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Action 4 response to Registration Consultation on regulatory framework for phone paid subscriptions

Action 4 welcomes this opportunity to respond to your Consultation on regulatory framework for phone paid subscriptions.

As a membership driven trade association representing commercial businesses operating within the Premium Rate telephony sector we are starkly aware that effective regulation is intrinsically linked to the good levels of industry and consumer trust and in turn a buoyant industry. Key to this effective regulation and protection is not making onerous demands on commercial entities or overregulating services types so that innovation is stifled. We absolutely agree consumers must be given all the relevant information at all points in relation to subscription services but worry that currently they ignore updates sent to them and see them as Spam. Which has lead in the 24 months across 2017 and 2018, to PSA receiving 20,129 assessed complaints, of these, 18,826 were complaints about a phone-paid subscription. The majority of these consumers also reported that they did not request the phone-paid subscription service about which they were complaining. How can you prove that they simply didn't just ignore the warnings sent to them. What proportion of children are accessing these services?

It worries us you are not publishing the security data you have requested yet surely this information would help the industry have as full a position as possible to evaluate the best ongoing solution for all involved. Surely all information should be evaluated before you do anything.

Q1. Do you agree with the PSA's assessment that the evidence gathered from the research and other information, data and inputs considered support implementation of Special conditions for all subscriptions as an appropriate and proportionate response? If not, please set out your alternative approach and the supporting evidence.

You mention in your consultation document many times that consumers even if they are sent messages from the Level 1 or Level 2 see them as spam, they do not check their bills

and that of 20,129, complaints 18,826 are related to these services. You have perfectly good regulation within your code and it is your job to implement it. You mention the real issue is with games and apps so why not just address these? What is not clear in all the expensive research you have commissioned on behalf of the industry is, is it a service, service type or operator be they UK or international based that is causing the issue. You need to provide detailed statistics to demonstrate the real issue. Multi Part Chat taught this industry much that low level transactions but a high frequency cause issues. If you over regulate, you stifle innovation and the industry cannot legislate for consumers who do not read and check what messages that are sent to their handset by industry per se. We absolutely agree that if any consumer has clearly seen the price information, frequency, exit and refund mechanism/s then they are protected it is their job to ensure they read the information provided. If the MNO can control and send SMS messages to the consumer which is the update in your addendum surely then the consumer has maximum protection, the network is directly contacting them if they ignore this, then they are likely to ignore any form of communication. Our main issue is that by introducing special conditions and these extra levels to enter a service then the consumer is likely to be confused by too much information and simply not use the services.

Q2. Do you agree with our proposed approach that the proposed Special conditions be applied to all phone-paid subscription services to create clarity and certainty for providers of subscription services, with any additional requirements under other Special conditions not being replicated in the proposed conditions?

In light of your addendum and that an MNO can send directly network messages to the consumer, surely it would be best to go this route for all services and review the situation in 6 months. It appears your real issue is with games and apps. Surely network messages across all services and special conditions for games and apps should be implemented first.

Q3. Do you agree that the research and other information, data and inputs we considered support action on each of the identified issues outlined in this document? If not, please provide supporting evidence?

There is an old adage lies, damn lies and statistics – how are you going to change consumer habits? Indeed, the danger here is if you over complicate services consumers may be put off subscribing. In light of your addendum and that Level 1's (MNO's) can send directly network messages to the consumer, surely it would be best to go this route for all services and review the situation in 6 months. It appears your real issue is with games and apps. Surely network messages across all services and special conditions for games and apps should be implemented first.

Q4. Do you agree with our analysis using the risk taxonomy (outlined from paragraph 249 of this document) that Special conditions represent a proportionate regulatory response to the risk of harm posed by phone-paid subscription services? If not, please provide supporting evidence.

Whilst we agree that special conditions give a level playing field to all services this may stifle innovation and in turn revenue. How many companies are responsible for the complaints levels as they are? Is it a small number who are generating this level of issues, nowhere is there a full break down of how complaints are truly made up i.e. how many companies operate in this market space and how many companies are actually generating complaints. Therefore you risk for a couple of types of services - games and apps - which you state are causing problems, stifling innovation and revenue for all the others services which may be operating without complaint.

Q5. Are there any other issues not addressed through our proposed response that you consider warrant regulatory action in light of the research and other information, data and inputs considered? If yes, please provide supporting evidence.

It is unclear in the addendum if the word STOP is still to be the industry standard for exiting a service, as this instruction has been deleted in your revisions please see page 12. One other concern is that all mobile devices will be able to perform all that you ask in your special conditions for instance the complications of ensuring that the correct options are given to consumer i.e. biometric technology for smart phones/devices and effectively doos programming for android phones/devices to ensure that prompted commands are clear and can be followed. Therefore, surely if the MNO's via SMS can inform their customers of the relevant entry, update and exit messages this must be the best option. The consumer is much more likely to respond to the Level 1 or MNO than the party offering the service

Q6. Do you have any views or evidence on the use and effectiveness of free trial periods of varying durations to support the PSA in considering what might be appropriate in the context of phone-paid subscription services.

