

THUS Response to the Ofcom consultation: Extending Premium Rate Services Regulation to 087 Numbers

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Introduction

THUS plc is a leading provider of Internet, data and telecoms services in the United Kingdom. We deliver fixed line telecommunication services to large business customers and public sector organisations, while tailoring services to small and mid-sized businesses under the Demon brand. As part of our telecoms services we provide both PRS and 0871 numbers, which are utilised by our customers in a number of ways.

Question 1: Do you have any comments about the proposed extension of PRS regulation to 0871, 0872 and 0873 numbers?

THUS is disappointed about how long it has taken for PhonepayPlus to decide the final Statement of Application ("SoA"). It wasn't until the SoA was published that there was any clarity as to what was expected of 087 users or indeed how their compliance with the 11th Code of Practice (the "Code") might look. We were in regular contact with PhonepayPlus during their deliberations but the final SoA was significantly different from what was being discussed prior to its publication.

During this period THUS customers have been asking for guidance about whether they should renew 087 number contracts and what the new regulation will look like. We have been unable to give clear advice on these matters due to the uncertainty about the regulation, resulting in a drop in 0871 take up and a decline in the use of services using this number range.

We sincerely hope that PhonepayPlus and Ofcom have learned from this experience and will endeavour to stick to deadlines and targets when dealing with future regulation changes.

Question 2: Do you have any comments about the PhonepayPlus Statement of Application and Ofcom's comments about the concerns that have been raised by stakeholders?

Network Operator Due Diligence Requirements

It is correct that PhonepayPlus withdrew their plans to require Network Operators to carry out certain aspects of the due diligence checks required by the Code. To be required to do this would be disproportionate to the potential harm to consumers as well as being a significant burden (as has been the case with due diligence checks for 09 services) for Networks. However we seek further clarity about certain requirements for Network Operators that will apply to 087 services, specifically 2.3.1(e) and 2.3.1(f) as well as the relevance of s2.3.4.

s2.3.1(f) of the Code requires Network operators to validate that their customers have suitable customer service and refund mechanisms in place. What this actually means is unclear. The Statement of Application states that a Network Operator need only get an "undertaking" from their customer, but provides no further guidance as to what that undertaking may look like or how the mechanism of offering refunds for customer service calls (as per the "Notice in Respect of Paragraph 5.1.2(A) of the PhonePayplus Code of Practice (11th Edition)" on the use of an 087 number for customer complaints) may factor into this "undertaking". We request further clarity about what is actually expected and what such an "undertaking" might look like and indeed why this particular due diligence check is required when the others have been dropped.

Our biggest concern however is that there is no mention by PhonepayPlus in the SoA or by Ofcom in this consultation about whether s2.3.4 of the Code has any applicability. This is the part of the Code that requires

Network Operators to carry out retrospective due diligence checks on their existing customers. Given that 2.3.1(f) and the requirement to ensure 087 Service Providers are registered with PhonepayPlus (s2.3.1(e)) are both due diligence checks, we are concerned that at some point there will be an expectation that Network Operators will have to carry out these checks retrospectively against their existing customer base. What are the intentions relating to existing 0871 customers?

To carry out retrospective checks against 0871 customers would be disproportionate when compared with the harm consumers may face and the cost for Network Operators to comply. Carrying out retrospective due diligence against our 09 customers has been a time consuming and costly exercise for THUS, for just a couple of hundred PRS customers, due in part to the fact that there is no obligation on the Service Providers to comply with the Network Operator's request for information. If the same were to be expected for 087 services, even though fewer due diligence checks would be required the larger number of 087 customers would make it equally, if not more, of a burden to comply; also, we do not believe Network Operators should be held responsible if they fail to collect all the information needed – currently apart from a small mention in the due diligence Help Note, there is nothing which clearly states a Network Operator's position if, at no fault of their own, they are unable to get their Service Provider customers to respond to their request for information.

We therefore request that a statement be added to the SoA to confirm that s2.3.4 does not apply.

Business conference call services

THUS understands that the standard conference call services that we and our customers offer would not require prior permission as they fall within the definition of "business conference services" in the PhonepayPlus help note. However, there are services that operate via 0871 that are implemented in a similar way to conference facilities that would not fit this definition, for example, "one way" conferencing, in which the "moderator" does all the speaking and participants can only listen (i.e. their access is "muted"). Such applications may be used, for example, in the education sector, by lecturers delivering distance-learning lessons, where they may or may not wish to allow interaction from their students who have dialled into the call for the lesson. We believe this would not necessarily constitute a live service but we would like reassurance that we would not need to seek prior permission for such a service.

