

**NOTES ON THE 24th ILP MEETING TO BE HELD ON
TUESDAY 8th FEBRUARY 2011**

Present:

Hamish MacLeod – MBG (Chair)
Jeremy Flynn – AIME
Nik Hole – The Number (late arrival)
Justin Hornby – UKCTA
Hannibal Latuff – BBC
Jeff Loan – Ofcom
Rory Maguire – H3G, MBG commercial
Andy Martin – FCS on behalf of Jacqui Brookes
Marianne Pendray – ITV
Neil Pepin – Channel 4
Graham Pottie – BT
Miranda Roberts – MEF

PhonepayPlus

Sir Alistair Graham
Paul Whiteing
Bradley Brady
Joanne Prowse
Mark Collins
Alex Littlemore (part)
Emma Holloway (part)
John O'Reilly– (minutes)

Apologies:

Paul Berney – MMA
Suhail Bhat – MEF
Jacqui Brookes – FCS
Shawn Brown – MDA
Natalie Christian – BBC
Ann Cook – ITV
Suzanne Gillies – PRA
Jeremy Hallsworth – BT Agile Media
Mark Hawkins - MDA
Anne Hoitink – Ofcom
Michael Traynor - BT
Wendy Ward – BT Agile Media

Welcome:

Hamish MacLeod welcomed representatives to the meeting and apologies were noted.

Ongoing action log

Meeting/ Action number	Description	Owner	Status
19.7	Review analysis of breach history to help identify trends and include as a standing item on the agenda. A survey of tribunals over previous weeks was noted consisting of 8 cases, two informal representations and prior permission requests. Issues of interest raised include adjudications involving a TV service which encourages people to opt in without their consent; a service provider who failed to secure prior permissions for a gambling service; and misleading information provided on a consumer credit service.	Paul Whiteing	ONGOING
19.9	Create a working group to explore the CPRS definition for the next Communications Act.	Bradley Brady	COMPLETED
21.4	Administrative costs of formal investigations- discussion took place which will form part of the sanctions review. The Executive confirmed administrative charges are not dependant on size of fine but charged as a separate cost. Track 1 procedures will continue to be monitored and reviewed.	Paul Whiteing/ Suzanne Gilles	COMPLETED
16.1	Registration scheme – a breakdown of operational costs will be provided once contractual elements have been finalised and forecasts projected. ILP to be kept regularly updated with progress on the scheme.	Joanne Prowse	ONGOING
16.2	Sanctions review – ILP to advise whether they wish to attend the AIME presentation on 1 st December.	Jeremy Flynn	COMPLETED
16.4	Circulate ILP Terms of Reference to members. Review Terms of Reference	John O'Reilly/ILP/ Hamish MacLeod	COMPLETED
16.6	AoB <ul style="list-style-type: none">Technological developments, potential threats and risks monitor and mitigate; ILP agendas to have greater focus on effective problem prevention; explore issue of apps stores and produce guidance note on processes; ensure terminology is clear when speaking of industry to consumers.VAT increase and pricing transparency – issue note to industry on price point procedure.	Industry and Executive of Phonepay Plus	ONGOING
24.3	ILP members to provide information on the number of potential registrants to the Registration Scheme, and cascade registration information accordingly	All members	NEW
24.5	Establish 'Futures' working group	Jeremy Flynn	COMPLETED
24.6	Produce a report on the detail and number of cases being processed through Fast Track and Track 1 procedures	Joanne Prowse	NEW

1. Notes and Matters Arising from the Meeting held on 16th November & Budget Meeting held on 14th December 2010

- 1.1 The notes were approved with no further comment.
- 1.2 Actions were reviewed as noted above.

2. 12th Code & Guidance Consultation Update

2.1 Mark Collins informed the Panel of the current status of the new Code and development of supporting guidance.

2.2 It was noted that the new Code has been agreed by the European Commission, with no additional comments. With EU approval now given no additions can be made to the Code, although some adjustments may be made through minor changes which do not add to the regulatory burden.

2.3 PhonepayPlus is currently producing a policy statement following on from consultation of the new Code and Guidance. The aim is to publish this towards the end of March 2011, in line with publication of the Code and Guidance.

