

CABLE&WIRELESS RESPONSE TO OFCOM'S PRS SCOPE REVIEW

Cable&Wireless

16/07/09

Cable&Wireless is one of the world's leading international communications companies. The Worldwide business unit (formerly Europe, Asia & US) provides enterprise and carrier solutions to the largest users of telecoms services across the UK, US, continental Europe and Asia, and wholesale broadband services in the UK. With experience of delivering connectivity to 153 countries – and an intention to be the first customer-defined communications services business – the focus is on delivering customers a service experience that is second to none. Cable&Wireless has also recently acquired THUS, a leading provider of Internet, data and Telecoms services throughout the UK and with a major presence in the SME market. The comments contained in the response are representative of both companies.

Cable&Wireless welcomes the opportunity to be able to comment on Ofcom's PRS Scope Review.

INTRODUCTION

Cable&Wireless notes with some disappointment that this initial PRS Scope Review is not as broad as it could be. We recognise that this is the first in a number of consultation documents and that it is intended to establish the characteristics of PRS services, but we are disappointed that this did not extend to the nature of PRS services themselves. It is Cable&Wireless' view that in order to understand the characteristics of PRS it would have been beneficial to set the boundaries at the outset against which the characteristics of these services are to be reviewed. As a result there is very little mention of Directory Enquiry (DQ) services and 0871 is only mentioned eight times in the entire document – five of these being in the same footnote. This is a potential error and Cable&Wireless is concerned that comments will focus almost entirely on 'traditional' PRS.

We are also concerned that the Scope Review is being conducted at exactly the same time as PhonepayPlus commence their work on the 12th Code of Practice. We appreciate that the Scope Review has been long overdue (Thus and Cable&Wireless originally met with Ofcom as part of a 'scoping study' Summer 2006), but we would expect the timing between Ofcom and its agent to be better orchestrated. Obviously Ofcom and PhonepayPlus need to work closely, but the timing is unfortunate. The Scope Review should be much wider than a simple precursor to a 12th Code, but its narrower than expected remit suggests that it is in danger of becoming a diluted document. At best there is a danger that Ofcom and PhonepayPlus working so closely in tandem will give the impression that proper consultative process is being by-passed. At worst it threatens to make the 12th Code nothing more than a document of transition with the requirement of yet another edition or heavy revisions shortly after publication. Cable&Wireless would have expected fundamental questions such as whether a Code of Practice was the relevant form of regulation in the PRS market to form a fundamental aspect of the Scope Review. We would welcome clarification as to whether this is intended to form a part of later work or if the 12th Code work should be interpreted as this decision having already been made.

Ofcom's analysis of the PRS market reflects the varied number of parties active in both the fixed and mobile markets. From a technological level it can be complicated, but the definitions of the

various parties do not need to reflect drastically varied levels of regulation. Cable&Wireless favours the extension of PhonepayPlus' powers to include IPs as well as SPs and believes that it is important for PhonepayPlus to regulate all the way down the value chain, particularly where this is the source of most of the consumer harm.

Cable&Wireless cautions Ofcom on the need for proportionate regulation. A number of proposals contained within the document are either costly with no discernable practical means of implementation: Pre Call Announcements (PCA) and requirements to include the highest possible tariffs or the proposed extension of databases which offer 'nice to have' information rather than anything which will bring a discernible benefit to the market.

Cable&Wireless calls on Ofcom to refine its proposals to only those which will bring the greatest benefit and clarity of regulation. There are a number of potentially conflicting regulatory authorities covering the advertisement of PRS and it is important that a clear single approach is co-ordinated across the numerous bodies. Cable&Wireless believes this would be a beneficial role for Ofcom, particularly at a time when PRS complaints are declining across the industry and it is harder to make an effective case for additional regulatory intervention.

QUESTIONS

QUESTION 4.1: DO YOU AGREE WITH OUR ANALYSIS OF THE CHARACTERISTICS OF THE PRS SUPPLY SIDE AND THE POSSIBLE CONCERNS RELATED TO THESE CHARACTERISTICS?

Cable&Wireless broadly agrees with Ofcom's analysis of the PRS market. The examples of the supply chain for the fixed and mobile markets are a helpful summary. However we note that more consideration could have been made of the DQ services. Cable&Wireless does not have any particular concerns with these services, but we believe that an effective scope review needs to fully cater for what can be a slight variation to the supply chain in order to have a full picture of the current PRS market's characteristics.

