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Consultation Response

Phone-paid Services Authority Business Plan & Budget 2017-18

**Submission by
Association for Interactive Media and
Entertainment
(AIME)**

AIME (www.aimelink.org)

AIME is the UK based trade organisation representing the commercial and regulatory interests of member companies involved in the interactive media and entertainment industries - where consumers interact or engage with services across converged media platforms, and may pay for those services or content using a variety of micropayment technologies including premium rate.

We uphold our Code of Ethics and Core Values to create an environment of consumer trust and industry confidence within which our members' commerce can grow. We are committed to furthering the interests of Interactive Media and Entertainment through the regular exchange of information and communication throughout the value chain, effective engagement with regulators and legislators and the presentation of a successful industry image to consumer and business media.

We are the only UK trade association with membership across all elements of the interactive media and entertainment value chain. Our membership represents in excess of 80% of annual industry PRS revenues.

AIME promotes and abides by the philosophy that consumers who are accurately and openly informed of the nature, content and cost of participation in an interactive service experience should be perfectly placed to exercise their freedom of choice and thereby enjoy the most effective form of consumer protection.

To this end, we do not support the predetermination of products that are made available to consumers or pricing of those products or even the length of time that a consumer can enjoy those products provided the consumer has made their choices freely and knowingly and that vulnerable consumers are adequately protected.

Member Input

AIME welcomes the opportunity to respond to PhonepayPlus Consultation on its budget proposals for the financial year 2017/18.

To assist AIME in providing a comprehensive input to PhonepayPlus, AIME researched its Members in the following manner;

- Written input from Members
- One-to-one discussions

AIME Members who operate in the PRS markets are broadly split into five categories although there is some overlap inside individual Member businesses.

- Fixed Line Networks, Fixed line L1 and L2 providers
- Mobile Networks, Mobile L1 and L2 providers
- Broadcasters
- Charities and Charity enablers
- Industry Support companies

AIME sought responses from Members from all of the represented PRS industries, but traditionally we experience a low response for a budget consultation due to the levy normally being deducted prior to payments by the mobile networks and voice terminating networks.

Some of AIMEs larger Members may input their response directly to PSA through their regulatory staff or regulatory representatives. Wherever possible, we ensure that views of members made through independent responses are in synergy with AIMEs collective views.

As our response is guided and supported by Members input, some views that may be expressed are not necessarily those of the AIME Executive or of any individual on AIME's Board of Directors.

General Commentary

AIME and members are broadly supportive of the proposed budget and business plan for 2017 to 2018 and it mainly ties in with industry desire to focus on similar areas.

Unfortunately we do not support the view that market revenues for 2017-18 will be broadly in line with 2016-17. While PRS services have generated increasing number of complaints, behind the statistics were successful services generating revenues with happy customers alongside services causing high levels of consumer issues. The implementation of the Special Conditions were seen by industry to be too sweeping, thus unnecessarily capturing services that existed without consumer issues. The outcome was also felt to go against the grain of most consultation responses that supported a proportionate approach to the issue based on risk through an improved set of measurements for risk and mandatory conditions in place to mitigate the identified risk if the provider cannot self-mitigate.

We anticipate a revenue decline in mobile services over 2017 followed by slow a recovery as other product lines start to emerge, principally in new micropayment areas that AIME and its members are driving.

Consultation Questions

We normally provide detailed –and we hope– narrative outside of the Consultation question / answer area as we believe that questions can limit the scope of the responses by the very nature of the questions being asked.

We were disappointed to learn that our extensive narrative into the last consultation related to Special Conditions may have been overlooked by the use of a grid system to analyse responses to the stock questions.

As a result, we will provide now and in future, narrative inside the question areas, but AIMEs responses may not be necessarily be associated with the questions being asked if these are to be too restrictive.

Q1 – Do our plans for 2017/18 sufficiently deliver our role as a regulator? What else do you think we should be doing or not doing?