2.4 Following European approval, the Code is currently with Ofcom for final sign-off. It was noted that the anticipated date on which the new Code will become effective will be announced at the date of publication. Mark suggested this date would be September 2011.

2.5 A question was raised over how industry feedback would impact Guidance, and changes as a result of industry feedback be communicated. It was noted that industry feedback was welcomed and considered throughout the consultation period.

2.6 Consultation of Guidance in support of the new Code raised approximately 100 issues, with promotional material, due diligence and privacy being those of greatest concern. Industry members highlighted the desire for Guidance to clarify roles and responsibilities across the value chain.

2.7 As a result of comments received from AIME and others, Mark Collins advised that consent to charge and consent to market are to be separated into distinct headings within Guidance on Privacy and Consent to Charge. In addition a more flexible approach will be set out as regards consideration of consent to market. The burden of proof may be higher where there is a greater level of harm or complaint.

2.8 Questions had also been raised around the verification of consumer consent to charging. Whilst the Guidance will recommend that records of consumer consent can be held by a third party independent of the delivery chain, this will not be an expectation. The Guidance will recognise that the key to secure opt-in is in having records of consumer consent which cannot be challenged, altered, or created by the provider. In response to this, Jeremy Flynn noted the adaptability of the new Code and its ability to increase strenuous restrictions to respond to changes in the market.

2.9 Rory Maguire suggested that Guidance on consent to market and consent to charge should be separate and distinct documents, due to the complexity of the topics. Mark Collins noted the potential for significant delay to the release of Guidance that this might cause if there was a need to, in effect, re-consult on changes. Mark Collins and Bradley Brady committed to send this Guidance to ILP members for comment if the revised versions were still markedly different from the suggestions made by AIME and the MBG.

2.10 Guidance in support of the Code will be presented to the Board this week and published in late March at the same time as the Code.

3. Registration and Number Checker

3.1 Joanne Prowse advised on the current status of the Registration Scheme and Number Checker, noting an update issued in January in conjunction with a progress report, material on due diligence, bulk uploads, costs, etc.

3.2 It was highlighted that, at this time, total costs of the Registration Scheme are yet to be finalised, but initial projections of £875k have reduced to a current estimate of £650k. On-going operational costs are anticipated to be in the region of £150k per annum. Further developments will be communicated as applicable.

3.3 Joanne noted that currently the Registration Scheme is currently on target, with the pivotal web-development stage currently being processed. Both internal and external testing of the system will be implemented, with external invites to test being issued towards the end of March. Results garnered from test period will inform us of prospective 'live' date.

3.4 It was noted that the anticipated date for the system to go live will be April/May 2011, following publication of the new Code, to allow pre-registration and for users to become familiar with the system.

3.5 Joanne advised that PPP will provide a bulk-upload facility to aid industry during the pre-registration phase. It was noted that a due diligence facility will also be introduced at this point to help industry and match adjudications, etc. The forecast for delivery for all elements of the Registration Scheme is early September 2011.

3.6 The Registration Scheme will, in turn, grant increasing levels of accuracy to the Number Checker. Workshops are intended for stakeholder engagement in order to:

- Focus on objectives of the system
- Establish look and feel in the user experience
- Focus on service registration to aid consumer and industry alike
- Potential for two-tier Number Checker proposal; one for consumers with customer care contact detail and a second, more intricate and detailed model for industry members highlighting multiple parties along the value chain

3.7 Regarding communications and development updates, it was noted that such changes are currently communicated via website FAQs and email updates/alerts. A preference for workshops on the cascade of information along the value chain welcomed.

3.8 The Panel invited updates and information on system investment payback estimates, along with information drawn from the Registration Scheme to inform on contemporary market size. In response, it was highlighted that the number of registrants will ultimately impact on the payback timescale, and registration fee. The current projection for registered users is 3,500.

3.9 Jeremy Flynn noted that, initially, most L1 providers will have direct knowledge of the number of L2s contracted with, and may be able to estimate on subsequent members in the value chain. This information was also welcomed as an additional aid in the area of communication and reflection of market size, with reference to registration. Panel members including C&W, FCS, MEF, Opal *et al* advised they will also return and cascade such information.

