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## **Consultation Response**

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# **Special conditions for online competition and online adult premium rate services**

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**Submission by  
Association for Interactive Media and  
Entertainment  
(AIME)**

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## **AIME ([www.aimelink.org](http://www.aimelink.org))**

AIME is the UK based trade organisation representing the commercial and regulatory interests of member companies involved in the interactive media and entertainment industries - where consumers interact or engage with services across converged media platforms, and may pay for those services or content using a variety of micropayment technologies including premium rate services.

We uphold our Code of Ethics and Core Values to create an environment of consumer trust and industry confidence within which our members' commerce can grow. We are committed to furthering the interests of Interactive Media and Entertainment through the regular exchange of information and communication throughout the value chain, effective engagement with regulators and legislators and the presentation of a successful industry image to consumer and business media.

We are the only UK trade association with membership across all elements of the interactive media and entertainment value chain. Our membership represents in excess of 80% of annual industry PRS revenues.

AIME promotes and abides by the philosophy that consumers who are accurately and openly informed of the nature, content and cost of participation in an interactive service experience should be perfectly placed to exercise their freedom of choice and thereby enjoy the most effective form of consumer protection.

To this end, we do not support the predetermination of products that are made available to consumers or pricing of those products or even the length of time that a consumer can enjoy those products provided the consumer has made their choices freely and knowingly and that vulnerable consumers are adequately protected.

### **Member Input**

AIME welcomes the opportunity to respond to PhonepayPlus Consultation on its proposals for developing the regulatory framework to ensure that the regulation of premium rate services and premium rate charging mechanics is fit for purpose as consumers and their surrounding technologies evolve.

To assist AIME in providing a comprehensive input to PhonepayPlus, AIME researched its Members in the following manner;

- Written input from Members
- One-to-one discussions
- Discussions inside AIMEs Board and Member Working Groups

AIME Members who operate in the PRS markets are broadly split into five categories although there is some overlap inside individual Member businesses.

- Fixed Line Networks, Fixed line L1 and L2 providers
- Mobile Networks, Mobile L1 and L2 providers
- Broadcasters
- Charities and Charity enablers
- Industry Support companies

AIME sought responses from Members from all of the represented PRS industries and experienced mainly consistent views.

We have responded separately on the Project 30 Policy proposals. In that response we have requested further analysis before settling on specific Special Conditions. It is essential that both documents are read together.

In parallel with this consultation, the Mobile Operators issued their own consultation (Project Slimline) on the evolution of the Payforit mobile payment facilities and cross network payment scheme. The goal of Project Slimline is to ensure proportionality across the spectrum of services and merchants. This involves identifying risk and providing mitigations for those risks to respond to the high levels of consumer complaints that tend to drive regulatory and mobile operator interventions to the detriment of the whole industry.

Members were very keen to ensure that the two Projects (Project 30 and Project Slimline) plus any new Special Conditions dovetail into each other. Otherwise incompatible remedial action may be taken that, when combined, needlessly over restricts industry.

## General Commentary

AIME is extremely concerned that PhonepayPlus's analysis has led to incorrect conclusions about two service types, resulting in special conditions which may not address the core issue and will create detriment for existing and new providers of those services who currently do not experience consumer issues. We hope that you will take a moment to understand our concerns. We use PPP stated figures.

