



**TELEFÓNICA'S RESPONSE TO THE CONSULTATION ON
CHILD SAFETY AND MOBILE PHONE SERVICES**

Brussels October 16th, 2006

Introduction

Telefónica welcomes the opportunity to outline its position with regard to child safety and mobile phone services. We share the Commission's view that children should be adequately protected from inappropriate content and services when using mobile phones.

Mobile phones are a well established part of modern life and over the last ten years we have become increasingly dependent on the evolving mobile products and services on offer. We recognise that young people are major users of mobile services. They value their mobile phones highly, often viewing them as one of their most treasured and important possessions, increasing the possibilities of communications with others and having access to value-added services. Moreover, mobile phones are an excellent and instant way for parents to stay in touch with their children and are now extensively used as a means of enhancing security for parents. In addition, the mobile phone is increasingly becoming the tool with which young people gain access to news, media and public information.

The main elements of our position are:

- Telefonica acknowledges that, along with the obvious benefits that mobile phones bring for young people, there are possible risks that children face when using mobile phones. We recognise the need, where possible, to protect young mobile users from inappropriate content and services and to ensure that mobile phones are used responsibly. Whilst this is an issue that stretches well beyond mobile operators into society at large, as one of the leading mobile phone operators in Europe, we believe it is our responsibility to contribute to finding workable and effective solutions. However, Telefónica considers that this issue can only find the optimal outcome if the rest of those involved, such as content providers, ISPs, relevant public bodies, educators and carers and of course parents all play their part. It is a shared responsibility where each stakeholder has a role to play in increasing the protection of minors.

Therefore, Telefónica is fully involved in a number of different initiatives (technical and self-regulatory ones, but also educative and commercial ones), at national but also at international level, gathering the knowledge of the different players to better protect minors.

- Across our operating businesses we have dedicated teams who are working to promote the responsible use of mobile technology by children. These teams are looking at a number of ways to address inappropriate usage through technical controls, internal policies and consumer education. We are also working closely with relevant industry bodies, child protection agencies and legal authorities to ensure a co-ordinated and considered response to the issues facing child safety and mobile phone services.
- Above all, parents have the main responsibility in choosing the most suitable devices for minors. This also includes the activation and use, if they consider it necessary, of the tools made available by mobile operators to increase the level of protection of minors when using mobile services. Therefore, it is crucial that parents are provided with accurate information on the services available to better choose the service they wish for their minors.
- Telefonica believes that through a combination of technical safeguards, industry guidelines and the ongoing education of parents and children we can ensure that children continue to benefit from the positive aspects of mobile phone services whilst mitigating against any possible disadvantages. However, we acknowledge that rapid technological convergence means there is a need for constant vigilance by the electronic communications industry as a whole in order to ensure that controls are appropriate and evolve in line with the nature of the risks posed to children.
- It should be noted, that the implementation of packs, filters and age verification systems is, from a technical and operational point of view, complex because of the fact that, to be most effective, all content partners have to support standardisation and verification of content.

Risks

1) Can you provide the Commission's services with figures and examples on risks raised by the use of mobile phones by children and young people?

The key issues facing young people when using mobile phones in the main stem from the potential dangers of a range of content and services available on a mobile phone.

- Inappropriate Commercial Content – Content branded or sold by a third party provider through commercial agreement with a mobile operator can include pictures, video clips, games, music, sounds and gambling. Careful classification of

such content by the content provider is imperative and operators should offer different tools to restrict the access by those customers under the age of 18 to contents such as pornography or gambling should not be accessible by those customers under the age of 18.

- Non Commercial Content – this is where mobile operators do not have a commercial agreement and cannot exercise any control over the content, such as the Internet. Through the Internet it can be possible for children to view content which is unsuitable such as extreme violence, pornography etc. Whilst it is not possible to exercise the same control over this form of content, tools can be provided to children and parents to protect children from viewing such content. Such tools include white listing and filtering although they are only a partial solution. A new threat from the Internet is the growing popularity of social networking sites, although these are not widely accessed through mobile phones.