Cable&Wireless offers its own DQ services and in addition offers a full portfolio of directory services based on 118 directory enquiries numbers aimed at telecoms carriers that do not have their own directory services and non-telecoms companies wanting to market a directory enquiries number (known as 'marketeers'). Ignoring the differences in money flow between the two models it essentially means that Cable&Wireless is acting as a combination of TCP and Service Provider.

Cable&Wireless is aware of the AIME work in relation to the definition of parties within the supply chain. We do not believe that this model, whilst a simplified version of PhonepayPlus' working model is perfect due to the interchangeable roles that parties can play in the supply chain. Cable&Wireless is both an OCP and TCP and is not active in the Service Provider arena (with the exception above). However we acknowledge some of the difficulties that Ofcom and PhonepayPlus

face in identifying the responsible party for any particular service. If anything this is becoming even more complicated as Cable&Wireless is aware of companies in the Service Provider space which regard themselves as offering little more than a billing bureau service in order to remove themselves from the regulatory arena. We are also concerned about the number of Service Providers which essentially provide a technological service platform but which are categorised alongside those Service Providers which are much more heavily involved in the promotion of services. It is Cable&Wireless' experience that the majority of issues in the PRS market are caused by promotional material rather than technological design. It is only with this latest code iteration that PhonepayPlus has had the confidence and inclination to pursue issues beyond the Service Provider yet even then it is the Service Provider that remains the regulatory backstop for fines.

The major concern from the market analysis is however the lack of detailed consideration of the reseller market. This is an important subset of the market. Without understanding the characteristics of the reseller business model it is difficult to see how a robust compliance model can be developed. These companies most obviously operate as OCPs and in such an instance are direct substitutes for other OCPs, however in the termination market they hang off the TNO in much the same way as an aggregator. In Cable&Wireless' experience however these companies characteristically have little knowledge or understanding of the PRS market or its accompanying regulations. They are not involved in providing the service platform and the Terminating Network Operator will be responsible for terminating the call on their behalf. In Cable&Wireless' opinion these companies need special consideration and they should not be categorised alongside Service Providers. In almost every instance regulatory enforcement would be required either side of the value chain whether to enforce PhonepayPlus directives or to seek consumer redress. It is clear that a Service Provider contracted with Cable&Wireless and a Service Provider connected to a Cable&Wireless reseller should be considered in exactly the same manner. There is no difference between the two scenarios other than that the reseller obscures a clear view of the Service Provider involved. That one should be considered a Service Provider and the other an Information Provider is unhelpful. Cable&Wireless hopes that this scenario can be addressed by a more flexible approach to regulation of the entire value chain. PhonepayPlus must be prepared to act down the entire length of the chain and not to be constrained by entirely artificial designations.

QUESTION 4.2: DO YOU AGREE WITH OUR ANALYSIS OF THE DEMAND CHARACTERISTICS OF PRS? DO YOU THINK THERE ARE ADDITIONAL CHARACTERISTICS WHICH ARE NOT INCLUDED IN OUR ANALYSIS?

Cable&Wireless agrees in the main with the demand characteristics of PRS as Ofcom has set out. Cable&Wireless is aware of calls from some quarters to regard PRS as a billing mechanism rather than a good in its own right. We do not agree with this categorisation on the grounds that the cost of the PRS call in the vast majority of cases is integral to the cost of the service on offer. For the PRS call to merely reflect a billing mechanism it would require a separate invoicing for the service itself and in the majority of cases this is not what happens. We therefore agree with Ofcom's analysis of the demand characteristics of PRS.

QUESTION 4.3: DO YOU AGREE WITH OUR ASSESSMENT OF THE POTENTIAL CONSUMER HARM IN A SITUATION WHERE PRS REGULATION IS INEFFECTIVE?

Experience has shown the market that where there is so much as a grey area in the regulation of PRS then it will be exploited to the full by scam artists, disreputable companies or even purely in the name of profit. We saw this in the Fixed-Line market before the introduction of the 30 day payment rule, in relation to TV voting and we are now seeing it in the mobile market. In each case the boundaries of the regulation were pushed up to and beyond acceptable limits.

