



ITV plc response to PhonepayPlus Consultation on Online Competition Services

Introduction

ITV plc welcomes the opportunity to respond to the PhonepayPlus Consultation on online competition services and online adult premium rate services special conditions and agrees with the need to protect users and assist the industry by providing clarity around how these services should operate.

At ITV we remain committed to avoiding harm to all consumers of our premium rate services, including those using online competition services. For example, we do not provide any premium rate services that are targeted at under 18s, and we believe that we take a best practice approach to signaling charges and other important information in a clear and prominent manner in all our promotional messaging. In addition to ensure consumers and vulnerable consumers are not exposed to harm from excessive use when using our services we have spend warning systems in place for all purchases made from our services.

ITV do not provide any online adult premium rate services and therefore do not intend to respond to this aspect of the consultation document (for example we have not answered question 5 as it relates purely to these services). Instead we have selected below the questions relevant to our business and answered them accordingly. Where we do not have anything substantive to add we have not answered these questions and instead have addressed points where we hope to provide insight.

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?

We believe it is helpful and necessary to ensure that there is scrutiny regarding consumer complaints and responsibility around disputed PRS payments to improve consumer experience and aid confidence. However, we do not have any additional proposed measures to deliver this outcome.

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

As a general point in respect of this consultation we would flag that it is important not to conflate the risks posed by adult services and online competition services. These are two very distinct categories of PRS service and we believe the former presents a considerably greater risk of consumer harm. In light of this we believe it is important to ensure that not too many onerous special conditions are placed on providers in relation to online competition services whilst still agreeing in general that it is important for consumers and the industry to run online competition services to a high standard.

Therefore, whilst we welcome measures and steps taken to ensure the reputation of the PRS industry is maintained and service providers meet a high standard in respect of online competition services we do query whether all online competition services need to be captured by these Special Conditions or whether, in light of the evidence provided in the consultation document, the focus should instead be on online competition subscription services.

For example, the consultation document in the third bullet point of the 'Evidence' section (3.3.1) states that 'the prevalence of the subscription model is contributing to significant levels of consumer harm'. This indicates to us that in the main the cause for complaint is linked to subscription services and high spend with certain service providers. We would therefore suggest that the online special conditions are not necessary to apply universally to all online competition providers and are only necessary for subscription based models or those services with particularly high value spend.

In light of this we would propose that the scope and application of the special conditions be limited to only those online competition services where there is a subscription model or those where there is a high risk of economic harm.

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.

Regarding pages 7 to 11 we would broadly agree with the assessment of risks although would reiterate that the evidence seems to point to subscription models as causing the greater level of consumer harm than online competitions in general.

In addition, with regards to the opt-out processes set out in the “potential policy solutions” section our response is as further set out below at question 7. Whilst we believe the policy proposals seem fair we do have strong concerns that the requirement to text STOP to the opt-in mechanism is not proportionate. This is because a number of providers (which include charities) may use shared shortcodes in the set up of their PRS services and therefore rely on having separate opt-out numbers to manage opting out of a service. For these providers the separate opt-out number is a requirement of the technical set up. In light of this the business disruption caused by insisting on STOP going to the opt-in mechanism does feel disproportionate particularly for lower risk services. We have elaborated on this further in our ONCL6 response to Question 7.

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.

The definition of online competitions for the most part seems clear and accurate. However, given the complex nature of the delivery methods for online services there are a couple of minor changes we would suggest to the definition. For ease we have restated and amended the definition below and explained our reasoning by way of footnotes:

‘Online competition services’ are those premium rate competition services (PRS) that are operated online, and where the primary promotion is online and presents a consumer with a chance to win a prize by competing with other entrants, and which is paid for on a pay to enter or subscription basis.

As presented in guidance, some examples of competition services would be:

- (a) Lotteries;*
- (b) Other games with prizes;*
- (c) An entry mechanism into a draw;*
- (d) Information about prizes and how to claim them.*

*‘Online’ refers to those services consumed on personal computers or mobile devices (such as smartphones, tablets, etc.) ~~whether~~ **where** accessed via a Wi-Fi connection or directly through mobile internet portals¹. ~~If the consumer is given the choice to consumer the digital products or services online or to download them for off-line use,~~*

¹ This first revision is to avoid any confusion around the use of Wi Fi for messaging services such as iMessage and to clarify that the internet portal is the relevant identifier here (i.e. where the service is accessed via a safari, chrome etc. internet browser).

