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Review of the Premium Rate Services Condition

BT's Response to Consultation on extending the definition of Controlled Premium Rate Services to include all Information, Connection and Signposting Services published on 26 July 2018

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Question 1: Do you agree with our assessment of harm? Please give reasons

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

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

1 Executive Summary

- 1.1 We support Ofcom's proposals because Information, Connection and Signposting Services (ICSS) cause harm to the Consumers calling them and to the organisations those Consumers intended to call direct.
- 1.2 Ofcom can provide greater customer protection by using its powers to:
 - a) permit Communications Providers to block numbers and withhold revenue on the basis of fraud or misuse; and/or
 - b) withdraw allocated numbers where they have caused harm.

To assist Ofcom in this process it should agree a reporting process with the Phone-paid Services Authority (PSA) so that Ofcom is notified when and against whom these actions should be taken.

- 1.3 Ofcom needs to set out and agree with the PSA the status of ICSS. We recommend it is made clear that the ICSS Provider using a promoted number is a Level 2 Service Provider under the PSA Code of Practice¹ (the PSA Code). This should apply to all ICSS including those where the provider of the ICSS has been directly allocated telephone numbers by Ofcom and where the ICSS is providing onward connection to another number.

¹ https://psauthority.org.uk/-/media/Files/PSA/For-Businesses/Your-phone-paid-service/Code-of-Practice/PSA_Code_of_Practice_14th_Digital.ashx?la=en&hash=49BE1A6A76303EEBCF254A692015059D4D4171A3

2 General Comments on the Consultation

2.1 We support Ofcom's proposal to modify the Premium Rate Services Condition so that it applies to all Information, Connection or Signposting Services (ICSS), irrespective of the price charged to callers. However Ofcom could do more to limit the harm that ICSS causes and use its power under General Condition B4.4 (GC B4.4) and General Condition B1.18 (GC B1.18) to:

- prevent calls from happening in the first place by withdrawing the allocation of numbers to Service Providers where demonstrable misuse or harm has occurred;
- restrict caller access to services by instructing Communications Providers to block traffic to specific numbers and to withhold revenue where there is reasonable evidence to suggest harm may occur due to evidence of previous misuse by the provider; and

Ofcom should work with the PSA to ensure any fines for breach of the PSA code are supplemented by action taken by Ofcom against Service Providers who deliberately and consistently cause harm to consumers.

Ofcom should use its powers proactively to block numbers, withhold revenue and ultimately withdraw the allocation of numbers under the revised General Conditions to limit customer harm where appropriate

2.2 Ofcom has power under GC B4.4² (currently GC 20.3) to request Communications Providers block numbers and withhold revenue on the basis of fraud or misuse. This serves two purposes:

- blocking numbers prevents customers from calling the harmful ICSS service(s); and
- withholding the call revenue removes the financial benefit the ICSS provider expects to receive.

2.3 The use of GC B4.4 is effective because wrong-doers no longer benefit from misuse because their services no longer receive calls. Customers are protected from further harm as any calls they try to make to the blocked numbers do not complete and so are not charged for.

2.4 GC B4.4 allows Communications Providers to withhold revenue for blocked numbers. This restricts the financial benefit to the wrong-doer and discourages misuse on alternative numbers or number ranges.

2.5 Whilst GC B4.4 is effective at limiting customer harm it is neither proactive nor preventative. Where an wrong-doer has access to alternative numbers or number

² B4.4 *“Regulated Providers shall, where requested by or on behalf of Ofcom on the basis of fraud or misuse, block access to Telephone Numbers and/or Public Electronic Communications Services and in such cases withhold revenue associated with such Telephone Numbers and/or Public Electronic Communications Services.”*

ranges a repeated cycle of further harm is possible. To be fully effective Service Providers should be prevented from abusing customers by being excluded from the market where they are found to be repeat wrong-doers.