Customer service lines

The guidance as to whether services may continue to use 087 numbers for customer services is confusing and will cause problems for Service Providers. It is not clear whether customer service lines which use 087 numbers are expected to have a different 087 number for dealing with complaints about their "main" customer service line, or whether they will be expected to determine what part of the call relates to a complaint and should be refunded. So for example, if a consumer calls a company's 0871 customer service line to discuss a product or service problem or to discuss billing, if they are kept on hold and wish to complain about the delay within the same call, will the Service Provider be expected to refund the whole call or only the portion relating to the complaint about being on hold?

It would have been much easier for PhonepayPlus to require a refund of calls to the 087 line once it has investigated and adjudicated. To implement this refund process questions the effectiveness of using an 087 number for customer service and complicates the customer service mechanism unnecessarily.

THUS urges Ofcom to look further into the impact this will have on Service Providers. The problem is much more complex than requiring Service Providers to refund customer complaints (as implied by the Impact Assessment). Service Providers will need to fully understand how much of a call they are supposed to refund (as per the example above), they will have to set up a process for handling the refunds as well as consider the implications on their business for refunding the cost of a call where they have received no payment for the call (e.g. where there is no revenue share on the 087 number) or only part payment. They will also need to ensure they have a mechanism in place to record the length of the call to determine the amount of the refund.

PhonepayPlus Levy

PhonepayPlus has never during the consultation process made it clear how it derived the notional outpayment figure. There was some confusion (alluded to in this Ofcom consultation) about it arrived at the 60% figure. Without a clear indication about how this notional outpayment was calculated there is no confidence in how it might change in the future. Ofcom should investigate this further and require PhonepayPlus to publish how it will determine the levy in more detail than it has thus far.

THUS is also unclear how the levy will be collected. More information from PhonepayPlus about how the levy scheme and the process will work, would be appreciated.

Question 3: The proposed extension of PRS regulation would mean that service providers offering services on 09 numbers would not be permitted to use 0871, 0872 or 0873 numbers for complaints unless call charges are refunded. Ofcom would also welcome stakeholder comments about this secondary impact of the proposals.

We believe that the complicated “refund” regime associated with using 087 numbers for complaints will lead to existing PRS customers moving their 087 customer service line to a non-regulated number range for all the reasons set out above (in the section about Customer Service Lines). A number of our customers have already indicated this to us – although they use 0871 numbers to benefit from the revenue share, it is not a core part of their business and the low quantity of calls to the number would mean that they’d prefer to move to a non-regulated lower tariff number than be concerned about the regulatory control. We are sure the complicated regime for dealing with refunds for complaints made on the 087 number will also be a deciding factor for them.

Question 4: Do you have any comments on the proposed modifications to the PRS Condition?

The changes to the PRS Condition make reference to affecting any calls which exceed a 5p per minute threshold. Although the consultation paper refers to this charge as relating to the cost to BT users it does not say this within the Condition. The result is that it is not clear whether calls from mobiles, which could easily exceed this threshold, will also be affected. Furthermore, on the face of it, the changes suggest that any use of 0871 on tariffs less than or equal to 5ppm would not be covered. It is also not clear whether the Condition impacts 0871 drop charge calls, or services where there may be a mixed tariff where calls at certain times of the day may fall below the 5ppm threshold.

Question 5: Do you have any comments about the Impact Assessment for these proposals?

If s2.3.4 of the Code is to apply to Network Operators then an Impact Assessment will need to be carried out and the SoA should not come into force until this has been fully consulted on.

As set out in the “Customer service lines” section of our answer to Question 2 we do not believe that Ofcom has fully considered the impact on Service Providers of requiring them to make refunds of complaint calls made to PRS numbers. We request that the full implication is considered further before the Regulations are implemented. We believe the Impact Assessment on the cost to Service Providers documented in this consultation paper is inadequate in this regard.

Question 6: Do you have any other comments?

THUS is very keen that Ofcom learns from the implementation of regulation of 0871 and the problems the changes to 0870 have caused. Both situations have led to delays in implementation, uncertainty in the market and considerable migration away from 087 number ranges. Ultimately this (as with any future regulation of other number ranges) will result in business costs being passed onto consumers in other ways. Businesses are only able to offer the services and products at the cost they do, as many rely on the subsidies revenue share on higher tariff numbers bring to their business. As the options decrease or the regulatory costs increase, businesses will move away from offering the services or will subsidise them some other way – which is at best neutral and possibly harmful for the consumer.

These issues need to be considered not only in reflecting on how regulation of 0870 and 087 has impacted the market and consumers, but in looking forward to possible future regulatory control on other number ranges. For example the consultation refers to Ofcom considering reviewing 0845 call charges. Apart from the need to make sure that users such as dial-up Internet users will be taken into consideration before any decisions are made, Ofcom must consider the impact it will have on innovation in the sector and on consumer choice.

If Ofcom is to regulate all revenue share number ranges then their use will substantially decline as businesses find alternative ways to cover their costs whilst avoiding heavy-handed regulation. Regardless of original intentions this cannot be in the interests of consumers.