Unwanted and nuisance communications – whilst allowing for children to keep in touch with their friends and parents, mobile phones also can facilitate children becoming the recipient of unwelcome communications. In these instances education and awareness are key as the technical solutions in the area of peer to peer communications are currently not advanced enough to be widely adopted. In Ireland an industry trial of such peer to peer filtering technologies failed to find a workable solution at present.

- Financial exposure – in many Member States there are concerns from customers about premium rate text message services. Most of the problems tend to stem from the fact that adverts by some content providers – the independent companies that use the mobile operators’ networks to offer these services - have not been transparent on the costs involved. In particular, customers have complained that they believed they were only making a one-off transaction and were unaware that they have actually signed up to a subscription service. Mobile operators have been actively working with regulators in the UK and Ireland to address the problem and have taken steps to a) end malpractice by content providers, and b) make it easier for customers to cancel subscriptions to premium rate services, including the introduction of a ‘Stop’ command for content subscriptions services. In the UK, such measures have led to a 75% decline in complaints to the regulator in the year following their implementation.

Due to the high levels of prepaid penetration among minors in general, this potential risk is also reduced, due to the possibility of control that parents could have on the money spent by their children on mobile services.

- As it has been already indicated Telefónica believes that education and awareness are key to decrease the potential risks raised by the use of mobile phones by minors and is currently working individually and also in close cooperation with other stakeholders to foster a responsible use of mobile phones by young people through the implementation of different initiatives.
- For example, in Spain, Telefónica has launched a specific guide for parents accompanying its specific mobile pack for minors in order to foster a responsible

use of the mobile phone by their children¹. Parallel to this, Telefónica has also established a specific plan of information and training for scholarships on the adequate use of mobile phones in close cooperation with Protégeles, a Spanish NGO focussed on protection of minors linked to the use of new technologies. This programme will bring to parents and educators the means to better understand how a mobile phone works and the potential benefits for their children, if they assure a correct use of this device². This programme is included in the framework established by the National Strategic Plan on Childhood and Teenagers of the Spanish Social Affairs Office³. Additionally, Telefónica signed in July 2004 an agreement with the EU to develop joint activities with the NGO Protégeles towards the protection of minors and prevention of illicit activities but also assuring a safe use of Internet. The Safenet project has been recently presented publicly⁴, showing the positive results already obtained in the Spanish society and more specifically in schools.

2) Do you see specific risks associated with the use of pre-paid cards, which ones?

In general Telefónica does not believe that pre-paid cards generate specific risks for children. Experience in several Member States has shown that pre-paid is the most appropriate way to ensure cost control and a responsible usage of a mobile phone amongst young people. For example, In Spain around 70% of the minors use prepaid systems as this allows more control from parents and even leaves the possibility for parents to contact their kids, even if the children have run out of credit on their prepaid card⁵.

Pre-pay was introduced because of the delays and difficulties with credit checks for post-pay customers. People who did not have good credit records were barred from taking out mobile phone subscriptions. This hit the socially excluded the hardest. Pre-pay meant that people who struggled to open a bank account or may not have had a landline were able to get a pre pay phone and budget how much they spent. Pre-pay has been a major success and along with handset subsidies is one of the main reasons why the EU has such a high take up of mobile phones.

Regulatory framework

3) Please identify which of the above risks are not covered by the current national regulatory, co-and self-regulatory frameworks.

