



Review of Premium Rate Services

An application of the analytical framework

Consultation

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Section 1

Summary

- 1.1 Since the publication of the PRS Scope Review Statement in October 2009, mobile communications providers (“MCPs”) have asked Ofcom to assess whether certain types of premium rate services (“PRS”) require specific PRS regulation. In particular, PRS bought using the payment mechanism, Payforit, as well as fixed and mobile portal content services charged to the customers’ phone bill.
- 1.2 The PRS Scope Review Statement contained an analytical framework that can be used to analyse a particular form of PRS to assess whether it should be subject to PRS regulation because of the potential risk of consumer harm. This framework looks at the demand and supply side characteristics of the service and assesses the extent to which this may lead to a risk of consumer harm.
- 1.3 This consultation document applies this analytical framework to both fixed and mobile portal content services, where those services are charged to the customers’ phone bill, and to PRS bought using Payforit and assesses the extent of the risk of consumer harm occurring absent current regulation.
- 1.4 We then consider whether
 - Option 1: these services should fall within Controlled PRS regulation and should be actively regulated by PhonepayPlus (“PP+”), or
 - Option 2: these services should be removed from the Controlled PRS definition, and therefore not be regulated by PP+, but rely on self-regulation.
- 1.5 This assessment looks at the impact of these options on consumers, MCPs, fixed providers and service providers.
- 1.6 Our proposals are:
 - to adopt Option 2 for both fixed and mobile portal content services, and
 - to adopt Option 1 for PRS bought using Payforit. However, we would welcome inputs from all stakeholders on whether there are assurances that MCPs might provide that could be sufficient for Ofcom to consider whether Option 2 would be appropriate.
- 1.7 We have included proposed changes to the PRS Condition to accommodate these preliminary proposals, in particular the definition of “payment mechanism”.

Section 2

Background and introduction

Background

- 2.1 Premium rate services ('PRS') typically offer some form of content, facility or other service that is charged to users' phone bills. They can offer information and entertainment services via fixed or mobile phone, fax, computer or interactive digital TV. Regulation of PRS is designed to ensure that consumers can use these services with confidence and have access to effective redress when they encounter problems.
- 2.2 PRS are one type of micropayment mechanism and are defined in the Communications Act 2003 (see paragraph 2.5 below). Other micropayment mechanisms in the UK including Paypal, Click&Buy and Luup are offered by electronic money institutions, and are therefore authorised by and subject to the regulations of the Financial Services Authority (FSA).

How PRS are regulated

- 2.3 The last three major consultations regarding PRS were published in 1999, 2004 and 2009. The 1999 publication by Oftel¹ looked at PRS and the justification for specific PRS regulation. In this publication, Oftel set out that the main reason for PRS regulation was the risk of disconnection from a landline. In 2004 we published a report for the Department of Trade and Industry (DTI)², which was aimed at increasing the effectiveness of the PRS regulation following the dialler scams in 2004. In paragraphs 2.8 to 2.11 we discuss the 2009 Scope Review consultation and statement in further detail.
- 2.4 The rationale for PRS regulation is to target and prevent consumer harm in respect of those services which, based on their characteristics, could give rise to a particular type of risk and which may not otherwise be effectively covered by existing means of consumer protection.
- 2.5 The current PRS regulatory framework consists of a hierarchy with three components:
- i) The Communications Act 2003 ('the Act'): section 120 of the Act defines PRS and provides Ofcom with the power to set conditions ('the PRS Condition') for the purpose of regulating the provision, content, promotion and marketing of PRS;
 - ii) The PRS Condition³: This requires communications providers and controlled premium rate service providers⁴ falling within the scope of the PRS Condition to comply with directions given by PhonepayPlus ("PP+") in accordance with its Code of Practice ('the Code') and for the purposes of enforcing the provisions of

¹ This publication can be found at <http://www.ofcom.org.uk/static/archive/Oftel/publications/1999/consumer/prem0899.htm>.

² This document can be found at http://www.ofcom.org.uk/telecoms/loi/nwbnd/prsindex/ntsprsdti/prs_review.pdf.

³ The PRS Condition can be found in Annex 5.

⁴ The reference to controlled premium rate service providers in the PRS condition has been added with effect from 1 September 2011 as a result of a Statement entitled *Modifying who is subject to the Premium Rate Services Condition*, published on the same date as this Consultation.

that Code. The application of the PRS Condition is limited to 'Controlled PRS', so that only a specific subset of PRS are subject to Ofcom's enforcement powers for breach of the PRS Condition; and

- 2.6 **The Code:** The Code is approved by Ofcom under section 121 of the Act and outlines wide-ranging rules to protect consumers as well as the processes that PP+ applies when regulating the PRS industry. Those Controlled PRS are subsequently regulated by the Code and the relevant communications providers and controlled premium rate service providers involved in their provision are subject to Ofcom's backstop enforcement powers.
- 2.7 By narrowing or widening the scope of the PRS Condition Ofcom can include or exclude specific types of PRS that may or may not require PRS regulation based on their potential to cause consumer harm. Furthermore, whilst inclusion in or exclusion from the PRS Condition is a binary decision, PP+ have additional provisions to acknowledge the fact that certain Controlled PRS may pose a greater risk of harm than others. The prior permission regime, targeted at high risk services, is such an example. Another example is the PP+ Statement of Application⁵ setting out the interpretation of the Code in respect of 0871/2/3 services. Both examples show that regulation of certain service groups needs to vary in some way to remain proportionate.

The publication of the Scope Review statement

- 2.8 In 2009 we carried out a review of the way in which 'PRS are regulated in light of the market developments, in particular the rapid growth in number and range of PRS. This led to publication of the statement 'The PRS Scope Review'⁶ ('the statement') in October 2009.
- 2.9 In this statement we considered the following types of outcomes in respect of PRS to be in the best interest of consumers:
- Consumers should be able to purchase PRS with confidence and the more this is the case the more vibrant and healthy will be the PRS market;
 - Consumers should be confident when they purchase a service that they know (and can find out with relative ease) what price they are paying for that service and whether it is a one-off purchase or whether a subscription to the service is being purchased;
 - To the greatest extent possible when purchasing a remote service, consumers should be able to understand the quality and facets of that service. The service should function in the way that it is represented to the consumer and as part of that, it should be possible for the consumer to terminate a service without unnecessary delay and complexity; and
 - When a consumer purchases PRS they should receive that service.
- 2.10 The statement contained an analytical framework that can be used to analyse a particular form of PRS to assess whether it should be subject to PRS regulation because of the potential risk of consumer harm. We identified different sources of

⁵ This statement can be found at <http://www.phonepayplus.org.uk/upload/0871-Services-StatementOfApplication.pdf>.

⁶ The statement can be found at http://www.ofcom.org.uk/consult/condocs/prs_scope/prs_statement/.

consumer harm that are likely to impact on the demand and supply side. These include consumers paying higher prices than expected, services being of a lower quality, reduced innovation in the market, difficulties encountered by consumers seeking redress, consumers accessing inappropriate and offensive content, and providers behaving in an opportunistic manner (including the potential for scams). In their consultation document on the 12th Code of Practice⁷, PP+ set out a few more sources of consumer harm such as invasion of privacy, loss of reputation or dignity and anxiety and distress.

2.11 The following box summarises the analytical framework:

The extent to which a particular service or service category carries risks of causing consumer harm will be examined. Specifically, we will consider whether:

- The consumer's Originating Communications Provider ('OCP') is the actual supplier of the PRS.
- There is a complex, fragmented value chain, with large numbers of suppliers operating at different levels in the chain.
- Barriers to entry and exit are relatively low at the Information Provider level.
- Consumers are only able to ascertain the quality of the PRS at the point at which it is consumed.
- The price of the PRS is relatively low, potentially discouraging consumers from seeking redress.
- The purchase process involves little or no authentication, thus encouraging consumers to purchase on impulse.
- The PRS is likely to involve inappropriate or offensive content.
- The PRS is likely to be marketed to children or likely to have a particular appeal to children.

Our assessment is not intended to be a 'tick box' exercise, but will focus on the overall risks of consumer harm from a particular service. As the statement makes clear, the nature of the harm that may occur is a relevant consideration for whether a service should be regulated.

Scope of this review

2.12 Since publication of the statement mobile communications providers have asked us to apply the analytical framework to a number of PRS to assess whether these services require PRS regulation:

- PRS bought using Payforit: Payforit is a payment mechanism for WAP and web users, offered by all UK Mobile Communication Providers ('MCPs') for the purchase of services from third party providers / merchants. It provides enhanced pricing transparency (compared to 'conventional' PRS) by enabling consumers, once they have selected their service from a WAP or website, to confirm their intention to purchase within a secure 'checkout' area before a charge for that product or service is made to their mobile phone bill or prepaid balance.

⁷ This document can be found at <http://www.phonepayplus.org.uk/upload/Code12-GreenPaper-FINALv2-June2009.pdf>.

- Fixed and mobile portal content services charged to the customers' phone bill: Fixed communications providers (such as for instance Sky, Virgin Media and BT Vision) offer their customers access to their own on demand content such as film and catch up television programmes. Mobile providers also offer their customers different types of on demand content, such as video clips, music, games, wall papers etc through their own websites.
- 2.13 Mobile stakeholders have argued that PRS bought through Payforit should not be subject to PRS regulation. They consider Payforit provides consumers with comprehensive price and merchant information prior to entering into a transaction and that the potential for consumer harm is therefore limited.
- 2.14 Mobile stakeholders have, since 2005, questioned why mobile portal content services are subject to the Code when seemingly similar fixed portal content services have not been explicitly included to date.
- 2.15 We have carefully considered the arguments put forward and believe that a review of these services is merited to help assess whether regulation is being applied proportionately, focused where needed and in a technologically neutral way to protect the consumer interest.
- 2.16 The remainder of this document is structured as follows:
- Section 3 provides an overview of the services within the scope of the review. We describe how the services work, which parties are involved in delivering the service, what the end to end customer experience looks like and how the service appears on the customer's bill.
 - In section 4 we apply the analytical framework to the services and assess their potential for harm. Where available we refer to evidence of harm.
 - In section 5, based on the analysis in Section 4, we discuss options for each of the services including an Impact Assessment. We set out our preferred option, and depending on our assessment, proposals for amending the PRS Condition.

Section 3

Description of services

Introduction

- 3.1 As set out before, the services within the scope of this review are fixed and mobile portal services and PRS bought using Payforit. In this section we provide a high level overview of the regulatory context and then outline each service in turn.
- 3.2 We have used the following sources of information for the service descriptions in section 3, and the application of the analytical framework in section 4:
- Information available in the public domain, such as the Payforit Scheme Rules (“Scheme Rules”);
 - Information provided to us by fixed and mobile Communication Providers;
 - Responses to a questionnaire sent to the MCPs;
 - Meetings with a number of parties involved in the Payforit scheme;
 - Complaints information regarding VoD services from Ofcom, ATVOD and the ASA; and
 - Information provided by PhonepayPlus including revenues, outpayments, complaints and relevant market research.

Current regulatory framework

- 3.3 For the services in question there are two dimensions, first the PRS framework, which is of primary interest and implemented by PP+ and the second is the framework for Video on Demand services which is implemented by the Association for Television on Demand (ATVOD) and the Advertising Standards Agency (ASA).

Regulation of PRS

- 3.4 Section 2 outlined the overall regulatory framework for PRS. Day-to-day oversight of the sector is provided by PP+, which regulates PRS using their Code of Practice. This sets out rules regarding PRS in their entirety, their content, promotion and overall operation. For example this includes requirements on PRS providers to provide:
- clear and accurate pricing information;
 - honest advertising and service content;
 - appropriate and targeted promotions.
- 3.5 PhonepayPlus investigate complaints about PRS. They adjudicate complaints that are referred to them by consumers, members of the public, industry, and through their monitoring of services. Complaints are recorded and analysed, grouped with

similar complaints relating to the same service, and are then investigated by a specialist team.

- 3.6 Adjudication is undertaken by an independent tribunal. Where rules in the Code have been broken, they can fine the company responsible, bar access to its services and even bar the individual behind the company from running other services under a different company name. These sanctions can be complemented with obligations to provide refunds to complainants where that is judged to be a proportionate outcome alongside other sanctions.
- 3.7 PP+ also works proactively with the PRS industry to pre-empt and prevent consumer harm, through building in compliance to services. This is achieved through the publication of Guidance to industry, providing free compliance advice to companies on services and promotions, and through proactively monitoring the sector to identify (potential) consumer harm and respond to emerging market risks.

Regulation of Video on Demand services

- 3.8 Since 19 December 2009, UK-based TV-like Video on Demand (VoD) services have had to abide by a set of minimum standards under the European Audio Visual Media Service Directive. Under section 368A of this Act, a service will be an “on-demand programme service”, and therefore subject to VoD regulation, if it meets all of the following criteria:
- Its principal purpose is the provision of programmes the form and content of which are comparable to the form and content of programmes normally included in television programme services;
 - Access to it is on demand: the service enables the user to select and view programmes from among the programmes included in the service, which are received by means of an electronic communications network (whether before or after the user has selected which programmes to view);
 - There is editorial responsibility: there is a person who has editorial responsibility for the service;
 - It is made available to the public: the service is made available by that person for use by members of the public; and
 - That person is under the jurisdiction of the UK for the purpose of the Audiovisual Media Services Directive.
- 3.9 The Act provides for a system of co-regulation for on-demand programme services which fall within the Act. Ofcom has designated two bodies as regulatory authorities for certain aspects of the service: ATVOD⁸ is the body for notifications and for on-demand editorial content; and the ASA⁹ is the body that deals with complaints about VoD advertising. Ofcom retains legislative backstop powers, including the power to impose sanctions on providers who contravene the relevant requirements.

⁸ More information about ATVOD can be found at <http://www.atvod.co.uk/>.

⁹ More information about the ASA can be found at <http://asa.org.uk/>.

- 3.10 The rules¹⁰ regarding VoD services can be split into administrative rules, editorial content rules and advertising rules.
- Administrative rules include rules around notifying ATVOD regarding services being offered, fee payments, retention of programmes, compliance with enforcement notifications and provision of information.
 - Editorial content rules set out that content should not contain material likely to incite hatred (based on race, sex, religion or nationality) or which might seriously impair the physical, mental or moral development of under-18s.
 - Advertising rules contain obligations and prohibitions regarding sponsorship and product placement.
- 3.11 As can be seen, the current set of rules in place for VoD services is very similar to the broadcasting rules because the relevant aspects and possible issues of the service are considered to be similar to linear broadcasting services.

