

## Your response

### About Telecom2

Telecom2 are a voice network carrier with offices in London and Spain. Through the group of companies our focus is to be at the forefront of technology, specialising in VoIP B2B and call centre solutions. T2 also specialise in micro payments across mobile, card services and age verification.

Telecom2 has a broad spectrum of clients including a number of Contact Centres, Print media companies, TV companies and a Premiership Football club.

We also still have some of the traditional clients on 09 PRS running ICSS, Adult, Psychic and Competition services.

We are PCI DSS compliant and have achieved the ISO 27001 and Cyber Essentials Certified Plus standards

As a PRS provider, Telecom2 is looking at expanding into alternative revenue streams, recognising that the Voice Premium Rate market has suffered a significant drop in value. We believe this has two core causes. One is the emergence of other payment methods but the most significant is the impact of Regulation. The various codes that have regulated the market have been loosely worded in key areas, leading providers to be perceived to have breached the code where they have made stringent efforts to comply. Investigations have taken too long to be completed, years in many cases, and fines have been disproportionate, often in excess of the net revenue from services and issued with no clear, transparent or auditable formula. In addition, the in-situ regulatory agency, despite being 'not for profit' has introduced a raft of charges on providers for activities for which it already collected a levy and for which its staff were budgeted for. In combination, these measures and methodology of regulatory enforcement have deterred new entrants, both UK and overseas, from joining the market, deterred innovation by existing providers and led to some providers either exiting the market altogether or having to cease trading because they were unable to pay the fines. The Code of Practice has become the very thing it was determined not to do when it was first launched by Lois Blom-Cooper QC. Granted the market has evolved along with technology, but stifling and restricting innovation and young entrepreneurs is not what the Code was ever meant to be. Many of the measures now can only be supported by the larger more corporate organisation with significant IT capabilities and not the very small micro businesses established by young entrepreneurs. Evidence of this is the lack of small start ups entering the market.

We welcome the transfer of responsibility for Premium Rates Services from PSA to OFCM and the replacement of the Code with a Statutory Instrument in the hope that

these will provide more certainty and clarity and make understanding and compliance with the regulatory requirements easier.

We are grateful for this opportunity to contribute to the formal consultation exercise on the transfer of responsibility. Our comments are based on a combination of over one hundred years of experience, internal knowledge and discussions with clients and potential clients

One omission from the consultation is formalised and informal liaison between OFCOM and Industry after the transfer of responsibility takes effect. We would like this to continue, it provides a valuable two-way information flow and while the SI cannot easily be changed it could inform working practices and point up trends.

There is no mention of a Consumer Panel as currently employed by PSA. While the current execution of the idea is flawed we feel that it could be a valuable tool in the regulation of PRS. The flaw is that as it is currently constituted, the members of the panel are atypical of consumers, being largely comprised of senior members of consumer protection bodies in one form or another. We would like to see a panel made up of genuine consumers representing the UK Demographic.

We note the removal of the Prior Permission regime. We feel this is a retrograde step as this regime enabled providers to be confident that they were operating within the code for high risk services.

Unless otherwise stated, paragraph numbers are those in the consultation

We would also like the opportunity to comment on any changes to the order arising from this consultation.

### Consumer panel

Question	Your response
<b>Q1. Do you agree with our assessment that our proposals will not affect any specific groups of persons (including persons that share protected characteristics under the EIA 2010 or NIA 1998)? Please state your reasons and provide evidence to support your view.</b>	Confidential? – N  We have no reason to suppose that any of these groups will be adversely affected by the Transfer of responsibility to OFCOM