Under the Telefónica footprint, governments in Spain, UK, Ireland, Czech Republic and Germany have implemented all relevant European directives. In addition, at a national level appropriate legislative measures have been adopted in order to address these issues. However, as indicated above, we acknowledge that rapid technological convergence

¹ See http://www.empresa.movistar.es/areadeprensa/actualidad/2005/07/imp-prensa_3.htm

² See www.empresa.movistar.es/areadeprensa/actualidad/2006/07/imp-prensa_1.htm

³ See www.tt.mtas.es/periodico/serviciosociales/200605/plan_inf_ad.pdf

⁴ See press release http://www.madrid.org/lapresidencia/contenidos/noticias/20060925/noticia_internet.htm

⁵ See <http://observatorio.red.es/estudios/index.html>

means there is a need for constant vigilance by the electronic communications as a whole, in order to ensure that controls are comprehensive and evolve in line with national market demands. The self-regulatory response is the most adequate tool to quickly answer to a national market need.

Therefore, today there exists at national level different sets of rules assuring a correct protection of minors, based on

- Youth Protection Laws/ Acts,
- Criminal Laws/Acts,
- Content Control of Media,
- Self Regulatory initiatives

4) Do you think the current balance between regulation/co-regulation and self-regulation is the right one?

- As stated above we believe strongly in an essentially national self-regulatory approach to the issue of mobile phone services and children because, for example, the perception of what is adult content varies from country to country, so there is a need to respond to that issue primarily at national level.
- As a customer focused business we recognise public and governmental concerns in these areas but believe that the voluntary approach in the UK, Ireland and elsewhere has been highly effective in addressing such concerns. If regulation is required, we believe it is crucial that it is developed in close association with mobile operators who possess the technological know-how and experience to ensure it is both effective and workable.

Well-constructed industry self-regulatory efforts offer several advantages over government regulation or legislation, it is often more prompt, flexible, and effective than government regulation. This is especially beneficial in the fast paced environment of mobile content where self-regulation removes the need to constantly update and educate governments on constantly evolving new technologies. The main disadvantage of the regulatory tools in evolving markets is that they quickly become outdated and useless, not given an adequate response to new or emerging threats.

Benefits to consumers

The benefits of self-regulation to consumers include:

- Earlier delivery than formal regulation of measures for consumer protection and information;
- Processes that can respond flexibly to changes in issues and in consumers' priorities and expectations;
- More opportunity for direct interaction with and influence on suppliers;
- Faster responses to complaints, with faster, more efficient redress;
- Better information and greater confidence about exercising choice.

Benefits to providers

The following benefits are specific to providers:

- Fewer formal, prescriptive controls should give providers greater scope to tailor decisions to their own circumstances, to meet specific outcomes in ways that work better for them;
- More flexibility and responsiveness to accommodate rapid changes in the market, e.g. by drawing on a larger pool of those most qualified to resolve issues to allow faster development of products and services. Less formal regulation may also help to stimulate innovation through, for example, the avoidance of over-prescriptive service standards.;
- Adequate consumer protection can be provided without the heavier hand of formal regulation (for example, allowing for a code or codes of practice developed by the providers themselves, rather than imposing standards externally);
- Better relations with customers, by bringing consumer views on complaints and customer protection issues closer to providers and making those views a more integral part of business planning.
- Faster decision-making, may be possible where prior discussion among representatives of appropriate stakeholders has already developed a good understanding of the issues;

General Benefits

These benefits are more generally concerned with the effectiveness of regulation:

- Greater involvement of stakeholders
 - Access to specialist skills which Government/Regulator would not necessarily possess in such depth and volume;
 - Access to specialist knowledge – as stakeholders are closer to the market - e.g. a greater knowledge of products, tariffs and quality of service outcomes, with the ability to update changes more quickly;
 - Implementation of policy at a detailed level can be enhanced by involving the objective views of consumer representatives.
 - More focus on achieving outcomes rather than simple process management
 - Involving the objective views of consumer representatives can enhance implementation of policy at a detailed level.
- Flexibility
 - Rapid changes in markets are more likely to be accommodated, as self regulatory arrangements can evolve to take them into account on a more flexible basis than formal regulation;
 - Less formalised relationships between existing groups will better enable a wider range of stakeholders to join such arrangements and facilitate sharing of good practice from other sectors.