1. Of the 14,078 consumer complaints to PPP in FY2015/16 for identifiable services, 90% of complainants state they did not request the service. Without further detail, we speculate that these complainants started their complaint journey believing that they are being charged through their operator bill for a service they do not recollect. We believe therefore that the issue may be consumer recall of the agreement to a charge – rather than unsolicited billing.
2. PPP has adjudicated on a range of services from different providers that purport to be running £3 / week glamour services without any evidence that the consumer consented to the charge. If these services are as fraudulent as some people have suggested given the adjudication paperwork, these complaints are distorting the figures. It is vital that these services are eliminated from any analysis. Similarly, it is vital that Payforit and PSMS complaints are treated separately as they are wildly different purchasing experiences.
3. There were issues last year. PhonepayPlus' investigation (as part of the 2015 RRT process) into the services causing the issues showed a high proportion were from online competition and adult services. Largely this identification (performed mid-2015) has been retained despite everything learned since then.
4. Around this time (Summer 2015) it was speculated that consumers using a Payforit charging mechanism (where pricing transparency is guaranteed by the consumer's mobile operator and where a robust mechanism is used to gain consumer consent to the charge) might not recall the transaction despite receiving a receipt immediately afterwards.
5. In response, PhonepayPlus commissioned research (the Craft Report) to investigate this phenomena but geared the research to study consumer journeys relating to online competition and adult PRS instead of a study of consumer journeys in general to understand the concept of "consumer blindness" when transacting online.
6. The conclusions of this research were essentially circular. Having been asked to look for consumer blindness in online competitions and adult services, Craft found consumer blindness in online competitions and adult services.
7. Based on a finding of consumer blindness in online competitions and adult services, PhonepayPlus is now consulting on the need for special conditions relating to online competitions and adult services.

8. There is considerable confusion in the marketplace as to why adult services continue to be mentioned. The Industry Update issued on Tuesday points out that 57% of relevant complaints relate to online competitions and 14% to adult services. The Update also asserts that combined (in 2015/16) these two service categories represented only 10% of industry revenue. Industry is confused because relevant revenue is up substantially this year (at least for online competitions – although obviously not up to 74% of the market), and adult services appear to be tacked on for historic reasons.
9. There is also confusion around why online competitions themselves have been highlighted when the Taxonomy of Risk would tend to indicate issues with (1) the method of promotion, (2) the payment flows currently being applied to online competitions, or (3) both – all of which might easily shift to other service categories (e.g. virus scanner) when the Special Conditions come into force.

## **Analysis of the issue**

Let's assume for a moment that there currently is an issue with both online competitions and adult / glamour services. It is interesting to note that these two service categories are attractive to radically different consumers. Yet it is postulated that they suffer under similar risk profiles and require similar remedial action. Perhaps the issue is not the service types at all. Perhaps the issue is the method of promotion, or the payment flow.

One thing that can be said about both online competitions and adult services is that they tend to be popular.

First, the UK public (replicated across most western countries) love to gamble and are as likely to enter a competition service promoted online as they are for one promoted via television or radio broadcast.

It is interesting to note that broadcasters receive consumer calls misdirected from mobile operator call centres about subscription competition services which they are not supplying but the cause of the mobile operator misdirect is a billing record of an earlier entry by the consumer into the broadcaster's competition.

The reason that this is interesting is because the consumers in question have entered BOTH broadcast competitions and online competitions. However, for some reason they do not remember the online competition – or at least are unable to recollect it as easily.

This does not mean that the online competitions are scams. The vast majority of such services can prove that pricing was clear, yet the consumer ignored the repeating charge information, the pricing information, the receipt message or all three.

This suggests that the issue is not competitions per se. Nor has your analysis identified what aspect (present in online competitions but missing in broadcast competitions) increases the risk and thus justifies Special Conditions.

In contrast, second, adult service users seek out adult content using the relative privacy of mobile phones compared to computer access. Most adult commercial site purchases are referrals from free adult sites or adult search terms.

Again, there is no analysis as to why this discovery route increases risks and thus justifies Special Conditions, or as to why any other characteristic unique to glamour/adult requires special attention.

Simply citing the potential for unreasonable offence is a little weak given that the vast majority of adult services operate behind MNO Adult Verification and the vast majority of adult services are advertised in adult media.

We note that both online competitions and adult services tend to be popular ... both with consumers and therefore with market entrants chasing the revenues. Some of these market entrants cut corners and so more advertising malpractices will occur and an increasing percentage of consumers will be misled to the purchase screen.

A consumer paying attention will abandon the journey at that point; however, research has shown that many consumers are not paying attention for various reasons.

