



Internet Telephony Services Providers' Association

ITSPA's response to Ofcom's consultation on initial assessments of when to adopt self- or co-regulation

ITSPA welcomes the opportunity to engage with Ofcom about the suitable pre-conditions for the introduction of self- and co-regulatory schemes. A degree of transparency from the outset is important in order to enable the regulator and its stakeholders to adopt the optimum solution for both industry and consumers.

The biggest question mark as far as ITSPA is concerned is in the area of enforcement and, in particular, the extent to which self-regulatory schemes are required to pro-actively monitor compliance, or whether they need merely react robustly to non-compliance in terms of imposing effective sanctions.

Q1. Do you agree that there is a need for Ofcom to have straightforward means of making an initial assessment of when to adopt a self- or co-regulatory approach rather than rely solely on its powers as a statutory regulator?

Yes. It is important for Ofcom's stakeholders to have an objective basis on which to determine whether or not self- or co-regulation would be appropriate in any given circumstance.

Q2. Do you believe that it is possible to define a set of objective criteria for determining co- and self-regulation?

Yes.

Q3. Do you agree with Ofcom's proposed incentives-based approach to co- and self-regulation?

Yes. It makes sense that companies are more likely to participate in a self-regulatory scheme if there is an acknowledged problem which could cause harm to consumers. Government intervention can be overly prescriptive, impairing the ability of companies to compete and increasing their cost of doing business; an effective self-regulatory scheme is therefore sometimes an attractive alternative.

Public awareness and visibility of schemes: Ofcom believes that consumers and citizens should be made aware of the existence of schemes by "active promotion". We believe that the members of the scheme should be obliged to provide details of the scheme to customers in marketing literature and at the point of sale. We do not believe it is necessarily always appropriate to require scheme managers to publicise the scheme, for example with advertising in the press or other media. The cost of this may, in many cases, be prohibitive and/ or may outweigh the benefit to consumers.



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The delivery of benefits to citizens and consumers: this is sometimes a somewhat nebulous concept, and we agree that a self-regulatory scheme would not be appropriate unless the tangible benefits to consumers outweigh the cost of compliance for service providers.

Incentive to participate in the scheme: Ofcom talks of the need to ensure public awareness of the scheme; it would be helpful if Ofcom's guidelines made clear what form such "raising of awareness" should take. It may, for example, be more appropriate for service providers to publicise the scheme in their own marketing collateral, rather than being required to fund more extensive advertising.

Q4. Do you agree with the subsequent factors Ofcom is proposing to consider for the institutional design of self- or co-regulatory schemes?

Enforcement: We note that no mention is made in paragraph 4.3 e) of the need for managers of a scheme to monitor the compliance of its members. Our understanding of Ofcom's position is that pro-active monitoring of compliance is not mandatory and indeed such a requirement (for example to undertake "mystery shopping" exercises) would impose significant administrative burdens and cost upon those running a scheme.

We do, however, agree with Ofcom that a strong reactive approach is taken so that action is taken against members when consumers or indeed when the scheme managers become aware of non-compliance brings complaints to the scheme's attention by other means.

We would suggest that the sanctions imposed for non-compliance with a scheme need not necessarily be financial and we would welcome more discussion on this. For example, "blacklisting" a particular company (so that they lose their membership of the scheme or association) may be more appropriate than fining them.

We would appreciate clarification from Ofcom regarding the extent to which monitoring of compliance with the scheme should be pro-active (for example in the form of "mystery shopping" exercises) or merely reactive, that is to say taking action against a member when complaints are brought to the scheme's attention by consumers or indeed when the scheme managers become aware of non-compliance by other means.

System of redress: Ofcom suggests that an effective scheme should have a means of redress to an ombudsman or independent arbitration. ITSPA would be grateful if Ofcom could elaborate on what they envisage the relationship would be between the managers of the scheme and such an arbitrator.

Proportionate cost: Self-regulatory schemes need to be financially viable, so that any costs incurred in dealing with complaints, monitoring compliance or taking enforcement action should be able to be recovered through the levying of membership fees. Ofcom suggests in paragraph 4.3 d) that "the operation of the scheme should dictate proportionate costs" – we are unclear as to the meaning of this statement and would welcome further elaboration. Any charging or fining



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mechanism imposed by the scheme would have to be agreed upon by its members or those running the scheme and should not be dictated by Ofcom.

Q5. Do you have suggestions for possible co- and self-regulatory schemes within the UK Communications sector?

Ofcom has imposed a mandatory code of practice on providers of VoIP services, which will be further updated when the provision of calls to emergency services becomes a requirement for most VoIP providers. It is Ofcom's view that consumers are not yet sufficiently familiar with the features and limitations of VoIP services and therefore extra care must be taken to explain certain features and limitations at the point of sale and beyond. ITSPA would hope that, as VoIP becomes mainstream and consumer awareness grows, a move to co- or self-regulation will be possible. ITSPA will work to ensure that its members comply with the 999 and other obligations and envisage that this will be a good test bed for how a self-regulatory scheme for VoIP providers might work.

About ITSPA:

The Internet Telephony Services Providers' Association (ITSPA) is the UK VoIP industry's trade body, representing over 60 UK businesses involved with the supply of VoIP services to industry and residential customers within the UK. ITSPA pays close attention to the development of VoIP regulatory frameworks on a worldwide basis in order to ensure that the UK internet telephony industry is as competitive as it can be within international markets.

A full list of ITSPA members can be found at <http://www.itspa.org.uk/>