Overview of PRS billing mechanisms

- 3.12 There are a number of different ways that content¹¹ can be sold and charged to customers' communication bills or pay-as-you-go credit¹² using a fixed or mobile communications network, and these provide context for the subsequent sections:
- A customer can call a PRS phone number and a per minute or per call tariff is charged to their telephone bill. This is the way calls to 09 numbers are charged;
 - A third party service provider (or aggregator or payment intermediary) can send an incoming Premium SMS message through an MCP's billing system to charge for the transaction.
 - A transaction can be charged directly to the bill by an OCP without instruction by or involvement of a third party. By 'directly' we mean that other than browsing and clicking (including the red button used in certain interactive television programmes) there is no other action on behalf of the customer (i.e. the customer does not make a call, or send a text message). This is the approach used for portal services;
 - A third party service provider (or aggregator or payment intermediary) can instruct the communication provider's billing systems to charge a transaction to the customer's communications bill. Again, in this case other than browsing and clicking, the customer does not make a call or send a text message. The service provider will have access to instruct the OCP's billing systems to charge transactions, in some cases using a Premium SMS message. This is the approach used for the Payforit scheme.

¹⁰ A detailed version of the relevant rules can be found at

<http://www.atvod.co.uk/downloads/ATVOD%20Rules%20and%20Guidance.pdf>.

¹¹ By content we mean content defined in a broad sense, including access to a facility such as voting or entering a competition.

¹² There are other mobile content models possible, where content is provided over a mobile network, but not billed through the MCP's bill, but through for instance Paypal or a credit card. Those other models will not be discussed here, since they will not be captured by the definition of PRS in the Communications Act.

Portal services

- 3.13 Portal services can be offered by mobile and fixed providers. Despite convergence in this area we consider it is helpful in the first instance to describe fixed and mobile portals separately and identify differences between the two types of portals.
- 3.14 For the avoidance of doubt we are focusing here on the OCPs' own portal services, thus excluding third parties portal services.

Mobile portal services

- 3.15 For the purpose of this review we have used the following definition for mobile portal content services.

Mobile portal content services are digital content services that can be purchased by the MCP's customer through 'browse and click', where the MCP carries out all retail activities regarding the content itself, including the promotion, delivery, billing and customer care and where the transaction is charged to the MCP's customer's bill or pay as you go credit.

- 3.16 Mobile portals can be accessed through mobile devices, but also in certain cases through computers. Whereas mobile portals started off as 'walled garden' environments, where the customer could only access MCP's own content, they have evolved into a more open environment where customers can easily leave the portal and surf the web.
- 3.17 MCPs currently tend to offer access to:
- Own controlled content through their portal;
 - A number of third party websites via their portal (e.g. Facebook, Twitter); and
 - Third party content on their portals. Despite the content being branded by a third party, in this case the MCP takes responsibility for the end-to-end customer experience (quality of content, delivery, billing and complaints handling).
- 3.18 Any content for which the MCP would not assume full responsibility would therefore fall outside this definition and outside of the services under consideration in the review.

Purchasing a mobile portal service

- 3.19 A customer can enter their MCP's services either through an icon on their phone, or by typing the address in the web browser. The MCPs offer their digital content under the following names:
- 3UK: Planet 3;
 - O2: O2 Active;
 - Orange: Orange World;
 - Vodafone: Vodafone Live or Vodafone 360;

- T-Mobile: T-zones;
- Virgin: Virgin mobile.

3.20 An overview of the information flows in a mobile portal transaction is shown in Figure 1 below.

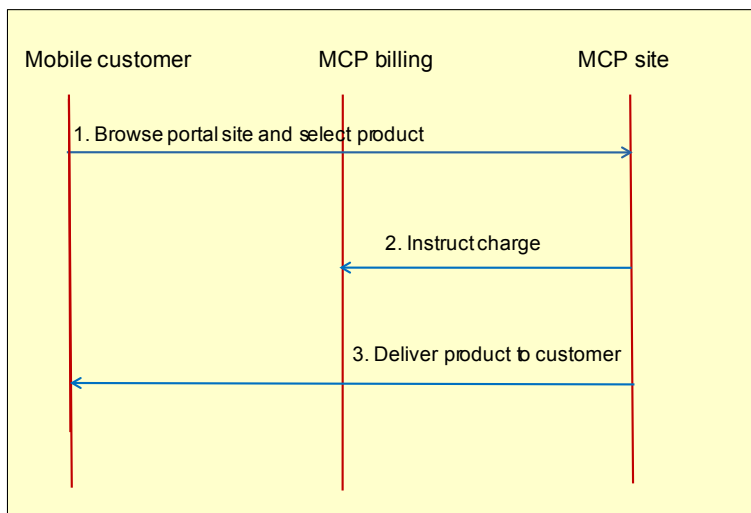


Figure 1: Overview of information flows for a mobile portal content transaction

Customer experience

3.21 Examples of the portals through which the content services are sold are shown below. MCPs typically offer ringtones, games and puzzles, videos and also links to other websites (outside their portal) such as Facebook, BBC News, Twitter and Skype.



Figure 2: Examples of three mobile portals

- 3.22 By clicking on a content service, the customer typically enters into a transaction, and the service is downloaded onto the customer's device. It will be charged to the customer's mobile bill or deducted from their pay-as-you-go credit.
- 3.23 An example of the information provided to the customer in subsequent screens when buying a game is shown in the screenshots below:

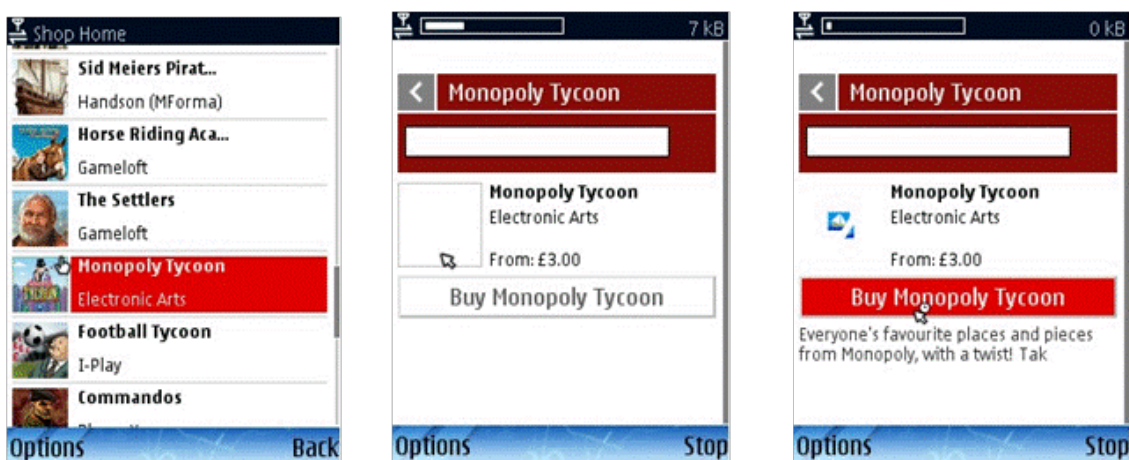


Figure 3: Buying a game through the Vodafone portal

Presentation of mobile portal services on the bill

- 3.24 The MCPs present mobile portal transactions in different ways on their customers' bills. Some MCPs clearly identify on-portal transactions separately on their bills, others just provide a list of all calls, SMS messages and other transactions and descriptions of on-portal transactions vary from very detailed to quite generic.


Your bill number ABD31460777		Your 3 phone number [REDACTED]		Customer services 333 or 08707 330 333 Or visit My3 on your handset		
Itemised usage cont'd.						
Games						
Date	Time	Event description			Charge(£) (ex VAT)	
Sat 24 Jan	09:07	Game Purchased: Zuma: TBVB - Glu - preload			4.247	
Sun 25 Jan	14:05	3Download Games TBVB ACC Rental - PAC MAN Namco 099			0.843	
	14:09	3Download Games Preload Rental - Debloo THQ 099			0.843	
Sat 31 Jan	19:32	3Download Games TBVB ACC Pay Per Play - PAC MAN Namco 050			0.426	
Total (games)				4	£6.359	
Payforit payments (for services outside of 3)						
Payforit is the safe, easy way to buy services on the mobile internet. Costs are simply added to your 3 bill - and shown clearly. Charges shown include VAT where appropriate.						
Date	Time	Services Purchased and Customer Helpline		Charge(£)		
Tue 20 Jan	14:28	GBP9.0 Mobile Content 448700790400		3.000		
Total (Payforit)				1	£3.000	

Figure 4: Example of Payforit on 3 bill.

Fixed portal content services

- 3.25 For the purposes of this review we use the following definition for fixed portal content services.

Fixed portal content services are digital content services offered by fixed communication providers which can be accessed 'on demand' by a provider's customer over an ECS (typically a broadband connection), where the provider carries out all retail activities regarding the content itself, the promotion, delivery, billing and customer care and where the transaction is charged to the customer's communication provider's bill.

- 3.26 Fixed portals tend to be accessed through a fixed connection, and are often accessed through computers and televisions, but can also be used through mobile devices. They enable consumers to access films, television programmes, videos and other types of on demand content offered by fixed OCPs. However, other forms of service such as gaming and competition services can also be provided through fixed portals.

- 3.27 As set out in the Pay TV statement¹³, there are different models to provide VoD services.
- Transactional VoD allows customers to purchase content, usually on an individual 'pay-per-view' basis;
 - Customers can buy stand-alone VoD packages, providing unlimited access to on-demand programming for a monthly fee, called subscription VoD;
 - In some cases VoD is bundled with a linear television channel subscription, such as Virgin Media's TV Choice service or Sky's Sky Player service; and
 - Sky Player is also available on a stand-alone basis as a subscription service.
- 3.28 Different types of VoD can also be distinguished:
- Push VoD is a solution used by broadcasters on systems that are unable to offer full interactivity required for 'true' VoD. Such a solution uses a Personal Video Recorder (PVR) to record content selected by customers. Customers can then watch downloaded content at times of their own choosing.
 - Near VoD is pay-per view solution used by multi-channel broadcasters using high bandwidth distribution networks such as satellite and cable television. Multiple copies of a programme are broadcast at short time intervals providing convenience for viewers who can watch the programme without needing to tune in at a scheduled point in time; and
 - Pull VoD is a truly interactive service where the customer can decide at any point in time to download content. These services can be provided by Internet Service Providers ('ISPs') who offer access to these services over their customers' broadband connections. A broadband connection is required for these services since a certain speed needs to be available in order to guarantee a certain quality. A number of OCPs, such as Virgin, TalkTalk, BT Vision and Sky, currently offer VoD type of services.
- 3.29 Fixed portal services are similar to mobile portal content services, in that there is one party, in this case the fixed OCP, that is responsible for the content, promotion, delivery and billing of the content and the customer care. However, at present and in contrast to mobile portals, a customer can only access their provider's on demand offering, and is unable to 'leave' the fixed portal to access other sites and content. This may change in the future with the launch of other IPTV platforms, such as for instance YouView.

Customer Experience

- 3.30 The fixed provider will buy the rights to certain content from content providers such as film studios, broadcasters etc. and will make that content available to their customers.
- 3.31 Customers can browse their provider's offerings, select a film or some other content, and purchase it by selecting it. The content will subsequently be downloaded over the customer's broadband connection. The transaction will be charged to the

¹³ This document can be found at http://stakeholders.ofcom.org.uk/binaries/consultations/third_paytv/statement/paytv_statement.pdf.

customer's provider's bill. Price information is typically clearly displayed, both subscription costs and one-off costs.

Payforit

3.32 Payforit was set up by the (then) five UK MCPs in March 2006 to offer a consistent standard for purchasing goods and services through a mobile phone, supporting both one-off and subscription payments. In May 2007 it was extended to support transactions through the internet, allowing consumers to purchase a service via Payforit while browsing the internet on a device other than their mobile phone with the payment being charged to their mobile phone bill. Payforit shares many characteristics PRS delivered using Premium SMS and many of the value-chain characteristics are similar, including the commercial entities involved which overlap extensively.

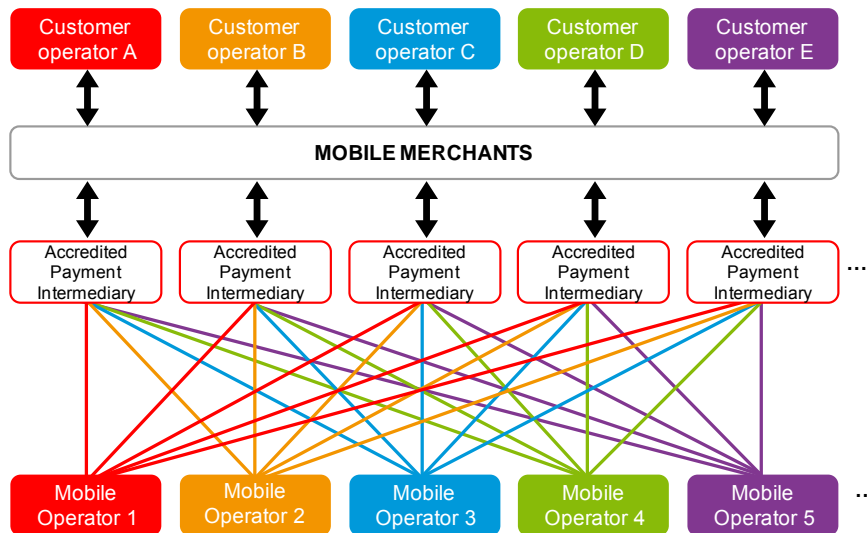
3.33 For the purposes of this review we use the following definition for Payforit.

Payforit is a payment mechanism offered by the UK MCPs which enables mobile phone users to purchase services over the Internet (WAP and web) and charge these purchases to their mobile phone accounts. Under the Payforit mechanism, merchants contract with Accredited Payment Intermediaries ('APIs') who in turn have contracts with all MCPs. In line with these contracts, merchants and APIs taking part in the scheme have to comply with the Payforit rules and use the Payforit logo.

Parties involved in providing Payforit and Scheme Rules

3.34 Payforit provides an environment in which mobile phone users can purchase online services (currently up to £10 per transaction) and charge the transaction to their mobile phone bill or prepay credit. Payforit supports both one-off transactions and recurring transactions (subscriptions), and offers a standardised payment process for both WAP (mobile) and web transactions.

3.35 Through their MCP's network, mobile customers can browse websites from mobile merchants who offer their services online to mobile customers. When a customer enters into a transaction with a merchant, payment for this transaction is managed by independent intermediary companies (APIs) who deliver on-screen payment pages and manage the billing request. APIs are often Service Providers / Aggregators as well, and provide other PRS such as Premium SMS. Figure 5 below gives an overview of the parties involved in Payforit.



