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31 July 2009

Dear Jeff,

Section 6 of the PRS Scope Review & Ofcom's Intended Approach to Consulting on the Approval of PhonepayPlus' New Code of Practice

Please find enclosed our response to section 6 of the Scope Review consultation and the discussion paper on Ofcom's approach to approving the 12th Code.

As indicated in our response to the Scope Review, we believe section 6 of the Consultation focuses primarily on proposals for the regulation of Premium Rate Services rather than scope and as such should be considered in the alongside any discussion on the PhonepayPlus 12th Code rather than within a policy discussion on the scope of Premium Rate Regulation.

Please do not hesitate to contact me if you require any clarification on any of the points raised in our response.

Yours sincerely,

Julie Minns
Head of Regulatory & Public Policy

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Hutchison 3G UK Limited (“3UK”)

Response to

Section 6 of the Premium Rate Services (“PRS”)

Scope Review & Ofcom’s Intended Approach to

Consulting on the Approval of PhonepayPlus’ New

Code of Practice (“Code”)

July 2009

Ofcom’s Intended Approach to Consulting on the Approval of PhonepayPlus’ New Code of Practice

1. 3UK supports the proposal for PhonepayPlus and Ofcom to consult simultaneously on the code. 3UK would welcome clarification as to whether joint meetings between stakeholders (collectively or individually), Ofcom and PhonepayPlus will form part of the consultation process.
2. 3UK notes that the current proposed timeline does not include any modifications to the Premium Rate Condition. 3UK believes there is a significant possibility that the Scope Review may conclude that some services are either included or removed from the scope of the Premium Rate Regime.
3. 3UK would welcome confirmation from Ofcom that it will determine which services will be removed or included in the scope of the Premium Rate Regime by consulting on changes to the PRS Condition ahead of the consultation taking place on the 12th code. 3UK believe it is necessary for Ofcom to clarify which services the 12th Code should apply to before consulting on the code as this will directly influence to the responses stakeholders will wish to make to the Code consultation.
4. 3UK asks that when Ofcom publishes its response to this consultation is includes a revised timeline which includes modifications to the PRS Condition prior to a direction to PhonepayPlus to make any relevant adjustments or revisions to the Code.



Section 6 of the Premium Rate Services (“PRS”) Scope Review

Question 6.1: Do you consider there is a consumer benefit requiring all OCPs to offer the same retail price to a PRS number?

No

Question 6.2: If you do believe there is a consumer benefit, do you have suggestions as to how this option could be implemented?

3UK notes firstly that this is not an issue for mobile shortcode services, but only for 09 and secondly that Ofcom believe the major issue is that service providers (“SP”) do not set the retail price. 3UK therefore suggests that Ofcom should explore with stakeholders whether the regulatory framework could require Service Providers to set a retail price and require Originating Communications Providers (“OCPs”) to state in a pre call announcement what the price of the call is if the SP retail price was not being charged. This gives greater transparency to the consumer whilst enabling OCPs the flexibility to determine their own retail pricing.

Question 6.3: Do you consider this option could have any negative side-effects? If so, which ones?

Question 6.4: Do you consider PCAs would improve price transparency in the PRS market?

Pre Call Announcement’s (“PCAs”) enable free market pricing however there are two disadvantages. First on implementation, there will be a significant drop in usage until consumers become used to the concept and accept the pricing information. Secondly, there will be a cost to industry to implement which Ofcom will need to measure before proceeding to mandate the inclusion of PCA obligations in the 12th Code.

Question 6.5: Do you consider Ofcom should carry out such a study? If so, which aspects should such a study cover?

It will be essential for Ofcom to undertake a comprehensive cost/benefit analysis to understand costs of implementation and impact in relation to decreased usage.

Question 6.6: Do you consider including BT’s tariff and a maximum tariff for the PRS in PRS advertisements would improve price transparency in the PRS market?

Our preferred option is outline in 6.2 above.

Question 6.7: Do you consider the name of the OCP with the highest tariff should be included?



No. This will be difficult to maintain by promoters as Originating Communications Provider's ("OCPs") will change prices to ensure they are not named or uniformly increase prices to the maximum, giving promoters a difficult choice on naming (plus legal implications).