3.10 Sir Alistair Graham advised of potential discounts for early registration.

3.11 Jeremy Flynn advised that results of a previous AIME survey highlighted that 80% of customer care lines were not answered by operators; 10% connected to a voicemail service, with no response within 48 hours and 5% were answered. Customer care lines given by the Number Checker will need to be answered for consumer satisfaction.

3.12 Hamish MacLeod enquired into attendance at recent workshops. Joanne Prowse advised that there had been a high level of attendance. It was noted that there will be an open invite to future dates. The point was made that, where the Number Checker is concerned, the data owner will have control over what is visible and to whom.

3.13 In response to questions on the security of data held within the system, Joanne Prowse advised that technology and penetration testing, plus standard protocols and internal processes will ensure any such issues around the technology and policy are mitigated to ensure the security of the data.

4. Sanctions Review Update

4.1 Paul Whiteing advised that there is currently a project team working to develop a document to keep industry members informed with emphasis on transparency and consistency of investigations as the review of sanctions develops in line with the new Code.

4.2 It was noted that the document will guide industry on their rights throughout the investigations process. This will also serve as the process for the CCP. It is anticipated that the document will be published alongside the new Code and Guidance.

4.3 Jeremy Flynn enquired as to whether this will be a similar document to the recently released Operations schematic. Paul Whiteing advised that the document will serve a similar purpose, highlighting the workings of the CCP to ensure it is fair and objective; straightforward and clear.

4.4 Hamish MacLeod enquired into the possibility of similar trials of the document in an industry workshop environment, as per the testing in Tribunals – a case study example. In response, Paul Whiteing highlighted the increasing levels of transparency of processes, even at Tribunal level and the potential to codify what terms decide the seriousness ratings in adjudications.

4.5 Hamish MacLeod enquired as to whether the Tribunal will be granted more room for movement with the advent of the new outcomes-based Code. Sir Alistair Graham highlighted the point that, in each adjudication, the Tribunal always give clarity around the rationale of any decision made. Bradley Brady continued to indicate that under the new Code, the party responsible for the breach is answerable, enabling a more direct impact. Cases will be taken against the responsible party.

4.6 Paul Whiteing highlighted the importance of cooperation at this stage. The point was made that each party in the value chain has distinct roles and responsibilities, and individual cases will be brought against individual organisations on the basis of any breach of their individual responsibilities.

4.7 A final enquiry was posed by Hannibal Latuff raising the issue of a single player in any given value chain approaching PPP and potential leniency granted to the associated organisations; Paul Whiteing confirmed that in any case, each individual behaviour will be assessed.

5. Market Developments & Emerging Risks

5.1 The ILP was highlighted as a forum to exchange and piece together intelligence. A working group was suggested under the moniker 'Futures' to allow PPP and industry to establish opportunities and risks on the horizon.

5.2 Recommendations included guidance, or Help Notes notes for new-comers to the market, such as app developers incorporating PRS into in-app billing. Awareness of recent Trojans and other malware affecting the Android OS and thoughts on cooperative working to mitigate risk in this area can be shared across the board.

5.3 Bradley Brady highlighted the high quality market intelligence currently gathered in-house enabling PPP to remain abreast with developments in the area. It was noted that similar intelligence gathered by industry members can be used in conjunction with this. Invitations to ILP members for dialogue on the subject are open. Jeremy Flynn raised the question for a possible meeting for discussion in March.

6. Quarterly Report

6.1 It was noted that data for Q3 market size has not yet been updated in the current report due to timing of its produce. Joanne Prowse advised that the data was discussed in greater detail at the previous ILP meeting, reflecting data for Q2, as the data was not yet updated.

6.2 Hamish MacLeod questioned the measurements of Customer Satisfaction on p12 of the Report. Joanne Prowse advised the 3-point scale had been used to give a positive/negative reflection of the Customer's experience. A new 5-point scale is to be incorporated to allow a more accurate reflection in the data. Hamish MacLeod noted the relatively low percentage figures for responses, and enquired as to whether this had prompted remedial action. In response, Joanne Prowse highlighted the difficulties in receipt of accurate data in certain circumstances, where a lack of understanding or persistent grievance may skew results. The new 5-point system of analysis will give more accurate results and allow detail to be scrutinised further, leading to far more sophisticated future reporting to understand the data and develop a plan to respond.

