

aimm Consultation Response



Phone-paid Services Authority Business Plan & Budget 2018-19

Submission by Association for Interactive Media and Micropayments (aimm)

About aimm

The Association for Interactive Media and Entertainment (aimm) is the UK based trade association representing the commercial and regulatory interests of companies involved in the interactive media and micropayment industries.

Our members supply products and services to consumers via different media channels and platforms, facilitate the service delivery and/or the charging facilities or provide the telecommunications and charging mechanisms. This enables consumers to engage with innovative digital and voice services that fulfill a need or provide entertainment.

Our membership is diverse and ranges across digital content providers, broadcast interactive service providers, charities and their support organizations, payment and infrastructure intermediaries, fixed line and mobile network providers.

Our members uphold aimm's Code of Ethics and Core Values to ensure an environment of consumer trust and industry confidence exists within which, our members' commercial interests can prosper.

We are committed to furthering the interests of Interactive Media through the regular exchange of information throughout the value chains, effective engagement with regulators and legislators and the presentation of a successful industry image to consumer and business media.

We promote the philosophy that consumers who are accurately and openly informed of the nature, content and cost of participation in an interactive service should be perfectly at liberty to exercise their freedom of choice and thereby enjoy the most innovative range of services.

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

Member Input to Consultation

aimm welcomes the opportunity to respond to the Phone-Paid Authority's (PSA) Consultation on its budget and business plan proposals for the financial year 2018-19.

To assist **aimm** in providing a comprehensive input to this consultation, we research our Members in the following manner;

- Written input from Members
- One-to-one discussions

Our members who operate in the Premium Rate Services (PRS) market are broadly split into five categories although there is some overlap inside individual businesses.

- Fixed Line Networks, Fixed line
- Mobile Networks, Mobile Intermediaries (L1's) and Merchants (L2's)
- Broadcasters
- Charities and Charity enablers
- Industry Support and Monitoring companies

aimm sought responses from members within all of the represented PRS industries. Traditionally we experience a low response for a business plan and budget consultation mainly due to the levy charge being funded at mobile or terminating networks prior to cascading payments.

This year, we have had an unusually higher level of input, indicating concerns with the proposals that we are reflecting in this response as well as overall concerns of the general impact of regulation on non-global companies ability to conduct business and compete.

Some of **aimm**'s larger member organisations may input their response directly to PSA through their regulatory representatives. Wherever possible, we ensure that views of members made through independent responses are in synergy with **aimm**'s collective views.

As our response is guided and supported by collective member input, some opinions being expressed are not necessarily those of individuals in the **aimm** Executive or **aimm**'s Board of Directors.

PSA Questions

Q1 - Do our plans for 2018/19 sufficiently deliver our role as a regulator? What else do you think we should be doing or not doing?

Member input to this question indicates that the Business plan reflects a stable and confident regulator that has set out its minimum operating level, has established processes that have survived the testing times of the last two years, has enough reserves to provide economic consistency over the next few years and is aiming to establish a greater role with consumers.

aimm supports the consistency for industry, particularly regarding levy fluctuations and code changes but has concerns that the business plan is not ambitious enough to tackle or assist with the core issues that affect the regulated industry that are fuelling industry downturn, that are limiting innovation and will ultimately result in reduction of choice and innovative new products for consumers.

Behind the stable regulatory business plan is an industry that is forecasting year on year financial decline for a number of reasons that are not necessarily attributable to the role of the regulator but for which overall regulation is having a material effect.

Significant changes have occurred and are occurring to the environment in which the premium rate industry operates with a combination of effects. Factors leading to industry constraints include careless and uneducated online activity by some consumers who possess smartphone technology or worse, gift them to their children without any cautions; an increasing “blame culture” from a small segment of those consumers that can effect new regulation; competing (and more effective) online payment products; globalisation squeezing out small players; new regulatory restraints from EU financial and data protection sectors; damaging commercial practices by dominant market players and increases in fraud inside the digital environments.