<p><b>Q2. Do you agree with our assessment of the potential impact of our proposal on the Welsh language? Do you think our proposal could be formulated or revised to ensure, or increase, positive effects, or reduce/eliminate any negative effects, on opportunities to use the Welsh language and treating the Welsh language no less favourably than English?</b></p>	<p>Confidential? – N</p> <p>We cannot see any areas for enhancing the Consultation’s effects on Welsh speaking people</p>
<p><b>Q3. Do you have any comments about our proposed definitions in articles 3 to 8 of Part 1 of the draft PRS Order for key service concepts that are used throughout the Order?</b></p>	<p>Confidential? – N</p> <p>We aren’t clear what is meant by “an electronic communications service which is being provided by the same person providing the premium rate service”. This could be read as exempting Network Operators as some of them already are provided a PRS. Vodafone for example operate a SMS Football alert service at £1.50 per alert..</p> <p>We believed that services provided on the 098 range were already regulated under code 15..</p>
<p><b>Q4. Do you have any comments about our proposed definition for PRS regulated providers and regulated activity in article 9 in Part 1 of the draft PRS Order?</b></p>	<p>Confidential? – N</p> <p>The definitions are clear except that a recent PSA case suggests that Network Operators should perform DDRAC on Network Operators they host, saying that they are intermediaries We would like clarification on this as provided the Networks are fully partitioned we believe it would be anti competitive for a Network Operator to have sight of another Network Operators services and customers.</p>
<p><b>Q5. Do you have any comments about our proposed approach to registration and registration exemptions in Part 2 of the draft PRS Order?</b></p>	<p>Confidential? – N</p> <p>4.6 We note that OFCOM are not proposing to give compliance advice. We feel that this is a retrograde step. Being able to seek advice for proposed new services and promotions gave limited confidence (in that the PSA would indemnify their advice as being accurate or correct and providers who followed that advice could still be breached) that a providers approach was correct, it removed some uncertainty and made a strong contribution to ensuring that services and their promotion were not in breach of the letter and spirit of regulation.</p>

Not having this facility will reduce investment and innovation in the market even further.

4.37 We welcome the proposal to remove some requirements for registration, in particular the need for annual registration. The requirement to promptly notify the regulator of any changes makes repeated registration unnecessary.

4.41 We have concerns over the exemption from registration for Merchants who Operate services exclusively through a single intermediary. This will make it more difficult for consumers and OCP service teams to identify merchants if any issues arise as Intermediaries links to services are not visible to OCPs and consumers. We note that Intermediaries are required to make Merchants' contact details available on their web site but consumers won't know where to look, which Intermediary is involved.

Will an extract from the registration data still be publicly available as it is with the current number checker? This is a valuable service to consumers and OCP Customer Service Teams.

We note that affiliate marketers are not accountable for their actions. We would like them brought into the scope of the SI as they are often the cause of breaches of the code and Merchants aren't aware of Affiliates action until the harm has been caused

Bringing 087 numbers within scope of the new code will cause significant amounts of extra work, the quantity of 087 numbers in use is huge and registering them will be a

	<p>massive job for Merchants and OFCOM</p>
<p><b>Q6. Do you have any comments on our proposed requirements relating to due diligence and risk assessment in Part 4 of the draft PRS Order?</b></p>	<p>Confidential? – N</p> <p>4.67 We would like details of OFCOM directions to be made prominent enough to be easily found by people undertaking due diligence, it isn't currently always easy to find documents on the OFCOM web site.</p> <p>4.68 Is it the intention that Due Diligence be carried out on all suppliers used to promote and provide a CPRS? Search Engine operators for example would be inundated with requests to provide information.</p> <p>4.74 How can Merchants perform Due Diligence on themselves? Products and services can be risk assessed</p> <p>4.75 © Contracting party's involvement in legal proceedings should be limited to proceedings relevant to provision of PRS</p> <p>4.75 (d) SI Schedule 1, 12(f) says:“ Where a PRS provider is a merchant, the PRS provider must also provide the following information in respect of each controlled PRS being provided to consumers— (b) the name of any other person contracted for the provision of that service, including for promotion and marketing of that service.”</p> <p>We would like this requirement to be removed. The information will be obtained as part of the Due Diligence and risk assessment procedures. In addition, it would mean that commercially confidential information will be publicly available.</p> <p>Articles 18 and 19 permit termination or suspension of agreements between Network Operators and Intermediaries and Intermediaries and Merchants but not where</p>