Source: Trusted Mobile Payment Framework Scheme Rules

- 3.36 All parties involved in providing Payforit are bound by a set of rules (the “Scheme Rules”) devised by the MCPs.¹⁴ According to PP+, these Scheme Rules are closely aligned (for now) with the PP+ Code of Practice, with only three notable differences currently:
- PP+ expects pricing to be shown on the advertising for a mobile product or service, whereas the Scheme Rules stipulate only that pricing be shown on the Payforit checkout screen;
 - The Scheme Rules stipulate the exact wording for messages about Payforit-paid subscriptions, while the PP+ Code of Practice is more flexible depending on the specific usage;
 - The Scheme Rules insist on the merchant making their full address available within the Payforit workflow, whereas PP+ requires only the company name and the customer helpline.
- 3.37 The MCPs continue to update the Scheme Rules, with the latest version 3 released in February 2010.
- 3.38 The focal point of the Scheme Rules is a standardised layout for Payforit-based checkout pages. These rules currently include:
- Wording for the different screens (pricing notification, payment success, payment failure);
 - Requirements regarding the use of logos, where the Payforit logo and the MCP’s logo are mandatory, and a number of MCPs allow the merchant’s logo to be displayed as well;
 - Payforit single click buying process where a customer can buy multiple services from the same merchant without being shown the screens for each individual transaction;

¹⁴ The detailed Scheme Rules can be found at <http://www.payforituk.com/pages/schemerules.html>. (v.3.0 dated 28.02.2010)

- Subscriptions;
 - Passing on customer details such as MSISDN to the merchant;
 - Customer care; and
 - Auditing.
- 3.39 Under the Payforit scheme APIs need to be accredited by each of the MCPs separately in order to be able to carry out the payment processing on behalf of their customers. According to the information provided to us by APIs, each MCP carries out its own due diligence in respect of potential APIs but there is a large number of common requirements, such as:
- API business plan and long term commercial viability;
 - Technical infrastructure;
 - Financial structure;
 - Credit rating;
 - Disaster recovery; and
 - Processes in place.
- 3.40 The MCPs have contracts in place with the APIs setting out the terms and conditions by which an API is bound; and in turn, the API has contracts in place with merchants who want to sell their services using Payforit. The same arrangements apply for Premium SMS.
- 3.41 The MCP should monitor the API by checking the end-to-end service. MCPs state they carry out audits continuously, though they are likely to do so in different ways and to different extents. One MCP has outsourced the auditing to a third party, and a sample of the results is outlined in section 4.
- 3.42 When an MCP finds a breach of the Payforit rules and its underlying contract it can, depending on the type and severity of the breach, issue a yellow or a red card to the API. The yellow and red card system is also in place for other mobile PRS. Examples of breaches leading to a yellow card are missing merchant's contact details, or information not being compliant with the prescribed format. An example of a red card would be a discrepancy between the price information on the merchant's site and the price information on the check-out screen. In the case of a yellow card, the API has 48 hours to remedy the breach. In the case of a red card, the API will be suspended for a time period ranging from ten days to one month. When a red card is issued by an MCP it shares that information with the other MCPs who can in turn decide whether or not to take action themselves. In addition, an MCP can terminate its contract with an API, and we understand that to date there has been one incident of this.

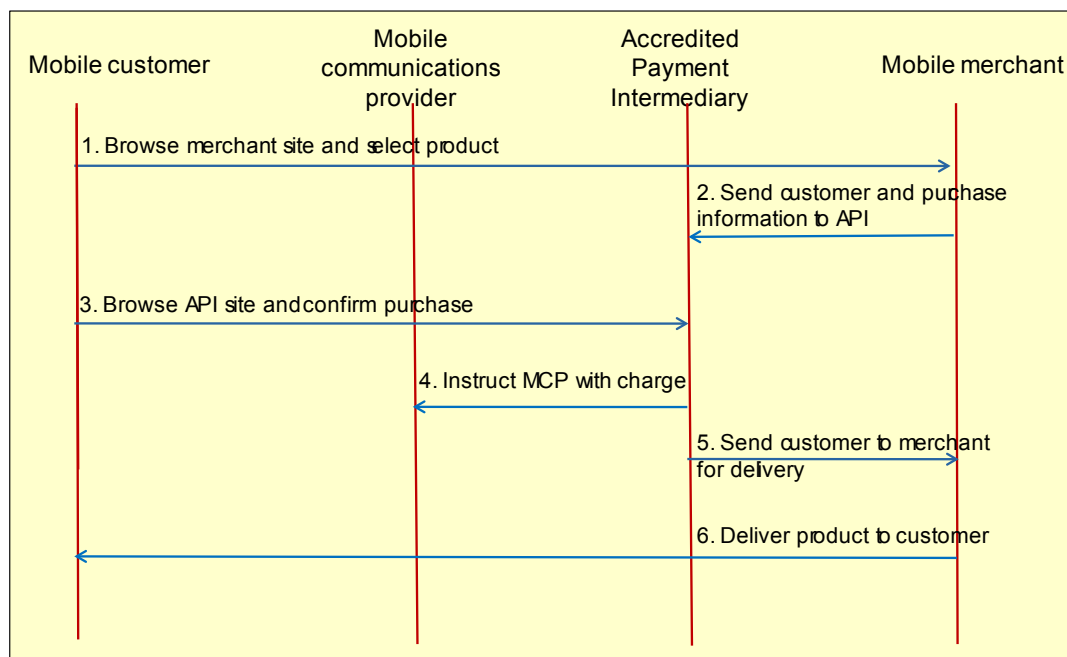
Purchasing PRS using Payforit

- 3.43 The Scheme Rules specify that when a customer wants to enter into a transaction, he/she is redirected from the merchant to the API, who carries out authentication of the payment, and triggers payment of the transaction either on the customer's mobile

phone bill, or by deducting the required amount of money from the customer's prepay credit. In order to do this, the API sends a billing instruction to the customer's mobile operator's billing platform. The API therefore holds all relevant transaction information including the date and time of the transaction, the type of phone used, the amount charged, the customer's number identifying their subscription, the MSISDN, the merchant involved and the service purchased.

- 3.44 The billing platform gets the transaction authorised via the relevant contract or prepay billing system and sends the confirmation back to the API involved. The customer is subsequently reverted to the merchant's website. Figure 6 below gives an overview of the information flows between the parties.

Figure 6: Overview of information flows between parties involved



Source: Payforit description provided by Mobile Broadband Group

- 3.45 At the end of a billing period, the MCP shares part of its revenue with the API who will then settle with the merchants.

Customer experience

- 3.46 The customer will typically start off at the merchant's website, where they will browse and click on the product they intend to purchase. When the customer clicks on the product, they should be referred to the first Payforit screen presented by the API. This is the 'pricing notification screen' and will look like the two examples shown in Figure 7. It is at this point that the Payforit rules start to apply. The following outlines the customer experience when the current Payforit rules are complied with.
- 3.47 In this first screen the customer is asked to confirm their intention to purchase certain content from a mobile merchant for a certain price. In addition to a contact number of the mobile merchant, the screens should contain Terms & Conditions, an explanation of Payforit and a notification of the possibility of incurring data charges as well.

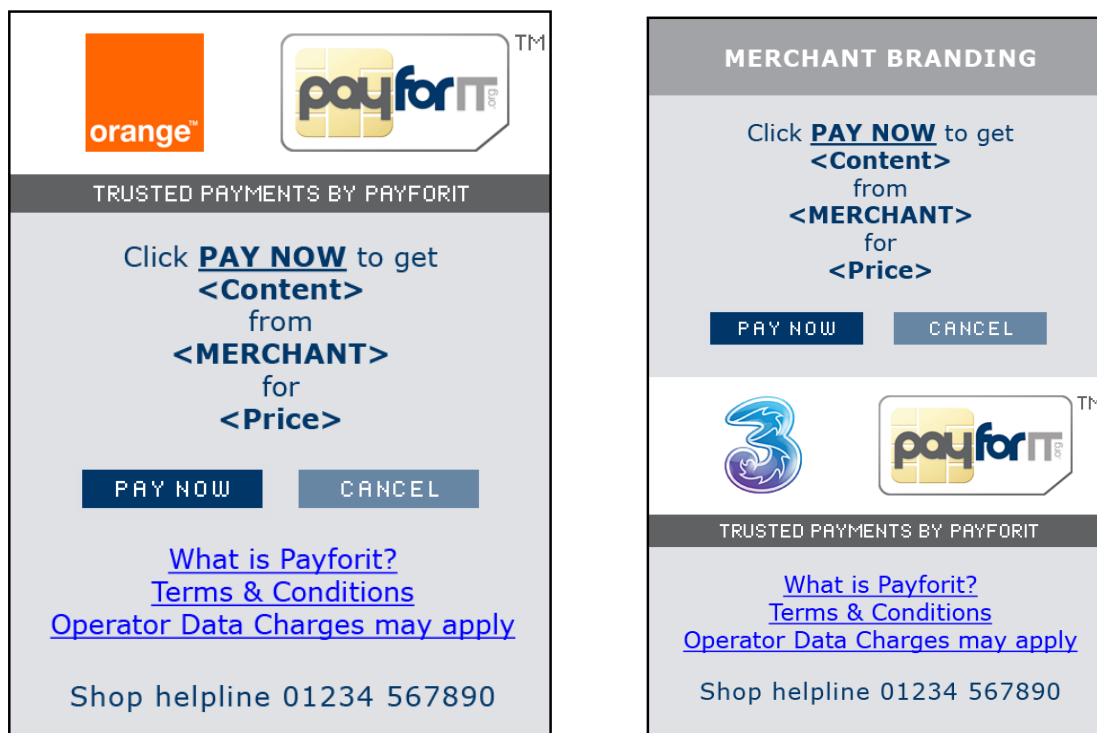


Figure 7: Price notification screen shown before entering into transaction

- 3.48 The wording on the first screen may vary depending on the type of transaction; above the screen for one-off payments is shown. Comparable screens are available for charity one-off donations, charity subscriptions and non-charity subscriptions.
- 3.49 The second screen shown to the customer by the API should be either the 'payment success' or the 'payment failure' screen. An example of the success screen is shown on the left hand side of Figure 8 below.



Figure 8: Payment success and failure screens shown after payment

- 3.50 The payment success screen should confirm successful payment for content to a particular merchant and set out how much was charged. Again, the exact wording on this screen may vary according to the type of transaction. On this screen APIs can also request an opt-in from the customer for marketing messages and for use of the Payforit Single Click functionality. This functionality should allow customers to buy content from the same merchant with a single click, meaning customers will not have to confirm each payment on a separate Payforit payment page. When a customer has spent £20 with a single merchant using the single click functionality, or when 30 days have lapsed since starting to use the single click functionality, the customer has to be presented with a new single click opt-in screen where they can confirm continued use of the Payforit single click functionality.
- 3.51 After the successful payment notification, the customer should be directed back to the merchant's website. An SMS receipt may be sent to the customer after a successful transaction, containing the amount spent on the transaction, contact details of the merchant, date and time of the purchase and a description of the service purchased.
- 3.52 When a customer has entered into a subscription, the API should send a free SMS message to the customer specifying the type of content a customer has subscribed to, the price, the billing frequency, details on how to stop the subscription and contact details of the merchant.

3.53 If payment for the content failed, the customer should be shown a 'payment failure' screen by the API, including the reason for failure. An example of such a screen is shown on the right hand side of Figure 8 above. After an unsuccessful payment the customer should be redirected to the merchant's website.

Presentation of Payforit on the bill

3.54 The MCPs present Payforit transactions in different ways on their customers' bills. The billing information typically consists of the date of the transaction, the amount charged to the customer, a description of the type of service purchased and in certain cases a customer helpline number.

3.55 Below are two examples of customer bills detailing Payforit transactions.


Your bill number ABD31460777	Your 3 phone number <input type="text"/>	Customer services 333 or 08707 330 333 Or visit My3 on your handset	
Itemised usage cont'd.			
Games			
Date	Time	Event description	Charge(£) (ex VAT)
Sat 24 Jan	09:07	Game Purchased: Zuma: TBYB - Glu - preload	4.247
Sun 25 Jan	14:05	3Download Games TBYB ACC Rental - PAC MAN Namco 099	0.843
	14:09	3Download Games Preload Rental - Deblob THQ 099	0.843
Sat 31 Jan	19:32	3Download Games TBYB ACC Pay Per Play - PAC MAN Namco 050	0.426
Total (games)		4	£6.359
Payforit payments (for services outside of 3)			
Payforit is the safe, easy way to buy services on the mobile internet. Costs are simply added to your 3 bill - and shown clearly. Charges shown include VAT where appropriate.			
Date	Time	Services Purchased and Customer Helpline	Charge(£)
Tue 20 Jan	14:28	GBP3.0 Mobile Content 448700790400	3.000
Total (Payforit)		1	£3.000