It is clear therefore that where regulation is ineffective the potential for consumer harm is at its greatest. We note that in this instance Ofcom has focussed on the lack of pricing transparency as the trigger for the greatest level of consumer harm. Ironically this is also the area of the greatest regulation through Ofcom with General Condition 14 and Participation TV rules, PhonepayPlus' numerous rules for publication and pricing announcements as well as requirements for the Advertising Standards Agency, Office of Fair Trading, FSA and the Gambling Commission. The issue is clearly not one of insufficient regulation, but rather a plethora of competing regulations which has the potential to render the final consumer protection ineffective.

Cable&Wireless notes however that the measures within General Condition 14 are considered to be an effective solution for the regulation of the 0870 number range. It should be remembered that the PRS range covers price points between 6ppm and £1.50pm and therefore PRS as a whole can not be clearly differentiated from the 0870 range. A call at a 6ppm price point does not represent the same risk of consumer harm as a service at the upper end of PRS pricing.

QUESTION 4.4: DO YOU AGREE WITH OUR ASSESSMENT OF THE POTENTIAL AND ACTUAL CONSUMER HARM IN RESPECT OF PRS?

Cable&Wireless agrees with the potential for consumer harm in each of the services outlined.

QUESTION 5.1: DO YOU AGREE WITH THE APPLICATION OF THE CHARACTERISTICS TO THE SERVICES?

For completeness Cable&Wireless would have liked to see Ofcom's analytical framework examples include a DQ and 0871 service. We acknowledge that this consultation is primarily interested in PRS characteristics, but by ignoring these services we are concerned that they will suffer by concentration upon 'traditional' PRS.

Cable&Wireless also questions the demand characteristics per service table which seems to indicate that tarot services and purchasing football goals on-portal have no appeal to children. Ofcom concludes in the document that on-portal services such as the football goals service pose a low-level of consumer harm due to the high accessibility of procedures for redress. However we do not believe that removes the need for any consumer protection designed to protect children and find it difficult to believe that highlights of the country's national sport has no appeal to children.

QUESTION 5.2: DO YOU AGREE WITH OUR ASSESSMENT OF POTENTIAL HARM FOR EACH OF THE SERVICES?

Cable&Wireless agrees that Ofcom has set out a comprehensive assessment of potential consumer harm for each of the services in question.

QUESTION 5.3: DO YOU AGREE WITH OUR ASSESSMENT OF ALTERNATIVE MEANS OF PROTECTION FOR THE NEW SERVICES IN OUR ANALYSIS?

The assessment clearly shows that there are a number of different means for redress to issues concerned with a PRS purchase. It is incumbent upon Ofcom to regulate in a proportionate manner and there is a danger that further additional regulation in the PRS arena will not satisfy this requirement. Indeed there has been evidence only recently with the introduction of due diligence measures of a disproportionate level of regulation for the problem encountered. It is clear in the Fixed Line market that it was the introduction of the 30 day payment rule which served to drive some of the more dubious elements from the Fixed Line market. In Cable&Wireless' experience due diligence has been nothing more than a costly and time-consuming form of bolting the stable door.

Ofcom has only recently tightened the requirements of GC14 and we note that ADR schemes are currently being reviewed. It would be premature and disproportionate to suggest that neither of these measures are insufficient to protect consumers before they are given the opportunity to bed in.

QUESTION 5.4: DO YOU AGREE WITH OUR ANALYSIS OF THE APPROPRIATENESS OF SELF-REGULATORY INITIATIVES IN THE CONTEXT OF PRS?

Cable&Wireless agrees with Ofcom's analysis. Self regulation is not appropriate for the PRS marketplace without the backstop of regulatory powers. Cable&Wireless favours continued co-regulatory participation in this area.

QUESTION 5.5: DO YOU CONSIDER SELF-REGULATORY INITIATIVES COULD BE IMPLEMENTED FOR (CERTAIN) PRS? IF SO, PLEASE SET OUT FOR WHICH SERVICES, AND WHAT SUCH AN INITIATIVE WOULD LOOK LIKE.

Cable&Wireless believes that a sub-set of self-regulatory initiatives in this market will only add more confusion and allow opportunities around the fringes of regulation. We have commented previously on the plethora of conflicting measures that already exist to protect consumers in this sphere. Cable&Wireless would be concerned that self-regulatory initiatives would only add to this confusion and strongly favours a level playing field for all operators and services.

