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18<sup>th</sup> September 2018

Dear Kathryn

**Reference: Consultation on extending the definition of Controlled Premium Rate Services to include all Information, Connection and Signposting Services (“ICSS”)**

*Question1: Do you agree with our assessment of harm? Please give reasons.*

We mostly agree with the assessment of harm. From our experience, the ICSS provider is attempting to exploit customers’ lack of understanding, hiding behind complex supply chains so that the customer cannot work out who is profiting from the service and the customer also does not realise the extent of the charges. Often this causes reputational damage for the organisation whose number is being forwarded to. For example, a customer accidentally calls an ICSS that is forwarding to the HMRC and later receives a large phone bill from their operator. Their first thought will be that the HMRC charges a high rate to call their customer services. If the customer follows up with a complaint, they may later find out that they accidentally used an ICSS but otherwise they will remain under the impression that it was the HMRC at fault. Even when they do realise an ICSS was used, we do not consider that the customer realises the extent to which their telephone provider profits relative to the ICSS either.

*Access Charges*

We would question Ofcom’s lack of evaluating the harm caused by high mobile access charges. When assessing the level of harm caused by charges to a service, the total value of the call must be

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taken into consideration. Ofcom's focus in this Consultation has referred to "bill shock" but has conflated shock from the total value of the call with shock relating to the service.

As Ofcom has noted in §5.13, mobile operators are charging between 44p and 55p per minute. Even on the maximum service charge available on 087s, 13ppm inc VAT, this is a 238% – 323% extra charge on top of the service charge and therefore is a significant contributor to bill shock. The fact that the majority of the charge is coming from the mobile access charge rather than the service charge is not something we believe most consumers are unaware of.

If ICSS is causing enough harm to warrant regulatory intervention, surely the mobile access charges, being the majority of the harm by value, must be looked at in conjunction?

*Question 2: Do you agree with the proposals for reform? Please give reasons.*

We somewhat agree with proposal to extend the definition of Controlled Premium Rate Services ("CPRS") to include ICSS as it will mean that ICSS providers, to be compliant<sup>1</sup>, will have to be transparent about the costs and that it is an ICSS provider and therefore should reduce the number of customers who accidentally use the service. The increased level of regulation may also cause some ICSS providers to exit the market. It also gives the Phone-paid Services Authority, ("PSA") the power to take action against providers who are not compliant.

The proposals, however, put new regulatory requirements on providers who may be unable to identify that they are involved in the supply chain of an ICSS. For example, a Network Operator, has no mechanism to identify which services are ICSS unless they are told by the ICSS provider (Level 2 provider) or the reseller (Level 1 provider), yet they are obligated to pay the PSA levy on these services. The Level 1 provider may also be unaware of the existence of the ICSS service. This issue is further exasperated by the complex supply chains that exist in this market. There could be multiple providers who inadvertently break a regulation because they do not have the information to be able to be compliant.

This raises the question as to whether the PSA will be able to identify an ICSS range prior to a complaint being raised. If this is not possible then it feels like an extremely reactive regulation and so is not likely to have a significant impact on consumer harm. One characteristic of some ICSS is that they purposefully exploit consumers through a lack of transparency of the service they are offering

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<sup>1</sup> Assuming that the PSA extend the same rules presently in place on 087 to 084.

and finding loopholes in regulation to continue operating when they are being investigated. These providers may continue operating in this way so that when one number is found to be non-compliant they can quickly (within minutes) deploy a new number, from a different Network Operator<sup>2</sup>, knowing that there will be a significant length of time before the new number is complained about. This will continue the current cat and mouse effect that the PSA are experiencing with ICSS. While the proposals will give the PSA the powers to deal with non-compliant ICSS on the 084 range, they need to be able to identify them first and to handle the issue in a way and time frame that prevents a new number being used. The PSA may also need to reconsider the enforcement regime and process as with the current process, it can take over a week to identify who the ICSS provider is (Network Operator is given 2 working days to identify the Level 1 Provider, who is then contacted and given 2 working days to identify the Level 2 Provider, timescales increased if there is a longer supply chain). By this point the ICSS provider could be out of reach of the PSA.

In other words, just amending the PRS Condition may not, even if the PSA amend the Code accordingly, address any of the harm Ofcom have identified (noting that the majority of the harm by value is a function of the Access Charge not the Service Charge). Ofcom have not considered other measures to address this harm, such as a prohibition on translating numbers without the B-number Subscriber's permission.

We also noted that there was no cost benefit analysis included in consultation and so would like to question whether one has been calculated? It is difficult to agree or disagree with proposals without knowing what the full impact will be. We note that this is somewhat circular as it requires the PSA to reveal its hand on what to do with the levy and due diligence and other parts of the Code of Practice once granted the power, but it does affect whether or not the granting of the power (as we assume it has the intention of being exercised) is proportionate and in keeping with Ofcom's statutory objectives.

***Question 3: Do you agree with our proposal of a four-week implementation period? Please give reasons.***

The timescale of the implementation period is a function of the cost benefit analysis, the shorter the timescale, the more expensive the implementation. We would expect that during the analysis, the appropriate balance between cost and timeliness was chosen. Does the PSA have any indication of

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<sup>2</sup> [REDACTED]

the quantity of ICSS currently live as this would give some indication of how many businesses will have to update their policies?

The majority of the implementation burden falls with the Level 2 operators and possibly the Level 1 operators and therefore we cannot comment fully on the implementation period. However, as a Network Operator we do have specific obligations relating to CPRS, including paying the levy. Again, we would like to question how we can identify ICSS to be able to fulfil our levy obligation? Our only recourse seems to be to send notification to our customers, who may be Level 1 operators, highlighting the change in regulations and hope that we are informed of any ICSS operating on our network. As previously stated, the problematic ICSS are likely to be operated by providers who purposefully exploit consumers and loopholes and so it seems unlikely they will voluntarily identify themselves.

We would also like to question whether an ICSS provider will need to register with the PSA because there is currently an exemption on the requirement to register for 087 numbers and so there would need to be clarification as to whether the ICSS requirements overrides this exemption.

Yours Sincerely,

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