

Response to the Developing the next Phone-paid Services Authority Code of Practice Discussion Document

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Vodafone is supportive of the need for the United Kingdom to have proportionate and balanced regulation in the Phone-paid Services market. Vodafone continues to work alongside industry and the regulator to deliver a compliant market. Vodafone welcomes the opportunity to respond to the document “Developing the next PSA Code of Practice” (CoP) as published on 27th February 2020.

The PSA document sets out in 64 pages the rationale of the PSA for a new more prescriptive CoP and poses 20 questions to steer the discussion with industry. It follows the publication of the PSA consultation on the Business Plan and Budget 2020/21 on 16th December 2019 and the CoP Terms of Reference document on the 8th January 2020. Vodafone has responded to the Business Plan Consultation.

This Vodafone response should be read in conjunction with the submission from Mobile UK to which Vodafone is a signatory

The 15th CoP revision comes at an important time as not only does the market continue its evolution but also the current funding model for the PSA levy funding will expire for financial year 2021/2022. The PSA must ensure all recipients of regulatory oversight fund the proportionate activities of the regulator.

The Mobile UK document deals in four sections the high level concerns of the MNO community and Vodafone will comment further on the points raised.

1. “Move from broad outcomes to a regulatory approach based on raising market standards”

Vodafone strongly supports the detail of the Mobile UK response under this section heading.

When we have sight of the consultation document we will be able to determine how/if the PSA intends to merge the outcomes based CoP with the detailed rules bound in the numerous Special Conditions and slim down Part 4 of the Code, concerning investigations, adjudications and appeals procedures.

The rationale for Special Conditions being outside of code are understood (addressing harm without being bound into CoP consultations which take 2 years to affect) however they do elevate targeted sectors as especially high risk which projects the wrong message to prospective merchants protective of their corporate reputations. Special Conditions should be incorporated in to the main body of the CoP as general principles for operation rather than high risk mitigations.

The indication that the PSA intends to replace Guidance on topics with detailed regulation on every aspect to the Phone-paid Services experience is neither proportionate nor fair and definitely is not conducive to healthy and innovative market.

2. The over-arching principles for 'pre-operational'

Vodafone supports the view shared in the Mobile UK document that new merchants must have access to the market and with creative uses of new entrant delayed payment mechanics which are designed to create an effective tail of funds if the merchant unexpectedly drops acquisition activity or rapidly leaves the market.

The principle of bonds retained against future misbehaviour signals that Phone-paid Services is an intrinsically flawed market and as above we reject this proposition.

3. Effectiveness of enforcement procedures

If the 15th CoP delivers a disproportionately detailed regulation that inadvertently dilutes the responsibility of the L2 community to deliver robust, fair and transparent services then the incentive for the L2 to shift regulatory focus to other tiers in the value chain increases and therefore so does the time to execute an investigation. The key is to recover fines from the bad actors in the value chain and not introduce fines on easier targets (L1s and Networks) intending to remain as long term participants of the Phone-paid Services market. Regulation needs to demonstrate to L2s that malpractice is financially painful and fines are swiftly delivered.

On the matter of reporting responsibilities, the function of the Networks in the provision of information gathering should be to validate information provided by the value chain and not to drive a requirement for Network Care Agents to follow detailed complaint categorisation processes that may resemble financial accounting processes.

4. Responsibility across the value chain

Currently (quite correctly) the L2 is the focus of regulatory requirements and the cascade of responsibilities changes along the value chain.

The L2 must remain responsible for their services but it has become apparent to industry that the 3 tier definition of the value chain although concise means that actors directly involved in the value chain are entirely overlooked in a regulatory context, examples are 3rd party consent to charge verification services, Charity platform providers, External lottery managers, service facilitators (all normally referred to as sub L1s) therefore the 15th Code should ensure the value chain is fairly represented.

The concerns raised in the Mobile UK response regarding Mobile Operators being required to take active responsibility for members of the value chain they have no contractual responsibility for is well made. MNOs have progressively required more of L1 in terms of Due Diligence and Risk Control (DDRC) and the Security Framework Declaration is a good example of the high standards the L1s are held to, to ensure the consumer is protected from harm.

The proposed introduction of fining capability based on turnover that targets Networks has only one intention and that is to create a level of jeopardy for running Phone-paid Services that is only mitigated by Networks leaving the market and that fails one of the PSA declared aims of supporting a healthy market that is innovative and competitive.