~~the service must still comply with these Special conditions.²~~

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; and

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

We will not comment on each and every one of the special conditions but for the most part we believe the special conditions as drafted may reduce the risk of consumer harm. In particular we have no comment on ONLC1 (point of purchase) and ONLC4 but have set out below in our response to Q7 where we feel this reduction in harm comes at the price of being disproportionate with regards to the other special conditions.

Q7: As stated above we do think there are potential issues for businesses in respect of some of the ONCLs and we detail these below. In particular regarding:

ONLC2: We agree with PhonepayPlus that consent to charge the consumer should be sought in a positive, recorded and auditable manner where the cost and name of the PRS service are clearly presented. However, we would suggest that for PRS provider consent being established should be widened to include consent via a response from the user that could include a positive acknowledgment as an alternative to a pin and/or password system. This is because in our experience PRS payment Level 1 service providers that use direct to account payment will often send a confirmatory text to the consumer prior to the user being charged which asks them to respond with a “Yes” or “Y” should they wish to continue with the transaction. We believe this should and would constitute an adequate means of managing the opt-in as a third possible manner of getting consent (instead of a pin or password).

In addition, we would strongly stress that whilst consent must be sought in a positive, recorded and auditable response that the double opt-in need not apply for **‘each’** and every purchase made with the same service but that where a visitor returns to a previously used competition site that a purchase may still take place without re-authentication (via password or pin) providing that it is made clear by way of signposting within the user journey that a further purchase is being made or that they have elected via some variation of a one-click opt-in (i.e. a ‘remember me mechanic’) to make further purchases without re-authentication. This would be

² We are not clear how digital products being downloaded is relevant here. This is for online competition subscriptions so download for off-line use does not appear relevant and instead seems to relate more generally to other digital services/products (not online competitions). The amendment feels necessary for clarity and to avoid accidental inclusion of services these SCs are not intended to capture.

more consistent with how micro-purchases work for digital goods (such as iTunes purchases) and would prevent the PRS industry being at a disadvantage to the digital industry in general. Given consumers are used to purchasing digital goods in this manner we also believe it would not disadvantage consumers (providing as stated before that it is still clear that a further purchase is being made albeit that this further purchase may not need re-entry of a previously entered pin and/or password). An example would be as follows: users first visits the online competition site and makes an initial purchase by way of entry of a password and/or pin and/or affirmative text 'Y' to allow purchase. User then chooses to simplify subsequent purchases by accepting a 'one-click' type authentication journey. When user then returns to the site user is recognized (usually by way of cookies) and can make a subsequent purchase without re-entry of passwords and/or pins and/or affirmative responses but still by positive, recorded and auditable means by confirming at the point of entry (where it is clearly stated that they will be charged) that they wish to make a subsequent purchase. We have proposed amended drafting below in response to question 8.

ONLC3: We believe this special condition to be fair and proportionate but would ask that further clarity around what may constitute signing in be included in the drafting. We have provided further detail below in our answer to question 8.

ONLC5: We believe this to be fair and proportionate as a special condition but propose again that further detail is added to the drafting to provide clarity around how the cost of the service is detailed. Please see below our response to question 8.

ONLC6: With regards to the opt-out method for subscription services, ITV fully supports the establishment of effective opt-out processes but believes that elements of this special condition require clarity and that some may give rise for cause for concern. Whilst ITV do not currently operate any subscription services for online competitions we may choose to in the future and ITV also supports various charities in their fundraising efforts who could be disproportionately affected by this special condition. In addition, for smaller business enterprises (where short codes are shared to reduce overheads) the requirements set out in this condition could give rise to cause for concern. The two key elements of concern are as follows:

“(i) Shortcode(s) used for charging consumers must also receive STOP and STOP ALL requests.” Often SME businesses and services and charitable services will share shortcodes with other businesses, services and charities. In these instances the return path to opt-out from communications will be different from the originating shortcode path. This is technically a preferable solution as it prevents confusion (where a shortcode is shared) as to which service on a shared shortcode the consumer wishes to be is being opted out from. Should this element of the SC

remain it seems likely that this could cause consumer confusion and financial hardship on entities who share shortcodes to keep costs low.

“(iii) The opt-out process must be free of charge for the consumer.” This goes against standard practice for the majority of opt-outs (for example, marketing opt-outs would be charged at a standard rate message; there is no benefit or profit to the provider of the services but it does prevent opt-ing out becoming a burden on them). Given the user has chosen to opt-in to the service it does seem unreasonable and disproportionate that the service provider should then bear the standard rate cost of their opting-out. We would argue that providing the choice of opting-in is clearly and honestly presented there is limited risk here. We therefore would propose that should a consumer choose to opt-out of the service their opt-out be charged at standard rate message cost as is usual practice. We believe given consumers are often on bundle tariffs (where opt-out SMSs often result in no charge) this would not cause consumer harm and further believe (given many opt-outs are currently run with the opt out being charged at standard rate message) this approach would not be considered unreasonable by consumers.