As recognised within the Commission’s consultation paper, there is currently some divergence across member states with regard to adoption of industry codes of practice. However, this is due to the different national and cultural situations existing within Europe concerning content issues that require different responses at national level.

National responses to potential threats in that area must be adopted taking into account the principle of proportionality, as the degree of the measures taken must be proportionate to the perception of the problem detected in a given society. An inadequate answer could only create less confidence on some value added services offered to users in particular and on the Information Society in general.

Technical solutions

As Telefónica considers that this issue is a matter of shared responsibilities, we have been very proactive in the activity of achieving the standardisation of a service enabler allowing the different actors (operators, content providers, service providers, etc.) to get a common and flexible solution to many of the raised issues.

To this end, Telefónica promoted the creation of a new work item within OMA defining the categorization-based content screening framework (CBCS). This work was lead by Telefónica during its first stage (requirements definition) now concluded and stable and it has been also actively participating in the definition of the architecture (almost stable and finished).

5) What measures do you recommend in the different areas described below, and why? By whom should they be implemented?

5a) Classification of commercial content.

We believe that classification of commercial content is an important contributor to increasing the protection of minors in Europe. However, this classification must be done at national level in order to take into account cultural differences across Europe and we also must ensure that this classification of content is horizontal, following as far as possible other classifications already existing in the content market, mobile operators are mere distributors of already existing contents (video games, for example).

As we have already indicated, due to the cultural differences, the measures vary nationally, and for example:

- In 2004, UK operators worked with the content market.premium rate services regulator ICSTIS. In the UK the IMCB⁶ publishes a classification framework. Operators require that commercial content is self-classified by content providers using the framework and that, where appropriate, access is restricted to customers aged 18 or older.
- Content Board (IMCB).The Irish government is currently establishing an independent body to govern the classification of content a similar body in conjunction with their regulator for premium rate services. This body will produce

⁶ <http://www.imcb.org.uk/>

a framework against which operators are to classify their content and will adjudicate in the event of a dispute.

- In Germany the FSM together with their member mobile companies is developing appropriate documents. Additional to the age identification a thematic identification, similar to the Dutch KIJKWIJZER-system⁷, could be useful, to create a bigger transparency.
- In every case the intensive education of the legal guardian and minors themselves is important. Schools and other public institutions, must not abdicate their responsibility. Mobile technologies should also form part of relevant courses designed to promote effective media literacy.

5b) Opt-in /opt out. Should the Opt-in (where the user has to explicitly request access to adult content rather by accessing it by default) approach be applied in all EU countries?

For the opt-in/out to be a viable option the issue of individual responsibility must be included in the process to facilitate any industry work on controls such as pre-defined users' profiles. The final user must have the sole responsibility for deciding what content is appropriate or not for them. For minors, parents should be the only people authorised to choose the range of services available for their children. The choice of opt-in/out is not simply about choosing a technical solution it is about a systematic approach involving a number of stakeholders.

Currently, there is no consistent picture for either opting-in or opting-out across Member States and this option should be left as an individual business decision, after having studied the possible alternatives as already described. However, across our operating territories there is some flexibility in this approach in recognition of the differing cultural traditions that exist in our markets. For example,

There is no consistent picture for either opting-in or opting-out across Member States. In general, Telefonica has a policy of favouring the opt-in formula as the mechanism for contracting adult services. However, across our operating territories there is some flexibility in this approach in recognition of the differing cultural traditions that exist in our markets. For example,

- In Germany and the UK a combined system is adopted, which provides an opt-in mode only for the 18+ content and the opt-out mode for every other content. We believe that such a system has, to date, provides sufficient protections..
- Ireland has taken a mixed view of the issue of Opt-in controls, based on whether operators are certain of a customer's age or not. Prepay customers have to verify their age before the controls restricting access to adult content are lifted. This is because they do not have to verify their age when purchasing their prepay phone. Given that when a post pay customer contracts with O2 they are required to prove

⁷ <http://www.kijkwijzer.nl/>.

