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Ofcom's PRS Scope Review

A response from the Mobile Broadband Group - Part II

1. The Mobile Broadband Group ("MBG", whose members are the UK mobile businesses of O2, Orange, T-Mobile, Virgin Mobile, Vodafone and 3) welcomes the opportunity to respond to Ofcom's PRS scope review.
2. For the purposes of responding, the MBG has split its submission into two parts: first, the part that deals specifically with the scope of PRS regulation, second the part that covers the other matters.

Part II

Pricing transparency

3. Ofcom states in paragraph 6.24 that '*evidence.....indicates that a lack of pricing transparency remains the major problem in the PRS market, despite the currently regulatory framework*'. On the basis of this statement, Ofcom offers various policy options that might improve the situation
4. However, the MBG believes that Ofcom overstates the case considerably and that there may in fact be no basis for making the changes suggested.
5. First, the problem really only arises for calls to 09xx numbers, which today accounts for around a third (and falling) of the PRS market. There appears to be no suggestion that Directory Enquiry (DQ) prices suffer from a lack of aligned call pricing.
6. In mobile, service promoters that wish to have the same retail price across networks obtain a short code that is available on all five networks and, because in each case the mobile network is both originating provider and terminating provider for a given short code, the service promoter can choose a retail price point that is available on all five networks. The revenue share for the parties is then individually negotiated

between mobile operator and service promoter, while keeping the retail price constant.

7. With long dial numbers, the premium rate number is issued by a single network operator and calls only terminate with that one provider, with a constant wholesale termination rate set by that provider. Retail prices for that number are set by each originating operator separately and independently.
8. The MBG acknowledges that this situation for 09xx leads to customers being charged different prices, depending on whom their communications provider is but we would not agree that this amounts to being *the major problem in the PRS market* or that the problem is getting worse as the market share of BT (the price reference point) declines. The decline in BT share is counterbalanced by the fact that the market value of 09xxx PRS also declining. The price variation issue is thus more or less static.
9. We also disagree that this means there is a lack of pricing transparency. There is already regulation in place to ensure that all originating providers provide clear and accurate pricing information (General Condition 10) and that there are processes in place to ensure end user understanding of PRS pricing information (General Condition 14.1). Consumers are entitled to clear access to this information. If Ofcom believes that any provider is falling short in this regard, they should be looking to enforce the condition, not introduce yet more regulation.
10. Furthermore, Ofcom in paragraph 6.2 states that *the main reasons for mobile PRS complaints were disputes regarding subscriptions, unclear pricing or misleading promotion and unsolicited promotional texts* and refers, in footnote 89, to the 2007/8 PhonepayPlus annual report, which contains the following table:

Complaint reason	Number	Percentage
Subscription dispute	4,125	51%
Other (e.g. Unclear pricing or misleading promotion)	1,075	13%
Unsolicited promotional text	972	12%
STOP not working	716	9%

11. It is quite clear from this table that the major problem at that time was subscription services (on which further regulatory action has since been taken and, according to PhonepayPlus, complaints have halved since the introduction of the new rules¹) and not pricing transparency at all.

¹ <http://www.phonepayplus.org.uk/output/news/PHONEPAYPLUS-MOBILE-REVIEW-ONE-YEAR-ON.aspx>

