

# **Statement following consultation on Business Plan and Budget 2020/21**

19 March 2020

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## 1. Consultation process

1.1. Our draft Business Plan and Budget 2020/21 was put out for public consultation on 16 December 2019, with a deadline for comment of 23 January 2020.

1.2. We have received four consultation submissions, from:

- Vodafone
- aimm (Association for Interactive Media and Micropayments)
- Action 4
- Mr Paul Muggleton

1.3. We have reviewed each submission in detail and our responses are set out in section 2 of this document. They are based on our understanding of the points in each submission that are relevant to the Business Plan and Budget, and our responses should be considered alongside the respective consultation submissions, which are published separately alongside this statement.

1.4. As a result of the consultation, we have amended the Business Plan and Budget 2020/21. These changes are detailed in section 3 of this document.

## 2. PSA response to consultation comments

### 2.1. Vodafone

- 2.1.1. We thank Vodafone for their submission and welcome their support for “proportionate and balanced regulation”.
- 2.1.2. We note that some of the comments relate to our approach to enforcement, both in terms of the coming year and longer-term in support of Code 15, and we agree with the broad principle of investing resources to prevent consumer harm rather than tackling it after it has happened. However, in our view, the business plan reflects the balance we need to address current and ongoing issues in the market while preparing for the phone-paid services market we expect to see in the future (as described in section 4 of the business plan).
- 2.1.3. As we are required to do annually by Ofcom, we will review this resource allocation balance for 2021/22 and will prepare a (zero-based) budget accordingly. We note Vodafone’s comments regarding the levy requirement and seek to assure them that we will only ever propose to Ofcom a cost base that is necessary to deliver our regulatory remit.
- 2.1.4. We note Vodafone’s support for our consideration of how to make our investigations and sanctions more effective as set out at 4.5.3 and 4.5.4 of the business plan and we agree that we need to ensure we have the most effective means of preventing non-compliant revenues from leaving the value chain. We have worked on this area in 2019/20 (as set out at 3.5.7 of the business plan) and this will form part of our Code 15 considerations during 2020/21.
- 2.1.5. With regards to Vodafone’s comments on Registration, we have launched the new Service Checker following beta testing, and as set out in the business plan at 4.2.3, we will review consumer’s experience in using it during 2020/21. We would note that we are currently in the process of ensuring the underlying database is populated with accurate Registration information by service providers, and that we have a fair and proportionate enforcement strategy in place to deal with non-compliance.

### 2.2. aimm

- 2.2.1. We thank aimm for its submission and note that their members “generally agreed that the business plan delivers what they expect of a regulator”.
- 2.2.2. A number of points raised relate to activities in the current year, and we would assure aimm members that the PSA Board regularly reviews delivery of our business plan, including any changes to planned activity. This process of constant review includes looking at the impact and effectiveness of our work,

with specific reference to the strategic purpose we set out in Section 2 of the business plan. As ever, we remain open to receiving evidence from industry that shows our regulation may be getting in the way of consumers who are knowingly and willingly seeking to purchase phone-paid services.

- 2.2.3. The Business Plan and Budget 2020/21 includes an overview of our work in 2019/20, which we have updated in the final version of the business plan (as set out in section 3). We have responded as appropriate to a range of specific industry issues throughout the year, and will continue to do so through engagement including: the Industry Liaison Panel; regular meetings with aimm and ad-hoc responses to queries raised by aimm during the year; and a broader programme of engagement with industry members (including an annual forum, 1-2-1 meetings and a range of workshops).
- 2.2.4. With regard to the planned activity set out for 2020/21, it is a balance between new activity and delivery of the ongoing nature of much of our work, including, for example, continued assessment of the effectiveness of our policy decisions. Where relevant to our strategic purpose, we will also ensure that we deliver in 2020/21 any stand-alone activity that we have been unable to fully complete during the current year. We note that most of the comments from aimm members are actually in relation to how we might execute delivery of some of the activity outlined (rather than the activity per se), and include areas such as compliance advice, communication with industry members, management of investigations, and data sharing. We will of course take the views expressed into account as we engage with industry stakeholders during the year, both in terms of delivering our day to day activity and as part of the development of Code 15 – for which we have a full stakeholder engagement programme in place.
- 2.2.5. We note the desire of some aimm members for PSA to develop “a better understanding of the technicalities and logistics of a complex value chain”, and we recognise that we need to ensure our intelligence in this area is up to date. We have therefore amended the business plan at 4.3.3 to include specific reference to developing our knowledge around value chains, such that we can continue to ensure complex value chains are not put in place to work against the consumer interest.
- 2.2.6. We note aimm members concern that in setting out our expectations for 2020/21 at the start of section 4 of the business plan, “there is no mention of increasing engagement from organisations that are not blue-chip/app store based”. This is true, with our assumptions based on a combination of factors including: feedback from industry members as part of our Annual Market Review; analysis of market revenue trends; monitoring of market activity; and strategic dialogue with a range of networks and aggregators. However, our assumption around financial growth in the mobile market that there will be

“growth in operator billing and some PSMS” is based on the potential for this to be delivered across all existing providers in the market.