Balanced Approach: In relation to the Business Plan we believe that the “Balanced Approach” outlined in 4.3.1. was negated in 2016 through the implementation of Special Conditions linked to Service Categories rather than identifying and mitigating risk factors. The excellent work performed on the Risk Taxonomy measure was an indication of a new method for applying proportionate risk controls either self-applied by the PRS providers or applied via Special Conditions that mitigate identified risks. We believe that this

methodology would deliver a more effective outcome through a flexible approach that targets only high risk services.

The Special Conditions for online Competitions and Adult services with the former sweeping up a wide range of service types that never caused consumer issues, together with the short implementation timetable and the lack of clarity on how to implement effectively has caused this area of the market to virtually cease trading at least for the short term.

Risk Taxonomy: We were led to understand that the risk taxonomy would be able to assist a provider to define how their service created consumer risk so that they could either self-mitigate the risk or follow Special Conditions linked purely to risk mitigation instead of service types. Along with risk identification, a weighting system would also identify which risk mitigation would have the most effect.

We believe that PSA should dedicate time in 2017 to understand how it can progress the work on risk taxonomy to be more usable as a tool for self assessment of services by providers and to be effective in developing risk mitigation alongside industry. We would be happy to work with PSA on this development and it falls in line with the Project 30 objectives.

In particular, with the MNO's looking to allow "principles based" consumer payment interfaces to foster growth with lower risk services, alignment of the risk measures and mitigation will help MNOs to define what "lower risk" actually looks like.

Research: We believe that the research conducted in 2016 to understand consumer online journeys that lead to a purchase that consumers subsequently do not recall was delivered in a manner that spoiled the essence of the research and encouraged a disregard of the results. This is a "lesson learned" exercise but we will be interested in supporting a research re-run to gain a greater understanding of consumer behaviour- potentially consumer blindness - when they encounter perfectly price transparent services but subsequently have no recall of their actions. This research should guide industry on the design of services, pricing presentation, receipts and downstream support information.

Compliance Advice: On 4.2.3 we understood that compliance advice could be given by parties outside of PSA, much in the same way that consultants and lawyers provide advice on other regulations and this concept was introduced at the request of AIME. We have not seen any report of companies that have applied to PSA for approval to provide that advice and suggest that this facility would create efficiencies, cost saving and deter rule bending.

We would counsel however that with an outcomes based code, "rule bending" as you suggest in your consultation can only be possible with explicit rules. Ongoing measurement of both consumer take-up (agreement to a charge) and resulting complaints is the method to generally establish if outcomes are being met.

Review of Code: We welcome a review of the Code and supporting procedures as we have always stated that PSA should have the appropriate tools to deal with those parties that set out to contaminate the industry and destroy consumer confidence which then converts to overall low business confidence.

A review will help to understand any flaws in the current process that AIME assisted PSA to develop as what looked good in theory may need finessing in practice.

We are concerned however that an external review may not capture the nuances of this industry and could be an expensive exercise without useful merit if placed into the wrong hands. We suggest that one of the few legal representatives that normally sit on the other side of the enforcement table is commissioned to conduct this review using their acquired experience. The results will be hard-hitting and critical, but will inform improved processes.

We welcome a review of the PSA guidance for Due Diligence and Risk Control as there have been significant failures of both seen in 2015 to 2016 as demonstrated by adjudication reports. We offer assistance to refine this guidance using industry experiences and best practice.

We welcome exemption carve outs for the current Special Conditions for lower risk services and are preparing discussion documents on several services to show how risk is mitigated.

We will provide detailed input into the Consent to Charge Guidance update as industry feedback suggests that this is still a misunderstood area that can be made robust with appropriate checks and balances. It is important however to recognise that the greater the robustness of a merchants charging facilities may result in a reduced tolerance towards redressing consumers who dispute charges.

Communications

We have received industry feedback on recent deterioration in the clarity of communications from PSA towards industry and would seek a better understanding of the cause behind this and any proposed solutions.