Figure 9: Example of Payforit on 3 bill

	21:47	Other Mobile Network	talk	1200 mins	y	0.0003	0.000
	21:54	Other Mobile Network	talk	1200 mins	y	0.0057	0.000
	22:05	Other Mobile Network	talk	1200 mins	y	0.0003	0.000
	22:33	Other Mobile Network	talk	1200 mins	y	0.0024	0.000
	22:51	Magic Numbers	talk		n	0.0004	0.000
	23:00	Payforit	content		n	0:00:00	8.511
	23:55	Magic Numbers	talk		n	0.0133	0.000
	23:57	Other Mobile Network	talk	1200 mins	y	0.0253	0.000
03.08/10 Tue	00:00	Magic Numbers	talk		n	0.0043	0.000
	03:31	Magic Numbers	talk		n	0.0054	0.000
	04:06	Magic Numbers	talk		n	0.0427	0.000
	10:19	BT 'b' Rate	Voice	UnLim	y	0.0105	0.000
	12:02	BT 'b' Rate	Voice	UnLim	y	0.0039	0.000
	12:05	Other Mobile Network	talk	1200 mins	y	0.0003	0.000
	12:18	Other Mobile Network	talk	1200 mins	y	0.0001	0.000
	12:35	BT 'b' Rate	Voice	UnLim	y	0.0052	0.000
	12:36	Other Mobile Network	talk	1200 mins	y	0.0151	0.000
	13:01	Other Mobile Network	talk	1200 mins	y	0.0008	0.000
	13:08	Other Mobile Network	talk	1200 mins	y	0.0448	0.000
	13:14	BT 'b' Rate	Voice	UnLim	y	0.0210	0.000
	14:14	Magic Numbers	talk		n	0.0005	0.000
	15:40	Orange	talk	1200 mins	y	0.0251	0.000
	15:45	BT 'b' Rate	Voice	UnLim	y	0.0006	0.000
	19:26	Other Mobile Network	talk	1200 mins	y	0.0019	0.000
	19:40	BT 'b' Rate	Voice	UnLim	y	0.0119	0.000
	20:21	BT 'b' Rate	Voice	UnLim	y	0.0128	0.000
04.08/10 Wed	00:51	Orange Answering Service	talk		n	0.0010	0.000
	20:46	#Multimedia Services Sent	text		n	0.0000	0.000
	20:46	#Multimedia Services Recd	text		n	0:00:00	0.350
	20:47	Other Mobile Network	talk	1200 mins	y	0.0038	0.000
	20:49	Mobile Text Messaging	text	500 texts	y	0.0000	0.000
	21:23	BT 'b' Rate	Voice	UnLim	y	0.0504	0.000
	22:24	Other Mobile Network	talk	1200 mins	y	0.0003	0.000
	22:25	Magic Numbers	talk		n	0.0047	0.000
	22:26	Other Mobile Network	talk	1200 mins	y	0.0003	0.000
05.08/10 Thu	02:34	Other Mobile Network	talk	1200 mins	y	0.0004	0.000
	14:02	Other Mobile Network	talk	1200 mins	y	0.0056	0.000
	14:21	Orange	talk	1200 mins	y	0.0108	0.000
	14:22	Orange	talk	1200 mins	y	0.0011	0.000
	14:30	Other Mobile Network	talk	1200 mins	y	0.0024	0.000
	14:52	Other Mobile Network	talk	1200 mins	y	0.0025	0.000
	14:55	Other Mobile Network	talk	1200 mins	y	0.0113	0.000
	15:40	Orange	talk	1200 mins	y	0.0009	0.000
	16:37	BT 'b' Rate	Voice	UnLim	y	0.0038	0.000

Figure 10: Example of Payforit on Orange bill

Section 4

Applying the analytical framework to the services

Introduction

4.1 The PRS Scope Review statement established an analytical framework to help assess whether particular services should be subject to PRS regulation, because of the potential risk of consumer harm. This section applies this framework to the services within scope of this review. The framework set out in the statement is summarised below.

Analytical framework

4.2 The analytical framework poses a number of questions around the supply and demand side features to assess whether the combination of those could lead to potential consumer harm. On the supply-side these questions include:

- Whether the customer's OCP is the actual supplier of the PRS;
- Whether the supply chain is complex and fragmented, including the number of suppliers at different levels in the supply chain; and
- Whether the barriers of entry and exit at different levels in the supply chain are low.

4.3 These questions have important implications for risk of consumer harm for PRS in general. Firstly, because the retail price is set by the OCP rather than the PRS supplier it can be difficult for consumers to obtain precise pricing information. Secondly, when the consumer has a complaint, it is not always easy for them to identify who is responsible and how to obtain redress. Thirdly, low barriers of entry and exit, a complex supply chain and rapid technological change could incentivise opportunistic behaviour towards consumers.

4.4 The analytical framework then addresses demand side characteristics which could lead to consumer harm, such as whether the specific PRS:

- Is an experience good where consumers are only able to ascertain its quality at the point at which it is consumed. If reputation is unimportant then its suppliers may have incentives to provide low quality or high priced services. This raises particular problems for consumers as services such as digital content are typically "consumed upon purchase", which means that they are exempt from some provisions of the Consumer Protection (Distance Selling) Regulations 2000 in respect of the right to cancel;¹⁵
- Can be characterised by bill-supply separation where consumers access and pay for it via their OCP but the service is supplied by a third party. Here consumers may not be aware of the identity of the third party supplier and may therefore

¹⁵ Regulation 13 - Exception to the right to cancel; paragraph (1)(c).

have difficulty contacting the party who is responsible for the part of the service which they are dissatisfied with;

- Involves a relatively low expenditure per transaction. While the charges may appear high in comparison to other phone calls, they are still relatively low compared with many other purchases consumers make. As such consumers may not consider it worthwhile to shop around or to complain if they are not satisfied with the service;
- Can be characterised as an impulse purchase with an easy sales process and little authentication requirements. An easy sales process could again result in consumers not making the effort to check and understand the charges they will face;
- Could involve inappropriate or offensive content; and
- Will have a particular appeal to children. Children are more likely to enter into impulse purchases without being sufficiently well informed or capable of making informed decisions about the purchase of a particular PRS and may be more susceptible to scams and misleading advertising.

4.5 In Figure 11 we have set out the characteristics described above for different types of PRS, specifically the three services or types of services that are the focus of this review and two more conventional and broader categories of PRS.

Figure 11: Demand and supply side characteristics from the analytical framework, by service type

Characteristics from analytical framework	Mobile and fixed portal services	PRS bought using Payforit	09 voice services	Premium SMS
Is the OCP the actual supplier of the PRS?	Yes	No, service is provided by a third party merchant. But MCP logo displayed on Payforit check-out screens.	No, service is typically provided by third party information provider / merchant	
Complexity and fragmentation of supply chain	Straight-forward from consumer's perspective, only OCP in the chain	Three levels, MCP-API-Merchant	Supply chain is likely to involve the following parties: OCP, TCP, SP and IP. There may be more than one IP.	
Barriers to entry and exit	Barriers to both entry and exit high	Barriers high for MCP, reasonably high for APIs, barriers entry remain low for merchants (but depend on how the accreditation scheme is implemented)	Barriers to entry are low for IPs / merchants, but higher for SPs.	

Is service an experience good?	Yes			
Bill-supply separation	No – billed directly by OCP	Yes, as merchant is providing the service but billed by MCP		
Low expenditure?	Currently likely to be low in most cases, although subscriptions could lead to higher bills.	Likely to be low in most cases (and currently capped at £10 per transaction) although subscriptions could result in higher bills.	Price per minute / call relatively low, but long calls / high volume of calls could lead to higher bills.	Likely to be low in most cases, although subscriptions could lead to higher bills.
Susceptibility to impulse purchases? (Easy sales process)	Moderate, although browsing and clicking through screens could make transaction less impulsive.	Moderate to High, but additional check-out screen builds in extra step into sales process, allowing customer to see price and confirm intention to purchase before being billed. Less easy than PSMS.	High	
Inappropriate/offensive content?	Adult content is available.			
Appeal to children?	Sometimes for certain services.			

4.6 As set out in the PRS Scope Review statement, our assessment is not intended to be a ‘tick box’ exercise, but will focus on the overall risks of harm from a particular service. As such not every PRS will exhibit the full set of characteristics identified above and not all characteristics may be relevant for our assessment. The assessment is therefore focused on whether a combination of the above characteristics may cause consumer harm. For example the combination of a complex value chain with a large number of IPs that can enter and exit easily, an “experience good” and relatively low price can generate incentives for opportunistic behaviour and in turn give rise to consumer harm.

4.7 The nature and likelihood of the harm, which is not limited to financial detriment alone, that may occur is a relevant consideration for whether a service should be regulated. The statement focused on three areas where consumer harm may still arise for PRS:

- Lack of information, particularly on price, where consumers may be deterred from making calls if they expect the price to be higher than it is or they make the call when on the basis of accurate price information they would not have;
- The exposure of consumers to offensive or inappropriate content; and
- The ability and incentive to seek redress, which given that PRS are experience goods may be sought more often. However, the complexity of the value chain and

the low value of the good may deter consumers from seeking redress. As such, although the level of harm may be small for each transaction, depending on the number of transactions made, the overall harm could be substantial. Research conducted by Thinktank for PhonepayPlus on consumer's views of their new Code of Practice, showed that complaints handling and the way this was undertaken, was one of their biggest concerns. Many felt that it was a very difficult and time consuming process.¹⁶ This confirms earlier research commissioned by Ofcom and published in the PRS Scope Review Statement that 60% of customers would not know where to go if they had a problem with a PRS. Expectations of the problem being resolved were also low with only 17% confident the problem would be resolved, against 59%, who lack confidence.

- 4.8 In the remainder of this section and in Section 5 we apply the framework to each of the services and consider what types of harm could potentially occur in the absence of effective regulation. This encompasses a comparison of the service in question with more conventional PRS such as calling an 09 number and entering into a subscription billed through incoming SMS messages.
- 4.9 We draw on our understanding of the facts, analysis and relevant evidence, where available. However, it is worth noting that evidence gathering in relation to consumer detriment for the services under consideration is particularly difficult because of the combination of the following factors:
- The size of the market is small and even smaller for individual services (total PRS sector around £800m, of which "Payforit revenues" are around £15m, mobile portal around £23m and fixed portal unknown);
 - The infrequent usage of the services by a restricted and difficult to identify group of consumers (which are difficult to identify). This means it is difficult to carry out any meaningful market research, particularly on the specific services in question;
 - The evidence we have in respect of mobile portal services and Payforit is based on a situation where PRS regulation applies. It may be difficult to assess if and how providers' behaviour would change in the absence of regulation; and
 - The very limited number of complaints in a sector where the low value of many services is likely to provide a disincentive to consumers to pursue complaints.

Mobile portal services

- 4.10 To provide context for the following discussion we note here the available information on revenue for mobile portal services:
- From the data provided by the MCPs to PP+ it appears that revenues from own portals are falling. Between 2008¹⁷ and 2010¹⁸ gross revenues fell on average by approximately 61%, with a fall of 35% between 2008 and 2009 and 40% between 2009 and 2010. This is based on partial revenue information, and as such does not provide a complete picture of the market.

¹⁶ Research conducted by Thinktank for PhonepayPlus on Code 12: The view from consumers, June 2010.

¹⁷ For year ending 31st March 2008.

¹⁸ For year ending 31st March 2010.

- An article in New Media Age¹⁹ which discusses the results of ComScore's Mobile Media Metrics (MMM), that monitors traffic figures to MCPs' own portals have been declining during 2010. For example Orange World recorded 3.6m visitors in January but only 2.6m in May. O2 dropped from 3.5m in January to 2.9m in May. Vodafone had a more moderate drop from 3.9m in Jan to 3.6m in May. Based on the limited information regarding mobile portal revenues and above traffic figures it is hard to draw any firm conclusions, but it appears the mobile portal content market is not currently growing.

Demand and supply side characteristics

- 4.11 The key difference between mobile portal content services and conventional PRS is the fact that the MCP has responsibility for the end-to-end service in relation to its customers. It provides the customer with access to the content, the content itself, and charges the content to its customer's bill or pay-as-you-go credit.
- 4.12 The MCP may have a contract with a content provider for content available through the portal. But, critically, it is the MCP that retails the content provider's product and accepts responsibility for it. Thus from a consumer perspective the supply chain is short and simple.
- 4.13 Barriers to entry and exit are high since these types of services are solely offered by MCPs, and starting up as an MCP requires significant investments (in terms of spectrum licenses, investments in brand, processes, billing systems etc).
- 4.14 Therefore the supply side characteristics suggest that the incentives for opportunistic behaviour are likely to be significantly lower for mobile portal services compared to conventional PRS. For the latter, the combination of a complex value chain (making it difficult for example for consumers to be sure who is responsible for resolving complaints), the high number and easy entry and exit of IPs suggests that IPs may be less concerned with maintaining a favourable reputation.
- 4.15 On the demand side, there are some similarities with conventional PRS:
- a mobile portal content service is an experience good and is purchased remotely. This means that customers are only able to verify the quality of a service at the point of or after consumption;
 - the services are typically low expenditure digital content services such as ringtones, games, puzzles, and music;
 - adult content services are available. Although MCPs provide age verification procedures; and
 - some services will have a particular appeal to children.
- 4.16 However, these services are billed and delivered by the MCP, which means that there is no bill-supply separation. This means that if customers are dissatisfied with any aspect of the service (e.g. quality of service or charge) and it is made recognisable as such on the portal, they are likely to go directly to their MCP with any queries or when seeking redress.

¹⁹ Extracted from an article written by Ronan Shields for NMA on 9th September 2010.

- 4.17 The combination of experience goods and low cost per item suggests that these items are potential impulse purchases, although browsing and clicking through screens could make the transaction less impulsive than calling 09 numbers or some PSMS-billed services, suggesting that their susceptibility to impulse purchases may be more moderate than for conventional PRS.

Do consumers have access to appropriate information?

- 4.18 Unlike conventional PRS, price information on mobile portals is transparent and available to consumers at the point of purchase.
- 4.19 As MCPs take sole responsibility for all retail aspects, there is likely to be less scope for confusion around the price information provided to the customer, and less scope for differences between the price advertised and the amount billed. For example, with other types of PRS the content provider has to provide price information to the aggregator or service provider and the MCP has to determine a price point for the service in question depending on the price of the content.
- 4.20 In addition, there is likely to be less incentive for the MCP to behave opportunistically in this area and advertise a lower price where a higher price is actually payable, describe the content incorrectly or provide poor quality products, because of a greater commercial interest to retain their customers than can be the case for IPs/merchants providing more conventional PRS. Such IPs may be aware that they can evade redress where consumers find it difficult to identify which party they should complain to, or exit as they face only low barriers to entry and exit. In contrast, MCPs would need to handle additional complaints, which are costly to process, and loss of goodwill.
- 4.21 We do not have complaints or mystery shopping data that focuses specifically on mobile portal content services. Anecdotal evidence suggests that pricing information provided on the portals is generally clearly displayed and correct. The information was particularly clear where prior to the transaction a confirmation screen was shown, clearly setting out the price and the type of content the customer was about to purchase. When provided, this additional confirmation screen also prevents accidental clicking and downloading of a service.
- 4.22 Overall, we consider that transparency is likely to be significantly better than for conventional PRS.

Is the redress mechanism appropriate?

- 4.23 As with other forms of PRS the low value of the services suggests that consumers' incentives to seek redress is likely to be lower than for other transactions that consumers make. As such, it is important that the process is as straightforward as possible, regardless of whether their complaint is about, for example, securing a refund or a wider outcome such as concerns about children accessing inappropriate content.
- 4.24 MCPs told us that they handle complaints and redress regarding all aspects of their portal content services. This is very different to conventional PRS where a potential concern is that, because there are a number of bodies involved in providing the service to consumers, it may not be clear who the SP is. (In some cases, even the

OCP may not know who the PRS provider is.²⁰) In addition, where a number of suppliers are involved in providing conventional PRS, they may have stronger incentives to blame other parties in the chain and fail to take responsibility for addressing the consumer's concerns.

