

## COM AND TEL UK; Responses to PARTICIPATION TV 3

Com and Tel UK Ltd are a reputable UK Service Provider, licensed under live licence permission certificate 9908017 by Phone Pay Plus and is a member of AIME. We have been established since 1998 and obtained the first of only three available live licences that were available to UK service Providers at this time. Our current business is primarily functioning as a Service and Resource Provider for several Participation Television Channels.

Whilst we are a relatively small Company in terms of full time members of staff, there are many Companies and individuals that rely heavily on the revenues that are generated on the premium rate numbers that we supply to the Broadcasters. This is not limited to the Broadcasters themselves, as currently our Premium Rate services, which comply fully with the Phone Pay Plus code of Practice, have a resource and support network of third party suppliers which include hosting companies, live operator suppliers, live operator trainers, technical support agents, and corresponding administration and management staff, involved on an employed or self employed basis. We have been the Service Provider for Psychic Interactive TV since its beginnings and work on a consultancy basis for training and advisory on several programmes of the “babe” genre.

This is Com and Tel’s third submission to OFCOM in answer to their Participation TV consultation documents. In our opinion, OFCOM are complicating a situation which is relatively simple and are attempting to restrict consumer freedom of choice with some statements they have raised in PTV3. Psychic Interactive TV has now been on air for seven years and is successful at offering compliant programming and services with the highest levels of customer satisfaction. Babe style programmes have been running on TV for the same period and have increased in quantity, growth and consumer response. OFCOM’s own consumer research show very few concerns amongst consumers regarding the nature of these programmes and a clear understanding of what they offer. Evidence of consumer harm is lacking, despite OFCOM’s continual diligent efforts to further protect the Consumer. We agree that it is high time that rules are made for PTV programmes of both the adult and the psychic genres, but we do not feel that OFCOM’s regulations should hamper either the consumer in his choice, or the broadcaster in his ability to create quality programming on any platform he wishes, subject to adequate protection for the consumer.

OFCOM have a statutory duty to ensure that in performing its duties it does so in a manner that is proportionate and targeted only at cases in which action is needed. We in turn have our own concerns that OFCOM’s proposals are unnecessarily restrictive, in that

- 1) They could frustrate innovative business models dependent on billing methods offering greater consumer choice (such as the ability to pay by credit card or other alternative billing mechanisms)
- 2) They could hamper the advancement of new technologies offering consumer choice (such as the Freeview platform).

Our answers to the consultation questions are below.

## Question 1:

### Do you agree with OFCOM's assessment of those stakeholders likely to be affected by changes to the regulatory framework for Adult Chat and Psychic PTV services?

We agree that on the whole the summary of relevant stakeholders is accurate; however we feel there are a large amount of additional stakeholders that have not been taken into consideration. These are third party suppliers, presenters, technical companies, live operators, consultants etc who are all part of the PTV service provision but who are not directly employed by the Stakeholders listed in 6.67 of the consultation document. This numbers thousands of individuals whose livelihoods are at risk also, particularly so with the OFCOM proposals on limitation on Freeview and the banning of Credit Card and other alternative billing mechanisms, which would reduce customer revenues significantly and directly affect stakeholders who OFCOM have not taken into consideration.

### b) Do you agree with our understanding of the industry and operators?

We feel that the Industry Information set out in paragraphs 6.37-6.45 (inclusive) and 6.57 – 6.72 (inclusive) broadly represents an accurate picture, but feel that the revenues estimated in 6.40 as quoted in the Mediatique estimates of £20M for the psychic and adult PTV industries combined are a gross underestimate.

Com and Tel were one of the stakeholders mentioned in clause 6.39 who provided a range of information to OFCOM on request. Clause 6.41 states; *in their responses to the 2007 Consultation, some members of the industry claimed that the real scale of the value of the sector is in the region of £60-100m. However, there has been no substantiation of these claims or indeed any explanation as to how they have been derived.* This is because OFCOM did not ask all the relevant stakeholders for their submissions, concentrated on premium rate revenues rather than total revenues including alternative billing mechanisms from many stakeholders and did not also take into account the wide variety of services that are available on many channels. Stakeholders can only answer questions that OFCOM set them and OFCOM did not ask all the necessary parties, nor did they ask all the right questions to get a full market view.

There are now 2 dedicated psychic channels and several more adult channels that did not get included in impact assessment as they were not on air at the time it was conducted. This data is therefore also missing and shows market growth.

In short, while we feel that OFCOM has come to grips with some stakeholders and has a partial idea of the market size we do not feel that OFCOM has a 100% accurate picture and suffers from underestimating the marketplace, the amount of stakeholders and the many individuals that could be negatively affected by their latest set of proposed rulings. The circle is much wider than OFCOM has set out in their document.