When faced with this issue in 2015, the mobile operators shifted from single opt-in transactions on their Payforit scheme to double opt-in. Post implementation analysis demonstrated that this change has not cured the “consumer blindness” issue.

The underlying issue is apparently more complex. By extension, to be successful the solution must be more nuanced.

Similar issues exist with co-registration sites (co-reg) where the consumer willingly forsakes their right to privacy from advertisers in exchange for entry into free competitions. To qualify for the free competition, co-reg consumers must interact with a range of 3<sup>rd</sup> party offers. Included in these offers are chargeable services which the consumer engages with and agrees to the charge. It appears that the resulting text message to confirm the charges are not mentally linked by the consumer to the online activity they just took and therefore is not used to mitigate their financial exposure.

This form of consumer blindness is not exclusive to premium rate online charges. Considerable blog entries discuss “unauthorised” charging by Amazon for their Prime service which is enabled usually by agreeing to a free trial and can be cancelled by following the instructions in the resultant email.

**We conclude the following:**

Popular online services increase risk for consumers by being popular, through advertising and discovery methods, through the spontaneity of the consumption, and the encroachment of malpractices to exploit the service popularity and consumer trends.

There is a recognised and provable risk that consumers – in a fast browsing mode – may not read the information presented and as a result, will enter a transaction unknowingly.

Furthermore, consumers who have purchased products spontaneously have trouble recalling those purchases and are thus less likely to engage with the provider of the service, instead reverting to their MNO or PPP. Arguably consumers involved in a “considered” purchase are more likely to discuss any concerns directly with the merchant.

Whether this difference in how consumers choose to pursue redress requires a regulatory response is another matter. If, however, this difference in approach does exist, it might explain the disproportionate number of complaints seen by certain services.

It would have been helpful if analysis along the lines of the above was taken (1) before the Taxonomy of Risk was applied (to determine what to apply it to), and (2) after the Taxonomy of Risk was applied (to determine the range of possible mitigate steps).

In contrast there is at least the perception that some initial identification performed in mid-2015 (pointing the finger at online competitions and adult services) has merely been carried through to Special Conditions – the enforcement of which will not address the root problems and thus will not reduce the risk of consumer harm.



## Specific Commentary

The Taxonomy of Risk is good. We have commented in our response to the parallel consultation on why that the Taxonomy can be extended (to identify low risk services).

The approach to risk assessment is good: articulate risks, look for evidence, consider mitigation, and propose policy solutions.

We are concerned that the “Current Mitigation” column appears largely to only consider actions taken by PhonepayPlus. We believe that one goal of Project 30 is proportionate regulation that is not “one size fits all” in that it takes into account the ability and interest (both theoretical and proven through action) of specific merchants to mitigate the identified risks in innovative ways.

We are also concerned that the “Potential Policy Solutions” do not necessarily link back to the stated Risk. Although there is some correlation, there is no attempt to demonstrate that the proposed policy solutions address the Risk completely or to consider whether they are the most proportionate and targeted solution.

Finally, we suggest that some of the conclusions that drive potential policy solutions may be incorrectly informed through a narrow analysis by Craft Research and the lack of follow up to what appeared to be a technical failure. (We are referring specifically of the inability of some users to STOP.)

## PPP Potential Policy Solutions

### **Clearer opt-out process.**

We agree that consumers will benefit from a reply capability to a receipt message for a subscription service and that the reply shortcode, if made free or a fixed low price to the consumer would enable the provider to state the cost of a reply.

We trust that PhonepayPlus are aware that Android phones provide a cost warning to the consumer when sending a message to a shortcode and we believe this message is not a network option (that can be removed or prevented by the network). It is better therefore to have a small fixed charge e.g. 10p and to state in the message the cost of a reply. Our concern would be to state that the reply is free only to have the phone contradict that statement.