- 4.25 As the MCP is responsible for all retail aspects of the service, it is the sole body to which consumers can complain, should they have cause to do so. MCPs are therefore likely to have greater incentives to provide effective complaints and redress processes, because there are no other parties involved and so the MCP bears the costs of complaints handling and the risk of losing the customer's goodwill.²¹
- 4.26 In principle, consumers will also have access to alternative dispute resolution ("ADR") schemes for issues relating to mobile portal content services.²² However, in practice such processes will only be appropriate for transactions involving larger sums of money than is typically the case for PRS.

Is there a substantial risk of exposure to offensive/inappropriate content?

- 4.27 All MCPs offer adult content services through their portals. Different MCPs use different adult verification procedures: some automatically block access to adult content so that customers have to go through age verification procedures to receive such services; others require customers to actively request to block such content.
- 4.28 We have no evidence to indicate whether access to inappropriate content is any better or worse through mobile portal services compared to other more conventional PRS. It is possible that MCPs may be more likely to ensure access to certain services is properly controlled if the content is perceived by customers as the MCP's own (as it is accessed through the MCP's portal). As argued above, for mobile portal services, MCPs take responsibility for complaints and are likely to have an incentive to minimise complaints (the handling of which is costly) as well as the risk of customers switching because of concerns about accessing inappropriate content.

Fixed portal services

- 4.29 To provide context for the following discussion we note here the available information on revenue for fixed portal services:
- The Communications Market Report 2010²³ contains some revenue data regarding on-demand television revenues. Although not all revenue categories identified are relevant to the scope of our analysis, some of the categories may contain fixed portal content PRS which gives an indication of market size and

²⁰ For example for 09 numbers, the OCP may have a contract with the Terminating Communications Provider rather than the PRS provider.

²¹ If a MCP lost its customer because he or she was dissatisfied with the PRS provided and decided to change MCP, the loss to the MCP would extend to all revenues from that consumer including voice and data revenues and not only the PRS revenues. This could provide a sufficient disincentive not to provide a good and clear redress route for the consumer.

²² All OCPs have to comply with General Condition 14, which sets out requirements regarding complaint handling and dispute resolution (see page 43 of http://www.ofcom.org.uk/consult/condocs/nts_info/statement/statement). It requires OCPs to produce a basic code of practice for domestic and small business customers, which should include details of the procedures for bringing an unresolved complaint to an alternative dispute resolution scheme (the 'Complaints Code of Practice').

²³ The relevant annex can be found at

<http://stakeholders.ofcom.org.uk/binaries/research/cmr/753567/UK-tv.pdf>.

growth²⁴. Total online TV revenues grew from £2.9m in 2004 to £94m in 2009. From 2006 to 2009 the relevant revenue categories (subscriptions, pay-per-view transactions and download-to-own transactions) grew from £8.4m to £39.7m, which is a compound annual growth rate of almost 58%.

- Another source of revenue is on-demand film delivered online. Near VoD services and 'real' VoD services grew from £92m in 2007 to £124m in 2009. Although these numbers are still relatively modest they show a growth. This combined with the fact that a growing number of TV manufacturers are now incorporating broadband connections into their television sets and the launch of new IPTV platforms and services could mean this market will continue to grow.

Demand and supply side characteristics

- 4.30 Similar to mobile portal services, a key difference between fixed portal services and conventional PRS is that the fixed communications provider is responsible for the content, promotion, delivery and billing of the content and the customer care. There are no other parties involved in retailing the service. Therefore from a consumers' perspective the supply chain simply comprises the fixed communications provider.
- 4.31 Barriers of entry and exit are high for these services. To set up as a fixed communications provider offering VoD would require a significant investment in terms of infrastructure, systems, marketing and branding, staff costs etc.
- 4.32 Therefore the supply side characteristics suggest that for fixed portal services, the incentives for opportunistic behaviour are likely to be significantly lower than for conventional PRS for reasons similar to those outlined under mobile portal services.
- 4.33 Regarding demand side characteristics, fixed portal VoD services display a number of the same characteristics as other PRS:
- The digital content services are experience goods;
 - VoD services are likely to be of relatively low expenditure;
 - Adult content services are available although there are typically safeguards in place;
 - Some content will have a particular appeal to children.
- 4.34 However there is no bill-supply separation, thus if a customer is dissatisfied with any aspect of the services they can go to their fixed communications provider with a complaint. As with mobile portal content services, fixed communications providers are also likely to have an incentive to provide an effective complaint and redress process regarding their own services, because of the costs of complaints handling and risk of losing customer goodwill.
- 4.35 The purchase process can be characterised as easy, but may be less impulse driven than other more conventional types of PRS due to the need to browse and click through screens, and because of the more limited type of content on offer (films and videos rather than ringtones, horoscopes, games etc.)

²⁴ However, it should be noted that the figures quoted are likely to result in an overestimate as the categories may contain revenues for non fixed portal services.

Do consumers have access to appropriate information?

- 4.36 In terms of price transparency fixed portals perform well and in a very similar way as mobile portals.
- 4.37 Furthermore, as with mobile portal services, because fixed communications providers take sole responsibility for retailing the service the potential confusion around price information provided by different parties that can occur with conventional PRS is not a concern here.
- 4.38 In addition, there is likely to be less incentive for the fixed communications provider to behave opportunistically (e.g. through misleading advertising of prices, or by providing poor quality services) because they are likely to have a greater commercial incentive to minimise complaints and retain their customers than can be the case for IPs/merchants providing conventional PRS.
- 4.39 It is easier to provide greater price transparency for these services due to the need to browse and click to select a service, compared to conventional PRS, particularly when compared to making an 09 call, where the customer is charged from the moment of connection.
- 4.40 We do not have specific complaints or mystery shopping data on fixed portal content services. Anecdotally, based on the services we have seen, pricing information appears to be clear at present. For example, customers are shown on screen the price of the content before they purchase it. They are then asked to confirm the purchase before it is streamed to them.
- 4.41 Overall, we consider that transparency is likely to be significantly better than for conventional PRS.

Is the redress mechanism appropriate?

- 4.42 Fixed communications providers have told us that they handle complaints and redress regarding all aspects of their portal content services. For these services in particular, it should be clear to a customer where they need to go to make a complaint. This situation is very different compared to that for conventional PRS where there are likely to be a number of bodies involved in providing the service to customers, and customers may not know who to complain to. Furthermore, for conventional PRS there may be scope for providers to try and pass the blame/responsibility on to others in the chain rather than take responsibility. In contrast, fixed communications providers will have a greater incentive to deal with complaints quickly and effectively to minimise complaints handling costs and loss of goodwill.
- 4.43 If a customer is not satisfied with the way their complaint has been resolved there is the potential to escalate the complaint to ATVOD or ASA for content or advertising complaints, or to ADR in relation to access to the service or content.²⁵ This has been confirmed by providers of fixed portal content services. However, in practice such processes will only be appropriate for transactions involving larger sums of money than is typically the case for PRS.

²⁵ All OCPs have to comply with General Condition 14, which sets out requirements regarding complaint handling and dispute resolution (see page 43 of http://www.ofcom.org.uk/consult/condocs/nts_info/statement/statement). It requires OCPs to produce a basic code of practice for domestic and small business customers, which should include details of the procedures for bringing an unresolved complaint to an alternative dispute resolution scheme (the 'Complaints Code of Practice').

Is there a substantial risk of exposure to offensive/inappropriate content?

- 4.44 To limit inappropriate or offensive content being shown to children, additional authentication (e.g. pin codes) is typically required to purchase adult content.
- 4.45 The available complaints data suggests that this has not been a material issue in practice to date:
- ATVOD has received a total of 88 complaints since taking on the regulation of VoD in September 2010 up to May 2011 (although it is not possible to confirm that all of these related to editorial content).
 - The ASA have also provided us with their complaint numbers. They have received 21 complaints between 1 September and 31 May 2011, none of which were considered an issue under the Advertising Rules for on-demand services.
 - From December 2009 when the new regime relating to VoD came into force, until September 2010 when ATVOD and ASA took over responsibility, Ofcom recorded 12 complaints, 2 of which related to VoD advertising and 10 related to VoD editorial content.

PRS using Payforit

- 4.46 To provide context for the following discussion we note here the available information on revenue for PRS bought using Payforit:

According to research conducted by Thinktank for PP+²⁶, Payforit is estimated to have generated £21.4m in revenue in 2009, which is a 2.6% share of all PRS revenues. In addition from information received from PP+ revenue for 2010 for Payforit was estimated to be worth £18.2m, which is a 2.2% share of all PRS revenues. Based on information provided to PP+ by the MCPs, over the past three years gross revenue for Payforit has grown by 39% between 2008²⁷ and 2009²⁸ and decreased by 6% between 2009 and 2010²⁹. However, this data is incomplete since some of the MCPs are unable to separate Payforit from other types of PRS revenues.

Supply side characteristics

- 4.47 In terms of supply side characteristics, there are three key levels in the supply chain: the MCP, the API and the merchant or IP that provides the PRS to the customer. Therefore, a key similarity with conventional PRS is the fact that the MCP is not the actual supplier of the PRS (unlike portal services). However, we note that there are differences between Payforit services and conventional PRS, in particular the MCP's logo appears on the Payforit screens that consumers see immediately before and after purchasing a product, (see section 3). Therefore the MCP is explicitly linked to the purchase of services using Payforit in a way that it is not for conventional PRS. This may have implications in terms of brand implication if the MCPs behave in a manner that leads to consumer harm.

²⁶ Research conducted by Thinktank for PhonepayPlus on Code 12: The view from consumers, June 2010.

²⁷ Year ending 31 March 2008.

²⁸ Year ending 31 March 2009.

²⁹ Year ending 31 March 2010.

- 4.48 The supply chain is fragmented although there are fewer APIs and merchants operating the scheme than are involved in the provision of conventional PRS: in the scheme there are currently 13 APIs³⁰ and MCPs estimate that there are approximately 150 merchants;³¹ whereas in the PRS scope review consultation we had estimated the total number of SPs and IPs was around 3,000.
- 4.49 This may be due to a number of reasons including the additional investments and due diligence required before an SP can become an API:
- According to information provided to us by APIs, the specific software development costs relating to Payforit are approximately £100,000 (a one-off cost).³² In addition, APIs incur ongoing maintenance, upgrading and migrating costs (for instance if the Scheme Rules are revised). For these costs to be a barrier to entry they would need to be sunk – i.e. not recoverable upon exit. At present it is unclear the extent to which these costs would be sunk or whether they could in part be redeployed if an API no longer provided Payforit.
 - APIs are also subject to due diligence by the MCPs before they are accredited as APIs. As set out in section 3, this covers areas such as financial structure, credit rating, technical capability, technical infrastructure and business plans. Through contracts, MCPs place the liability for Payforit with the API, who will then pass some of the liabilities on to the merchants.
- 4.50 As with conventional PRS, barriers to entry for merchants / IPs are low. They have to connect their systems to the API's systems. APIs tend to charge a monthly fee for this service, with the amount depending on the types of services carried out by the API for the merchant. Like many APIs, most merchants offer both Payforit and non-Payforit services such as premium SMS, and therefore many of them are already connected to the APIs and have the required systems in place before starting to offer Payforit services. Offering Payforit services therefore may not require any significant additional investment by merchants who already offer other PRS.
- 4.51 APIs should carry out due diligence on their merchants and are responsible (through contracts with the MCPs) for monitoring their services. The main additional costs are around customer care and ensuring they are compliant with the Payforit rules.
- 4.52 We noted in the statement that the supply side characteristics of PRS can incentivise opportunistic behaviour as suppliers, particularly merchants/ IPs may not be concerned with maintaining a favourable reputation with customers. There are two mechanisms that may temper this for services bought using Payforit. First, despite the low barriers to entry for merchants, the Scheme Rules (which are aligned with the PP+ Code of Practice see paragraph 3.36) are likely to discourage opportunistic behaviour by merchants and APIs, provided they are enforced. The key to such enforcement is action by MCPs. One tool available to them, already discussed in paragraph 3.42, is the use of yellow³³ and red³⁴ cards with APIs. Another is

³⁰ According to PP+ and MCPs.

³¹ This information was provided by MCPs at a meeting on 16 September 2010. These numbers would increase if Payforit were to increase in popularity.

³² A company also needs to have the capability to link up to the MCP's networks to become an SP, and this is estimated to involve one-off costs of £100,000. However it is unlikely that a company would choose to set up as an API without also acting as a SP to offer other types of PRS.

³³ A yellow card is given for minor issues that are consumer affecting, such as pricing or service delivery issues and can be resolved in a short period of time – 48 hours.

³⁴ Red cards are given for serious issues where the service needs to be taken away immediately from consumers to protect them and will be suspended for 10 days.

termination of the contract between the two parties. Based on information provided to us by MCPs, one MCP has terminated a contract with an API since Payforit was launched in 2006.³⁵

- 4.53 Secondly, as observed above (and illustrated in section 3), the relevant MCP's logo is clearly visible throughout the Payforit transaction screens. This may provide an additional incentive for them to monitor APIs, to avoid loss of goodwill with customers and minimise complaints handling costs.

Demand side characteristics

- 4.54 In terms of demand side characteristics, PRS bought using Payforit display many of the same characteristics as conventional PRS. In particular the services are relatively low cost experience goods, there is the potential to view inappropriate content and some services may have a particular appeal to children.
- 4.55 The key difference between the two types of services is the clear checkout screens that the API needs to provide for services bought using Payforit under the current rules. These tell consumers the content they are about to purchase, the price and provide a link to terms and conditions prior to purchase. Consumers need to confirm that they wish to purchase such content before they are charged for it.
- 4.56 This is very different to conventional PRS where there may be no "confirmation" process, and no prices displayed such that consumers can relatively easily purchase a service without understanding the implications (e.g. by dialling a 09 number for which they are automatically billed without knowing how much they are charged per minute or precisely how long the call will last).
- 4.57 There is bill-supply separation under Payforit, in that the merchant supplies the content, whereas the API instructs the charging of the transaction to the customer's mobile phone bill. This may make it difficult for consumers to know who to complain to or seek redress from. However, we note that, where Payforit rules are complied with, the consumer should be clear about who the merchant is and how to contact them (merchant details are provided on the check-out screen, in addition customers may receive an SMS receipt or be able to see the contact number on their bill, although this is optional under the Scheme Rules).

Do consumers have access to appropriate information?