6.3 Jeremy Flynn enquired as to whether the best metric for such data was currently being used. In response, Joanne Prowse highlighted the ongoing effort to present such data in a clear and straightforward fashion, but noted that the metric used will often be dictated by the question posed.

6.4 Further enquires were posed in relation to the number of fast track and Track 1 procedures taken. An estimate of approximately 250 per month was returned. This was commended as being an excellent example of targeting low-level consumer harm and related problems with great efficiency. An action was proposed for future meetings to produce a report on the detail of cases being processed in this manner.

7. Higher Rate Tariffs

7.1 Hamish MacLeod noted that the issue of Higher Rate PRS Tariffs had been raised by the Ofcom Review.

7.2 Bradley Brady referenced current discussion with Ofcom and FCS in the area and noted PPP's relaxed attitude regarding higher rate tariffs. An open dialogue with industry members was welcomed in relation to what levels may be set with appropriate measures to mitigate the potential for consumer harm. Current safeguards in this area include the requirements for services operating in excess of £1.50 per minute to have prior permission.

7.3 Comments in the condoc referenced charitable fundraising services as an example of a service category which may benefit from any increase in tariffs. Questions were raised concerning the application of such higher rates to charitable versus commercial services, and whether there may be any difference in restrictions of their use. In response, Bradley Brady expressed the requirement of transparency is paramount and the potential for harm with increased tariffs is present concerning all service types. The point was raised that providers in all areas must act responsibly when providing services at any increased rate.

7.4 Rory Maguire highlighted that there are currently mobile services operating at higher rates with few problems, especially where charities are concerned. Rory continued to note that, as long as the principles of transparent information are upheld and adhered to, there should be no problems. In contrast, Andy Martin raised the issue of the constraints of fixed-line numbering on price points, which may be seen as having restricted development in this area. In response, Jeff Loan highlighted the notion that mobiles are not subject to the same issues of unauthorised use *et al*, that fixed-line services experience. Jeff continued to note that changes will be made, and that the Numbering Plan's current limits of £1.53 will be looked into in consultation with PPP, should the limits be relaxed, with the issue of consumer safeguards being central to any developments.

7.5 The Panel acknowledged that moving fixed-line services into a tariff structure comparable to that of mobile is desirable, as long as fundamental principles of consumer protection and transparency remain integral. Bradley Brady noted that the issue must be approached in a reasonable manner, in line with Ofcom's timetable.

8. ILP Terms of Reference

8.1 Paul Whiteing circulated a revised copy of the ILP ToR. The revised copy incorporates a few minor adjustments in order to speak the language of the new Code.

8.2 References to consumer education have been removed, as an alternative consumer literacy group has been established. Any suggested additions from panel members are welcomed.

8.3 Hamish MacLeod enquired as to whether membership of the ILP should be re-examined, perhaps to include only trade bodies. It is noted that broadcasters have trade body representation at the table, but it may be beneficial for broadcasters to remain, nonetheless.

9. AOB

9.1 Paul Whiteing raised the recent OFT adjudication on scratch card mailshots/supplementary newspaper promotions containing PRS. It was noted that the case clarified the scope of the new legislation through court action. Further discussion with the OFT in this area is to come.

9.2 Hamish MacLeod enquired about the due date of the Budget Statement. In response, Paul Whiteing advised this is currently being discussed with Ofcom. Bradley Brady advised the current aim is for publication in March. It was advised that levy amounts have not yet been finalised.

9.3 Bradley Brady advised that a new stakeholder survey was underway to follow-up on the one taken 2 years previously and the useful insights it granted, leading to actions to overcome issues raised. It was noted that the survey is to be taken again by Think Tank and Sand. Industry members can expect to be contacted for feedback over the next month.

ILP meetings in 2011 at PhonepayPlus Offices

Tuesday 19th April- 10am-1.00pm

Tuesday 12th July- 10am-1.00pm

Tuesday 15th November- 10am-1.00pm

Tuesday 13th December (Budget Meeting) – 10am-11.30am