We firmly believe that consumers **do** understand the stop command and do use it. The stop command is a huge success of ICSTIS/PPP and our industry. The evidence of its success can be seen in the high stop rate (allegedly 95% within one hour of sign up) experienced late last year by one service that relied upon click training.



In parallel, we firmly believe that consumers do **not** use the stop command when they do not mentally link it with a purchase they have made. Instead, they treat the subscription initiation or spend reminder text as spam and delete it or ignore it. If true, this goes a long way to explain the average complainant's bill of £42 and we believe that this behaviour was demonstrated during recent research. We would argue that the best response is greater awareness of the purchase commitment at the time of the purchase so as to enable the consumer to link the received message with their previous activity.

We would also suggest that aggregator logs for SMS delivery receipts is a more robust way of demonstrating that the receipt message was received by the handset. If these changes are made, then when a consumer complains about a high bill they should be asked why they did not mitigate their financial cost after the first charge. Their answer will then inform any further remedial steps.

### **Provision of Receipts at every charge**

We do not believe that providing more frequent receipts will resolve the issue of an inattentive purchase as the consumer may simply dismiss these messages as increased spam. The issue of inattentive purchasing has to be resolved first.

We also feel that if a consumer was more aware of the purchase, then the receipt is the best mechanism for the consumer to identify and then contact the merchant. The objective then is to provide enough information at the time of purchase. Again, we question whether more frequent reminders will achieve any benefit.

As an aside, there may be benefit in an advertising campaign encouraging consumers to retain text receipts. The act of attempting to retain text receipts will encourage users to consider whether any given text message is a receipt – thus encouraging consumers to notice at the time that they have just entered into a financial commitment.

### **Passing Off:**

We agree that the identity of the promoter is critical when the competition relates to a branded product. This view is supported by ASA precedent.

It would be interesting to see if industry comes up with more innovative ways of illuminating the distinction between the promoter and the prize.

It should be recognised however, that regardless of who the consumer felt was running a competition, they mostly agree to join that competition. As such we feel that the harm of passing off is lower than the financial harm arising from an inattentive purchase. As such, we would place more emphasis on the consumers understanding of the terms of the competition service and its pricing at the point of sale.

## **Double Opt-In:**

The research demonstrated that if a consumer can blindly hit an online payment button without acknowledging that they have committed to a financial transaction, then they are just as capable of hitting the second button as well without acknowledgement. If true, this shows that the current model of a double opt-in will not address the core problem (inattentive purchasing) for consumers in certain environments.

Where there is a risk that a significant percentage of consumers will make inattentive purchases, then the greatest protection is achieved by interleaving a secondary action rather than merely another button press. At the moment MT PINs are proving popular in the market place. A MT PIN solution works in a payment environment where the mobile number is transferred to the payment intermediary after a single screen button is pressed, which confirms the purchase. A text message is then sent to the mobile number with a request to the consumer to complete the transaction by entering the supplied PIN into a second webpage. Other variants include the consumer replying with an MO text, clicking an embedded link, etc.

These approaches add appropriate friction (to an otherwise low friction journey) and additionally provide further evidence of the consumer's opt-in.

## **Clear point of purchase:**

We agree that the point of purchase should be clear, should detail the terms of the service and have a clear point of consumer agreement to the charge. AIME contributed to Trading Standards written industry guidance to show how this clarity should be achieved

We are not convinced that the regulations need to be prescriptive on exactly how the point of purchase is made clearer. Best practice has been detailed. A clear gap will emerge between companies wishing to inform their customers and companies wishing to exploit them.

## **Passwords:**

Mandating a password protected service is more nuanced than it might initially appear. How distinct is the registration step? Does the user have to propose the password, or can the system generate one for them? Are there requirements as to the length, composition, or security of the password? What happens if the user forgets their password? Who witnessed the consumer setting up the username / password combination?

Without answering these questions, there may be arguments that the existing MT PIN flow is equivalent to a secure registration (the user supplies their MSISDN) and login process (where the password is system generated and text to the supplied MSISDN).