Finally it is worth mentioning that as the OFCOM consultation has been going on for several years, this has hampered many new entrants into the market, who have delayed or indefinitely postponed the starting or new programming or channels until OFCOM have completed the

consultation process. So it is true to say that the POTENTIAL size of market is unknown, but has certainly seen some restriction due to OFCOM itself.

## **Question 2:**

### **Do you agree with our analysis of the options available for regulation of the promotion of premium rate services of a sexual nature.....**

There are of course further options that OFCOM could have presented. What is of some concern is the unnecessary restriction in the wording of Option 4 which is OFCOM's chosen preference.

*Option 4 – allowing promotion of premium rate services of a sexual nature and specific psychic services as teleshopping in dedicated channels only, subject to scheduling restrictions and channel positioning and labelling*

For adult services, we agree that dedicated channels and clear labelling are required, however “babe” channels are already in this position and we see no reason to make further changes or apply unnecessary restrictions in the light of the lack of consumer complaints or harm.

#### **.....and a) that on the basis of options, a change to the existing rules appears merited?**

Yes we feel a change to the existing rule is merited, but we feel that Psychic and adult should be separated and different wording be applied to each.

#### **b) Of the options presented, Option 4 meets the regulatory duties and suggests least potential impact on stakeholders?**

We agree that option 4 best meets the regulatory duties and has least impact on stakeholders, depending on how OFCOM finally word this clause and interpret it accordingly.

#### **c) That the scheduling restrictions of 9pm to 5.30am and requirements for labelling and EPG position under option 4 offer appropriate protection for viewers?**

We agree with the scheduling restrictions, which (for the benefit of the public) are in place anyway. We also agree with clear labelling. We do not agree with your wording on the above as we feel this is a deliberate attempt to restrict “babe” style programming to the SKY platform, which contains EPG positions and an adult section where the babe programmes are featured. This would, we feel, be entirely questionable in terms of OFCOM's ability to restrict the public's freedom of choice of viewing on non-SKY platforms and certainly anti-competitive and unnecessarily confining towards other providers. What is OFCOM's justification on this? If viewers are protected by clear labelling, dedicated channels and adult programming is after the watershed as stated, this should be satisfactory.

Question 3:

**Do you agree with our analysis of the options available for regulation of the promotion of live personal psychic services....**

We feel that there are more options available that fall somewhere in between those offered. We partially agree with Option 4 but find the wording overly restrictive and unnecessary. As stated above, we wish there to be SEPERATE rules applied for psychic and adult. Further explanation is given below. We do not see the harm also in spot advertising for psychic product, which is common in other European countries as long as psychic advertising is placed in context alongside psychic related editorial material and this is not accounted for in the wording of Option 4.

We welcome the suggestion in point 7.37 of the Consultation that “certain specific psychic practices – tarot, astrology and horoscopes be extended to live personal readings” and these services would therefore continue to operate under PhonepayPlus prior permission constraints.

**And a) on the basis of the options, that a change to the existing rules appears merited?**

We certainly agree that a change to the existing rules is merited and that current regulations are outdated. We would however consider that other than Psychic TV and “ Babe” TV sharing promotions inviting viewers to call in, there are no similarities between them and thus Psychic should be treated differently as a subject matter to “ Babe”. Accordingly, rules applied to Psychic TV can be less restrictive than those applied to “ Babe”.

**b) Of the options presented, Option 4 meets the regulatory duties and suggests least potential impact on stakeholders?**

Our view on this is that Option 4 is partially acceptable and would cause least damage for stakeholders simply by virtue of OFCOM allowing Psychic programming to continue on TV however there is unnecessary restriction in the wording of clause 4 that is unsuitable and unwarranted as well as factors discussed in later points.

Psychic TV has been successfully running for more than 7 years and has a good history without serious complaint. Services are extremely popular and well supported by consumers.

In our experience (this being the Service Provider for the longest and until recently only Psychic PTV show on TV) this type of content holds very little or no interest for minors. The audience is predominantly female and aged over 30. There is therefore no reason to restrict Psychic TV to dedicated channels. At the present time Psychic TV is on BOTH dedicated channels and appears on various slots on other, non dedicated channels (simulcasting). This practice has been taking place for several years and no consumer harm or complaints have come to light regarding channel positioning. There is no reason, in our opinion, why Simulcasting should not continue, nor why broadcasts of individual programmes of the psychic genre should not appear on other, non dedicated channels. This must surely be a key point in OFCOM’s decision making process. We do not feel either that there is a need to

restrict broadcasting to the SKY EPG, as we feel programmes, as long as they are clearly labelled for consumers, should be able to appear on any platform.