As long as any entry length and exit mechanism is clear then there shouldn't be an issue certainly in light of the fact that messages can be communicated at MNO level. The problem with free trials in any environment is to ensure the consumer knows the duration and how to stop being charged, if this is communicated at MNO level this should alleviate the problem of confusion to consumers.

Q7. Do you have any additional comments?

As a trade association it is always a worry for the industry when there is a rise in complaints and this must be taken very seriously and looked at carefully, however over regulation can kill whole areas of the industry as we have seen in the past with Multi-party chat. Its reintroduction was in the main an abject failure. Over complication of the entry mechanism to be able to subscribe to a service will almost certainly see a real decrease in the use of subscription services and therefore we say again, how are you going to change consumer habits? Indeed the danger here is if you over complicate services consumers may be put off subscribing. In light of your addendum and that MNO's can send direct network messages to the consumer, surely it would be best to go this route for all services and review the situation in 6 months. It appears your real issue is with games and apps. Surely network messages across all services and special conditions for games and apps should be implemented first.

We welcome positive affirmation for a consumer to proceed to purchase these services but it appears that this is already in place the real issue is consumers ignoring messages from Level 2's, therefore the MNO's sending messages are more likely to be read and be effective and this seems a sensible and pragmatic as the first step for industry and the consumers. We do of course recognise that subscription services are not just provided via phone but are also provided via the internet but inevitably at some point pass through a mobile device or network, it would appear few services are offered via fixed lines but again your research does not clarify this.

The original consultation seems much like a sledge hammer to crack a nut.

Addendum questions

Q1. Do you agree with our proposal to include use of a secure, consumer controlled, mobile originating short message service (MO SMS) as a method that providers could utilise to fulfil the proposed first or second phase consent to charge requirements (and as proposed at Annex A)?

We however feel that clear announcements at Level 1, effective enforcement via your current code and teaching consumers to read would help. We do believe that MO SMS is a sensible solution and that MNO announcements are the most effective resolution to the issue. Then special conditions would not be required apart from for games and apps.

Q2. Does the addendum provide clarity on the proposed consequential amendments to the service-type specific sets of Special conditions and Notice of Specified Charges and Duration of Calls, required as part of the subscriptions review? Do you agree with the consequential amendments proposed within Annexes B to F? If not, please explain.

These are clear in the way you have set them out. However, we however feel that clear announcements at Level 1, effective enforcement via your current code and teaching consumers to read would help. We do believe that (MO SMS) is a sensible solution and that MO announcements are the most effective resolution to the issue. Then special conditions would not be required apart from for games and apps.

Q3. Do you agree with our approach as outlined at paragraphs 20 – 24 of the addendum? If not, please provide evidence that would support an alternative approach, and/or on any potential impacts of the approach currently being proposed.

These are clear in the way you have set them out. However we however feel that clear announcements at Level 1, effective enforcement via your current code and teaching consumers to read would help. We do believe that (MO SMS) is a sensible solution and that MO announcements are the most effective resolution to the issue. Then special conditions would not be required apart from for games and apps.

Q4. The PSA welcomes feedback on the new receipting-based proposals set out in the proposed Special conditions.

We feel that special conditions could in fact be as we suggested only introduction for games and apps and that other services could be dealt with by MO SMS announcements. No, we do not feel the new requirements will keep you in line with your objectives and certainly not your primary objective which should be to ensure all companies within the industry, not just diligent ones comply with your regulations, alongside allowing the industry to be able to commercially operate and grow.

Conclusion

We urge you to re-consider what you are really seeking to achieve and if this could not be better met by MNO's controlling communication with consumers. The diligent players in the industry do not want consumer harm as ultimately it will destroy their business. This is one area where we believe that you should hold an industry workshop to go through the issues, in this way you can explain your real motivation to request such a change and the industry can seek to help you find truly effective solutions. Please can you clarify what is your intention re the STOP command, as you seem to propose merging various sets of special conditions – and therefore we are not clear as to whether it is “lost” overall, or just deleted in some of your proposed special conditions to avoid duplication. We believe that this is an industry standard and accepted and identified by consumers and it would be a serious error if you are proposing that it is no longer used. We believe that if all MNO's agree that they can communicate directly with their consumers and that the rest of the industry support this, that this is the most sensible and pragmatic approach to resolve the issue, with as we say a review in 6 months' time we would support special conditions on games and apps but worry that for these services we have not had clear data presented to support that they are the real issue.