We do see opportunities for companies that provide competition services to offer a password protected account where the consumer can return to purchase their next competition entry and this adds friction to the purchase journey. We caution against services that utilise this as a facade however.

### **Unauthorised consent.**

We believe that this is not a “risk” that can be mitigated. We believe that consent should always be obtained and that consent should always be robustly verifiable. As such, we believe that this risk does not have a place in a discussion focussed on improving consumer transparency to a charging commitment. Unauthorised consent is committed by parties who are not interested in consumer protection.

## **Proposed Requirement for Special Conditions**

We totally agree that **something** needs to be done to pull back from the current levels of consumer complaints regarding charges to mobile bills for which consumers have no recall of their agreement to the charge. We believe that the action that needs to be taken must be fully informed, targeted and not likely to unfairly disadvantage the providers of services where consumer recall is easier.

We believe that increased consumer complaints where the consumer does not recall the purchase arise from the following:

1. Unauthorised charges
2. Charges caused by click jacking and iframe masking
3. Charges where the consumer was misled to a purchase
4. Charges where the consumer has clicked through payment pages without fully considering their actions
5. Charges which have been knowingly instigated by a person who is not the bill payer but may be related
6. Charges which have been knowingly instigated by bill payer who then forgets the purchase and ignores the reminders

The issues above can be exacerbated or fuelled by the subscription model as this generates greater reward for the advertising value chain and greater cumulative harm for the consumer.

We believe that the Taxonomy of Risk analysis covers some of these risks but falls short by not discussing the nature of consumer discovery of services and spontaneity of purchase. It also does not attribute a weighting to each risk.

Given a complete set of risks in a Taxonomy of Risk, providers can devise and implement a range of mitigating factors to ensure their services eliminate or reduce each risk, likely prioritising the factors with the greatest risk.

The Special Conditions comprise a collection of mitigations, in the hope that one of them will work, within any clear linkage between the mitigation and the risk(s) and no assessment as to the appropriateness (in terms of proportionality, targeting, or even likelihood of success). We would argue that this style is ineffective for the following reasons:

1. By naming online competition services, this unfairly penalises (for example) online competition services that are not promoted through affiliates, or where the consumer is required to register with the provider first, or where the charges are single and capped to a maximum daily expenditure. We suggest that if a provider already has mitigated certain risks, then the special conditions relating to that risk should not apply.
2. By naming online competition services, the providers who deliberately exploit consumer gullibility and lack of attention at the point of purchase will move their promotion to other services, leaving the good providers stuck with redundant conditions and requiring a new special condition consultation on the next product. Some might view this as an expensive game of “whack-a-mole”
3. The lack of weighting does not enable the correct targeting of the special conditions needed to mitigate the identified risk. Where the risk is mainly uninformed consent, the receipt message loses its designed protection for the consumer, so increasing the receipt quantity is hardly likely to mitigate this risk.

We suggest therefore a workshop with industry expertise to understand how a provider can either self-mitigate risks to avoid the requirements for Special Conditions and then a set of Special Conditions that demonstrate how remaining risks are mitigated.

## **Specific comments on the proposed Special Conditions**

### **ONLC1(a) – Point of Purchase**

As discussed previously each Condition should be viewed as a way of mitigating a specific risk or set of risks. As such, it would benefit from being worded as an outcome rather than a prescriptive implementation.

The desired outcome is that the consumer notices the point of purchase. One way of making consumers notice the point of purchase is to “separate it”. One way of separating it is to make it distinctive from other pages “such as by design and colour scheme”.

While this proposal is possible when the consumer moves from a product page to a payment page, this is not possible in a web page where the consumer is viewing the information and making their purchase decision within the branded environment. Our proposal for ONLC2 will alleviate this issue.

We are also not convinced that the word “abundantly” should be used as this word means “more than adequate; over sufficient”. By definition, regulations define what is adequate or sufficient and therefore it is potentially oxymoronic for a regulation to require anything in abundance.