- 4.58 Issues relating to lack of price transparency have been a key concern in relation to PRS. However, where the Payforit rules are complied with, price transparency will be significantly better than for conventional PRS due to the requirement for the API to display the price prominently in the checkout screens and lack of adequate pricing information is unlikely to be a risk.
- 4.59 While this is a significant improvement, there remains some scope for:
- the price advertised in merchants' promotions to be different to that displayed to customers at checkout, which would be misleading. While there is a lower risk of this resulting in financial harm (because of the clear price transparency at checkout), it may cause confusion and diminished consumer confidence;

³⁵ In this case the API failed to demonstrate the correct security procedures and processes to retain the Accreditation status.

- The content to be of poor quality or to fail to function on a particular mobile handset.

Is the redress mechanism appropriate?

4.60 There is no single route for consumers to follow when seeking redress in relation to services bought using Payforit. Based on discussions with MCPs, APIs and merchants, we understand that the following scenarios are possible:

- The consumer may try and contact the merchant directly (providing they get a bill³⁶ and this is sufficiently detailed, and / or where the customer has the contact details from the SMS receipt of the transaction);
- The consumer may contact the API where the merchant has outsourced the customer care to the API, and the customer has the API's contact details in an SMS receipt and / or the bill, where available;
- However, it is more likely that the customer will contact their MCP, who is likely to transfer the call to either the API or the merchant depending on the nature of the complaint, and whether the API carries out customer care for the merchant. In the worst case scenario, the most time consuming process involves a customer being transferred from the MCP to an API and then to a merchant.

4.61 There is no research available to indicate which of these routes is the more likely for customers buying services using Payforit. More general research carried out by PP+ for PRS overall suggests that complainants will typically contact their MCP in the first instance.³⁷ While this may be less likely for those customers that receive and retain an SMS receipt or bill with alternative contact details³⁸; some MCPs felt overall that customers were in general likely to contact them in the first instance.

4.62 Taking into account the relatively low expenditure for each transaction, the effort required to lodge a complaint and seek redress should be in accordance with the expenditure involved. This does not appear to be the case at present for PRS as a whole and also for services bought using Payforit, particularly where consumers first contact their MCP and then either the API or merchant (or potentially both).

4.63 Furthermore, if the consumer is unhappy with the way an API or merchant deals with their complaint, they may go back to the MCP who may escalate the complaint directly with the merchant or API. The presence of the MCP logo at checkout might create at least some incentive for MCPs not to pass responsibility on to others in the way that can be done for conventional PRS. Nonetheless, we consider redress remains weak in terms of providing consumers with an effective redress mechanism. This is particularly true because ADR schemes have limited application.³⁹

³⁶ In the case of pay as you go mobile services customers are unlikely to receive a bill, however they should still receive a SMS receipt of the transaction.

³⁷ This report can be found at <http://www.phonepayplus.org.uk/upload/Customer-Journey-Quant-St-2-090704.pdf>.

³⁸ Under the scheme rules (v3.0) an SMS receipt is recommended to be sent to the customer but is not compulsory. The rules also suggest that the wording of the receipt should include what was purchased, how much for and the name and helpline number of the merchant.

³⁹ ADR can be used by a consumer who has exhausted the complaints procedure with his OCP, but only in respect of services offered by their OCP. This is because only OCPs are members of the available ADR schemes and only they can be bound by adjudications. In respect of Payforit, this means that where fault lies with a third party content provider, ADR is unlikely to be available as a

- 4.64 We also understand that where financial redress is given, in many cases it is provided in the form of a cheque, instead of a credit to the customer's bill or pay-as-you-go account.⁴⁰ From a customer's point of view this requires additional effort in having to deposit or cash the cheque.⁴¹

Is there a substantial risk of exposure to offensive/inappropriate content?

- 4.65 Adult content services can be bought using Payforit. As discussed at paragraph 4.27 the MCPs offer adult verification procedures for their digital content services. We have no evidence to indicate whether access to inappropriate content is better or worse than for conventional PRS.

Available evidence

- 4.66 There is some limited evidence in relation to services bought using Payforit, in terms of complaints numbers and "mystery shopping" audits.
- 4.67 PP+ provided us with their complaints information about Payforit. In 2008, 3 complaints were made where Payforit was mentioned. This increased to 433 in 2009. In 2010 there were 94 complaints and from January to June 2011 there have been 4 complaints. Of the 433 complaints in 2009, 393 related to one service which was found to be in breach of the Code of Practice and fined by PP+⁴², where customers using the service were not shown the check-out screens and unknowingly entered into a subscription. Therefore overall, since 2006, PP+ has only investigated and adjudicated one Payforit related complaint. MCPs do not record complaints made by payment mechanism and therefore were not able to provide complaints data.
- 4.68 We have two types of mystery shopping information. The first was provided to us by an MCP, which commissions regular audits by an independent party into compliance of PRS with the Scheme Rules. The data covers a three month time period in 2010, during which time 102 Payforit services were tested against the Scheme Rules. Overall compliance of the Payforit sample with the rules was 31%. The table below provides an overview of breaches observed and their occurrence.

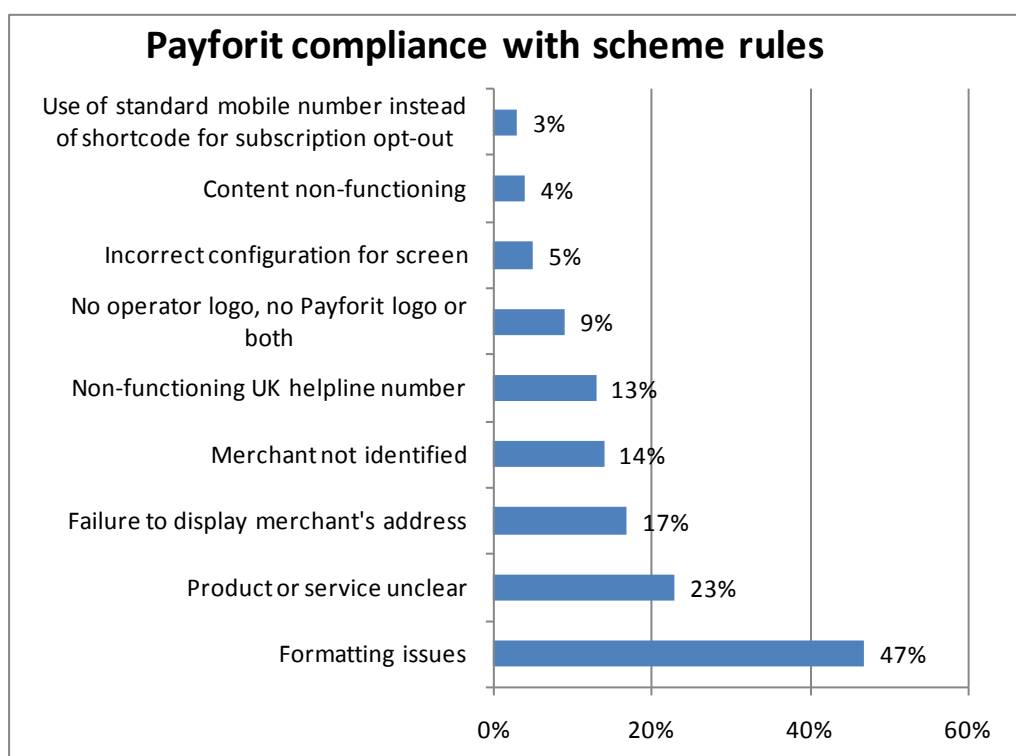
form of redress. For example, compatibility and technical issues are unlikely to be dealt with by ADR schemes.

⁴⁰ According to information provided to us by MCPs and merchants.

⁴¹ Though it is possible that in some cases the amount paid may include an amount to compensate them for this additional effort

⁴² Details regarding the adjudication can be found at <http://www.phonepayplus.org.uk/output/Search-adjudications.aspx>.

Figure 12: MCP mystery shopping into compliance with Scheme Rules.



Source: MCP

- 4.69 Most breaches relate to formatting issues, such as improper formatting of the Payforit name, omission or improper use of the Payforit strapline ('the trusted mobile payment framework'), improper formatting of payment success message, transaction type or description). We consider these to be minor breaches from a consumer harm perspective as they do not substantively affect a customer's experience (i.e. does not affect the quality of the service, the information provided to the customer regarding the merchant, or the price charged to the customer).
- 4.70 Some of the other breaches are potentially more serious though appear to be less frequent. Non-functioning content means that the customer is unable to use the service and incorrect configuration for the screen could lead to quality issues. The lack of an operator logo, Payforit logo or both could lead to consumer confusion. A non-functioning UK helpline number and merchant not identified will make it hard for consumers to complain about their service, and will result in complainants calling their MCPs and going down a multi-stage complaints route, or not following through with a complaint at all, given that the low value of the transaction may mean that consumers will only pursue a complaint when the process is particularly straightforward. The MCP that commissioned this survey told us that it was intending to take the relevant APIs and their content provider clients through the enclosed data and undertake an 8 week action plan to remedy the most serious issues highlighted and drive up the overall rate of compliance.
- 4.71 The second type of mystery shopping information was provided by PP+, which commissioned two audits into PRS compliance (including Payforit). These audits focussed on sectors of the market deemed at the time to pose a higher risk of consumer detriment, therefore it does not include all PRS. However, it should be

noted that the first audit tested Payforit and the other PRS against the PP+ rules⁴³, while in the second audit Payforit was tested against both the PP+ Rules and its own Scheme Rules. As a result of this, and the differences in sample sizes⁴⁴ there is a difficulty in making direct comparisons between the results for Payforit for both audits (due to different versions of the Scheme Rules) and between Payforit and other PRS. For example other PRS do not test for functioning helplines, whereas this is tested for under the Scheme Rules.

- 4.72 The first audit was carried out for Q1 2010 and comprised 322 PRS, covering Premium SMS, 090 services and Payforit platforms. This found that 9% of mobile services using Premium SMS, 28% of 090 services and 65% of Payforit services were compliant. WMC noted that for Payforit services the rate was higher because content providers were unable to violate the same requirements in the PP+ rules as they can with other Premium SMS because of the nature of the Scheme Rules providing these are adhered to.
- 4.73 The main compliance issues across the types of PRS tested were pricing issues, specifically unclear pricing, pricing information hidden in the Terms & Conditions, and pricing information displayed below the fold (where a customer has to scroll down to see the pricing). There were also issues around lack of opt-out information.
- 4.74 However for Payforit, the main drivers of non-compliance with the Scheme Rules were not pricing issues. Instead they were as follows:
- 10% non-compliance where content was non-functional due to handset issues, or issues retrieving content;
 - 8% non-compliance due to invalid or non-functional helpline number;
 - 8% non-compliance due to no opt-out information; and
 - 5% non-compliance due to conflicting pricing information, where contradictory pricing information was displayed at different points in the message flow.
- 4.75 The second audit carried out for January to March 2011 tested 120 Payforit services against both version 3.0⁴⁵ of the Scheme Rules and PP+ rules, and found that overall compliance had fallen to 27%. It was considered by WMC in their report that this drop from the 2010 compliance rate was due, in part, to the change in Scheme Rules from version 2.1 to 3.0. These amendments were considerable and added additional complexity to the payment mechanism and difficulties in the implementation process for APIs and merchants.⁴⁶ The data also highlighted that one API in particular had more than a 40% failure rate, the next API had less than 20%. The audit found that for 090 services compliance with PP+ rules had increased to 32%.

⁴³ The 2010 compliance report noted that there was only one mismatch between PP+ rules and the Scheme Rules (v2.1).

⁴⁴ The research was undertaken by WMC on behalf of PP+. However it should be noted that the sample sizes vary considerably between the two audits. For example for Payforit in Q1 2010 the sample size was 40 and this increased to 120 in Q1 2011. For 090 services the sample size in Q1 2010 was 200 and in Q1 2011 it was 25.

⁴⁵ Version 3.0 of the Scheme Rules were mandated on 28 February 2010, with a compliance deadline of end of May 2010.

⁴⁶ These changes included major revisioning covering Web flows and designs, WAP/xHTML design, new logo and a number of other smaller changes. The format of the document also changed to be easier to use.

4.76 The three most prevalent breaches of the Payforit Scheme Rules were as follows:

- 27% of Payforit-paid services had non-functioning or non-responsive helplines;
- 23% of Payforit services had problems with non-functioning content; and
- 13% of services checked did not display either the Payforit logo, the operator logo or both. Where this related to the MCP logo, this is an important omission.

4.77 To summarise, although it is difficult to make direct comparisons between the audits given the changing nature of the Scheme Rules and the sample sizes, it would appear that compliance for Payforit services has fallen. However, it is not clear whether this will be a temporary situation. As discussed in paragraph 3.4, MCPs have a number of powers at their disposal to penalise APIs and merchants who do not adhere to the rules. As such, if the Scheme Rules are properly policed, then compliance should increase, although this will depend on the MCPs' intervention.

Section 5

Options, preferred options and proposals to amend the PRS Condition

Introduction

- 5.1 In this section we consider the options we face for the different services and the likely outcomes. To do so we draw on the material and analysis outlined at sections 3 and 4, which together with this section represent an impact assessment, as defined in section 7 of the Act.
- 5.2 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. Under section 7 of the Act, we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. In addition, as a matter of policy, we are committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions.⁴⁷

Options

- 5.3 We believe there are two main options to be considered in relation to the services we are reviewing:
- **Option 1: Regulate the services.** Currently, mobile portal content services, PRS using Payforit as payment mechanism, and fixed portal content services are considered to be Controlled PRS (CPRS), although fixed portal content services are not being actively regulated by PP+. Under this option, fixed portal content services would become actively regulated by PP+.
 - **Option 2: Remove the service from the CPRS definition and rely on self regulation.** Under this option, the service would not be regulated by PP+, but industry would be responsible for regulating the service. Removal does not preclude re-imposing regulation in the future if it emerged that consumers were significantly harmed by the services.
- 5.4 In assessing these options, we are treating Option 1 as the base case.
- 5.5 In principle it would be possible for mobile and fixed portal content services to be treated differently, with one subject to PRS regulation but not the other - i.e. a type of asymmetric regulation. However, given the strong similarities in the demand and supply side characteristics for these services under our analytical framework we do not consider there to be sufficient grounds to justify different regulatory treatment from a PRS perspective. Therefore, we have not considered this outcome further.