Question 6.8: Do you consider there are any additional implications linked to this option, apart from the ones we have set out above?

This proposal may cause consumer harm by encouraging uniformly higher prices, when all OCPs raise their rates to the maximum. Consumers should be able to obtain the information they need from their OCP to make the decision on PRS usage with ease.

Question 6.9: Could you provide us with an estimate of cost information regarding the collection and updating of tariff information (for SPs and OCPs)? Do you believe there are there any other costs involved under this option?

The cost of this gaining tariff information for SP's and promoters has been reduced through the AIME initiative www.callcosts.co.uk which provides links to the call costs checker available from participating OCP's.

AIME is funded by members and the cost of this service may widen the funding requirement if Ofcom recommends this approach.

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

The objective at this stage should be to either remove number checker or improve its accuracy on the basis of the significant disjoint between the PP+ defined "in-remit" and the consumer expectation. In tests, numbers that were promoted in mainstream advertising failed to provide the contact details through the number checker in a majority of cases. Once challenged, PP+ stated their "remit" was to provide data on the most searched for numbers. There is no signposting to consumers that this would be the case and so the service is misleading (a factor that would cause PP+ to raise an adjudication if the service was run by a Service Provider).

Once the number checker can provide the contact details of PRS numbers in use and the updates are frequent and accurate, then this service should be made available to consumers without caveats.

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)?

The service should provide consumers with information about numbers that they will see in their phone bill and therefore should be numbers that are in use and being promoted. Anything less is not an option.



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

The number checker needs to provide to consumers the contact details of the merchant/promoter that created the charge to the consumer. This will enable the consumer to escalate the enquiry or complaint directly to the body most qualified to deal with the consumers' issue.

It should not include information that may be different to the consumer's experience (such as the name of the service) to avoid consumer confusion. It should also not contain information that is likely to change unless the change can be reflected in the number checker within a short timescale.

Above all, it should aim for accuracy ahead of coverage.

Question 6.13: Do you agree PhonepayPlus should carry out an analysis into the benefits of requiring SP/IPs to adopt a formal complaints procedure?

The emphasis and effort for PhonepayPlus would be to define a customer centric formal complaints procedure that is targeted at providing ease of resolution of complain with escalation facility if resolution is not provided. Attempts to do this so far have been regulator centric with the emphasis being on providing investigative information rather than complaint resolution.

Part of the review of the 12th code should focus on regulatory process and how it helps (or not) consumers.

Question 6.14: Do you consider that in light of developments in the PRS market, IPs should be targeted as a point of regulation, in addition to SPs or on their own? If so, what kind of rules should be applied to IPs and/or SPs?

As most of the issues with PRS are caused by IP's either deliberately or inadvertently, they should be included in regulatory enforcement and held accountable for their actions. In mobile PRS in particular, SP's are bearing the cost of an increasingly sophisticated range of PRS scams that beats the due diligence process and the regulatory environment needs to change to meet these challenges.

This change however will lead to complexity far beyond the capabilities of the staff of the regulator and industry co-operation is required to ensure smooth application of regulatory reform in this area.

In making changes to the points of regulation, proportionality of enforcement to the roles that each actor plays is vital.



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

No.

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

We believe that SP and Information Provider (IP) registration detailing individuals and directors responsible for promotion of their services are named and available for reputational scrutiny as part of the due diligence process. We believe the figures quoted by Indepen and / or Plum consulting in the creation and maintenance of this database are overstated.

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

Yes, they are ideally positioned to run and update this database, but the objective has to be accuracy led and must not follow the poor example of the implementation of the number checker database.

Question 6.18: Do you agree with the options identified regarding call barring facilities?

We agree that there needs to be an analysis on call and message barring facilities to be offered to consumers by OCPs to ascertain demand versus costs.

In looking at mobile shortcode services, not all services incur premium charges and a blanket bar may limit consumers' access to certain services such as authorising Congestion Charge, responding to radio stations, gaining reduced entry to cinemas and historic places and gaining more information from advertisers such as car manufacturers.