



**The Mobile Broadband Group**  
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**A Review of ICSTIS's Governance Arrangements – a response from the Mobile Broadband Group**

The Mobile Broadband Group (whose members are O2, Orange, T-Mobile, Vodafone and 3) welcomes the opportunity to respond to ICSTIS's Governance review. With the new co-regulatory framework now in place, this review is timely.

**Summary**

- Premium rate services have grown strongly in recent years. This is good evidence that the regulation is broadly aligned with the needs of consumers and service providers. The UK industry also compares well with overseas markets such as the United States.
- The MBG would like to see a few changes to the Governance arrangements of ICSTIS but always recognising that its overall independence is valued by consumers and, in the interests of continued growth of the premium rate industry, should not be compromised.
- This paper covers the majority of areas on which the MBG expresses a collective view. Individual operator responses are being submitted on some specific points.
- If any significant changes are proposed as a result of this review, there would need to be further consultation on the detailed plans for re-structuring.
- One of ICSTIS's core values is "independence at all times from the sector companies or individuals that we regulate or that fund our work". This core value needs to be retained under the new arrangements.
- Furthermore, any restructuring would have to be balanced and give due weight to important sectors, such as the mobile sector.
- New arrangements would also have to avoid the problems that have been encountered in the past with industry representation on the Committee .
- The suggested Experts Panel may be worth exploring, as the MBG would like to see ICSTIS being a bit more technologically aware. However, we would have to be satisfied that this was the most cost-effective way of achieving this. The MBG would need to see the remit tightly drawn and focused on some value-added deliverables.
- The idea of a Resources Council also has merit but the MBG would like to see some more fundamental questions asked about its role and method of operation before giving its enthusiastic support.

**Q1. Do you have any comments about the background and context to this Review in light of the changes in the market and statutory framework that are outlined?**

Premium rate services have grown strongly in recent years. This is good evidence that the regulation is broadly in line with the needs of consumers and service providers. The MBG therefore does not see that there is a need for root and branch reform.. Nevertheless, it would be complacent to think that there is no room for improvement and so this consultation is worthwhile.

A good starting point for the Governance Review is to revisit the vision, mission and values of ICSTIS. Some of the proposals in this consultation, if adopted, could undermine the core values (for example: *independence at all times from the sector companies or individuals that we regulate or that fund our work* [source: ICSTIS web site])

The MBG believes that these values have served stakeholders well and we would like to see them retained.

It is also important that ICSTIS is not indifferent to the future viability of PRS, as far as that is determined by public confidence in levels of consumer protection.. Whilst recognising that ICSTIS is not responsible for promoting the commercial attractiveness of PRS, it is nevertheless a payment method that customers find very convenient and generally trustworthy. This is the context in which ICSTIS conducts its regulation and should always be reflected in its overall strategy.

## **SECTION 4 – The functional areas of the Governance Review**

### **Strategy, accountability and constitutional matters**

**Q2. How strongly do you feel that there is a case for change to the current arrangements for the structure and composition of ICSTIS' Committee?**

The MBG believes that it is an appropriate time to review the current arrangement for the structure and composition of the ICSTIS Committee.

As ICSTIS has pointed out, the UK premium rate market is now one of the largest in the world. This growth is largely down to the innovative approach taken by premium rate service providers. However, the existence of ICSTIS and the Code of Practice has undoubtedly been particularly useful in creating an environment where consumers trust this form of payment mechanism and as a result use the services more – ultimately leading to revenue growth.

As a consequence, the MBG would urge a cautious approach to making significant changes in the way in which ICSTIS is governed.

When suggesting changes we all have to be confident that what will replace the existing regime will be a substantial improvement on what has gone before; and that in trying to erase existing (apparent) shortcomings, we don't just create a different set of shortcomings.

ICSTIS is a good example of co-regulation that has in general served the market (both industry and consumers) well. We do not believe that the current structure and composition of the ICSTIS Committee has demonstrated flaws that would necessarily warrant a fundamental overhaul.

If, however, as a result of this review, any significant changes are proposed, the MBG would like to have further consultation on the detailed arrangements, including an assessment of what benefits would be delivered by proposed changes, how they would be realised and how restructuring could be balanced to give due weight to important sectors such as the mobile sector.