While we do understand that PSA’s primary role is to protect consumers by authoring a code of practice and then ensuring that the code is being upheld by the value chain, our members believe that PSA should take a long hard review of how it can assist the operating environment under which innovative services are able to flourish while the vast majority of consumers safely and confidently engage with those services. This was, in part, the intent of Project 30, but the momentum seems to have stalled.

We are seeing a trend for most small and large companies planning innovative new chargeable services, to choose premium rate as the last payment choice instead of traditionally being the first. If they choose premium rate first, they quickly change their plan once they examine the complex combination of risks and restrictions.

As an association where our members generate over 80% of the premium rate market’s revenues we are concerned that premium rate as a payment mechanic is rapidly

disappearing, which may encourage some unscrupulous players to use sophisticated frauds and scams to recover declining revenues.

Industry concern reflected to **aimm** is that PSA does not appear to recognise the need to support industry by re-examining its operating model and historical decisions, untangle its complex set of requirements, eliminate regulatory overlap, take steps to reduce its de-facto role in consumer complaint resolution, improve its industry and consumer facing technology and understand why mobile networks continue to fund PSA while duplicating large parts of its regulatory function. The latter just adding to market complexity.

Without adaptations to the regulatory role to cater for the growth of direct mobile operator billing and an increasing number of digital services we anticipate the decline forecasted by PSA for FY 2018-19 will continue and may accelerate.

An ambitious plan from PSA to enable premium rate payments to compete effectively with the ease and simplicity of other forms of payment, while still protecting consumers from fraudulent or shady practices would include:

- A detailed review alongside industry of the consumer support structure for digital content services coupled with direct to bill charging to ensure consumer's simple bill enquiries do not escalate to complaints.
- A detailed review of PSA's role in the consumer enquiry / complaint journey including how the Code itself (Rule 2.6.5) prevents merchants usage of ADR facilities despite legal obligations to advise consumers of ADR
- A review of ADR facilities alongside industry to ensure consumers have access to effective ADR without imposing disproportionate costs on merchants.
- A retrospective analysis (as requested in our Business Plan consultation response this time last year) of the application of the "taxonomy of risk" to services that had never presented a risk, but are now classified as "High Risk" due solely to their product category.
- A retrospective analysis (to support our request made in our Special Conditions consultation response) of the reasons for excluding advertising models used for digital services in the risk analysis of services. Without this, a directly marketed service is given the same risk profile as an affiliate marketed service despite the risks being radically different.
- A review of the technology used to support consumers who arrive at PSA's website to ascertain if it is a) robust enough to ensure accurate information is presented consistently, b) not imposing an unnecessary administrative burden on industry and c) fit for purpose for direct operator billed services.
- Advancement in facilities - alongside industry - to provide more self help to consumers who have been charged via Direct Operator Billing but are unable to resolve the bill amount to the merchant and product detail.

- A review of the reasons why 1,400 registered PRS providers require 1,000 pieces of compliance advice and whether these can be handled better /smarter / cheaper. This will include the complexity and risk factor that can drive compliance advice.
- A detailed review alongside industry of the overlapping, duplicated and sometimes contradictory regulatory requirements operated between the mobile operators and PSA to establish if PSA can condense some requirements into a single source to remove market complexity and avoid duplicated costs.
- A detailed review into the monitoring facilities being used by PSA as this did not appear to detect the emergence of fraudulent affiliate marketing entities continued unchecked for over two years resulting in floods of consumer complaints, increased regulation and a distortion of market competitiveness.

While this proposal may sound like an ambitious plan to assist industry, we believe that there are sufficient reserves in PSA's finances to be able to fund such a plan after consultation with industry members and their trade associations.

Q2 - Do you have any comments on the proposed budget for 2018/19? If you recommend any changes, please clearly identify which areas of activity you expect this to impact upon.

We have congratulated PSA previously and will do so again on sustaining a cost-challenge budget representing real-terms reduction.