12. The table includes a category 'Other' (e.g. unclear pricing) We are not told what proportion of 'Other' actually relates to unclear pricing, which, in any event, could cover a whole range of ways in which pricing is unclear in advertising, promotion and the operation of PRS. This is very weak evidence on which to conclude that OCP pricing variations are a significant policy problem. Ofcom potentially exaggerates the issue by making the statement in 6.2 based on this underlying data.
13. In other data, in 6.27, Ofcom states that customers do know (or at least think they know) how much PRS costs – 89% of males and 91% of females. And in 6.31, most consumers acknowledge that *'the price information is available somewhere but looking up the price of a call before dialling was considered not to be worth the effort'*.
14. This attitude makes intuitive sense. Although people say that it is important to them to know the price of something before consuming, in fact, if actual behaviour is observed, it is not, providing the person has a ball park idea of the price that will be charged. With 09xx, the evidence is that they very largely do.
15. By way of analogy, a person intending to take a flight or a long distance train journey, would in all likelihood check the cost before committing to the journey (either by booking in advance or checking on-line, say). On the other hand, a person intending to take a short journey on a suburban railway, for example, would just turn up at the station (i.e. effectively commit to the purchase), relying only on a very general knowledge of the costs of suburban railway journeys. The same might go for restaurants – where customers would take care to check prices for an expensive night out but would pop in for a simple pizza without checking the exact prices beforehand. There are many such examples of people making purchasing decisions without precise knowledge of pricing, particularly for low cost purchases.
16. The MBG believes that there is insufficient evidence to support the view that variations in OCP prices is causing significant consumer detriment or that customers do not know where to obtain prices, if they wish to. We do not believe there is enough reason to warrant a significant change in policy from Ofcom in the way that pricing information is presented to the public.
17. After considerable amounts of industry discussion between broadcasters and other industry participants, the wording on participation TV became *'calls from BT will cost xppm, costs from mobiles cost considerably more'*. As far as the MBG is aware, this approach works fine. Broadcasters get negligible, if any complaints.
18. Of the options for change presented by Ofcom, the MBG would not support pre-call announcements ("PCA") that detail the prices of calls. If the requirement were to be imposed at network level, the cost of implementing and maintaining such a process would not be proportionate.(and allowing customers to opt-in or opt-out of announcements would be an additional cost). If Ofcom is minded to consider pre-call announcements further, there needs to be a much more detailed examination of the costs and benefits and options for implementation. For example, the impact on the DQ market may be very damaging. Mobile customers using DQ services are

extremely time sensitive and are paying the premium for mobile DQ (as opposed to free on the Internet) for that speed. Potentially tripling the answer time by adding a PCA lasting a few seconds would not be welcomed. The MBG understands that where this was done in another market, call volumes dropped by 25%.

19. The MBG does not support the maximum call price approach. While it would be less costly to implement than PCA, there are a number of disadvantages. First, as Ofcom points out, it may have the side effect of prices clustering around this point. And second, given the increasing number of MVNOs active in the market, the task of identifying which operator is charging the highest price would not be straightforward.
20. OCP price variations have been a feature of 09xx PRS since liberalisation. Variable prices make it more difficult for service promoters to advertise precise pricing information and this is potentially a drawback when compared to other payment mechanisms. However, the pricing is available if customers want it and they continue to use 09xx PRS when they are deemed to be quick, convenient and useful.

Facilitating effective consumer redress

21. The MBG agrees with Ofcom that customers should be able to contact service providers and have their queries and complaints dealt with efficiently.

Question 6.10: Do you agree with our proposal to expand the PhonepayPlus number checker?

Question 6.11: Which criteria should be used regarding numbers to be included in the number checker (e.g. revenues, complaints over the last X weeks etc)?

Question 6.12: What information should be included per number in the number checker?

22. On the basis of the information presented, it would seem worthwhile to expand the use of the number checker to 'most' PRS numbers. The MBG agrees that it would be excessive to pursue the long tail for details when the numbers in question are little used and not complained about, although we feel that all mobile short codes should be included.
23. PhonepayPlus should exercise some discretion as to the criteria used for identifying numbers that should be included in the number checker, with a mixture of ex ante and ex post criteria. Perhaps all numbers with an expected high use should register in advance. PhonepayPlus should also have a process for picking up numbers that regularly fail the look up process and, ex post, require the SP to supply the necessary details.
24. The details of what information and processes should be used should be discussed by PhonepayPlus in more detail with their Industry Liaison Panel and the industry more widely. The MBG understands that consultation on these matters between industry and PhonepayPlus is already in progress.