2.2.7. We also note aimm members concerns that we might take different regulatory approaches to those in the value chain. This is again true, but we would seek to assure aimm members that this would be driven by the consumer interest and would be applied fairly and objectively in line with different provider roles or obligations.

2.2.8. A number of comments have been made by aimm members in terms of the PSA cost base, including the view that we should consider cutting costs “in order to ensure that there is the opportunity for growth in this industry the year after next”. We would note the following in response:

- our business plan and budget is subject to approval by Ofcom, and must satisfy their statutory requirement that we are adequately funded to meet our regulatory obligations. Our view is that the planned activities for 2020/21, and therefore the associated budget to achieve them, is the minimum required to meet these regulatory obligations;
- we continue to seek operational and financial efficiencies in all areas, and during 2019/20 we have further developed our in-house IT capabilities and reviewed our approach to investigations and enforcement. Since 2015/16 this approach has delivered £1.1m (21%) in real-term savings;
- as set out in section 2 of the business plan, our overall strategic purpose is to build consumer trust in phone-paid services and ensure they are well-served through supporting a healthy market that is innovative and competitive. This does not necessarily translate into support for growth per se, and in any case, while we have seen growth in certain areas (and declines in other) these are based on a range of factors and would consider our cost base not to be a material factor in either.

2.2.9. In terms of the levy funding of the PSA budget, we note the range of comments made by aimm members. It is true that the absolute amount of levy required from industry is expected to go up in 2021/22 as a consequence of the lack of offsetting collected fines, and have the following points in response:

- our enforcement strategy is comprised of three guiding principles: firstly, to ensure fair and proportionate action is taken to deal with serious consumer harm as it arises; secondly, to underpin compliance with our Code, such that (a) service providers are held to account if they undertake non-compliant activity, and (b) clear deterrents to non-compliant behaviour are seen to be in place; and thirdly, to achieve the most effective regulatory outcomes for consumers, through targeting key issues in the phone-paid services market. We hope it is evident that this strategy should not be driven by funding requirements;
- where a fine sanction is imposed by a Tribunal, we take appropriate debt recovery action to chase down any non-payments. This recent [blog](#) provides further explanation;

- as set out at 1.6 and 6.4 in the business plan, full transparency has always been provided of the unadjusted levy and subsequent use of collected fines to determine the adjusted levy. We remain clear that we need to be funded to deliver our strategic purpose, and that while there is a viable phone-paid services market, our cost base is neither a function of absolute market size or changes up or down.

2.2.10. While we recognise that the absence of collected fines will mean additional levy cost in the market from 2021/22, our view is that the recovery of this by parties in the value chain is ultimately a commercial arrangement between those parties (whether explicitly stated or implied in revenue-sharing agreements).

We would also make the following practical observations:

- the Code sets out that while network operators are responsible for collecting and paying the levy, it should be passed down the value chain to L2 merchants. In reality most network operators pay the levy as a cost of business and do not pass it on;
- we recognise the increase in levy will have a significant impact on our major funders in the first instance, and we make explicit in the business plan at 4.4.3 that our engagement with industry will include consideration of our funding model during 2020/21. As part of this, we will consider the potential wider impacts on the rest of the value chain;

2.2.11. In respect of comments about the estimated size of the market, we would note that as a consumer protection body our regulation is concerned with the broader market implications on consumers, including their knowing and willing engagement with services, and not considerations on the commercial viability or otherwise of individual players in the market.