By the same token there is no need to limit its broadcasts by specific scheduling. The channels are clearly labelled in any case and your own Consumer research found this to be satisfactory. We do not feel any further or additional changes are necessary and would suggest also that OFCOM is going against its own ethics as laid out in clause 7.29. In the absence of evidence of Consumer harm and being duly diligent, responsible and ethical as a provider of such services, we find there is a danger of OFCOM over-regulating when there is no need to do so.

**c) That the restriction of promotion to specific live personal psychic services and the requirements for labelling and EPG position provide appropriate protection for viewers?**

We feel the CURRENT promotion, labelling and EPG positions on Psychic PTV programmes are quite satisfactory for viewers and do not see any need to change. This would seem to be supported by your own research by Essential *“most did not object per se to the promotion of psychic premium rate telephone services: in the right place and at the right time, promotion on television could be considered acceptable”*. And *“most participants supported a continuation of long form promotion of this product on television”*.

We would add to this that we see no reason why spot advertising for live psychic practices could not also be included, as long as the advertising is placed in context with programming of that nature around it.

For PTV, we also feel that there need be no restrictions on Freeview and no restriction on consumer use of payment via alternative billing mechanisms other than premium rate numbering as long as the service given follows industry best practice guidelines.

OFCOM also write as if viewers are ONLY exposed to psychic product via the medium of participation television. Naturally this is not the case, with every major newspaper now having its own psychic products and huge exposure, an increase in psychic publications and magazines with high circulations being available with no restrictions in every newsagent and a huge amount of products and information available on psychic subjects on the internet. Whilst we appreciate that OFCOM should always protect the consumer, we also believe that OFCOM should not OVERprotect the consumer and in both sets of PTV research, respondents mentioned particularly their concerns and aversions to “Nanny State Intervention”.

**Question 4:**

**Do you agree with the principles identified for changes to the Advertising Code rules on promotion of PRS of a sexual nature (rule 11.1.2) and psychic practices (rule 15.5)?**

Com and Tel agrees with the principles identified for changes and the suggested wording for the rules for Adult PTV in 11.1.2 as laid out in clause 7.23. In support, we do not feel that

spot advertising of adult premium rate phone lines should be allowed on un-encrypted channels or to appear within general editorial content.

For PTV, do not agree with OFCOM's comments regarding Freeview and think this is a somewhat dangerous precedent and an impediment to new and innovative platforms that may spring up in future, neither do we support any attempts by OFCOM to stipulate payment methods for the interactive broadcast services medium. We feel that as long as an adult PTV channel is clearly labelled and the content does not go out until after the watershed, i.e. when a viewer flicks over to it after 9pm and can realise within seconds what the nature of programming is, this is perfectly acceptable. We would ask OFCOM how many complaints there have been regarding "babe" style programming on Freeview? This surely must be relevant given the enormous number of viewers watching it. We would also ask OFCOM to supply information on why they have the right to take away current viewers freedom of choice and selected programming? Is there evidence of consumer harm among these viewers?

The viewer is not stupid and OFCOM must never treat them as such. The viewer is able to make his own discerning judgment as to his viewing choice. The broadcaster is responsible and follows best practice and industry regulations to ensure customer satisfaction and long term success. So where exactly are OFCOM's issues here?

For psychic practices we agree that the principles in 15.5 are due for change, but are unhappy with some of OFCOM's definitions, wording and thought processes in clauses 7.30 to 7.39. To begin with quoted the 2001 audience research in 7.32 "Beyond Entertainment" is completely unacceptable and should be struck from this consultation document! To stakeholders not in the industry, it is misleading in its entirety to quote this information. This research was done in the era Pre-Psychic TV, almost ten years ago, when peoples' perceptions of Psychics were different, there was far less psychic content available either editorially or in advertising on television or via other mediums ( e.g. there were no psychic lines in the daily newspapers, only recorded horoscopes) and the popularity of Psychics generally was much more fringe. The sample size of this research was over 3000 people, which is a reasonable number.

The latest audience research that OFCOM conducted had only 113 people, which we would argue was not large enough to be representative for anything. Even with this small sample there was a general knowledge of PTV programmes of the adult and psychic genres among respondents who, on the whole, did not raise any alarms regarding either.

We agree that clear labelling is desirable so that users can easily identify Psychic PTV services. We do not see the need to prohibit other broadcasters from simulcasting Psychic PTV or broadcasters promoting such services on Freeview, or to restricting content to a certain section on the EPG. There is no psychic section on the EPG and dedicated channels come under the Specialist category, which is hardly clear and precise labelling.