⁸ <http://www.imcb.org.uk/>

that they are over 18 a decision has been taken to automatically remove the access controls for all post pay customers. In order to retrieve the adult content though, they have to actively seek it out by sending a message to a short code or through accessing a particular site.

- In the UK access to 18 classification commercial services is restricted until the customer has passed through an age verification process. Access to services on the open Internet can also be restricted on request.

In Germany a combined system is adopted, which provides an opt-in mode only for the 18+ content and the opt-out mode for every other type of content. This system provides sufficient protection because there is a need for the legal guardians to be present, when signing a mobile contract or buying a pre-paid card. If desired appropriate offers and services, e. g 16+ content, can be blocked. This “combined” system offers nearly the same level of protection as a general opt-in system. As with all opt -in/out systems it is important, that the appropriate content and the opt-out options are made known to the parents..

- In Spain, we are currently working on a tool allowing the definition of profiles by the users themselves when purchasing our services. This is in order to have a more detailed understanding of the preferences of our clients, taking into account protection of minors (some specific packs will be blocked by default for example) but also parents own choices.

5c) Age verification: should mobile network operators implement face to face identity check to determine the age of the user? Should this process also be applied when a customer buys a pre-paid card?

- Telefonica considers that regulation should not define how a procedure of age verification should work, as this could become outdated due to technological advances and market changes. This decision has to be taken by the companies in order to ensure a reliable mechanism that best fits with their own procedures and processes.
- Taking this into account, there are many ways in which robust age verification can be accomplished.
- In Ireland we are adopting a process of online credit card verification whereby a customer will be able to verify through our website using their credit card. We have based our process on other successful credit card verification processes already tried and tested in Ireland and have introduced a number of additional checks to ensure the process is robust such as stating the transaction on the credit card bill along with the number that has used the card to verify.
- In the UK age verification can be completed in retail stores or remotely based on a credit card transaction or, where we have this, our own record of a customer’s age.

- In Germany it is a legal requirement to verify the age via an age verification system. For that purpose the mobile operators have already submitted a positively evaluated system by the KJM. According to the German civil law it is necessary that the legal guardians agree to the contractual agreement made by anyone under the age of 18. Otherwise German law allows minors to buy a pre-paid card and mobile phone if certain qualifications are fulfilled⁹. This possibility to buy a pre-paid card to a comparatively small amount should be retained, even for minors.

5d) Filtering and blocking systems. Should filtering systems be installed by default when the subscription allows Internet access?

Taking into account that this sector is subject to convergence along with the rest of the communications industry, there is a need to bear in mind the principle of technological neutrality and to apply it here. It will be disproportionate and ultimately unsuccessful to ask for the implementation of specific filters for the mobile sector and not for other existing players since the Internet (the main source of content) is reachable from different devices (PC, mobile, TV, etc...)

- By requiring operators to automatically apply filtering and blocking of internet access it implies that all internet content is by default adult.
- In Ireland O2/Telefonica has taken the view, in line with that adopted by fixed internet providers, to provide internet filtering on an opt-in basis. Should a parent be concerned about the internet content which is available on their child's mobile phone they can have this access restricted. In this instance education is the key to ensuring that the parents are aware of what their child's phone can access.
- Telefonica, at the time of contracting, offers its internet customers the possibility of limiting access to adult content through appropriate parental controls. Where we provide a mobile TV service we identify and label adult content clearly in order alert parents. In addition, we do not market adult services as part of our standard Mobile TV package.

5e) Chat rooms. Should chat rooms accessible by children be moderated (in an automatic way or by a person)?

Telefónica believes that chat monitoring and moderating is a way to increase the control of chat room services for the benefit of children and is currently working on solutions to implement it in its different companies.