QUESTION 6.1: DO YOU CONSIDER THERE IS A CONSUMER BENEFIT REQUIRING ALL OCPS TO OFFER THE SAME RETAIL PRICE TO A PRS NUMBER?

Yes, there is a very clear benefit from this policy in terms of pricing transparency. Ofcom identifies the lack of consumer price awareness as being the root cause for many if not all of the challenges

facing consumer protection. Any step to introduce a retail price ceiling across all PRS numbers remedies these issues in a single step.

It also removes the competition issues that exist at the moment. If all OCPs were locked to the same retail price point, then it removes the free advertising that BT gets many times a day when broadcasters announce “calls cost XXppm from a BT landline. Calls from other networks may vary and may be considerably higher”. This only serves to create a perception of BT as “the consumer champion” and competitors as not only lacking clarity, but actually being more expensive. This can only be damaging to the wider communications market.

QUESTION 6.2: IF YOU DO BELIEVE THERE IS A CONSUMER BENEFIT, DO YOU HAVE SUGGESTIONS AS TO HOW THIS OPTION COULD BE IMPLEMENTED?

Ofcom has recently shown through the introduction of the 03 and 116 number ranges that it is possible to regulate prices through the numbering plan and to enforce these across the whole of industry. Admittedly these were new number ranges and we note that Ofcom expects to be given further powers to do exactly this for consumer protection purposes through the European Framework Review. The Numbering Plan remains the best tool for implementing any ceiling, however it doesn't really address the issue of consumer protection.

PRS covers a wide range of price points from 6ppm / ppc to £1.50ppm / ppc. Implementing a price ceiling does not in any way provide clarity to the consumer. The wide spectrum of prices remains a hinderance to providing the level of clarity required. The only way in which such an approach may be possible would be to introduce tariffing bands and to re-structure the PRS range accordingly, but this will be a costly and highly disruptive option.

QUESTION 6.3: DO YOU CONSIDER THIS OPTION COULD HAVE ANY NEGATIVE SIDE-EFFECTS? IF SO, WHICH ONES?

The most obvious side-effect is that implementing a price ceiling across all operators effectively kills price competition amongst OCPs for these services. In practice Cable&Wireless suggests that the only really significant price differentiation in relation to PRS costs is between fixed-line and mobile operators. Call origination for PRS is not a material market in its own right and the negative impacts of a retail price ceiling are more than offset by the removal of the price advertising portraying BT as the ‘trusted’ party in the market. Nevertheless Ofcom would need to build a very strong case that such an intrusive regulatory step was justifiable in light of the consumer protection requirements. This may prove difficult at a time where both PhonepayPlus and Ofcom are reporting a declining number of complaints across the PRS market.

QUESTION 6.4: DO YOU CONSIDER PCAS WOULD IMPROVE PRICE TRANSPARENCY IN THE PRS MARKET?

As a concept we note that Ofcom seems to favour Pre-Call announcements and that the consumer survey appears superficially to back this up. It has to be noted that of the options offered to the focus groups it was only the PCA option that purported to offer the respondents the exact cost of the call. It would perhaps have been a more informative exercise had Ofcom considered including the

possibility of a tariff ceiling and the option for the advert for the service to include the full cost of the service. We suspect that this would have been a preferred option. Instead the focus group has been drawn to the option offering certainty and not, as is suggested, to the idea of PCAs per se.

Unfortunately the whole idea of PCAs is fundamentally flawed in implementation. Industry is fully aware of the Health and Safety issues caused by PCAs on the 070 number range and the subsequent withdrawal from both the 070 range and proposals for 0870. Whilst Cable&Wireless is unaware of any specific issue on the 09 range we are led to believe that the same issue may exist in relation to 0871 numbers, but it is unlikely that anyone can be certain until end user devices failed.

Technically the solution also causes problems in the Mass Caller arena. During the 070 consultation we made it clear that the solution implemented in that instance was non-scalable and would only work in relation to 070 due to the low call volumes. As an originating network Cable&Wireless' solution would be to route the calls to core Service Switching Points (SSP – for Cable&Wireless System X, DMS or CS2K switches which has the ability to query the IN) for treatment at an announcement platform. These calls would then be onward connected to the Terminating Network which serves that particular 09 number.

