

Modifying who is subject to the Premium Rate Services Condition

A consultation on amending the PRS Condition to mirror the remit of PhonepayPlus under its new Code of Practice

UKCTA Response to Ofcom Consultation

Submitted to Ofcom: 22nd June 2011

UKCTA is a trade association promoting the interests of competitive fixed-line telecommunications companies competing against BT, as well as each other, in the residential and business markets. Its role is to develop and promote the interests of its members to Ofcom and the Government. Details of membership of UKCTA can be found at www.ukcta.com.

Introduction

UKCTA welcomes the opportunity to comment on Ofcom's proposed amendments to the Premium Rate Services Condition. Our members were largely supportive of the changes made to the PhonepayPlus Code of Practice and we welcome the development of a streamlined, more flexible approach to PRS regulation.

Ofcom seeks to make a minor change to the Controlled Premium Rate Services Condition by inserting the phrase "and Controlled Premium Rate Service Provider" alongside "Communications Provider" as the subject of the PRS Condition. The impact of this simple change is far reaching, unambiguously encompassing all parties in the PRS value chain within the back-stop powers Ofcom uses to support the PhonepayPlus Code. This is a move which we fully support.

UKCTA is concerned however that the consultation document itself sends something of a mixed message. On the one hand Ofcom serves to reaffirm the regulatory underpinning of the PhonepayPlus code and yet on the other paragraph 3.13 makes it clear that PhonepayPlus is to seek its own legal action rather than referring cases of non-compliance to Ofcom. We would question the circumstances under which Ofcom envisages using its regulatory powers, if PhonepayPlus is to be urged to take its own direct legal proceedings?

Question 1: Do you agree the PRS Condition should be amended to require all Controlled PRS Providers to comply with directions made by PhonepayPlus for the purpose of enforcing its Code of Practice?

Yes, we believe that this amendment is necessary to ensure that Ofcom's back-stop powers remain consistent with the revised PhonepayPlus Code of Practice. Those members of

UKCTA which operate at the terminating end of the value chain have long campaigned for recognition that previous PhonepayPlus regulation unduly impacted upon their resource rather than tackling the causes of market abuse. We welcome any measures that address consumer harm at its source and on this basis support both the new Code of Practice and the extension of Ofcom's back-stop powers to underpin the Code of Practice.

We are however concerned that this tidying up exercise has been necessary. Under the Communications Act 2003, it is our understanding that Ofcom has responsibility for the regulation of Premium Rate Services. Furthermore in December 2007 it was reiterated that PhonepayPlus acts as the agency which carries out the day-to-day regulation of the PRS market on Ofcom's behalf. We do not believe it to be good regulatory practice for changes made by the 'agency' to appear to dictate Ofcom's responsibilities; rather we would have expected Ofcom to strengthen its powers ahead of PhonepayPlus' Code work rather than as a reactionary measure to close a loophole ahead of the new code coming into force.

Question 2: Do you agree that the proposed amendment to the PRS Condition gives effect to this intention?

Yes, we agree that the addition of "and Controlled Premium Rate Service Provider" to the PRS Condition achieves the necessary extension of Ofcom's powers. The simple insertion is a tidy and efficient resolution to the issue. We agree that the amendment satisfies Ofcom's intention and that it remains consistent with existing definitions; including clause 2.g which itself defines Controlled Premium Rate Service Provider.

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