**Q3. What are your thoughts on the analysis we set out in terms of the options for engaging stakeholders further in the strategic work of ICSTIS and how far should we alter the governing arrangements as they currently exist and in what way?**

The MBG agrees with ICSTIS that it is a good idea to draw more widely than in the past on the expertise that commercial stakeholders could offer in determining the mission, strategy and business plans for ICSTIS. In this way, the Committee could ensure that it is better placed to understand developments in the PRS sector. The MBG thinks that ICSTIS should be more alive to technological developments.

With such an objective in mind, ICSTIS has put forward two potential options for consideration. First, to provide the ICSTIS Committee with widened access to expertise, through perhaps an 'Expert Panel' of industry advisors. A second option would be to alter the current composition of the ICSTIS Committee entirely and bring into it a range of commercial expertise.

The MBG believes that if there is to be more direct industry participation on the Committee, candidates (either collectively or individually) should be able to demonstrate a degree of impartiality and a broad knowledge of the industries covered by ICSTIS, including the mobile sector. They should not be purely representatives of individually regulated companies. Any restructured committee must be balanced and not skewed to one particular sector or set of interests.

The idea of the Experts Panel could also work but there are still a number of questions to be answered about it. For example, would this be the most cost-effective way of achieving greater technological awareness. Would the panel be paid or be volunteered by interested stakeholders? Would the remit be tightly drawn and focused on some value-added deliverables? Would the panel replace INOC? How could ICSTIS ensure that the panel were indeed 'experts' and not just there to peddle a particular commercial interest?

The idea certainly deserves further thought but the MBG would like to see more details.

**Q4. Where and why is independence thought critical to the effectiveness of ICSTIS? What benefits does it bring?**

The independence of ICSTIS is central to the way in which consumers perceive premium rate as a trustworthy and convenient way of consuming and paying for services.

The principle to follow here is that the adjudication 'arm' of ICSTIS must remain independent. If there are to be new arrangements, they should clearly set out how conflicts of interest can be avoided and thus avoid a re-occurrence of past problems in this area.

**Q5. Depending on your answer to Q2, how should we go about securing the input of stakeholders, and specifically commercial stakeholders, whether in an advisory or decision-making capacity?**

The MBG does believe that one area where ICSTIS could improve is in technical know-how. The industry does evolve fast and ICSTIS needs to develop its strategy and practices in a way that recognises forthcoming developments and also makes a proper assessment of whether there are any risks posed to consumers. (For example, premium rate services supplied by a service provider that has no billing or ongoing relationship with a customer pose a far greater risk than those supplied in a competitive market and billed directly by suppliers that have a major stake in keeping their customers happy.)

Whatever the new governance arrangements, ICSTIS will still have a need to engage the wider premium rate community and should retain existing processes for gathering opinion, such as regular public fora and formal consultation.

**Q6. Can we have the best of both worlds - the benefits of independence and arrangements that maximise our understanding, efficiency and effectiveness?**

See response to Q5.

**Determining the Code of Practice**

Q7. What are the barriers to this in an area where commercial players are very numerous and may have little in common or can be direct competitors, and where representative groups are limited in membership and scope?

Q8. What benefits (and/or downsides) would you see in involving wider stakeholder expertise in Code making?

Q9. Depending on your answer to Q8, how should that input best be provided? Should it be through direct involvement of stakeholders, including commercial stakeholders, in the governing body, should it be through the creation of an "expert panel" of stakeholders created with the aim of advising ICSTIS on Code and policy issues, should it be both of these or something else?

**Response to Qs 7-9**

By and large the existing arrangements for determining the Code of Practice are acceptable. It has proved effective that the code has ultimately been finalised by the Committee, after consultation with stakeholders.

The MBG's preference is that this process remains with the following provisos:

- all stakeholders continue to be properly consulted about revisions to the Code and that the process be transparent.

- ICSTIS do not attempt to take the remit of the Code beyond the scope of premium rate services, as set out in the Communications Act 2003.
- ICSTIS remain alive to new opportunities for the use of PRS suggested by industry and look to incorporate them in the Code, where necessary (e.g use of higher rate tariffs).
- ICSTIS should retain the 'prior permission' process, so that it can be flexible about introducing new services without having to wait for a Code revision. This is important now that new versions of the Code have to be passed through the European Commission.
- Regulatory intervention is evidence based.

ICSTIS should also keep under review the increasing length and complexity of the Code. On the whole the MBG prefers that the Code be reasonably detailed and be backed up by guidance notes. This approach adds to the legal certainty and allows the Code to be targeted more accurately at the services it is trying to govern.

However, ICSTIS should also recognise that the increasing length could give rise to increasing complexity and thus confuse the service provider community. This will lead to the Code being misinterpreted or possibly even ignored.