	<p>Network Operators contract directly with Merchants. We would like the latter relationship to be included in the Order</p> <p>A recent PSA case has suggested that where a Network Operator hosts another Network Operator the Hosting Operator should perform DDRAC on the Hosted Operator, claiming that the Hosted Operator is an Intermediary. We believe this is not the case and that such action would be anti-competitive as this would require the hosting Operato to be given details of the other’s clients and services when both Operators could be in competition with each other</p>
<p><b>Q7. Do you have any comments about our proposed approach to security testing in Part 5 of the draft PRS Order?</b></p>	<p>Confidential? – N</p>
<p><b>Q8. Do you have any comments about our proposed approach to misleading information and/or the promotion and marketing of PRS in Part 6, Chapters 1 and 2 of the draft PRS Order?</b></p>	<p>Confidential? – N</p>
<p><b>Q9. Do you have any comments about our proposed approach to pre-contract information and express consent for imposing certain charges in Part 6, Chapter 3 of the draft PRS Order?</b></p>	<p>Confidential? – N</p> <p>4.150 There is currently only one price point that permits a free period following connection. We would like to have either more price points or existing redundant price points re tariffed and to be involved in this process as we were in the set up of the original 100 price points in the NGCS unbundling. Implementing either by OCPs could take some time. Even then, this will not be truly free as the OCPs will still raise an access charge on consumers.</p> <p>THE proposed amount of free time, sixty seconds, is too long, if the caller continues with the call they will already have been connected to and may be talking to the called party. Pre call announcements are normally complete within fifteen seconds. We are aware that some EU countries have a twenty second free call period, e.g. Telefonica and Orange in Spain,</p>

	<p>amongst others, and feel that this would be more appropriate.</p> <p>There is a significant amount of pre contract information required and may not fit on a single phone screen and still be readable. We would like it to be made clear that some information may be provided by a link to a web site containing information other than pricing and contact details</p> <p>It should be possible to give consent by means other than a DTMF button push. AI Voice consent for example should also be suitable</p>
<p><b>Q10. Do you have any comments about our proposed approach to provision of CPRS in Part 6, Chapter 4 of the draft PRS Order?</b></p>	<p>Confidential? – N</p> <p>Only to repeat that there are technical and contractual challenges to the implementation of the first free minute on calls to ICSS and that the time won't be free unless Access charges are also withdrawn for this time.</p>
<p><b>Q11. Do you have any comments about our proposed requirements relating to vulnerable consumers in Part 6, Chapter 5 of the draft PRS Order?</b></p>	<p>Confidential? – N</p> <p>We and our clients already have policies and procedures for dealing with Vulnerable consumers but we are concerned by the reference to an "average" consumer. Average in this context is a very subjective term and we aren't sure that it is appropriate.</p> <p>We believe that age verification in whatever form should be applied to all age restricted services.</p>
<p><b>Q12. Do you have any comments about the proposed requirements relating to prevention of harm and offence in Part 6, Chapter 5 of the draft PRS Order?</b></p>	<p>Confidential? – N</p>
<p><b>Q13. Do you have any comments about our proposed approach to competition and voting services in chapter 6 of Part 6 the draft PRS Order?</b></p>	<p>Confidential? – N</p>
<p><b>Q14. Do you have any comments about our proposed requirements in respect of certain CPRS in chapter 7 of Part 6 our draft PRS Order?</b></p>	<p>Confidential? – N</p> <p>Where the service is provided by means of a call we would like guidance as to what age verification is required. Providers can state that the service is not to be accessed by people under eighteen but actually verifying this is technologically challenging.</p>