For example, all public forums operated by Telefónica in the UK are moderated by people. This provides a point of contact for any users that are made to feel uncomfortable, and ensures that all messages and images are reviewed in context. Text chat is pre-moderated (messages reviewed before being published). WAP chat is post-moderated (messages reviewed once they have been published). Moderators warn or block users that publish offensive messages. On top of the human moderation provided in public forums, all chat

⁹ vgl. §110 BGB.

communications on O2 services are filtered for offensive language and to prevent sending of mobile numbers.

5f) Raising awareness amongst parents and children

- As has been indicated in the last Safer Internet Forum organised by the European Commission in June 2006¹⁰, this is the key issue that should be addressed in tackling the issue of mobile phones and children. As parents and guardians have a key responsibility in ensuring the safety of their child when using their mobile phone it is imperative that they are provided with the relevant, up to date information to empower them in this area. Mobile operators have a key responsibility in this along with other stakeholders such as the government and parents organisations but also educators and carers in general.

It is clear that mobile operators have a role in that objective and Telefónica is currently and actively contributing to it through different initiatives. Mobile operators should provide the relevant information at the point of sale and through information placed in store and on their websites. This information needs to be routinely updated in order to inform parents about all the services available on their child's phone. The information also must focus on how to assure a responsible use of mobile by children.

- Up to now, Telefónica in Spain for example, is working on the publication of specific leaflets and web pages to educate users for a better and safer use of the Internet, but also on the production of specific educative CDs for its distribution in schools and also to parents and carers in general, within the scope of the Safenet Project. Moreover, there are specific courses already in place in schools and centres of education showing minors how to use the Net and other new technologies such as mobile devices and services in a safer way. This project has already reached more than 150 schools and more than 40.000 minors
- It is key, however, that other stakeholders get involved in this process so that the message can be constantly reinforced in the minds of parents. Such stakeholders include parents groups, schools educators and other public institutions.

5g) Dedicated mobile phone packs for children, for which age group?

In many member states e.g. Germany and Spain such packs have been offered on a voluntary basis in as part of our approach to corporate responsibility and to answer to a specific market demand. These specific packs give to carers the opportunity to have a distinctive product, useful but also protective for children as they offer a set of tools and specific services designed for minors (educative games, attractive designs, etc...). This initiative has been strongly welcomed by the market as Telefónica has been working with NGOs and Consumer associations to assure that its product answers to the market needs with a high degree of protection for minors¹¹.

¹⁰ See http://europa.eu.int/information_society/activities/sip/si_forum/forum_june_2006/agenda/index_en.htm

¹¹ For example, in Spain, "Play Pack" has been launched with the support of the Spanish Consumer Association UCE (Unión de Consumidores Españoles).

European solutions

6) Among the measures listed above which ones would be useful to elaborate at European level? For which ones would it be useful to discuss/exchange best practices at European level?

This company considers that there are several measures that could be implemented at European level and that could be useful to increase the level of protection of minors in that area.

- Telefónica believes that a better exchange of information could be very helpful. In that way, the European Commission must be the facilitator to promote the exchange of information and opinions between the different stakeholders (ISPs, content providers, NGOs, Public Administrations, educators, carers and parents, etc...) sharing the same objective: to increase the level of protection of minors when accessing to contents through new technologies.

The EC also has a relevant role to play in that field, having currently the tools to develop and adapt programmes to increase the level of protection of minors. For example, the EC could establish and fund specific programmes through the e-content initiatives, to foster the creation of specific and attractive digital contents adapted for minors, and more specifically support a diversified mobile content offer for minors. The EC is also better placed to realise a monitoring of the content market evolution and its appropriateness towards minors.

- Mobile operators could follow already well-established classification of specific contents, as for example, the Pan European Game Information (PEGI) for computer- and video-games a European wide classification system could be implemented in a number of European countries.¹²
- It would make sense to elaborate specific aspects of the educational work at a pan-European level. EU requirements for Member States to encourage schools and other public institutions to put some educational programmes on the use of mobile by children into their “curriculum” would support an improved European regime for the protection of minors.

¹² <http://www.pegi.info/pegi/index.do?language=en>