



The Mobile Broadband Group

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14th July 2010

Mr Jeff Loan
Ofcom
2a Southwark Bridge Road
London SE1 9HA

Dear Jeff,

Approval of the 12th Code

The Mobile Broadband Group ("MBG") has pleasure in submitting a response to Ofcom's consultation on whether it should approve the Draft PhonepayPlus Code of Practice.

The MBG very much supports the general thrust of the new Code – in particular the move to a more outcomes based approach, backed up by general and service specific Guidance that should be more capable of adaptation in response to changing market circumstances. It is also welcomed that the regulation will now fall directly on the entity that is operating the relevant PRS service.

Nevertheless, the MBG has strong reservations about supporting the approval of a Draft code.

First, the MBG has raised a number of substantive issues in our response to PhonepayPlus on the Draft code that we would like them to reconsider before finalising the Code. Our full response can be made available to you, but in outline the main points made are as follows:

- Risk assessment and monitoring – PhonepayPlus needs to demonstrate why a regulatory requirement on mobile networks is required to formalise existing risk assessment and monitoring arrangements.

- Complaints handling requirements – Originating communications provider complaints handling processes are already regulated by Ofcom. The mobile networks have been engaging with PhonepayPlus and ILP members to agree a complaints handling process to help improve the customer experience. This is a voluntary initiative and OCP obligations should not be formalised in the code.
- Terminology – The definitions used in the Code of Practice and other PhonepayPlus documents are not always clear and accurate. For example, the definitions around what is a network operator and the use of ‘phonepaid’ are inaccurate against PhonepayPlus’ current interpretation of the definition of what a PRS is.
- Outcomes-based approach – Whilst we wholly support this approach, it is extremely important to have clear guidance for stakeholders and guidelines and training for PhonepayPlus staff and tribunal members, explaining how regulation will be applied in practice, to ensure the principles set out in the outcomes based approach will be applied consistently across the board by PhonepayPlus. The guidance should be consulted on at the same time as the draft Code.

Secondly, we cannot support the approval of the 12th Code while there is continuing uncertainty over the scope of its regulatory remit. Ofcom has informed us of its intention to follow up the scope review, using its analytical framework, to assess whether they believe it is appropriate to include certain services within the CPRS condition. We understand that this includes services on some fixed services that PhonepayPlus have confirmed they consider are within the S120 definition but are not currently regulated by the Code of Practice.

Ofcom will be aware that the mobile operators have been concerned by this inconsistent treatment over several years. Ofcom need now to look at this issue with a view to bringing about greater consistency and should not be approving further codes until this long standing problem has been resolved and all affected stakeholders are in a position to assess the impact of the new code.

Yours sincerely,

Hamish MacLeod

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Chair, Mobile Broadband Group