

Mobile Entertainment Forum (MEF) response to the issues paper on prize competitions and free draws

Introduction to MEF

Founded in 2001, MEF is a global trade association representing all participants in the mobile entertainment value chain. Our members are interested in driving the mobile entertainment industry's evolution and commercial potential through collaboration, consultation and promotional activities. We are committed to reducing the barriers to entry into the innovative mobile entertainment market, thereby encouraging entry by new businesses and increasing competition and growth to the benefit of all industry players and consumers. Our global membership is composed of the best thought leaders and mobile entertainment players throughout Europe, the Americas and Asia and we currently have over 120 members¹.

We would welcome the opportunity to meet with the Gambling Commission as soon as possible to discuss the issues stemming from the issues paper.

Consultation response – A summary

Before we answer the specific questions posed by the issues paper, we would like to make the following general comments:

- **Regulatory certainty**

One of the primary goals of the Gambling Commission must be to increase regulatory certainty and bring clarity and stability to the regulatory environment. As recognised by the issues paper, the current law is unclear on the distinction between lotteries, prize competitions and free draws.

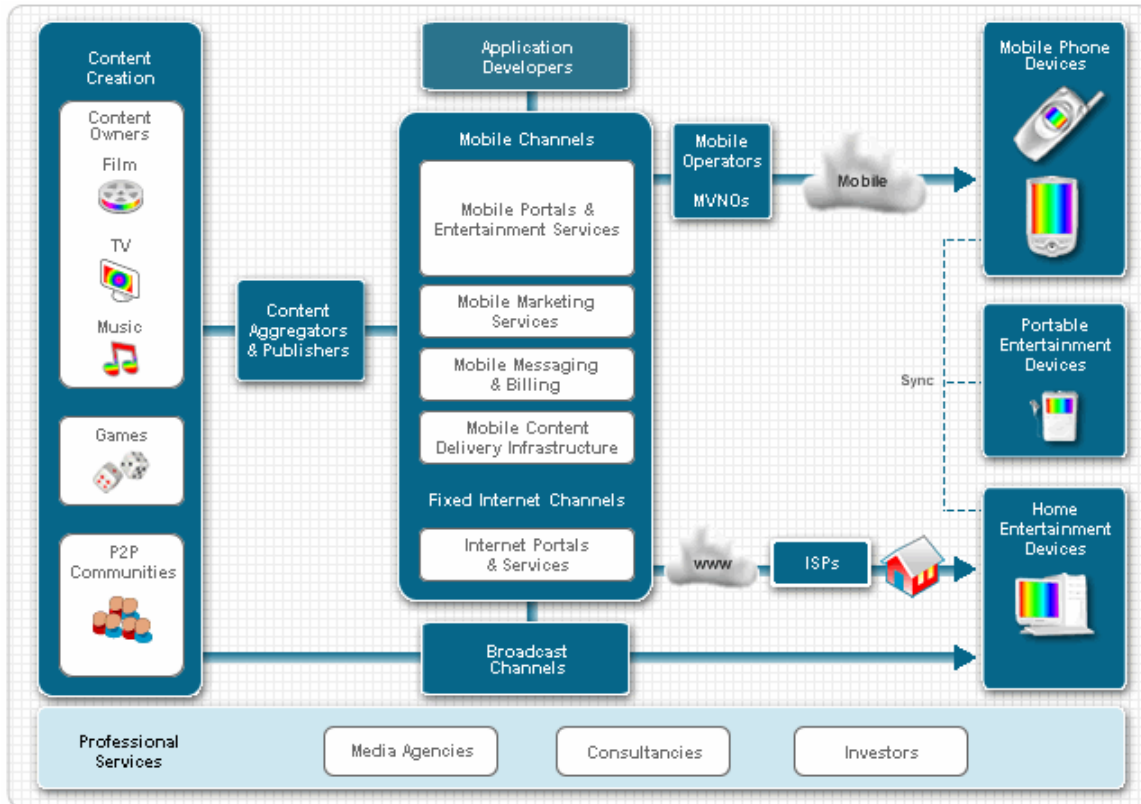
We have concerns regarding the transparency of the application of the Act if the Gambling Commission fails to provide clear examples of how the Act will apply in practice. In addition, there are now four regulators involved in regulating gambling related activities. These are: the Gambling Commission, Ofcom², the ASA and ICSTIS. Unless we manage to determine which regulator does what, when and how there is likely to be confusion for our members. It is vital that, for example, ICSTIS and the ASA are clear over which regulator has remit for enforcing the compliance of advertising material. ICSTIS regulates both the content and the promotion. And the ASA is also specifically responsible for regulating the advertising of gambling services and prize competitions. The industry should not be subject to overlapping jurisdictions and investigations. Clarity needs to be established from the outset.

¹ A full list of our members can be found at <http://www.m-e-f.org>.

² The Gambling Act 2005 states that Ofcom is responsible for setting, reviewing and revising broadcast gambling advertising rules. However, Ofcom has contracted-out the regulation of broadcast gambling advertisements to the ASA.

- Gambling licenses/prior permission**

The issues paper fails to address the complexity of the value chain involved in providing mobile entertainment services. The chart below indicates the number of parties involved in delivering a service:



Bullet point 8 in the issues paper states that many of the commercial schemes which currently operate as competitions are, in fact, complex lotteries. The paper then states that all such channels will either have to stop operating altogether or operate under the provisions relating to lotteries – including the requirements to obtain a Gambling Commission licence and that at least 20% of the proceeds must be contributed to a good cause.

