

# THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

Thursday 19 August 2010  
TRIBUNAL SITTING No. 60/ CASE 3  
CASE REFERENCE: 773908

Service provider: mBlox Limited, London  
Information provider: Sonnerier, France

## THIS CASE WAS BROUGHT AGAINST THE INFORMATION PROVIDER UNDER PARAGRAPH 8.7 OF THE CODE

### BACKGROUND

This service was the subject of a PhonepayPlus investigation and adjudication (case reference 773908) that resulted in sanctions being imposed on the Information Provider known as Sonnerier on 17 December 2009. One of the sanctions imposed by the Tribunal was a fine of £175,000.

Sonnerier was advised of the above sanction by PhonepayPlus in an adjudication letter sent by post and sent electronically on 6 January 2010. This correspondence included invoices 9621 and 9624 in respect of the fine and administrative charges associated with the cost of the investigation.

Sonnerier failed to make payment in respect of the invoices, resulting in the sanctions being reverted to the Service Provider. The Service Provider made a part-payment of the fine sanction, a sum of £102,784.25 (representing the sum it had withheld from Sonnerier). The Executive re-issued the invoices to Sonnerier on 7 July 2010, covering the outstanding fine amount and the administrative fine, a sum of £79,093.75.

No payment was made, and the Executive believed that this contravened the PhonepayPlus Code of Practice 11<sup>th</sup> Edition Amended April 2008 ('the Code') and amounted to further breaches of the Code by virtue of the following Code provisions:

- Paragraph 8.9.3b (in respect of non-payment of fine imposed under paragraph 8.9.2d)
- Paragraph 8.12 (in respect of non-payment of an invoiced administrative charge)

### The Investigation

The Executive conducted this matter as a Standard Procedure investigation in accordance with paragraph 8.5 of the Code.

The Tribunal made a decision on the breaches raised by the Executive on 19 August 2010.

### SUBMISSIONS AND CONCLUSIONS

#### ALLEGED BREACH ONE FAILURE TO COMPLY WITH SANCTION (Paragraph 8.9.3b)

*“The failure of any service provider to comply with any sanction within any reasonable time period imposed on it by PhonepayPlus will result in:*

*b a further breach of the Code by the service provider, which may result in additional sanctions being imposed.”*

1. The Executive submitted that Sonnerier failed to make payment of Invoice 9621 in respect of the fine of £175,000 imposed on it by the Tribunal of 17 December 2009.

It submitted that, as the Information Provider has clearly failed to comply with a sanction, a further breach of the Code appears to have occurred by virtue of paragraph 8.9.3b in relation to the fine sanction imposed under paragraph 8.9.2d of the Code.

2. The Information Provider did not respond to the Executive's allegations.
3. The Tribunal considered the evidence and concluded that, as the Information Provider had not paid Invoice 9621 in respect of the £175,000 fine imposed on it by the Tribunal of 17 December 2009, it had amounted to a further breach under paragraph 8.9.3b of the Code. The Tribunal upheld a further breach of the Code.

**Decision: UPHELD**

## **ALLEGED BREACH TWO**

### **NON-PAYMENT OF ADMINISTRATIVE CHARGE (Paragraph 8.12)**

*“All service providers found to be in breach of the Code may be invoiced for the administrative and legal costs of the work undertaken by PhonepayPlus. Non-payment within the period laid down by PhonepayPlus will also be a breach of the Code and may result in further sanctions being imposed. PhonepayPlus may direct that the relevant network operator withholds and passes to PhonepayPlus the sum(s) due from the payments outstanding under the contract between the network operator and the service provider.”*

1. The Executive submitted that Sonnerier failed to make payment of Invoice 9624 in respect of an administrative charge of £6,878 issued to it.

It submitted that, as the Information Provider had failed to pay the administrative charge, a further breach of the Code appears to have occurred by virtue of paragraph 8.12 of the Code.

2. The Information Provider did not respond to the Executive's allegations.
3. The Tribunal considered the evidence and concluded that the Information Provider had failed to pay an administrative charge imposed on it by the Tribunal of 17 December 2009, and that this amounted to a further breach under paragraph 8.12 of the Code. The Tribunal upheld a further breach of the Code.

**Decision: UPHELD**

## **SANCTIONS**

The Tribunal took the view that the case should be regarded overall as **very serious**.

There were no specific aggravating or mitigating factors for the Tribunal to consider.

Having regard to all the circumstances of the case, the Tribunal decided to impose the following sanctions:

- A Formal Reprimand.
- The Tribunal ordered that the existing bar on the Information Provider operating any premium rate service be extended for a further two years, starting from 17 December 2010.