- 2.6 From 1 October 2018 Ofcom can use new regulation under GC B1.18(e)³ to remove numbers from wrong-doers that cause significant harm. If Ofcom withdraws the allocation of numbers and number blocks used to cause harm it will proactively limit the continued misuse of communications networks. This will break the cycle of continued and persistent provision of harmful and deceitful services by Service Providers who are determined to take advantage of customers.

Ofcom should work together with the PSA to take action against Service Providers who cause consumer harm

- 2.7 The PSA monitors and assesses consumer harm caused by services that fall within the remit of the PSA Code. Where harm is significant, or there is a breach of the PSA Code, Service Providers are investigated and if found guilty, action is taken to address the misuse.
- 2.8 The PSA may fine Service Providers for breaches of the PSA Code. However, the financial benefit the Service Provider gains by providing the service may render the penalty an ineffective deterrent. This happens, for example, where the Service Provider migrates the same, or a similar service onto a different number or number range and so continues to cause customer harm.
- 2.9 This means that any action by the PSA needs to be coordinated with Ofcom to be truly effective and reduce the risk of consumer harm as far as possible.

We recommend that Ofcom and the PSA agree a process of working together to address misuse of ICSS services

- 2.10 The PSA can investigate and notify Ofcom of cases that would warrant Ofcom taking action to block numbers and withdraw allocated numbers.
- 2.11 We recommend Ofcom agrees a process with the PSA to report cases of significant harm and misuse to Ofcom, to enable Ofcom to take action on receipt of such reports.
- 2.12 Ofcom could publish this process on its website and set out the timeline for the actions it will take. This provides transparency to the Communications industry and helps to ensure timely action is taken to prevent further customer harm.

³ B1.18 *“Ofcom may withdraw an Allocation of Telephone Numbers from a Communications Provider where: e) Ofcom has advised the Communications Provider in writing that a significant proportion of those Telephone Numbers has been used, or that such Allocation has been used to a significant extent, to cause harm or a nuisance, and the Communications Provider has failed to take adequate steps to prevent such harm or nuisance.”*

Ofcom should clarify that Service Providers that provide chargeable ICSS services are Level 2 providers under the PSA Code. No call origination payments for ICSS calls made to Freephone numbers should be made because these calls are not “free to caller”

- 2.13 Ofcom should confirm with the PSA that the label of Level 2 provider (under the PSA’s Code) is always attached to the termination point using the telephone number that the customer has called to reach the ICSS.
- 2.14 The PSA has a broad definition of a Premium rate service provider⁴ which may cause confusion for some ICSS providers. Under the PSA Code, Level 2 providers⁵ promote, operate and control the content of their service. The onward call connection provided by an ICSS to another organisation is a part of the content they provide as part of their advertised service. The onward connected part of the service is not a separate or subsequent communications service.
- 2.15 Some ICSS providers claim they provide call origination to Freephone numbers, however ICSS calls are not free-to-caller. They promote their chargeable call connection service and require payment for calls that would have been free of charge had the caller dialled the Freephone number directly.
- 2.16 Most ICSS use numbers within Ofcom’s Non Geographic Call Services (NGCS) ‘unbundled tariff’, which allows the Call Terminator to set and receive a Service Charge for their calls. BT considers that the ICSS service is the termination point for the call because the Service Provider has used a non-geographic call Service Number for the calling customer to contact them on.
- 2.17 ICSS services can be compared with Directory Enquiry Services that offer onward connection via a 118 number. These Directory Enquiry Service Providers are already considered to be Level 2 providers where they control the content, cost and promotion of their service. The charging model is the same for both 118 services and ICSS. Like Directory Enquiry Services, an ICSS is a facility operated by a Service Provider who controls the content and promotion of the ICSS.
- 2.18 Ofcom and the PSA should agree that any onward call connection provided as part of an ICSS facility is neither transit nor origination in terms of communications networks as the ICSS using the promoted number the caller has dialled is the termination point of the call for the purpose of billing that calling customer:
- any onward call connection provided by the ICSS as part of its service is not transit, because this implies a new service is being provided that is independent of the call the ICSS has received from the originating caller, which is not the case; similarly,
 - the ICSS is not the originator of the onward connected call in communications