If services are to be considered lotteries, we believe greater clarity is required as to which party may be required to obtain a Gambling Commission licence. Is it the content provider, the aggregator, the mobile operator or broadcaster? In addition to the Gambling Commission licence, ICSTIS requires all premium rate remote gambling services to acquire prior permission before operating. Permission is granted to the service provider (the aggregator) who will not actually be the gambling operator. In essence, potentially two different parties will have to apply for permission for the same service but to different regulators. This does not seem proportionate regulation and as such is not in line with the EU principle of proportionality.

We welcome clarification from the Gambling Commission on this issue.

20% of proceeds

The issues paper states that 20% of proceeds of lotteries monies must be contributed to a good cause. The questions we would ask are 20% of whose proceeds and how are proceeds calculated? As stated previously, there are many parties in the value chain that take part in a service being delivered and money generated is divided by them. We would welcome clarity on this issue.

Answers to specific questions

(i) Think that the Commission has in any way mis-stated the requirements in the 2005 Gambling Act.

No. However, there is still considerable ambiguity between prize competitions, free draws and lotteries. We welcome the intention of introducing greater clarity however, phrases such as 'significant proportion' and the lack of guidance as to what this may mean in practice is not helpful.

ii) Agree with the Commission's view that there will be an onus on prize competition organisers to take steps to satisfy themselves that their proposals will meet the statutory test relating to the need for the skill element to eliminate a "significant proportion" and to be able to produce evidence that they have done so.

Almost all regulatory authorities in the UK provide guidance on how enforceable provisions will be interpreted. ICSTIS, for example, provides Guidelines and, under the 11th Edition of the Code, will issue Help notes. It also offers compliance advice to individual service providers when asked to do so. Such compliance advice is not binding but helps to provide clear guidance to the service provider on areas of the service/advertising that may need to be amended. It is a valuable tool in ensuring compliance without the need for prosecution. To leave the onus on prize competition organisers following the introduction of new legislation is unhelpful. The Commission's view that it will generally be clear where sufficient skill has been required is unclear. If the Commission has criteria for judging this, then we would welcome it being made public. We are also unclear what the Commission means by the statement that 'When prize competition promoters choose to experiment with borderline cases, they will run the risk of being prosecuted.' What is meant by a 'borderline case'? Such phrases are generally unhelpful. We would encourage the Commission to invite further consultation with a view to publishing guidance on this. The onus can still be left on prize competition organisers to satisfy themselves that they meet the statutory test – it will, however, be most valuable if they are able to base such judgment on published guidance relating to the test.

(iii) Have any views on whether any more definitive guidance could be produced on what amounts to a "significant proportion".

We believe it is critical that more definitive guidance is produced on what amounts to a 'significant proportion'. For example, organisers who seek to rely on subsection 14(5)(b) have a near impossible task in trying to determine that a significant proportion of people who wish to participate are deterred from doing so. Even though the mechanics of some competitions may be the same, their take-up by consumers can vary hugely. It would be disproportionate for the prize competition organiser to produce some form of evidence such as market research to show a significant proportion of potential entrants are deterred for every different service they operate. The cost of trying to comply may make operating such services no longer viable.

In 2004, in the explanatory notes to the Gambling Bill, an example was provided of a fishing magazine where entrants would have to answer a question on fishing to which the vast majority of readers would know the answer. It would not matter that a majority of non-readers would not have the knowledge to answer the question. The question would not serve to prevent a significant proportion of people from participating or winning a prize (because the people excluded would not be likely to buy the fishing magazine) and therefore the competition would remain a "lottery". MEF believes that the distinction between question(s) that fall within this definition and those which do not is still far from clear and could remain open to interpretation and argument.

(iv) In respect of free draws, agree with the way that the Gambling Commission interprets the definition of "payment to enter" in the 2005 Act.

Is it the Commission's intention that payment to enter a competition costing the equivalent to 'ordinary first-class or second-class post' would also be considered free? The use of the term 'standard' as applied to mobile services is largely redundant. Costs can vary depending on the

type of monthly tariff a consumer has. It could be free to enter for some while other consumers may have to pay. What would be the ramifications for the competition provider in such cases? There are many competitions services that require payment via the mobile phone where the cost may not exceed either 25p and can be as low as 10p. This is less than the current cost of a first class stamp. The payment may be made, however, using a premium rate mobile short code. Would this still be considered to be free? We would welcome clarity on this.

It is possible for a competition service provider to be operating a lottery without knowingly doing so. Paragraph 23 of the issues paper states that even if a competition organiser makes no charge for entry by telephone but the telecommunications company does, then it is still would be considered to involve a payment as defined in the Act. We would welcome guidance to competition organisers stressing this point.

(v) Agree that a reasonable indication of whether a (non-post) "free entry route" is as convenient and as well publicised as the paid route, is that a substantial proportion of entrants make use of that route.

We do not agree. The fact that free entry route is as well publicised as the paid route does not mean that participants will make use of it and there is no indication of what amounts to a substantial proportion. We would welcome some form of evidence that confirms the Gambling Commission's assumption.

(vi) Agree with the Commission's view that the 'provision of data' does not amount to payment. We agree.

(vii) Are content with the Commission's view on the way product promotions will be able to operate under the 2005 Gambling Act.

We agree.

Contact

We would welcome an active dialogue with the Gambling Commission to ensure the continued success of mobile entertainment services. To arrange a meeting or if you need more information about this response, please contact:

Mr Suhail Bhat
Policy & Initiatives Director
Mobile Entertainment Forum
313 Westbourne Studios
242 Acklam Road
London W10 5JJ

e: suhail@m-e-f.org
t: +44 (0)20 7524 7878
f: +44 (0)20 7524 7879
w: www.m-e-f.org