Large televoting events such as 'X-Factor' or 'I'm a Celebrity' use very short announcements. It is our understanding that the BT Ride platform has been dimensioned to support announcements up to a maximum of 8 seconds in length. Any longer and there is insufficient hardware ports to get the required call volumes through. BT have around 15k DS0 ports on Ride, so can support 15k * 60/8 calls per minute. They would need to provide a multiple of this to support pre-answer announcements, even though not all the calls originate on their network. This would be a considerable investment in announcement capacity, although distributed across their UK network. Similarly the lowest constraint in the Cable&Wireless network is only able to handle 255 simultaneous calls whilst playing a PCA.

In order to protect the platform and prevent congestion for other services Cable&Wireless would need to implement call gapping at the originating switch. As a result only a subset of all of the calls would make it through to the precall announcement. Of those that did, only a proportion would then succeed through to the terminating CP, because there'd be congestion on their platform and potentially on the interconnect trunks as well. In terms of the impact for the consumer it means that consumers ringing up to vote for any of the multitude of interactive TV shows would experience a variety of outcomes:

1. Caller receives network busy tone from the outset.
2. Caller hears PCA and then receives a network busy tone before the call can be terminated.
3. Caller makes a successful call

In this example the PCA introduces an additional bottleneck, but more importantly threatens to create consumer confusion as to the costs actually being incurred. In addition quite apart from the legitimate reduction in revenues due to callers choosing to put the phone down when they learn the cost of the call – there would be a reduction in completed calls for such events because normal customer behaviour is to vote repeatedly, and the insertion of what could be a significant delay while the PCA is played, plus further delays due to call gapping to protect the PCA platform would seriously dilute the consumer's ability to redial.

Cable&Wireless has experience of issues caused by multiple instances of call gapping. In the example mentioned above call gapping would be applied by the originating operator prior to the pre-call announcement to protect the message platform and again for the onward routing to the terminating operator to protect their network. In such instances the lowest gapping rate is to allow 1 call in 2 through, however as these two gapping events are very close together they will always be consecutive events on the switch, resulting in no calls getting through at all. A technical solution has been found for this on Cable&Wireless' network, but it should not be imagined that PCA offer on option that is anything other than technologically complex and costly particularly in the management of call gapping.

Cable&Wireless strongly objects to the insistence that its reseller customers are forced to advertise BT's tariff with all PRS services. We acknowledge that BT does have the largest retail market share but note that Ofcom has removed the retail restrictions placed upon BT. In such a scenario we strongly contest the appropriateness of BT's competitors having to publish the price of their largest rival every time a PRS number is advertised. It seems ludicrous that the end result of Ofcom's consumer protection measures is to regulate originating networks to actively promote the prices of their biggest rival. Such a requirement is both inappropriate and a clear threat to competition in the market place.

In practical terms there is yet another problem with the PCA and this is touched upon when Ofcom considered the PRS market framework. Service Providers are generally geared up for playing messages at the start of their services in order to comply with PhonepayPlus' existing regulations, but they will never know the full cost of the call the consumer is being charged. Only the originating network is able to provide this information.

In the case of the mobile operators this may be possible, but for a network such as Cable&Wireless which originates some calls, but more importantly originates calls for resellers this simply is not practical. Cable&Wireless does not know the price structure of calls from each of our resellers and from a competition perspective nor should we. The cost of the final call is a matter for the reseller and their customer. Yet it is Cable&Wireless as the originating network that would be expected to provide the PCA. It would be necessary to build multiple PCAs for each number according to the number of the resellers tariffs and to then multiply this across each reseller in question. To route caller to the correct PCA would imply routing both on the terminating number and CLI in order to establish the particular applicable tariff. The limitations outlined previously simply do not make this a viable prospect.

We note the work AIME has carried out recently to attempt to publish tariffs for Participation TV, but even if this imperfect model were to be extended it still doesn't address the need for multiple messages per number.

QUESTION 6.5: DO YOU CONSIDER OFCOM SHOULD CARRY OUT SUCH A STUDY? IF SO, WHICH ASPECTS SHOULD SUCH A STUDY COVER?