⁴ “5.3.28 ‘Premium rate service provider’ means any Network operator, Level 1 or Level 2 provider”

⁵ “1.3 Providers of Premium rate services

The PSA regulates through the imposition of responsibilities on Premium rate service providers. Three categories of Premium rate service providers are defined in Part Five:

Network operators, Level 1 providers (who form part of a premium rate value chain) and Level 2 providers (the end provider of the service). A Premium rate service provider may fall within more than one of these categories.”

provider terms, because the onward call is a part of the service being provided to, and paid for by, the caller.

The amount the ICSS wishes to receive for their service is set by the Service Charge applying to the number that the ICSS uses and promoted. ICSS should not seek to supplement the Service Charge payment they receive by claiming additional network charges independently from the call connection service being provided to the calling customer.

3 Responses to Ofcom's consultation Questions

Question 1: Do you agree with our assessment of harm? Please give reasons.

- 3.1 We agree with Ofcom's assessment of harm.
- 3.2 ICSS providers often rely on customers not understanding that they have not called the organisation they wanted direct and are instead being connected to that organisation by a third-party. This can result in complaints, unexpected charges for calls the customer thought should be free, and even the potential for fraud if the caller's personal data is captured and used without consent.
- 3.3 Ofcom uses the PRS Analytical Framework in its assessment of the harm (or likely harm) of the supply and demand-side characteristics. This predates the implementation of the Non Geographic Call Services regime introduced in July 2015. This Framework assumes that the supply-side (the Communications Provider with the calling customer) controls the cost of the call in its entirety. However, NGCS changed this factor with the supply-side provider controlling only the Access Charge element of the call. Under NGCS, the Service Charge element of the call is now set and passed to the terminating Communications Provider to share with the ICSS provider. As the Access Charge is generally higher than the cost for ICSS calls using 084 numbers, we do not believe this has any significant bearing on Ofcom's assessment.
- 3.4 While the Service Charge is relatively low, the cost to the caller will also include an Access Charge (in pence per minute). The consolidated price is likely to have a significant impact on the overall cost to the caller of what most likely, should otherwise have been a free call. We therefore consider Ofcom's assessment to be fair and the minor anomaly within the Framework has no significant impact on Ofcom's conclusions.

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

- 3.5 We agree that all ICSS should be subject to the PSA Special Conditions as these provide additional protections to customers who call ICSS numbers.
- 3.6 Calling a service via an ICSS number that provides onward call connection enables a third-party to remain in a call, or to add listening or recording equipment to a call, without the caller being aware. This is because the caller may believe they have they have called the organisation they wanted direct and they are do not

realise that they have called an independent third-party who has onward connected their call to the organisation they wanted.

- 3.7 PSA Special Condition ICSS 8 requires callers are clearly informed that their details are being provided to a third-party⁶ ensuring the customer is aware that they have not dialled direct and protecting the caller from unknowingly sharing personal information. However this currently applies only to ICSS providers using 087 or 09 numbers leaving 084 and non-NGCS numbers charged below 10 pence per minute vulnerable to misuse.

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

- 3.8 We agree with a four week implementation period as we cannot think of any reason why the implementation period would need to be extended, subject to the PSA's ability to carry out any additional changes that may be required.

⁶ ICSS 8 “Where the consumer is requested to supply secure personal and/or confidential details, then they must be clearly informed that their details are being provided to a third party, and not the organisation they wished to contact. In addition, where such secure data will be used to log into a consumer’s online account in order to undertake any action on their behalf, then consumers must be clearly informed of this and that they could perform these actions themselves at no cost. They should also be advised that information about how this data will be stored, retained, or further used is available on the ICSS providers’ website. Providers should ensure that such information is fully and clearly provided on the website relevant to the number the consumer has called.”