Phone-Paid Service Authority

Subscriptions - Call for Inputs

Empello provides 360-degree anti-fraud and compliance solutions to the carrier billing industry worldwide. We are happy to contribute and draw on both our UK and global industry experience.

1. **What are your views on the review objectives set out on page 4? Has the PSA got the right scope or are there areas the PSA should include or exclude?**

Our view is that as regulator the PSA has an important role to play in protecting consumers in the Carrier Billing sector, provided that innovation and development opportunities in the industry are not stifled.

The issues around subscriptions are complex and multi-faceted, and cannot be addressed by regulation alone. Indeed, a unilateral tightening of regulations may exacerbate some of the challenges currently faced by the industry.

Aside from the very concentrated global OTT players, the rest of the Carrier Billing sector is currently facing a fight for survival. Due to commercial and operational factors, the pay-out rates from Carrier Billing are significantly lower than those of Credit Cards and other payment mechanisms. To counter this, what Carrier Billing can offer as a USP is a lower friction payment experience.

We do not dispute that there is still work to do in the Carrier Billing sector, but we question if the sector would survive a blanket imposition of an enforced high friction payment mechanic.

The introduction in 2016 of Special Conditions on Adult services and on Competitions/ Sweepstakes in the UK effectively killed these two categories. According to Empello data, in February 2016 Adult was 58% of marketing activity and Competitions were 12%. In the past 28 days Adult was 0% and Competitions were less than 5% of marketing activity.

In our opinion there are other factors that could be reviewed or tightened to ensure services operate with more consistency and with greater consideration for the consumer.

2. **Some subscriptions generate high levels of complaints, whereas others with similar numbers of subscribers generate very few. Do you have any views on the regulatory measures that would better support growth and innovation across the subscriptions, whilst ensuring consumers are protected from harm?**

In many cases regulation is already in place but needs to be applied more consistently:

- Messages that confirm initiation, spend reminders, opt-outs and content delivery, all operate inconsistently across services and mechanics
- It is currently possible to start an SMS subscription service without sending an initiation message. Equally there are currently live services which do not respond to a STOP message.
- Trading standards CCR wording guidance has been loosely enforced e.g. use of 'Enter' for a competition is still accepted despite existing Special Conditions.

These cases illustrate ongoing challenges, which will not be solved by the global requirement of a PIN.

The complexity of the sector is illustrated by the Payforit scheme rules, which have needed extensive work to provide the required clarity and detail, as well as regular review, in order to deliver consumer protections whilst allowing innovation and commercial development.

Many Competitions were using PIN and causing complaints prior to Special Conditions. Adding a PIN does not inherently equal a clearer journey, there are more pertinent issues around opt-ins that could be reviewed first.

Further to this, we currently note an increase in popularity in services that display many of the same traits as Competitions, and use PSMS with third party PIN loop in order to meet the existing conditions. Some of the more traditional PSMS services will suit PIN, just as online Competitions did, and this may cause the market to look backward rather than forward. If the business case does not allow for the significant investment in content that we have seen in the past year, lower quality services could inadvertently have an advantage.

3. Do you agree that different subscription services may require different regulatory responses? Do you have any thoughts on what this variation could look like?

As outlined in our response to Question 1 there are serious commercial challenges currently facing the Carrier Billing sector.

The regulator has an important role to play, but industry in general, and mobile operators in particular, should be given some freedom to develop various propositions, which can support the sustainability of the sector.

To apply regulatory conditions at this point on the basic payment mechanic would pose the following problems:

- Progress has been made by industry, with mobile operators making significant adjustments to their policies across the board. It would at this stage be premature to attempt to translate a working recipe into statutory regulation
- Imposing such a narrow pricing mechanic would pose a serious threat to innovation, and remove flexibility for other healthy services or other commercial and operational approaches
- Legislating on one aspect of the overall consumer experience underestimates the complexity of the challenge to deliver good services with good marketing in the Carrier Billing sector

The list of headings below illustrate some of the important areas where industry is making ongoing progress on the many dimensions of delivering good services and marketing:

- Technical security
- Anti-fraud measures
- Pricing mechanic, price points and value for money
- Use of free periods and their relative prominence versus price
- Advertising sources
- Clarity of marketing
- Quality of service and access to content
- Quality of post-sale experience
- Initiation and service delivery messages e.g. at what point is the consumer told about being in a subscription service

In some of these areas the PSA can add value, whilst in other areas industry should for the time being take the lead, since it would be dangerous to isolate one factor and not take a holistic approach.

An example of where the regulator could contribute positively could be use of Free Periods, where the PSA could look toward the ASA where guidance is extremely detailed.

If the payment process proves too onerous for consumers then genuine, well-intentioned, Level 2 providers will no longer have a business case, but those who can circumvent or muddy advertising material or the payment process will still remain and even take a higher share of the market.

4. **Is there any other information or evidence that you would like to provide to PSA to assist it to undertake more detailed analysis of the existing framework, including around where you see subscriptions heading?**

   Please refer to our data on the impact of previous Special Conditions on the Adult and Competitions sectors (see response to Question 1).

5. **Do you have any experience or evidence to share about effective regulatory approaches in the other jurisdictions or methods of digital payment in which you may be operating, that have successfully balanced adequately protecting consumers from harm, as well as supporting innovation and growth?**

Many regulators around the world take the view that their first preference is for industry to deliver a working and balanced approach. If, after having given appropriate opportunity, this does not happen then the regulator imposes rules.

The recent activity in the UK market shows that mobile operators and others in the sector have been very active in exploring new models and rules.

Our international clients tell us that moving carrier-billing services to a payment flow that uses a PIN reduces revenues by 50-90%. Empello's UK data on the effect on two service categories of Special Conditions in 2016 supports this.

Furthermore, our international experience highlights many unintended consequences of PIN mandates:

- If the payment flow is more onerous, there will be less money to invest in content and hence many markets have become unattractive to those with higher-quality services and/ or reasonable price points.
- There is often an effect of encouraging use of cheaper traffic sources, and lower-value content whilst simultaneously deterring those that have a preference to operate with higher quality, more expensive traffic sources such as Google.
- No improvement in Marketing flows and in many cases a significant reduction in quality of marketing flows, as advertising partners become more aggressive to trick consumers into subscriptions.
- Recent data presented by Empello at the Global Carrier Billing conference shows that PIN does not necessarily prevent Payments Fraud, as App Malware has now evolved to automatically read and submit PINs without any user interaction.
- The internal security of PIN systems is questionable given recent cases in one European country where it was shown that there have been multiple security breaches

We believe that mobile operators should be given the chance to find the right balance of propositions and payment flows which meet the needs of their consumers and their business.

One approach we have seen work very well is to offer sensible and frictionless payment flows for those that have proven they can be trusted to take security, compliance, and KPIs seriously; where Level 2 providers exercise controlled marketing, and where they are providing services of genuine value. If the framework is breached or compliance and KPIs are not met, then this privilege may be lost.

Empello has supported the implementation of this kind of benchmark for a number of mobile operators worldwide and we firmly believe frictionless payments can be used responsibly whilst giving consumers a uniquely quick and easy way to pay for digital content. Protection for the consumer comes in the form of robust monitoring of the pre and post sales consumer experience, as well active payment page protection, underpinned by a clear and detailed framework.