⁴⁷ For further information about our approach to impact assessments, see the guidelines, Better policy-making: Ofcom's approach to impact assessment, which are on our website: http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf

Mobile and fixed portal content services

- 5.6 In Section 4 we applied the analytical framework set out in the statement. This entailed identifying the demand and supply side characteristics of mobile and fixed portal services and assessing the likelihood of potential harm in the areas of lack of information, inappropriate redress or exposure to offensive or inappropriate content.
- 5.7 We found that there are some significant differences between the characteristics of portal services and conventional PRS and that these portal services are likely to lead to a significantly lower risk of consumer harm. In particular, compared to conventional PRS:
- The OCP is responsible for all retail aspects of the service, as opposed to more conventional PRS where more parties tend to be involved in the provision of the service and hence responsibility when things go wrong is unclear, generating incentives for opportunistic behaviour, particularly by providers higher up the supply chain with low barriers to entry and exit;
 - As the OCP is also the retailer of these PRS services, OCPs are concerned about reputational issues, and potential loss of revenue or consumers switching provider. Also, as complaint handling is expensive (in particular relative to the service revenues) for an OCP this gives them an incentive to want to keep complaints at a minimum. Furthermore, there is no opportunity for OCPs to blame other parties when engaging with consumers;
 - The risks of poor pricing transparency are significantly lower (since there is no third party involvement and hence no pricing information to be exchanged, and lower incentives to behave opportunistically);
 - Redress appears to be more straightforward: the OCP itself is responsible for redress, which prevents customers being referred from one party to another (as can happen in relation to more conventional PRS). In addition, because the OCP owns the customer, refunds can be applied straight to the bill. For certain aspects of the service, customers have access to ADR (although ADR is not considered effective for PRS⁴⁸); and
 - Specific content and advertising issues in relation to VoD services are covered by co-regulation through ATVOD and ASA.
- 5.8 The policy question is whether the risk of harm is low enough to justify removing the service from PRS regulation altogether. This is essentially what is considered through the discussions on Options 1 and 2 below.

1. Do you agree with our preliminary conclusion for mobile and fixed portal content services, based on the analysis in section 4?

Option 1 – Regulate the services

- 5.9 Under this option mobile and fixed portal content services would be defined as Controlled PRS and be regulated by PP+ (this is effectively the status quo option for mobile portal content services but it is noted that fixed portal content services are not actively being regulated by PP+).

⁴⁸ Due to the relatively low value of purchases and because content aspects are not within the remit of ADR.

- 5.10 Our application of the analytical framework suggests that the likelihood of consumer harm arising in relation to both mobile and fixed portal content services appears to be significantly lower than for conventional PRS. Therefore if the services were to continue to be CPRS, we would expect PP+ to apply a light touch version of its Code of Practice to them.
- 5.11 In practice, this may result in the following differences for OCPs:
- MCPs would continue to need to pay the PP+ levy⁴⁹ for mobile portal services and to ensure that they are complying with the PP+ Code of Practice. To the extent that PP+ applies a lighter touch regime for these services than is currently the case, there may be a smaller regulatory burden for these MCPs;
 - Fixed portal services are not currently being actively regulated by PP+ and do not currently pay the PP+ levy. If we were to proceed with Option 1, they would need to start paying the levy and to check that they are complying with the PP+ Code of Practice, or any specific statement of application that PP+ makes for fixed portal content service. This may entail some additional costs for fixed communications providers.
- 5.12 For mobile portal customers, we would not expect there to be any practical difference for consumers, who would still be able to complain to PP+ and would benefit from any proactive consumer protection work that PP+ carried out in relation to these services (although we consider that such work is likely to be limited in light of our view that the risk of consumer harm here is limited).

2. Do you agree with our analysis of option one for portal services?

Option 2 – Removal of mobile and fixed portal content services from CPRS

- 5.13 Under this option mobile and fixed portal content services would be removed from the CPRS regime.

Impact on consumers

- 5.14 The potential impact on consumers is that in the absence of regulation, consumer harm arises which PP+ would no longer be able to tackle in a pro-active way, neither would it be able to examine complaints for consumers that are unhappy with the complaints resolution offered by their PRS provider.
- 5.15 As discussed in section 4 we do not believe that MCPs and fixed providers would have the incentives to act in an opportunistic manner for a number of reasons. Firstly they have an incentive to want to retain customers rather than alienate them so they want to switch. In this regard it is particularly relevant that in the case of these services they are branded by the relevant OCP. This reduces the ability to act in an opportunistic manner as any negative implications that consumers may derive from these services would have implications for the OCPs. Secondly, it is costly to MCPs and fixed providers to deal with complaints, therefore it is in their interest to keep them to a minimum.
- 5.16 All of the above discussion, including the analysis set out in section 4 on consumer harm for mobile and fixed portal content services, suggests that the removal of

⁴⁹ Currently 0.3% of relevant revenues.

mobile and fixed portal content services from CPRS is unlikely to negatively impact consumers.

Impact on MCPs, fixed providers and SPs

- 5.17 As discussed above, removing mobile portal content services from CPRS would result in MCPs being responsible for self-regulating their service. There are likely to be some financial costs involved with this, although it is unclear at present whether these would be larger than the current levy fee of 0.3% of portal revenues.
- 5.18 Regarding removing fixed portal content services from CPRS this is likely to have a limited impact on fixed providers given that currently they do not pay a levy to PP+. Removal though may increase certainty to the operators involved.
- 5.19 In terms of the impact of option 2 on SPs, we understand that some SPs may consider that removal of mobile portal content services from the CPRS condition will put them at a disadvantage to MCPs in the provision of content services. This is because the content services that they provide, which may compete with mobile portal content services, are still subject to PP+ regulation and their levy.
- 5.20 However, MCPs and fixed providers are still subject to regulation in many other areas requiring levies to be paid that SPs do not pay. For example levies for being a member of an ADR scheme, levies required by Ofcom for complying with General Conditions, etc. Further, it is unclear whether the reduction in the levy would result in lower prices for content services from MCPs and fixed provider portals or whether this would be put towards the cost of self-(co-)regulation. As such the competitive disadvantage to SPs is unlikely to be material.

3. Do you agree with our analysis of option two?

Preliminary proposal

- 5.21 As a result of the analysis set out above in paragraphs 5.7-5.20 our preliminary proposal would be to adopt option 2 for both mobile and fixed portal content services.
- 5.22 It should be noted that this preliminary decision is based on the services as they currently stand - i.e. subject to the services features remaining the same or very similar to today's. Should new similar services to mobile or fixed portal content services be created then provided that the features of the service remain the same, we are likely to consider the new service in the same light as mobile or fixed portal content service above.

4. Do you agree with our preliminary conclusion for mobile and fixed portal content services, based on the analysis in section 4?

PRS using Payforit as a payment mechanism

- 5.23 Our analysis in section 4 found that services bought using Payforit carry less risk of consumer harm than many conventional PRS. This is largely because of the Scheme Rules, which currently reflect the PP+ Code of Practice in some regards, though this also relies on the Scheme Rules being enforced effectively by MCPs. In particular these Scheme Rules provide consumers with a significantly higher degree of price transparency than is the case for many conventional PRS.

- 5.24 However, the prospect of consumer harm is higher than for fixed and mobile portal services. One of the key weaknesses with the existing scheme is redress, which is an important area of potential consumer harm for PRS. There is the potential for consumers to be passed from one organisation to another when trying to get their complaint resolved, particularly because MCPs do not take overall responsibility for handling Payforit complaints. Finally, the reduced harm from PRS services sold by Payforit relies on compliance by APIs and merchants with the Scheme Rules and on MCPs having incentives to enforce the scheme fully and incur the full costs of doing so, even when there is no longer a threat of regulatory action by PP+ where breaches do occur.

Option 1 – Regulate the services

- 5.25 Under this option PRS bought using Payforit would remain CPRS and continue to be regulated by PP+.
- 5.26 Based on the analysis set out in section 4, we consider that the risk of consumer harm occurring is still a concern. We note that, where enforcement by MCPs is effective, the issues around pricing transparency, which is one of the major concerns affecting PRS, is adequately addressed and that opportunistic behaviour by merchants is less likely to occur due to stronger incentives for MCPs than under conventional PRS. Crucially though, we note that much of this depends on the MCPs policing the Scheme Rules effectively.
- 5.27 However, one key concern remains around the issue of redress which we do not believe is currently adequately addressed in the Scheme Rules. There is a risk that consumers who wish to make a complaint will find it difficult for either the merchant or the MCP to take ownership and resolve the issue. Thus if the backstop of PP+ is no longer available, consumers may find they have no way to resolve their complaint. Absent regulation, consumers would lose protection afforded by these provisions. Finally, the view that the risk of consumer harm is lower under Payforit relies on MCPs having sufficient incentives to police APIs and merchants to ensure compliance with the Scheme Rules. The mystery shopping we describe in Section 4, does suggest that there may be circumstances where merchants and APIs are not complying fully with the Scheme Rules and where MCP enforcement, or threat of enforcement, is not of itself remedying the situation.
- 5.28 In light of this risk of consumer harm, the services under this option may be subject to a lighter touch approach by PP+ than for conventional PRS.⁵⁰ This reduces the regulatory burden for MCPs.
- 5.29 There is unlikely to be any change for consumers under this option. In particular, those who wish to escalate a complaint to PP+ would continue to be able to do so. In addition, consumers would continue to benefit from any proactive consumer protection activities that PP+ carried out in relation to services bought using Payforit.

Option 2 – Removal of PRS bought using Payforit from CPRS

- 5.30 Under this option PRS bought using Payforit would be removed from the CPRS regime and MCPs would be responsible for regulating the services with the Payforit scheme in effect becoming a self-regulatory scheme. PP+ would no longer have a role in regulating these PRS bought using Payforit.

⁵⁰ PP+ has previously issued a Help Note on Payforit, which clarifies points in relation to pricing transparency.

5.31 In the PRS Scope Review statement we identified three main factors that we considered would impact the success of a self-regulatory initiative in the context of PRS.⁵¹ These are discussed in the table below.

Factors impacting on the success of PRS self-regulatory schemes

Factors impacting on the success of PRS self-regulatory schemes	Application to the Payforit scheme
Will the collective interests of the industry and the public interest be aligned with the private interest of all parties in the PRS supply chain and will less reputable parties have incentives to join the scheme?	Payforit has been designed by the MCPs, who have written the Scheme Rules in conjunction with others. These rules currently reflect the PP+ Code of Practice and at present are therefore aligned with the public interest. Less reputable parties are unlikely to join the scheme if the rules are actively monitored and enforced by MCPs, (but would still potentially be covered by the PP+ Code of Practice). Therefore the key issue is to what extent would MCPs have incentives to monitor and enforce the Scheme Rules?
Will the scheme be able to set and enforce penalties for non-compliance in an appropriately independent manner?	MCPs are able to apply penalties for non-compliance (through the yellow and red card system and by removing API accreditation). MCPs do take a share of the revenue from sales via Payforit and are therefore not completely independent and incur a cost in securing enforcement of the Scheme Rules. ⁵² That said MCPs may incur costs in terms of handling complaints and loss of goodwill / custom if consumer harm arises and consumers associate the purchase with their MCP and this does provide some incentives on MCPs to enforce. Nevertheless, given the low value of transactions and the low propensity for affected consumers to complain, it is not clear if these costs would necessarily exceed the average transaction revenue that an MCP derives and the costs of enforcing the Scheme Rules effectively. ⁵³
Will the scheme promote a proper system of complaints resolution and redress?	As noted in section 4, redress is a key weak point of the current scheme, as customers could be passed from one organisation to another and if the scheme were removed from PP+'s remit, there would be no clear escalation route for consumers, other than to approach MCPs, however, MCPs do not take overall responsibility for resolving complaints.

5.32 When seeking to understand the likely impact of this option, we consider that a key question therefore is to what extent are MCPs likely to have incentives to monitor and enforce the Scheme Rules?

⁵¹ These factors were identified in the context of Ofcom's statement on the principles for analysing self- and co-regulation (<http://stakeholders.ofcom.org.uk/consultations/coregulation/statement/>).

⁵² The MCP takes approximately 25% of the Payforit payment (Source: PP+).

⁵³ We do not have the average value of a Payforit transaction, but according to PP+ the average value of a PRS transaction overall is £3.90. Therefore the MCP's revenue per transaction would be just under £1.

- 5.33 On the one hand, if the MCP logo continues to be displayed on the Payforit screens, MCPs may have an incentive to actively enforce the rules. The logo could encourage some consumers to complain to their MCP, either in the first instance or potentially as an escalation point even though MCPs do not currently look to play this role.⁵⁴ If so this will generate complaints handling costs for MCPs and potentially also a loss of goodwill and custom if complaints are not handled to the customer's satisfaction. Given the different nature of their relationship with customers, it is possible that MCPs would be more concerned about preserving goodwill than merchants providing PRS, which is the source of many issues for conventional PRS. This reflects the fact that even for active Payforit users the expenditure on these services is likely to be a very small proportion of the overall customer's revenues.
- 5.34 On the other hand, if consumers do not associate MCPs with the services bought then the commercial penalties from letting enforcement of Payforit rules slip may be small. In which case MCPs would not have strong incentives to monitor and enforce the Scheme Rules, and there is a risk of increased consumer harm, particularly if the scheme were to expand with, in the worse case, less reputable merchants participating in the scheme in a significant way, attracted by the opportunity to avoid regulation.

Impact on MCPs

- 5.35 If mobile portal services were removed from PRS regulation, MCPs would no longer have to pay the PP+ levy on these services. The impact on MCPs beyond this would depend on the extent to which MCPs continue to monitor and enforce the Payforit rules as a self-regulatory scheme. As noted above the arguments here are finely balanced but there is a risk that MCPs would not monitor and enforce the rules effectively if they are not committed to helping resolve complaints (and there is no other body handling escalated complaints). If this were to be the case MCPs own monitoring and enforcement costs would fall under this option.

Impact on consumers

- 5.36 If MCPs were to actively monitor and enforce the Payforit rules, the primary impact of removing these services from PRS regulation would be in relation to redress which is currently a weak point of the scheme. Consumers would no longer be able to take their complaint to PP+, and would only have very limited access to ADR (which in view of the small amounts involved is not likely to be an effective redress route). Furthermore, Ofcom would not be able to step in easily to secure redress for consumers particularly where actions taken by merchants are the cause of the consumer harm.
- 5.37 If MCPs were to reduce their monitoring and enforcement, or if the removal of PRS regulation were to result in a sudden influx of new merchants providing Payforit services that reduced the effectiveness of MCP monitoring then there would be a risk of consumer harm arising, which Ofcom would not easily be able to tackle. This is especially the case for small examples of consumer harm rather than for large concerns (i.e. a merchant engaging in activities that lead to consumer harm for all or most of its customers). Instead we would need to re-consult on whether it would be appropriate to bring the service back into PP+'s remit. In this case, there would be a period of potential consumer harm until the service is again covered by the PP+

⁵⁴ This is more likely to occur if a customer does not receive an SMS receipt/does not keep such a receipt. At the moment the scheme rules, version 3.0, do not enforce merchants to send one, although the rules do provide guidance as to what should be put in such a receipt (see footnote 38).