We do not agree that the staff levels are the minimum to operate as a niche market regulator and fear that there is limited motivation to look at roles that were created in the past that may not have applicability in the present while the funders are not providing pressure on PSA to examine this.

We do appreciate the need to convert staff to a consumer facing role if the incoming call rate accelerates as has occurred in the past, but we believe that PSA's consumer facing role and coded encouragement to companies to refer consumers to it requires a radical overhaul as stated above.

We have seen networks refer their consumers directly to PSA as well as "consumer advice" websites, when the consumer's issue could have been resolved either with the merchant or with network provided education and information.

The instruction by PSA (rule 2.6.5) to have calls referred to it if the consumer is dissatisfied with the handling of their complaint undermines the legal obligation of the consumer to refer the consumer to ADR and adds cost to PSA. Whilst no effective ADR was available, this needed to be the default option, but the situation has changed with Ofcom's approval of two more companies. ADR options and PSA's role therefore requires review.

We know from experience that increased number of calls from consumers encourages increased regulation which affects all parties. If ADR was involved the costs would be borne solely by the parties causing the complaints with no impact on the larger industry.

As a result, we propose that FY 2018-19 is the year that **aimm** and PSA work together to introduce effective ADR, redefine the consumer journey, add new technology to enable self-help and change the code requirements. We will expect to see savings from this activity in FY2019-20.

Q3 – Do you have any comments on the proposed levy for 2018/19?

We have not received any commentary on the levy from the funding parties.

We note that the levy is kept at a reasonable level by the use of reserves generated from fines and admin charges but the reserves are understood to be in excess of £6m. A not-for-profit company would normally turn reserves into investment to provide long term benefit for the funders, but this is not apparent in the business plan.

Members are also interested in the fine collection success ratio as this has not been reported in the business plan. We understand that this is not confidential information, so would like to see this openly reported.

Q4 – What is your view on the estimated size of the market for 2018/19?

We agree with the forecast made.

Q5 - Do you have any other comments on the Business Plan and Budget 2018/19?

We request clarity on the items below:

Page 11 refers as completed activities including “..consulting on changes in Registration requirements for service providers..”. This consultation was launched after the business plan, so could not be complete.

Page 13 refers as completed work to “providing clarity to industry on the (limited) impacts of the Digital Economy Act 2017 on the phone-paid services market” but this clarity has not been received by aimm (to our knowledge) for redistribution to its members.

Page 13 refers to “undertaking a full assessment of the impact of the General Data Protection Regulation and putting in place resources and controls to ensure we meet the new requirements by 25 May 2018.” We are expecting to see clarity from PSA on how this affects your ability to collect information from providers that will contain personal data e.g. billing logs. Clarity is required on what information you will expect providers to hold in case of an enquiry from PSA. As providers will need to review the legal reasons why they should archive data, we expect to see a legal justification from PSA for industry to continue to archive information including voice recordings.

Page 16 refers to “our work on refund mechanics and Alternative Dispute Resolution (ADR)” As reference to ADR is the merchant’s responsibility and aimm has been reviewing ADR (as discussed at the last ILP), on behalf of our L2 members, we are

concerned that this may lead to contradictory information being released. We are also aware that one ADR company has been unsuccessful in securing a meeting with PSA, so we do not believe that any ADR work to date by PSA has been comprehensive.

Page 16 also refers to “...ensuring strong working relationships with ADR partners are in place, so that we are able to refer consumers with confidence”. We do not believe that PSA is in a position to refer consumers directly to ADR unless PSA is prepared to foot the bill for the service. Referring consumers to ADR is the legal obligation of the merchant who would generally utilise their own choice of ADR and picks up the agreed charge of the consumer complaint. ADR companies should not take on cases unless the merchant involved has already handled the dispute and has agreed to the ADR charge.

Close

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

If any clarification to our response is required or if we can be of any further assistance please contact the **aimm** executive at regulatory@aimm.co