



31 July 2009

Jeff Loan
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Ofcom

By email jeff.loan@ofcom.org.uk

Dear Jeff

Ofcom PRS Scope Review

Vodafone welcomes the opportunity to respond to Ofcom's consultation 'The PRS Scope Review', published on 15 May 2009. Vodafone would commend to Ofcom the response of the Mobile Broadband Group, which comprises of the UK businesses of O2, Orange, T-Mobile, Hutchison 3G, Virgin Mobile and Vodafone.

Below Vodafone briefly draws out some of the issues from the MBG response that are of particular interest, which it would draw to Ofcom's attention:

1. Focus on those characteristics that cause consumer harm

In this consultation Ofcom does not appear to be seeking to ascertain the legal definition of the scope of premium rate service regulation, but to engage in a debate about the characteristics of services, including new types of direct-to-bill services, and their potential for causing consumer harm. What is not fully considered are the types of services, delivered over Electronic Communications Networks, that should, and should not, be in the scope of an industry-funded, sector-specific, regulatory system such as PP+, as opposed to being governed by general consumer law and regulation.

Vodafone sees the Scope Review as a missed opportunity to clarify that direct-to-bill payment mechanisms, such as Payforit, are not automatically caught by premium rate regulation and state that sector-specific regulation should only catch those services which have a greater potential for consumer harm. We have seen consistently that harm can arise where access to a service and the charge for that service are concurrent, combined with a third-party service provider having access to the revenue sharing mechanism but without a direct relationship with the end customer. Vodafone clearly sees the intent of section 120 of the Communications Act 2003 as dedicated to capturing just such services where access and charge are concurrent.

Vodafone does not see the drift of PP+ (and Ofcom) to refer to its role as regulating 'phone-paid services', instead of premium rate services, as helpful. Premium rate services, as defined in the Act, are rightly the focus for consumer protection activities.

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2. Better address convergence

Vodafone does not see that convergence has been fully addressed in this consultation. Ofcom's Mobile Sector Assessment II, 'Mostly Mobile', highlights market distortions by noting that: "increasingly, applications for mobile phones are being sold over the internet. This effectively means that the *same* service can be subject to *different* regulation according to the way in which it is delivered."¹

Vodafone would agree with the fact that the evolution of multi-service platforms, whether fixed or mobile, has created inconsistencies in regulation. Addressing these inconsistencies should have been central to the PRS scope review, so that the overall regime could offer consistent regulation for consumers and a level playing-field for industry. This sort of approach would have more readily led to the conclusion that specialised, sector-specific, PRS regulation, over and above general consumer regulation, should only be focused on services where it can be objectively and proportionately justified.

3. A proportionate approach to pricing transparency

Vodafone does not see that Ofcom has made a particularly convincing case around further intervention in pricing transparency. The research in the consultation does not clearly demonstrate that: "lack of price transparency remains *the* major problem today in the PRS market".² Indeed even with it bundled in with 'misleading promotion' (where the problem may, or may not, have been pricing transparency) the number of complaints is still a fraction of the number of complaints about subscription services; an issue which is, seemingly successfully, being addressed.

Vodafone does not see much to commend in either of the options around giving a maximum price or in pre-call announcements. Giving the maximum price might, as Ofcom observes, lead to prices clustering around that maximum leading to higher prices for consumers. It also might not be very helpful if one, potentially very small, operator was pricing radically differently from other providers. Vodafone would also question the proportionality of acting to mandate pre-call announcements. The burden of implementing such a solution would be great and there is neither a sufficient magnitude of complaints nor evidence of serious consumer detriment or confusion that would seem to justify such an intervention.

Price variations have been a feature of premium rate 09 services since telecoms liberalisation over twenty years ago and we accept this is potentially a drawback when compared to other payment mechanisms. We would note however that these are micro-payments and pricing is available if the customer wants it. We would also stress that Ofcom already has specific rules in place to address issues of OCP pricing transparency via General Conditions 10 and 14.

4. Use of PP+ complaints data

Ofcom repeats PP+'s complaints data for 2006-7 to 2007-8, most markedly showing an increase in complaints about mobile services, from 3853 in 2006-7 to 8010 in 2007-8³. Vodafone would stress that it would have been appropriate for Ofcom to note the caveat about these figures; namely that the increase was due to a change in the way PP+ recorded complaints.

In December 2008 PP+ noted that: "In February 2008 we revised our methodology for recording complaints to capture in a more complete way all concerns relating phone-paid services; this resulted in an increase in the

¹ 'Mostly Mobile: Ofcom's mobile sector assessment: second consultation', Ofcom, July 2009, p.90 (emphasis as original)

² 'The PRS Scope Review', Ofcom, May 2009, p.56 (emphasis added)

³ Op. cit., p.13

number of contacts to PhonepayPlus being recorded as complaints and is the sole factor for the dramatic increase".⁴

Given this statement, any proposed intervention based on increasing complaint numbers would be unfounded.

5. Call barring

On the issue of call barring, Vodafone does not see sufficient evidence for further Ofcom intervention, especially as the market is delivering call barring solutions to consumers. Vodafone offers 09 long-dial call barring and outgoing voice to mobile shortcodes. Vodafone also has available for customers outgoing and incoming premium SMS call barring. Vodafone decided to implement these solutions on the grounds of a better customer experience, not due to regulation or threat of regulation. We realise that this sort of protection is not offered across all networks, but the competitive market is delivering these protections to those who want them.

6. Ofcom Scope Review and PP+ 12th Code Discussion Paper

Vodafone would stress that it is important for Ofcom's Scope Review to inform PP+'s discussion of its 12th Code⁵ after Ofcom's consultation period has concluded and it has had the opportunity to report its findings. We were somewhat concerned that the PP+ Discussion Paper observed that: "the publication of Ofcom's PRS Scope Review... has given us an excellent understanding of the need for regulation to address certain market failings."⁶ We would encourage Ofcom to work with PP+ to stress that the Scope Review is in consultation form and that there should be no pre-judgement about the conclusions of the Ofcom consultation.

If you have any questions about this response, please do not hesitate to contact me.

Yours sincerely

Richard Sullivan

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⁴ PP+ Quarterly Report, PhonepayPlus, December 2008

⁵ 'Developing the Next PhonepayPlus Code of Practice: A Discussion Paper', PhonepayPlus, June 2009

⁶ Op. cit., p. 3