Code of Practice and the risk to consumers during that period of not having an effective route for redress.

Proposal

- 5.38 Services bought using Payforit share many of the same characteristics as the PRS discussed in Section 4. While there is potentially less risk of consumer harm occurring under Payforit than these types of PRS, the analysis carried out in this consultation suggests that the risk of consumer harm would remain too high to warrant removal of this service from the PRS regulatory regime.
- 5.39 Our preferred option, therefore, is to keep these services within the PRS regulatory framework. However we acknowledge that PRS sold via Payforit carry less risk of consumer harm than some conventional PRS and, in light of this, we have considered what would be needed to provide us with greater confidence that these services could be removed from PRS regulation without increasing the risk of consumer harm.
- 5.40 We would need to be persuaded that MCPs would take the necessary steps to ensure that the current levels of self regulatory control are at least maintained, and that consumers would have an effective means of redress direct with the MNO. MCPs would need to undertake, as a minimum, that they would achieve the following objectives, and to explain how they would secure them:
- to continue to monitor compliance with Payforit rules and to take action against APIs (and they in turn against merchants) where breaches of the Payforit rules are found;
 - to take responsibility for pursuing a complaint on behalf of a consumer if there is an allegation that the merchant / API is not properly examining the complaint, and to secure resolution of individual complaints in these circumstances;
 - not to let an API or its merchant clients have access to the Payforit scheme if it or they are prohibited by PP+ from providing PRS, or are listed on Ofcom's Number Refusal List; and
 - to inform Ofcom of any changes to the Payforit Scheme Rules and explain how the changes compare with the requirements of the PP+ Code of Practice.
- 5.41 If we were to remove these services from the PRS regulatory framework, Ofcom would:
- monitor the application of key Payforit Scheme Rules through mystery shopping;
 - record and monitor complaints through its Consumer Contact Team; and
 - be ready to re-consult and bring these services quickly back into the PRS regulatory framework if there was evidence of significant consumer harm arising.

- 5.42 To summarise, our preference at this stage is to adopt option 1, keeping Payforit within PRS regulation and asking PP+ to consider how it would regulate Payforit in a manner that takes into account the reduced potential for consumer harm in comparison to some other forms of PRS.
- 5.43 However, if MCPs provide adequate details giving confidence that they will take steps to ensure that the service is controlled (as indicated above) such that we are confident that consumer harm will not result from the removal, and that consumers will have easy access to redress, this would be sufficient for Ofcom to consider option 2 to be appropriate.
- 5.44 Of course, should we receive appropriate assurance from the MCPs about self regulation and redress, and decide on that basis to remove these services from the PRS regulatory framework, then Ofcom would not hesitate to put it back into CPRS if monitoring showed that consumer harm was taking place at a sufficient level to warrant it.
- 5.45 It should be noted that the preliminary decision set out in paragraph 5.39 above is based on the payment mechanism as it currently stands i.e. subject to the payment mechanism remaining the same. However, should similar payment mechanisms to Payforit be created then providing the features of this payment mechanism remain the same, we would consider the new payment mechanism in the same light as Payforit above.

5. Do you agree with our preliminary conclusion for Payforit, based on the analysis in section 4?

Proposed changes to the PRS Condition

- 5.46 In light of the above, we propose to make changes to the drafting of the PRS Condition as set out in Annex 5.
- 5.47 Our proposed approach involves making it clear in the definition of “Controlled Premium Rate Service” in paragraph 2(e) of the PRS Condition that a service delivered by means of an Electronic Communications Service and charged by means of a Payment Mechanism generally falls within the meaning of CPRS. The term “Payment Mechanism” would then be defined as “a mechanism whereby the charge for a service delivered by means of an Electronic Communications Service is paid to the Communications Provider providing the Electronic Communications Service”.
- 5.48 However, we would then go on explicitly to exclude portal services defined as being where, “The Communications Provider providing the Electronic Communications Service is also the service provider providing the service delivered by means of the Electronic Communications Service.”
- 5.49 As noted above, our preferred option is to keep PRS paid via Payforit, and any alike services, within the PRS regulatory framework and therefore for it to continue within the definition of CPRS.
- 5.50 We nevertheless considered that it would be useful to set out below a definition of Payforit and alike services for comment, such that it would be capable of inclusion in the PRS Condition were consultation responses to provide us with greater confidence as regards the points mentioned in paragraph 5.40 in particular.

- 5.51 We set out below how we would seek to define Payforit and like services were we to decide to exclude it from the proposed definition of a “Payment Mechanism” and therefore from the PRS Condition:

The Communications Provider providing the Electronic Communications Service is not the service provider providing the service delivered by means of the Electronic Communications Service, but where the Communications Provider:

- a. causes itself to be identified at the point at which the charge for the service being delivered by means of the Electronic Communications Service is incurred as the party responsible for administering payment;*
 - b. exercises control over transaction information including the date and time of the transaction, the identity of the device to which the service is to be delivered by means of the Electronic Communications Service and the subscription associated with that device, the identity of the service provider and the service purchased; and*
 - c. offers a resolution mechanism in circumstances where the service intended to be delivered by means of the Electronic Communications Service has been charged but not delivered.*
6. *Do you consider our proposed drafting properly achieves the intention of including services which are paid for on communications bills via payment mechanisms, whilst excluding mobile and fixed portal services? Do you have any comments on the proposed drafting in relation to Payforit and like services were we also to exclude these?*

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 7 October 2011**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <https://stakeholders.ofcom.org.uk/consultations/review-premium-rate-services/howtorespond/form> as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please prsreview@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation.
- Sue Merrifield
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.5 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.6 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Sue Merrifield on 020 7981 3719.

Confidentiality

- A1.7 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.8 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.9 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A1.10 Following the end of the consultation period, Ofcom will publish those responses which are non-confidential.
- A1.11 Please note that you can register to receive free mail updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.12 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.13 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk. We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.14 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

graham.howell@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing Name/contact details/job title

Whole response Organisation

Part of the response If there is no separate annex, which parts?

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 4

Consultation questions

A4.1 Please find below the questions included in this consultation document:

1. *Do you agree with our preliminary conclusion for mobile and fixed portal content services, based on the analysis in section 4?*
2. *Do you agree with our analysis of option one for portal services?*
3. *Do you agree with our analysis of option two?*
4. *Do you agree with our preliminary conclusion for mobile and fixed portal content services, based on the analysis in section 4?*
5. *Do you agree with our preliminary conclusion for Payforit, based on the analysis in section 4?*
6. *Do you consider our proposed drafting properly achieves the intention of including services which are paid for on communications bills via payment mechanisms, whilst excluding mobile and fixed portal services?*

Annex 5

Notification of proposed changes to a Condition under section 120 of the Act

Notification of a proposed modification

A5.1 Proposal for modification of a condition under section 120 of the Act which is set out in the Notification under Section 48(1) of the Act published by OFCOM on 17 October 2006 *The Conditions Regulating Premium Rate Services*.

1. OFCOM hereby makes the following proposal for a modification to the Premium Rate Services (“PRS”) Condition set under section 120 of the Act.
2. The draft modification is set out in the Schedule to this Notification.
3. The effect of, and OFCOM’s reasons for making, the modification referred to in paragraph 1 above is set out in section 5 of the accompanying consultation document.
4. OFCOM considers that the proposed modification referred to in paragraph 1 above complies with the requirements of section 47(2) of the Act, as appropriate and relevant to each of the modifications.
5. In making the proposal set out in this Notification, Ofcom has considered and acted in accordance with its general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.
6. Representations may be made to Ofcom about the proposal by 5pm on 7 October 2011.
7. In this Notification:
 - (i) “the Act” means the Communications Act 2003; and
 - (ii) “OFCOM” means the Office of Communications;
9. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word or expression shall have the same meaning as it has in the Act.
10. For the purpose of interpreting this Notification:
 - (i) headings and titles shall be disregarded; and
 - (ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.
11. The Schedule to this Notification shall form part of this Notification.

Signed by

Claudio Pollack

A person authorised by Ofcom under paragraph 18 of the Schedule to the Communications Act 2003.

29 July 2011

Schedule

Proposal for modification of a condition under section 120 of the Act.

The PRS Condition shall be modified as set out below (the added text has been highlighted in yellow for ease of reference):

1. The Communications Provider and Controlled Premium Rate Service Provider shall comply with:
 - (a) directions given in accordance with an Approved Code by the Enforcement Authority and for the purposes of enforcing the provisions of the Approved Code; and
 - (b) if there is no Approved Code, the provisions of the order for the time being in force under section 122 of the Act.

2. In this Condition,
 - (a) "Act" means the Communications Act 2003;
 - (b) "Approved Code" means a code approved for the time being under section 121 of the Act;
 - (c) "Communications Provider" means either:
 - (i) a person who:
 - (A) is the provider of an Electronic Communications Service or an Electronic Communications Network used for the provision of a Controlled Premium Rate Service; and
 - (B) is a Controlled Premium Rate Service Provider in respect of that Controlled Premium Rate Service;
 - (ii) a person who:
 - (A) is the provider of an Electronic Communications Service used for the provision of a Controlled Premium Rate Service; and
 - (B) under arrangements made with a Controlled Premium Rate Service Provider, is entitled to retain some or all of the charges received by him in respect of the provision of the Controlled Premium Rate Service or of the use of his Electronic Communications Service for the purposes of the Controlled Premium Rate Service;

or

 - (iii) a person who:
 - (A) is the provider of an Electronic Communications Network used for the provision of a Controlled Premium Rate Service; and
 - (B) has concluded an agreement relating to the use of the Electronic Communications Network for the provision of that Controlled

Premium Rate Service with a Controlled Premium Rate Service Provider;

- (d) “Chatline Service” means a service which consists of or includes the enabling of more than two persons (the participants) to simultaneously conduct a telephone conversation with one another without either:
- (i) each of them having agreed with each other; or
 - (ii) one or more of them having agreed with the person enabling such a telephone conversation to be conducted, in advance of making the call enabling them to engage in the conversation, the respective identities of the other intended participants or the telephone numbers on which they can be called. For the avoidance of any doubt, a service by which one or more additional persons who are known (by name or telephone number) to one or more of the parties conducting an established telephone conversation can be added to that conversation by means of being called by one or more of such parties is not on that account a Chatline Service, if it would not otherwise be regarded as such a service;
- (e) “Controlled Premium Rate Service” means a Premium Rate Service (other than a service which is only accessed via an International Call) in respect of which:
- (i) the service is obtained through a Special Services Number (except an 0843/4 number), and the charge for the call by means of which the service is obtained or the rate according to which such call is charged is a charge or rate which exceeds 5 pence per minute for BT customers inclusive of value added tax; or
 - (ii) the service is obtained other than through a Special Services Number, and the charge for the call by means of which the service is obtained or the rate according to which such call is charged is a charge or rate which exceeds 10 pence per minute inclusive of value added tax; or
 - (iii) the service is a Chatline Service; or
 - (iv) is Internet Dialler Software operated; or
 - (v) the service is a Sexual Entertainment Service; or
 - (vi) the service is delivered by means of an Electronic Communications Service and is charged by means of a Payment Mechanism.
- (f) “BT” means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or an subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985, as amended by the Companies Act 1989 and the Companies Act 2006;
- (g) “Controlled Premium Rate Service Provider” means a person who:
- (i) provides the contents of a Controlled Premium Rate Service;
 - (ii) exercises editorial control over the contents of a Controlled Premium Rate Service;

- (iii) packages together the contents of a Controlled Premium Rate Service for the purpose of facilitating its provision; or
- (iv) makes available a facility comprised in a Controlled Premium Rate Service;
- (h) “Dial-up Telephone Number” means the telephone number used by an end user's computer that connects it to the Internet
- (i) “Enforcement Authority” means, in relation to an Approved Code, the person who under the code has the function of enforcing it;
- (j) “Facility” includes reference to those things set out in section 120(14) of the Act;
- (k) “International Call” means a call which terminates on an Electronic Communications Network outside the United Kingdom;
- (l) “Internet Dialler Software” is software that replaces a Dial-up Telephone Number with a different Dial-up Telephone Number; other than where it is used so that:
 - a) an end-user's existing Internet Service Provider replaces the Dial-up Telephone Number;
 - b) an end-user moves from his existing Internet Service Provider to another Internet Service Provider or is so moved with his consent.
- (m) “Internet Service Provider” means a person who provides end-users, by means of a Dial-up Telephone Number, with connection to the Internet in the ordinary course of its business.
- (n) “National Telephone Numbering Plan” means a document published by Ofcom from time to time pursuant to sections 56 and 60 of the Act;
- (o) “Premium Rate Service” shall have the meaning ascribed to it by section 120(7) of the Act;
- (p) “Payment Mechanism” is a mechanism whereby the charge for a service delivered by means of an Electronic Communications Service is paid to the Communications Provider providing the Electronic Communications Service, except where the Communications Provider providing the Electronic Communications Service is also the service provider providing the service delivered by means of the Electronic Communications Service;
- (q) “Sexual Entertainment Service” means an entertainment service of a clearly sexual nature, or any service for which the associated promotional material is of a clearly sexual nature, or indicates directly, or implies, that the service is of a sexual nature;

- (r) “Special Services Number” means a telephone number designated by Ofcom in the National Telephone Numbering Plan as Special Services basic rate, Special Services higher rate or Special Services at a Premium Rate;
3. For the purposes of interpreting this Condition, except in so far as the context otherwise requires, words or expressions shall have the same meaning as ascribed to them in paragraph 2 above and otherwise any word or expression shall have the same meaning as it has been ascribed in the Act.

Annex 6**Glossary****Abbreviations and Technical Terms**

ADR:	Alternative Dispute Resolution
API:	Accredited Payment Intermediary
ASA:	Advertising Standards Authority
ATVOD:	Association for Television on Demand
CPRS:	Controlled Premium Rate Service
ECS:	Electronic Communications Service
IP:	Information Provider
IPTV:	Internet Protocol Television
MCP:	Mobile Communications Provider
MSISDN:	Mobile Subscriber Integrated Services Digital Network Number
OCP:	Originating Communications Provider
PP+:	PhonespayPlus
PRS:	Premium Rate Services
PVR:	Personal Video Recorder
SMS:	Short Message Services
SP:	Service Provider
TCP:	Terminating Communications Provider
VoD:	Video on Demand
WAP:	Wireless Application Protocol
xHTML:	eXtensible HyperText Markup Language