Further Specific Topics for consideration prior to Consultation.

Premium SMS used for subscriptions services.

The PSA should recognise that PSMS is a viable mechanic for services that require a MNO recorded and stored Mobile Originated (MO) message that is not triggered by any form of interaction/connection over the internet. Examples of service sectors that utilise PSMS successfully are charity donations, media (TV/Radio) driven competitions and chat services. Single transaction or re-occurring payment service (bus tickets, road tolls) must have a MNO recorded and stored MO to be valid.

The PSA should prohibit PSMS being used for any form of online service that is a subscription based.

Information Connection and Signposting Services (ICSS)

Industry feels that this a good example of massive amounts of regulatory time and effort being expended to protect consumers from harm from a very real threat where a simple change in regulation would remove the issue.

ICSS services insert themselves between the customer and the brand for financial gain and they do not adequately advertise their costs or purpose before the customer makes the call. The regulation drawn up to stop this fails because Directory Enquiries (DQ) services have call connect capability ("shall I put you through caller?) and the only way to adequately distinguish DQ from Call Connection (+value added feature of call recording) is for Call Connection services to reside in specific number blocks in 087x 084x and 09x and to require that every call has a free to user pre-call announcement identifying the service and the charge and a consent to charge IVR to confirm consent to the charges.

Vodafone calls on the PSA and OfCom to remove the functionality of call connection from within a Directory Enquiry service. This then enables a simplified definition of a legitimate call connection service. Services offering a call recording service must demonstrate a reliable and auditable service exists to qualify.

To conclude, Vodafone looks forward to engaging with the consultation on the draft 15th Code and trust that the comments made in this response are taken into account as your approach develops.

We would be happy to discuss in more detail any of the points raised.

Annex A: Questions in the PSA 15th CoP discussion document

Background

Q1 Do you agree with our proposed overall approach to the review? Please provide an explanation as to why you agree or disagree.

- PSA has already had a prescriptive CoP in the 11th CoP and argued that prescription did not give sufficient flexibility to contain innovative fraud
- The current Special Conditions already sufficiently regulate the user experience

Q2 Is there anything else we should be considering?

Market context

Q3 Do you agree with our assessment of the market? If not, why not? Is there anything else you think we need to consider?

Q4 Do you have any evidence of the market to share with us that you think would support our assessment?

Consumer expectations and experience

Q5 Do you agree with our assessment, based on research, of consumer behaviours, experience and expectations?

Q6 Do you have any other evidence in this area that we need to consider?

Likely future trends

Q7 Do you agree with our assessment of what the future holds? Please provide an explanation as to why you agree or disagree.

Q8 Are there any market developments which we have not factored into our assessment? How do you see these influencing the phone-paid services sector and associated regulatory challenges?

Assessment framework

Q9 Do you agree with our proposed assessment framework? Please provide an explanation as to why you agree or disagree

Q10 Are there any factors we have not taken account of which we should?

Initial thinking

Q11 Do you agree with our proposed initial thinking in terms of proposed changes to our regulatory strategy and approach? Please provide an explanation as to why you agree or disagree.

Potential Code 15 options

Q12 What are your views with regards to how we can best ensure that all firms operating in the phone-paid services sector will follow, and be held to, the same standard of professionalism?

- Q13 What are your views with regards to developing appropriate 'Pre-purchase standards?
- Q14 What are your views with regards to developing appropriate 'Purchase standards?
- Q15 What are your views with regards to developing appropriate 'Post-purchase standards?
- Q16 What are your views with regards to how we might achieve better outcomes for consumers and uphold the reputation of the market through more effective deterrents by considering the range of sanctions available to us?

Other general Code considerations

- Q17 What are your views on our existing funding model? Does it remain an effective model? Or do you think alternative funding models may provide a more sustainable approach going forward?
- Q18 Do you consider the current categories of defined providers capture all relevant providers involved in the provision of phone-paid services and appropriately spreads regulatory responsibility throughout the value chain? Please provide an explanation as to why you agree or disagree.
- Q19 Do you think the current regulatory framework remains fit for purpose? Please provide an explanation as to why you agree or disagree.
- Q20 Are there any areas of potential change proposed in this document which may have an impact which you believe should be considered? If so, please let us know, including any evidence you have as to the likely impact.