25. Ofcom also specifically asks the question as to whether PhonepayPlus should carry out an analysis into the benefits of requiring IP/SPs to adopt a formal complaints procedure.
26. The MBG understands that such an analysis is already under way (the MBG is participating) and so, in the context of the Ofcom consultation, this question is already answered. We would just stress the importance of ensuring a clear delineation between the responsibilities of Ofcom and PhonepayPlus in this regard. Communications Providers are already regulated by Ofcom and required to draw up and abide by a complaints code of practice. It would be disproportionate and duplicative to require Communications Providers to also abide by any requirements in this regard under the PhonepayPlus Code of Practice. PRS service providers and information providers must also take responsibility for the resolution of customer complaints.

Centralised scheme or information database

Question 6.15: Do you consider there are other options for a registration scheme / reputational database which have not been included in these studies?

Question 6.16: Which is your preferred option, and what are the reasons for this?

Question 6.17: Do you agree with our analysis that PhonepayPlus should run a registration scheme / reputational database?

27. The MBG is supportive of proportionate measures that will improve the ability of participants in the PRS value chain to carry out effective due diligence. Our experience is that the vast majority of SPs and IPs operate PRS responsibly and that it is only a small minority of individuals, migrating from SP to SP, that cause the majority of problems for consumers, industry and regulators.
28. Miscreants can go to great lengths to cover their tracks. For example an IP might use an offshore corporate entity with nominee directors as the contracting party, thus shielding the true identity of the individual fraudster. If we can collectively devise methods for identifying those individuals, thus making it harder for them to gain access to the market, then it will be better for everyone.
29. Of the options presented, the MBG believes that a database is not a panacea but that it would nevertheless be an additional weapon to deploy against those that are seeking to benefit illegitimately from the PRS market. If it is to be effective, though, it will be essential to have a solution that identifies factual, public information about individuals behind the organisations with a breach history, such as the names of directors and controlling shareholders.
30. Information about breaching companies alone will not be sufficient, as it is too easy for individuals intent on mischief to start afresh with a new corporate identity.

31. The MBG is not quite sure why Option F2 (the reputational database including individuals) will require a new database rather than an adaptation of the existing one but we only support a solution, providing that it is cost effective, that would identify individuals directors and controlling shareholders.
32. The MBG agrees that the most logical place for such a database to be housed and administered is within PhonepayPlus. PhonepayPlus **must** consult stakeholders on the design of the database so that the information stored and the search and reporting facilities match the due diligence needs of the industry.

Call barring facilities

33. As Ofcom sets out, mobile operators offer a different range of facilities for call barring. The MBG does not feel however, that there is sufficient evidence that would justify mandating a uniform approach across all networks. We would want to see Ofcom undertake a cost benefit analysis before proceeding further.

Mobile Broadband Group – comments on Ofcom’s proposed approach to consultation on PhonepayPlus’s 12th code

1. The MBG welcomes the opportunity to comment on Ofcom’s proposals for consultation on PhonepayPlus’s 12th Code. We agree that it is sensible to co-ordinate this activity closely with PhonepayPlus and not repeat the process employed for the 11th Code whereby Ofcom more or less duplicated the consultation carried out by ICSTIS.
2. There is, nevertheless, lack of clarity on the full sequencing of events post the PRS Scope review. In the Terms of Reference for the review, Ofcom stated that

Following its analysis, Ofcom may propose some of the following, if any:

- *Revisions to the PRS Condition and specifically Controlled PRS, which may extend or alternatively withdraw regulation to a particular service(s), based on, amongst others, considerations of proportionality;*
 - *Recommendations to ICSTIS to amend the ICSTIS Code which may include proposals for sector specific guidance;*
 - *Whether resources in enforcing regulation should be concentrated on those areas where the risk of consumer harm is greatest;*
 - *Recommending to Government changes in the legislative framework for PRS regulation if Ofcom’s view is that the current rules are not effective.*
3. Ofcom needs to explain how these aspects, if applicable, will be factored into the timetable after stakeholder comments on the scope review has been received and Ofcom has conducted its analysis - specifically how Ofcom will consult on revisions to the PRS condition ahead of the 12th Code being approved.