No, Cable&Wireless believes that Ofcom has spent more than enough time and resources pursuing this concept. Indeed we are disappointed that considering the recent experiences in trying to implement such a solution Ofcom has deemed it necessary to revisit PCA once again. We urge

Ofcom to devote its limited resources to more pragmatic and workable solutions and to further enforcement of the current measures that Ofcom and Phonepayplus have at their disposal.

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?

In principal the requirement for the Service Provider to put a specific message about the cost of the call from BT and the maximum cost from an alternative operator obviously does improve tariff transparency, but in practice it appears unworkable. We question how any Service Provider is supposed to know what the highest possible tariff is for any given number and be able to maintain this information upon a regular basis. Service Providers can not be expected to know and monitor the constantly changing prices of originating networks in order to be able to identify the highest possible price. Similarly a valid tariff one week may be completely redundant by the end of a promotion's shelf life, particularly in terms of printed material.

It is our understanding that the tariff transparency work in relation to the broadcasting industry stalled at "calls from mobiles will cost considerably more" because this was the minimum threshold required by Ofcom and no-one was willing to risk a legal dispute were they to publish an incorrect upper price point (brought on by all the reasons we set out above). We understand that AIME proposed a central database solution which met with little appetite from broadcasters.

As a result we strongly question why Ofcom deems it necessary to impose much tighter regulations in this instance. We understand that colleagues from Thus originally raised concerns about implementing proposals that met the broadcasters' requirements without considering the implication on non-broadcast Service Providers, but this has never been addressed by either Ofcom or AIME. Indeed, given the experiences of AIME in dealing with broadcasters, it would seem more prudent for Ofcom to investigate the benefits of using the current broadcast pricing information (i.e. that calls from mobiles will be considerably more).

QUESTION 6.7: DO YOU CONSIDER THE NAME OF THE OCP WITH THE HIGHEST TARIFF SHOULD BE INCLUDED?

Cable&Wireless for the reasons set out above does not believe this to be a practical solution. All that will be achieved by naming the OCP with the highest tariff will be a series of legal cases between companies and on current tariff levels, the mobile operators, where it is claimed a party has been incorrectly identified as being the highest priced operator for PRS.

QUESTION 6.8: DO YOU CONSIDER THERE ARE ANY ADDITIONAL IMPLICATIONS LINKED TO THIS OPTION, APART FROM THE ONES WE HAVE SET OUT ABOVE?

Ofcom's analysis has covered the key points and the disadvantages in terms of competition where OCPs take the opportunity to use the highest published price as a benchmark against which to increase their tariffs. This is highly likely for a service which is not seen as a differentiator when consumers switch between operators.

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?

Cable&Wireless considers this 'solution' to be entirely unworkable irrespective of the relevant costs.

QUESTION 6.10: DO YOU AGREE WITH OUR PROPOSAL TO EXPAND THE PHONEPAYPLUS NUMBER CHECKER?

Expansion of the number checker may provide some benefit to consumers, but Cable&Wireless cautions against the desire to provide a complete numbering database at excessive cost. Ofcom recognises this in the document but if the database really is 85% complete we query whether there is a need to extend the contents further in a manner outside of the current processes. At present Cable&Wireless is turning around weekly number checker queries within a day and we are minded that this represents a cost efficient means for completing the remaining 15% of the database.

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 ultimate aim should be to include as many PRS numbers in the database as is economically viable.

QUESTION 6.12: WHAT INFORMATION SHOULD BE INCLUDED PER NUMBER IN THE NUMBER CHECKER?

The number checker needs to provide the name and clear contact details for the Service Provider. Elements such as a description of the service or the tariff whilst useful are of secondary importance to being able to provide consumers with the information necessary for them to progress any query or complaint with the Service Provider in question.

Inclusion of the Service Provider's registration number within the database could act as a key for cross referencing with other databases such as the reputational database within PhonepayPlus.

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?

Cable&Wireless has no particular preference on this matter.

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?

Cable&Wireless believes that PhonepayPlus should target consumer protection regulation at the point at which the harm is caused. In this instance it makes sense to target those IPs responsible for promotional material that may be found to be wanting in terms of compliance with the

PhonepayPlus code. IPs generally represent the focus of the consumer interaction. They are responsible for promotion of services and the actual customer interaction. As a result it is essential that IPs should be officially regulated.