Most psychic services today utilising PRS have very limited potential to cause harm or offence and are operated within the constraints of the PRS PhonepayPlus Code of Practice and Industry best practice guides. Also within the general world of psychic information and entertainment there also exist numerous broadcasted programmes with psychic content which are not unusual and do not attract any undue concern or regulatory restrictions in programming or promotion. While there will be some psychic content, as with any other

content, which has the potential to disturb this is adequately restricted by normal broadcast rules and consumers are protected by current PRS Codes of Practice and Industry Best Practice guides and so should pose no more of a threat to consumers than normal “controlled” broadcast content.

We are also unhappy about OFCOM grouping together psychic and occult as one category in some cases in its document and treating them separately in others. We feel to most stakeholders “psychic” is viewed as relatively mainstream and would usually mean a person that can predict the future but various means. Occult we feel that most people perceive as including darker practices such as magic, sorcery, necromancy and witchcraft.

It must be recognized also that viewers are only one of the five stakeholder categories identified by OFCOM at paragraph 6.67 of the consultation. As stated previously we also believe not ALL stakeholders have been listed under this clause, many of whom are entirely reliant on their jobs. If OFCOM insists on its unnecessary restrictions, these unnamed stakeholders will suffer. OFCOM should balance the interests of all stakeholders and we do not feel this is achieved by the proposed addition to rule 15.5.

OF COM acknowledge in paragraph 3.49 page 20 that “on the risk of harm, there is no evidence that would suggest widespread harm to legitimate consumers from the use of PRS of a sexual nature or most types of psychic PRS. Consumers of these services are self-selecting and able to exercise their choice, with existing rules in place operated by PhonepayPlus to control the risk of harm from use of the products”.

And this, when there are channels already on Freeview, different types of payment mechanism and simulcasting on psychic? Surely this means that no changes are necessary?

**b) Do you agree with the wording of the proposed rules? If not, please suggest alternative wording.**

Having regard to our comments, we would suggest the following alternative wording:

**“Proposal for addition to rule on psychic practices in the Advertising Code (to be added to rule 15.5)**

#### **Rule 15.4**

Television advertisements must not promote psychic practices or practices related to the occult, except those permitted by rule 15.5. Radio advertisements may promote psychic products but must not make efficacy claims.

#### **Rule 15.5 – Television only**

Television advertisements may promote services that the audience is likely to regard merely as entertainment and that offer generalised advice that would obviously be applicable to a large section of the population, for example, typical newspaper horoscopes and live psychic readings.

### **Rule 15.5.1**

Advertisements may promote a pre-recorded or live psychic services if:

**15.5.1.a** the service includes no content that respondents might feel to be threatening and

**15.5.1.b** both the advertisement and the service state clearly that the nature of service is

**15.5.1 c** The content is covered by industry best practice guidelines, or in the case of premium rate numbers, the Phone Pay Plus Code of Practice

**15.5.2** Advertisements for personalised and live services that rely on belief in astrology, tarot and derivative practices of a psychic nature are acceptable only on channels that are licensed for the purpose of the promotion of such services and are appropriately positioned and labelled in a manner that enables viewers and consumers to readily recognize the nature of the product or service. Both the advertisement and the product or service itself must state that the product or service is for entertainment purposes only.

**15.5.3** Advertising permitted under rule 15.5 may not:

- Make claims for efficacy or accuracy;
- Predict negative experiences or specific events;
- Offer life-changing advice directed at individuals – including advice related to health (including pregnancy) or financial situation;
- Appeal particularly to children;
- Encourage excessive use.”



## Conclusion

Com and Tel feel that OFCOM should treat the regulations for Psychic and Adult PTV separately and apply clear wording, definitions and conditions to each.

For adult we do see the need for change and unless there is evidence of high consumer complaints or harm that have come to light, there is no need for OFCOM to impose necessary restriction on the consumer by restricting his purchasing choices, the broadcaster or the platform supplier by the imposition of unnecessary extra regulation.

Psychic genre PTV services which follow best practice guidelines should enjoy the same freedoms as other teleshopping services with the ability to advertise and broadcast with minimal restrictions as is increasingly happening under other EEC jurisdictions. Psychic PTV operates with due diligence and the consumers would seem to agree with this. So perhaps OFCOM could simply allow this to continue.

OFCEM should not disadvantage one supplier over another ( e.g. SKY over Freeview) as clear labelling, and sensible scheduling have to our knowledge lead to no problems for either the psychic or the adult PTV programmes in their current formats and placements on the platforms.

It would be good for OFCEM to work with, rather than against, the Broadcasters, whose intentions are to make high quality broadcasting that satisfies the consumers, and make best efforts to offer customers freedom of choice while offering

- i) Consumer and viewer protection;
- ii) Ensuring the freedom, availability and competition of different audio-visual services;
- iii) Regulation appropriate and proportionate to these objectives as stated in their own duties and considerations

This would seem to be all that anyone asks.