We advise that reference to Consumer Contracts Regulation compliance should be specified inside these conditions as a minimum with the Primary Authority Guidance used to measure levels of compliance.

We agree with the other parts of ONLC1

### **ONLC2 – Consent to Charge – ‘double opt-in’**

This section is headed “Consent to charge – ‘double opt-in’” but does not state how the “double” aspect of the opt-in is achieved.

We suggest that the first consumer consent to a charge is achieved via a clearly signposted consumer interaction in the form of a button, radio button or tick box (or other positive step using evolving technology) and if required, an entry of the consumers MSISDN and the second step is one of five mechanics:

- a) A PIN is sent to the consumer requiring the PIN to be re-entered into the payment page or area of the web site.
- b) A parameterised link is sent to the consumer requiring the consumer to click on it
- c) A message is sent to the consumer from a shortcode requesting a text reply
- d) An onscreen display requests that the consumer sends a unique code from the screen to a shortcode.
- e) On mobile handsets, an SMS Composition Window is opened and pre-populated for the consumer to send a unique code to a shortcode

Where there is no further web interaction (B, C, D, and E) the messages need to carry the text “...to confirm your purchase and charge your mobile account...” e.g. “Reply Y to confirm your purchase and charge your mobile account for Win a Voucher competition”.

Where there is further web interaction (A), the second opt-in can be signposted in the message or on the second web page.

The payment aspect (collection of the initial consent) and the message loop are conducted by the L1 or are witnessed and recorded (100% of occasions) by an external verification facility or by the L1

The requirement for double opt-in should be unnecessary if the L2 and the consumer create an account for the consumer with a username / mobile number and password combination and the mobile number is verified through a fully auditable procedure with the verification message confirming the provider's details. This would be typically deployed by services where the consumer would return to the site to conduct additional competition entries such as a weekly charity lottery, or a newspapers weekly prize draw.

### **ONLC 3 - Promotional material**

- Although mainly duplicated, we agree with the proposals. It should be noted that "clearly identify the brand of the current service" is likely to require Guidance. Given this fact, a few example guidelines might be beneficial – e.g. a consistent brand name must appear on all service pages, on all payment pages, and in all system messages
- The brand name must be prominent during the journey
- On all service pages and payment pages where other brands appear, the brand name must appear prior to and more prominently than any other brand (e.g. the brand owner of the prize)
- If multiple brands are referenced, the summary terms on the service pages must clarify who is the brand owner.

### **ONLC 4**

Agreed

### **ONLC5 - Receipts**

As stated before, we believe that the issue of inattentive agreement to the charge is the area that requires the most attention and do not believe that increasing the frequency of receipts will mitigate this risk area. We do support an immediate receipt for subscription messages (a subscription initiation message) and we do support monthly reminders. It is worth noting that no other subscription business informs its consumers to this level, and we reject as an industry the criticism levied in the Craft report in this regard.

### **ONLC6 - Opt-out processes**

We have indicated earlier the conflict between Android handset messages and zero rated STOP messages and thus, after this analysis, we support a small acceptable charge for consumers to remove this potential confusion. We recommend that the opt-out instruction should state the charge. On this basis, the charge should be fixed on each network and it is in your regulatory powers to suggest this to networks which will allow networks to agree the rate for the benefit of consumers.

### **ONLC7 –link to website**

The detail of ONLC7 limits the ability of a consumer to follow the link to establish what service they are being charged for. The web page must be allowed to provide a description



of the service, the full terms, the charge and charging frequency and the contact details of the provider. A fully informed consumer can then choose between continuation and cancellation. We would suggest that logs of this access are recorded to demonstrate that the consumer is fully informed.