	<p>We believe that Age Verification should be applied to all age restricted services, not just a few.</p>
<p><b>Q15. Do you have any comments about our proposed approach to the recovery of Ofcom's expenditure in Part 3 of the draft PRS Order?</b></p>	<p>Confidential? – N</p> <p>The proposed calculation will cause some uncertainty for providers as they will not know the size of the market,, making it difficult to calculate the cost of running services and so determine charges to clients.</p> <p>We would like this to be post pay rather than pre pay so that providers can be based on actual received revenue rather than projected revenue.</p>
<p><b>Q16. Do you have any comments about our proposed approach to additional requirements on network operators in Part 7 of the draft PRS Order?</b></p>	<p>Confidential? – N</p>
<p><b>Q17. Do you have any comments about our proposed requirements relating to information requirements in Part 8 of the draft PRS Order</b></p>	<p>Confidential? – N</p> <p>Article 57 (3) (a) says OFCOM may require a provider collect data that the PRS provider would not otherwise collect. We would like clarity that this requirement will not be imposed retrospectively and only if the provider has the ability to collect such data</p>
<p><b>Q18. Do you have any comments about our proposal to retain current PSA data retention periods for 2 years (for consumer data) and 3 years (for DDRAC data) in Part 9 of the draft PRS Order, with a preservation requirement following an investigation being opened?</b></p>	<p>Confidential? – N</p> <p>Currently, some providers of services requiring consent do not hold records of consent but sub contract this to the entity that performs this function on their behalf. We would like this to continue to be possible under the SI</p>
<p><b>Q19. Do you have any comments about our proposed approach to enforcement in Part 10 of the draft PRS Order?</b></p>	<p>Confidential? – N</p> <p>SI Article 64 (8) and Article 66 (8) says that OFCOM can issue an order requiring Providers other than those being investigated to make payment by way of compensation or in respect of annoyance etc.. We would like this to be limited to the amount withheld from the provider under investigation. Also, should this be as a result of or consequence of the direction or the investigated provider's actions?</p>



We note that there is no scope within the SI for a provider to appeal a Final Enforcement Notice. We feel strongly that there should be a formal appeal process, preferably to an independent body. The alternative, Judicial Review, is too costly for most providers to contemplate.

We would like to have transparency over how fines are calculated. Currently the fines imposed seem to be almost plucked out of thin air with no obvious rationale behind them. Fines need to be proportionate. The net revenue basis currently used by PSA makes no allowance for operating costs, legal fees, wages and property costs. PSA claim that providers go into liquidation to avoid paying their fines, the fact is that fines are so high that providers genuinely don't have the cash available and liquidation is a last resort.

We would also like OFCOM to clarify the position in relation to VAT and the role other parties may have played in services which ultimately receive a financial sanction. Firstly, VAT is paid / recovered for any PRS charge. If a fine is issued to a provider, does that then become a legitimate claim for VAT rebate from HMRC? If Ofcom wish to consider the revenue inclusive of VAT then it is incumbent that providers have legitimate recourse to reclaim VAT paid on revenues for services which become subject to a financial sanction. Secondly, if a provider receives a financial sanction, is it then an obligation for Communications Service Providers, network operators and other members of the value chain to return any payments or proportion of revenue share/service charge they will have received from the service? Ofcom should clarify this point because if they disagree, the Provider picks up the entire sanction and the other intermediaries will be financially benefitting from any breach of PRS Regulations as decided by Ofcom. Publicly, that would not sit well.

We would like timescales for investigations to be completed. Currently cases may take years to be completed. This prolongs consumer harm if there is any and creates uncertainty in the industry. Breaches tend to be inadvertent, not

	<p>resulting from wilful disregard for the code, providers all along the value chain need to know quickly how the code is to be interpreted to be confident that they are interpreting the code correctly.</p>
<p><b>Q20. Do you agree with our provisional assessment that our proposals are justifiable, non-discriminatory, proportionate and transparent? Please provide further information</b></p>	<p>Confidential? – N</p> <p>Subject to comments in this response, we agree with the regulations as set out in the Order, notwithstanding our concerns about the technical ability of small new entrants to comply with some of the regulation.</p>
<p><b>Q21. Do you agree with our implementation period? Please state your reasons and provide evidence to support your view?</b></p>	<p>Confidential? – N</p> <p>We believe that six months could be required to implement the SI. Much of the Order replicates in one way or another the 15<sup>th</sup> code and shouldn't take too much work to implement but there is one area of significant concern. The requirement to make the provision of the pre contract information free of charge will require either additional price points to the 100 mandated in the NGCS unbundling or the recycling of redundant price points. As far as we are aware, this process has not yet commenced. This will require significant work by the MNOs and Fixed Operators. Setting up the price points caused the NGCS unbundling to be delayed by a year, while this won't take so long it could be significantly in excess of three months. Additionally, there is an obligation under the Interconnect contract to give 56 days notice of any price changes.</p> <p>Even then, the first minute will not be truly free. For the free period to be truly free OCPs will have to be required not to raise an access charge.</p>

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