We were confused by the suggestion under consultation that adult services providers could bypass the existing robust age verification check on mobile consumers and replace it with a tick box and that 15 year olds could have access to adult material. There was also a clear misunderstanding of Ofcom definitions in relation to PRS. While we assume these and other issues are not intentional, documents are being released into the public domain which do not carry the required clarity to ensure that providers operate under regulatory certainty.

ADR: We are particularly concerned that ADR, as recommended through the two parties detailed on the PSA information note, could be ineffective for both consumers and merchants in the niche area of PRS as these are telecoms ADR companies who require pre-registration. With the enforcement by MNOs of the use of Payforit for online services, a

potential impasse situation between consumer and merchant could exist leading the consumer to be referred back to seek either MNO resolution or ADR. With ADR costing c. £300 we anticipate money reclaims against consumers that have been unsuccessful with ADR which in turn could create an industry reputational issue.

We need wide industry focus on this potential issue and are picking this up in one of our working groups.

Registration of Services: The number checker is an important tool for consumers that have engaged with numerically based services, but with transition since 2007 to bill consumers via mobile networks billing systems, there have not been any advancements in the support of consumers querying the entry on the bill. We would like to see advancements in this facility in 2017 and if possible work together to ensure consumers have maximum self-help possible.

Regulatory Map: We have supported the concept of a regulatory map for some time and it is important, particularly for new companies planning on utilising premium rate billing that they understand the overlap with other regulators and the detail of the MoU's in place. It is pleasing to see a hand-back to the Gambling Commission of areas that PSA felt they needed control over in the past and we would wish to see that extended to other regulatory bodies. It is confusing for a provider of services that an advertising issue (for example) gets dealt with by the ASA if the consumer pays via credit card but becomes part of the PSA remit if the consumer uses premium rate to pay for the same advertised product.

Q2 – Do you have any comments on the proposed budget for 2017/18? If you recommend any changes, please clearly identify which areas of activity you expect this to impact upon.

We support the continued drive to reduce the budget but feel that the levy may increase due to potential revenue downfall. It would be helpful to understand how the £50k reduction in depreciation was achieved and what plans are in place to develop the organisations IT advancement.

Q3 – Do you have any comments on the proposed levy for 2017/18?

We support the reduction in levy and note this has been achieved through increased fine income and also note that the majority of cases adjudicated have similar characteristics. These cases have resulted in widespread consumer harm, yet the affected consumers remain without refunds for the unauthorised transactions unless they demand one. The net income after fines and refunds may still have rendered a profit for the adjudicated companies causing industry concern that the services are still in operation and the

opportunity for the same unauthorised charging may still exist. We seek assurance that this is not the case.

Q4 – Do you have a view on the estimated size of the market for 2017/18?

Yes, we anticipate a 20% reduction in revenue in Q4 2016- 2017 vs. previous quarter, followed by an overall 10-15% reduction across the full year. This is mainly due to the impact on the market from the actions taken by PSA and MNOs on services causing consumer complaints.

Q5 – Do you have any views on the current levy model? If you recommend an alternative, please outline any principles underlying the model and how you think it might work in practice.

We are aware that this topic can be contentious, so will defer to the companies paying the levy for their views. None have been expressed to AIME.

Q6 – Do you have any other comments on the Business Plan and Budget 2017/18?

We would like to see a greater emphasis on educating consumers through the channels that they are likely to use to engage with services and make purchase decisions and greater education on the availability and use of the “stop” command.

We would like to see greater emphasis being placed on formalising and activating joint market monitoring facilities between PSA and network operators, with the commitment that discovered issues result in swift action to prevent accumulated consumer harm. While we recognise that there may need to be a trade off between preventing harm and acquiring evidence for enforcement, our MNO members would like to be assured that efficiencies exist in the processes to mitigate harmful practices when identified through monitoring.

Close

We assure you that, as ever, our comments are made constructively, compiled from member input and with the intent of achieving an effective, fair, economical and proportional regulatory regime for premium rate charged services in the UK.

If any clarification to our response is required or if we can be of any further assistance please contact the AIME office via regulatory@aimelink.org

Sincerely

AIME