QUESTION 6.15: DO YOU CONSIDER THERE ARE OTHER OPTIONS FOR A REGISTRATION SCHEME / REPUTATIONAL DATABASE WHICH HAVE NOT BEEN INCLUDED IN THESE STUDIES?

It is possible to draw up ever more elaborate plans for a registration scheme and reputational database. Cable&Wireless would have liked to see consideration of a revised model for PRS regulation which would have required registration of SPs and IPs and also built around this registration scheme a funding model. All SPs and IPs could be required to pay an annual 'registration' fee which would provide PhonepayPlus with a more stable funding model than currently and more importantly would ensure that the regulator was fully aware of those parties active within the market. A reputational database would be much easier to maintain with annually updated information and a clear interaction between regulator and service / information provider.

Cable&Wireless believes PhonepayPlus should take a more hands on role in proactive regulation. The registration scheme offers the ideal opportunity for the regulator to act as gate keeper and to whittle out companies and individuals who have a track record of persistent breaches or scam operations. PhonepayPlus already has the powers to bar individuals from operating in the PRS market. By utilising a registration scheme as a gateway to services PhonepayPlus are merely moving their regulation from a reactive to proactive position. It is not a barrier to entry as a company proving that they are a fit and proper person should be a low hurdle for the majority of individuals and companies. It also ensures PhonepayPlus knows their customers and provides the ability for the current uncertain funding mechanism to be replaced by an annual payment levied against Service and Information Providers. The benefit in terms of consumer protection is immense as it prevents scammers from operating at source rather than relying on numerous third parties to carry out regulation on the industry's behalf.

We reject the Indepen report finding that such an approach will not lead to a reduction in the number of breaches as PhonepayPlus must follow due process rather than be able to take commercial contracting decisions. Due process is exactly what is needed to prevent scams from reappearing. A reliance on commercial contracting decisions only results in more dubious services, rejected from the larger networks, resurfacing with those Networks where the commercial opportunity outweighs the potential risk of the service. It is not the case that these services are sold to the Terminating Network Operator as being dubious, rather that the service is hidden within a package of legitimate traffic. For smaller operators dependent on PRS traffic, commercial decisions focussed on the legitimate traffic are unlikely to reject anything where the purpose of the service is slightly unclear. It is only the regulator that can impartially identify these services and ensure that they are prevented from being reborn with alternative providers. Nor do we agree that PhonepayPlus is any less able to form an opinion on behaviour than Terminating Network Operators. Indeed PhonepayPlus is the only party that has a complete picture of behaviour across multiple networks and so is in a unique position to understand when a service is just a newly packaged form of scam.

QUESTION 6.16: WHICH IS YOUR PREFERRED OPTION, AND WHAT ARE THE REASONS FOR THIS?

Of the options under consideration Ofcom's favoured option F1 is by far the most cost effective. However Cable&Wireless struggles to see the difference in benefit between the database proposed and the ability Communications Providers already have to search the current adjudication database by company name. The database needs to include different information than is available on the adjudications database for it to be of any use. As part of a due diligence check Network Operators are looking for more than just adjudicated breaches. A clear picture of past behaviour can only be gained from a pattern of behaviour and this needs to include information on the number of complaints against a SP, informal procedures and more formal action, as well as any links with other companies.

QUESTION 6.17: DO YOU AGREE WITH OUR ANALYSIS THAT PHONEPAYPLUS SHOULD RUN A REGISTRATION SCHEME / REPUTATIONAL DATABASE?

Cable&Wireless agrees that there are benefits to be gained from such a database, particularly in terms of due diligence for Network Operators. However there seems to be little indication of what PhonepayPlus will do with the information other than populate the database. Whilst useful to have, Cable&Wireless does not place a particular value to the reputational information that will be included in the database. Past behaviour is not a guarantee of future behaviour and as such it is difficult to see where the benefit of this database lies for Cable&Wireless or any operator that conducts more than cursory due diligence. It's useful, but we struggle to see how it will lead to a reduction in the number of Code breaches.

QUESTION 6.18: DO YOU AGREE WITH THE OPTIONS IDENTIFIED REGARDING CALL BARRING FACILITIES?

Ofcom's concerns in relation to call barring appear to be very much confined to the mobile market and, as is much of the document primarily the 09 number range. Cable&Wireless offers an extensive range of number blocking options for all of our PSTN customers at both a wholesale and retail level.

✂