## **Other Risks**

We have identified earlier in this document the most predominant risks:

1. Unauthorised charges
2. Charges caused by click jacking and iframe masking
3. Charges where the consumer was misled to a purchase
4. Charges where the consumer has clicked through payment pages without fully considering their actions
5. Charges which have been knowingly instigated by a person who is not the bill payer but may be related
6. Charges which have been knowingly instigated by bill payer who then forgets the purchase and ignores the reminders

We understand that PhonepayPlus has invested in online monitoring and is proposing to collaborate with the MNO monitoring programmes. Monitoring will identify:

1. Unauthorised charges as there will be no product on the internet captured during monitoring to explain why consumers are receiving a charge (i.e. monitoring for absence) – accepting of course that no monitoring program can be expected to have visibility over 100% of the market.
2. Charges caused by click jacking and iframe masking should be detected through monitoring but our suggestions for ONLC2 removes the second “click” aspect of the payment and is thus likely to eliminate these issues.
3. Charges where the consumer was misled to a purchase should be detected through monitoring but ONLC1 reduces the risk relating to the mistaken belief that something is free when it is not.
4. ONLC2 removes this risk if our proposed changes are adopted.
5. ONLC4 may reduce this risk
6. Hopefully the combination of the above with ONLC3 will reduce this risk.

## **Special Conditions related to Online Adult Services**

We do not believe that the definition of Adult services is clear as to what services are being targeted and believe it is superfluous to cross reference another definition that could be brought into the title. We explain this further below.

We believe there is lack of knowledge of online environments that would lead to the proposal for condition ONLA 11 and explain our concerns further in this document.



We have already commented on ONLC requirements and as there is significant duplication in the Adult Services Conditions our previous comments and suggested solutions apply here also.

While on this topic, we note that online competitions and adult services are dramatically different both in terms of content, user base, and risks. As such, an uninformed person might find it surprising that there is so much overlap between the proposed Special Conditions for these two service categories.

## **Definition**

The PPP definition for online adult PRS cross refers to Ofcom conditions for Sexual Entertainment Services (SES). We cannot therefore understand why the conditions are not titled "Online Sexual Entertainment Services" as this would provide clarity.

Glamour type services do not fall under the Ofcom definition of SES as they are not "clearly of a sexual nature". Glamour services are not promoted as being services of a clearly sexual nature. Yet ONLA 11 requires an age verification question to ascertain if the consumer is 16+. We are concerned about this requirement.

It is possible that a consumer seeking SES will be diverted to a glamour service as they have failed the age verification checks put in place by the mobile operators, but this is not a direct linkage between the promotion and the site.

This area requires clarity before proceeding with the special conditions. We are assuming from this point onwards that PPP are referring to SES (18+) content.

The report from PhonepayPlus call centre implies that users of Adult services were unaware at the time of calling that they had authorised any service to charge them. This clearly is the problem that needs to be resolved and affects 90% of the callers. It is not until later on that the investigation showed it was an adult or glamour service.

Our suggestions above for online competition services (and any other online subscription services that demonstrate risk) will mitigate these risks.

We do agree that online SES can manifest the harm of offence if accessed by under-age consumers or consumers not seeking the content, but we know that the adult services industry utilise the mobile operators age verification / access control systems before providing commercial content.

We believe that ONLA 11 has been written by someone unfamiliar with online systems. These are automated and not staffed by operators. This condition fits better on a voice based SES, not web based.

All Mobile Operators require 18+ commercial content to be accessible ONLY by their consumers who have passed the networks age verification checks. Any other check routine such as an age question used as an alternative would undermine this protection.

**We absolutely do not support PhonepayPlus inference that SES should be accessible to 16 year olds as this undermines the protection measures that our members have implemented.**

## PhonepayPlus Questions

**Question 1: Do you agree that additional responsibilities placed on network operators and Level 1 providers, to offer redress upfront and inspect consumer complaints and disputed PRS payments, are necessary to improve the post-transaction consumer journey and increase consumer confidence? Are there additional or other measures that could deliver this outcome?**

This proposal is fraught with difficulties and may be illegal as this is interference in a contract between a consumer and a merchant. The Consumer Rights Act and Consumer Contracts Regulations (CCR) stipulate that in the first instance a merchant / trader and the consumer must resolve their issues before escalation. If the merchant has followed the CCR requirements, then a consumer is in a binding contract. The MNO or L1 should not interfere with the contract unless they offer a refund to the mobile phone account (as determined in Consumer Rights) and provide the contact details of the consumer to the merchant for debt recovery. There are rights that fully protect the consumer if they have not agreed to the purchase.