ICSTIS should consider whether it could provide clearer identification of the core obligations and produce a set of obligations that cover all services and only by exception make specific provisions to cover particular services.

### **Prevention and Enforcement**

Q10. What benefits and/or problems would you see with involving stakeholders, especially commercial stakeholders, directly in the prevention and enforcement role of ICSTIS?

Q11. If there is a role for stakeholders in making an input to the prevention and enforcement role, should this be at the level of "advice" or active involvement in "decision-making"?

**No comments on Q,s 10 & 11**

### **Funding and budgeting**

Q12. Would any of these options, in your view, provide you with greater comfort about the arrangements for accountability in the budget setting process?

Q13. Do you have any other suggestions for how accountability in the budget setting process could be strengthened?

Q14. What are your thoughts on the future role that INOC could play and how do these fit with your thoughts and comments on Options 1, 2 and 3 posed above?

## **Response to Qs 12-14**

The MBG prefers the suggestion that there should be a “Resources Council” (Option 2 in this part of your consultation document), although we would like to see more details on what the council would do and the process for electing its members

One of the main themes in this consultation is to explore how service providers can take more responsibility for the co-regulation of their industry, without compromising the integrity of the regulation. The MBG believes that a Resources Council, with a mixture of industry and ICSTIS representation could be a very good vehicle for ensuring that the views and interests of all parties are being properly taken into account. It is only right that service providers should be included in the scrutiny and assessment of the financial and operational efficiency of ICSTIS – i.e. how their money is being spent.

The Resource Council could cover a reasonably broad scope of funding issues, such as:

- Re-working the funding formula. At present there is no financial incentive for network operators to contract only with service provider that comply with the Code of Practice. A handful of network operators host the service providers that generate the significant majority of customer complaints.
- There is a clear requirement for placing more emphasis on a ‘polluter pays’ type of funding mechanism. Perhaps based on a 50/50 annual levy between service provider outpayments and complaint levels?
- Publication of complaints tables.
- Increased notification of breaches.
- Development of a better fine collection mechanism

It may be that if the Resource Council works efficiently, the function of INOC becomes redundant. Perhaps a period of parallel running would be worthwhile prior to any decision being taken as to whether it should be abolished.

## **Resources**

Q15. What are your views on Option 1 and 2 and which would be your preference?

Q16. What other thoughts, if any, do you have on the need for improvement in financial resource management within ICSTIS and on how this need might be met?

## **Responses to Qs 15 & 16**

The MBG agrees with ICSTIS that it would be very useful to give more attention to the objective measurement of the financial and operational efficiency of ICSTIS. We would like to see a few key performance indicators as part of the standard reporting pack. This should not be overdone; we don’t want to paralyse the secretariat with the production of endless statistics.

The key outputs are number of inquiries, complaints and adjudications handled, the cost of each per instance and the associated service levels.

In line with the responses to the previous section, the MBG believes that the Resource Council could take responsibility for the budget setting, funding issues, as proposed in Option2 of this section of the consultation document.

## **Reporting**

### **Q17. Do you agree with our assessment? If not, what alternative governance arrangements for this function would you propose and why?**

There is one area where the MBG feels that ICSTIS could improve on the transparency of its regime and that is in the way it presents its adjudications. At present, 'defendants' to a complaint are not able to use the decisions and evidence from previous adjudications heard by ICSTIS as evidence in their cases.

The MBG appreciates that there may be difficulties over protecting commercially sensitive information but would urge ICSTIS to review what can be done in this area. It would greatly assist service providers in interpreting the Code if they could use ICSTIS adjudications as a reference point.

## **Staff**

### **Q18. Do you have any other points or suggestions about staffing issues?**

No

## **Section 5 – Options for Governance Structures for ICSTIS**

### **Response to Qs 19-28**

The MBG believes that if commercial stakeholders are to be appointed to the Committee as a result of this review, then their expertise covers a broad range of relevant experience. This should include the mobile sector, which now represents a very significant proportion of the premium rate market. We also believe that the new arrangements could incorporate:

- a) A Resource Council (consisting of ICSTIS and service provide representation) to participate in the production of budgets and general funding matters. The Council would not compromise the independence of the Committee but would be able to scrutinise the amount of the budget (which has been rising fairly fast recently) and the efficiency with which money is spent.
- b) An expert panel – with a primary purpose to help ICSTIS keep abreast of technological and service developments and providing this is done cost effectively and is focused on some deliverables that genuinely add value.