## 2.3. Action 4

2.3.1. We thank Action 4 for their submission and welcome their support for a collaborative approach to regulation.

2.3.2. We note that much of the content in the submission is similar to issues raised in prior years. In response to this year's submission, we would note:

- with respect to our cost base, our business plan and budget continues to be subject to approval by Ofcom and must satisfy their statutory requirement that we are adequately funded to meet our regulatory obligations. Our view is that the planned activities for 2020/21, and therefore the associated budget to achieve them, is the minimum required to meet these regulatory obligations;
- we continue to seek operational and financial efficiencies at every opportunity and have delivered £1.1m (21%) real-term savings since 2015/16;
- it appears there is a misreading of the information provided at 6.4 in the business plan, since we have not, as asserted by Action 4, increased the

reserves we hold. The figures for “retained funds available” represent the amount of the fund made available to offset the levy, and not the funds balance. The effect of utilising £1,889,745 in 2019/20 and £2,051,712 in 2020/21 means the retained funds will in effect disappear, and, as set out in 6.5, lead to the expected increase in the amount of levy required from industry in 2021/22;

- as previously stated, the quoted market size figure of £763.7m for 2014/15 is incorrect, since the market size (as measured by outpayments from networks) for that year was £443.6m;
- the [Annual Market Review](#) provides the requested analysis of estimated revenue changes by service type;
- our filed annual accounts are a matter of public record and are available from Companies House.

## 2.4. Mr Paul Muggleton

2.4.1. We thank Mr Muggleton for his response and note that it contains a number of comments about issues we have previously responded to directly to Mr Muggleton. In broad terms with regard to this submission we note:

- Fraud is a criminal offence and our remit is limited to the provisions set out in our Code of Practice. We have, however, made a number of regulatory changes within our powers during the 2019/20 year (e.g. Special conditions on subscription services and our work with networks on aggregator platform security) that we anticipate will address many of the concerns raised by Mr Muggleton;
- We are duty bound to follow due process in our policy development and how we investigate, and this can take time for a variety of different reasons. We would reassure Mr Muggleton that while this enables us to hold people to account according to our Code, we also continue to try to identify the most efficient and effective processes possible within the principles of good regulation and the resources we have available;
- Mr Muggleton raises a number of issues that are the responsibility of others and not the PSA, such as the enforcement of County Court Judgments and the application of bars to phone-paid services by mobile network operators.

2.4.2. With regards to business plan activity, we note Mr Muggleton raises a number of points, including around the publication of data, service checker, refunds, consumer forums and the Consumer Panel. We will consider these as we develop Code 15 during 2020/21, but we are also pleased to report that we have already addressed, or have plans to address, a number of specific points raised:

- as planned for the current year, we are currently reviewing our approach to communicating enforcement decisions, which will include consideration of Mr Muggleton’s suggestion that “PSA should publish brief details of the outcome of informal investigations, with a view to ensuring that all customers entitled to a refund are able to claim it”;



- we are currently consulting on draft new guidance on the provision of refunds, which has been based on research into consumer expectations. As part of the planned Code 15 development during the 2020/21 year we will consider further how we can support consumers seeking redress. While there is not mandatory ADR in this market, and therefore we are limited in what we are able to compel providers to do in this respect as the regulator, we will use the development of regulatory standards (as set out in the business plan at 4.1.2) to consider how to benefit consumers in this area;
- we have launched the new Service Checker following a period of beta testing, and as set out in the business plan at 4.2.3, we will review consumer's experience in using it during 2020/21. We note that we are currently in the process of ensuring that the underlying database is populated with accurate Registration information by service providers, and that we have a fair and proportionate enforcement strategy in place to deal with non-compliance;
- we gather intelligence about the market and individual services (4.3 of the business plan), and use this information to consider potential breaches of the Code – including with respect to customer care. We refer to recent adjudications against Unicate Ltd and Premier Ventures to demonstrate our enforcement focus in this area.

2.4.3. We note Mr Muggleton's view that "more attention needs to be paid to enforcement" and would highlight the plans set out at 4.5.3 and 4.5.4 to enhance our capability in this area.

### 3. Finalised Business Plan and Budget 2020/21

3.1.1. After full and due consideration of each of the consultation responses received (as set out in section 2 above), we have identified the following changes to the draft Business Plan and Budget 2020/21:

- at 4.3.3 we have added a specific reference to developing our knowledge around value chains, such that we can continue to ensure they do not work against the consumer interest;
- at 4.4.3 we have added that our engagement with industry will include consideration of our funding model with our industry funders during 2020/21.

3.1.2. We have also conducted a full internal review of the draft Business Plan and Budget 2020/21 written in December 2019, and have concluded that there are only minor changes needed to arrive at a final version:

- we have made the following changes to described activities:
  - at 4.1.1 we have clarified that the call for inputs on Code 15 will take the form of a discussion document;
  - at 4.4.3. we have clarified how we expect to work with service providers in 2020/21 with regard to Registration requirements;
- we have made grammatical changes where relevant.

3.1.3. The final version of our Business Plan and Budget for 2020/21 is published alongside this statement and follows approval of our budget as £4,042k by Ofcom. It contains confirmation of the adjusted levy at 0.36% of outpayments for 2020/21, based on estimated outpayments of £500m from network operators to their industry clients.