In one provider's instance, a large percentage of complainants (who denied ever making a purchase) acknowledged that they made the purchase after they were shown the log of the payment screens and text messages.

Without dialogue with the consumer and evidence to concur the merchant's story, the networks and L1's would just be processing refunds for anyone who complains and will expect to reclaim this from the merchant. This will create a use and refund environment which will destroy the industry.

The issue at stake is the low recall by consumer of the purchases made and this is where solution priorities must lie.

**Question 2: Do you agree with us that Special conditions are necessary for online competition and adult services? Please provide an explanation to support your response.**

We have discussed this issue in the document above and believe that a greater analysis is needed to ascertain risk from online subscription services and provide mitigation methods that can remove risks. Please refer above.

**Question 3: Do you agree with our assessment of the risks posed to consumers by these services and our policy proposals as set out at pages 7 to 11 and 12 to 15? Please provide an explanation to support your response.**

The risk posed to consumers is from inadvertent purchases regardless of the product / service and that online competitions and adult services, being popular with consumers expose the risks. There are also practices at play to exploit consumers' desire for these services. We have provided extensive commentary above how these risks can be mitigated.

**Question 4: Do you consider our definition of online competitions and online adult PRS in the Special conditions notices to be clear and accurate? Please provide an explanation to support your response.**

We are happy with the definition of online competitions but disagree with the definition of Online Adult Services on the basis that vagaries exist.

**Question 5: Do you have any views on current age verification arrangements for adult services? If so, please share them and provide an explanation to support them.**

Please read document above. Current age verification arrangements for SES are robust but greater education of the consumer base is needed to understand, at both ends of the spectrum, what adults do to access adult services (instead of being served glamour) and what adults need to do to protect their children when given a contract (over 18) phone.

**Question 6: Do you think the proposals made and detailed in the Special conditions notices at pages 17 and 21 will reduce the risk of consumer harm? Please provide an explanation to support your response.**

We have commented extensively on the proposals and would like to see a weighting applied to risk and its mitigation.

**Question 7: Do you consider the proposed Special conditions notices to be fair and proportionate? Please provide an explanation to support your response.**

As a short term solution to an increasing problem of unwitting purchase, they may be appropriate (with AIMEs suggestions taken into account) but must be reviewed in early 2017 to ascertain if the desired effect has occurred.

**Question 8: Can the draft Special conditions notices be improved? Please provide an explanation to support your response.**

Yes, we believe that the Special Conditions should only be needed if the provider has not mitigated their risks. Certain service types already mitigate risks so should not be included

and the conditions should be modified to give priority to the mitigation with the greatest effect. We have offered workshops to discuss re-authoring.

## **Conclusion**

We believe that there is further work to refine the risk assessment, weight the risk, define mitigation, match the proposed conditions to risks, and demonstrate how the risk can be mitigated. We also believe that this weighting will mean that providers who have already mitigated risks are not subjected to the same conditions as providers that have not or cannot.

We are keen to see a re-authoring of the special conditions to encompass valuable suggestions detailed in this response.

We would be supportive of further workshops to assist with this policy and improvements to the Special Conditions requirements based on our comments inside this document.

## **Close**

We assure you that, as ever, our comments are made constructively and with the intent of achieving an effective, fair, economical and proportional regulatory regime for premium rate charged Interactive Media and Entertainment services in the UK.

If any clarification to our response is required or if we can be of any further assistance please contact the AIME office via [regulatory@aimelink.org](mailto:regulatory@aimelink.org)

Sincerely

AIME