Without the change proposed above we believe the effect of this part of the special condition is disproportionate and that it would place an unreasonable economic burden on PRS providers. This is because the drafting above at point (iii) would give rise to costs over which the PRS provider has no control. For example should a consumer act in bad faith and/or excessively use the opt-out mechanic, where the service provider is having to bear the cost of the opt-out message, the service provider may find themselves subject to spiraling and excessive costs.

ONLC7: We understand that this special condition is intended to only apply to subscription services given it talks of providing a website with an opt-out from billing and payment page being accessible. We think that this special condition is proportionate in light of subscription services but for any service that is not subscription it would neither be necessary, relevant and would cause unnecessary work for the PRS provider as it would require additional website build for high volumes of customers. We would therefore suggest that it is made clear on the face of it that this special condition is intended to apply to subscription services only.

ONLC8: We believe the intention behind this is that there be a one-off notification should a PRS provider operate a website that allows for online competition entry. We would query the necessity of this in light of the general requirement for registration of service providers and propose that this notification requirement be removed entirely as it feels excessive. Whilst in first position we strongly feel this requirement should be removed, should PhonepayPlus choose to keep it we believe it is important that it is clarified in this special condition that notification is not necessary for each and every competition run by a PRS Provider but rather that

notification is only required once for the overall service as a whole. Otherwise we believe this Special Condition will prove onerous and difficult for companies to manage. For example, ITV operate around 350 competitions a year (so approximately 30 a month) and should we have to notify for each and every competition this would give rise to unnecessary and disproportionate administrative burden for both ITV and PhonepayPlus.

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

Please refer to our response above by way of explanation as to where we feel some of the special conditions are not proportionate. To address these points we would propose the following changes to be made:

ONLC2: propose that wording be added so that it reads as follows:

*"At the point of ~~each~~ purchase and prior to delivering the PRS charge, including an initial charge of a subscription service, providers are required to obtain consent to charge from the consumer in the form of a positive, recorded and auditable response where the costs and name of the premium rate service been presented clearly to the consumer. PRS providers must establish such consent via one of the following means of consumer interaction: a) use of a secure PIN loop etc...**or b) use of a password system...etc. or c) use of a affirmative text response from the consumer confirming they wish to continue using the service such as "Yes" or "Y" or d) recognition of a previously authenticated user who has already made an initial purchase where consent has been established by means of a, b or c or they have agreed via opting-in to a single click mechanic to be remembered without need for further authentication.**"*

ONLC3: With regards to the potential requirement that consumers would sign in to the account they hold with the branded service we do feel subsequent guidance on what may cover signing in would be helpful – in particular for our branded services entry of a consumer's mobile number provides the most effective and simplest manner by which an account holder could sign into an online service and/or be recognised by the online service. Use of the MISDN as the identifier also feels appropriate given the nature of the service.

ONLC5: We support the inclusion of the special condition but believe it is important that the in respect only of the charge incurred the service provider only have to detail the actual cost of using the premium rate service (e.g. that the premium competition entry tariff is £1.50) rather than both the entry cost £1.50 plus any standard rate message charges (as these standard rate message charges may vary and/or not be applicable depending on the tariff the consumer is on).

ONLC6: We believe that it would be helpful to clarify that whilst there must not be a premium rate charge placed on any opt-out process that nevertheless the communication of opting- out by a consumer would give rise to a standard rate message charge and that this is acceptable providing always that it is made clear that opting-out will potentially give rise to this charge. This is obviously not a fee from which the PRS provider benefits (and will often be bundled into monthly tariffs) but we feel it is important that any SMS opt-outs remain as is common practice at standard rate message cost.

We also believe that Shortcode(s) used for charging consumers should not necessarily be the same ones that must receive STOP and STOP ALL requests. As stated before there are a range of premium rate services that use a different message path and shortcode to receive STOP and STOP ALL requests. There are strong business justifications for managing this in this way and we believe strongly it would be disproportionate to change this current practice.

ONLC7: Please make clear that this special condition relates only to subscription services. Please see our explanation above in response to question 7.

ONLC8: Please clarify that by service PhonepayPlus do not mean every individual competition but instead the overall online service. Ideally this special condition would confirm that registration of the PRS provider is adequate notification to meet this special condition (and query whether a special condition is needed here at all for this reason).

ITV

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