

PhonepayPlus Strategic Plan 2014-17
Response to Consultation by Association
for Interactive Media and Entertainment



AIME welcomes the opportunity to respond with
Member input to the consultation on PhonepayPlus
Strategic Plan for 2014 to 2017

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AIME (www.aimelink.org)

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

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 media.

We are the only UK trade association with membership across all elements of the interactive media and entertainment value chain, which is generally supported by Premium Rate Service (PRS) billing facilities, and our membership, represents in excess of 80% of annual industry 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 are perfectly placed to exercise their freedom of choice and thereby enjoy the most effective form of consumer protection.

Member Input

AIME welcomes the opportunity to respond to PhonepayPlus' request for feedback on the Strategic Plan 2014-2017.

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

- On-Line Survey
- One-to-one discussions
- Written responses

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

1. Fixed Line Networks, Fixed L1 and L2 providers
2. Broadcasters
3. Mobile Networks, Mobile L1 and L2 providers

AIME received responses from all sections of the value chain and from both small Enterprises and significant market entities. Whilst not all members have responded, the responses that were received have all been in support of the position set out in the response.

Some of AIME's larger Members will also input their requirements directly to PhonepayPlus through their regulatory staff or representatives as well as discussing their input with AIME. Outside of these parties, Members rely on AIME to reflect their opinions with a consolidated response. Our response is made up predominantly from Members' input. Views that may be expressed are not necessarily those of the AIME Executive or AIME Board.

General

The opening paragraphs to the PhonepayPlus three-year strategic plan discusses the next three years as having broad continuity with the last three-year plan with some exceptions. We debate these exceptions further in this document.

The market view of the premium rate regulator's current position however is different to that portrayed by the consultation document, suggesting that a tactical review is needed to ensure that the premium rate business arena continues while allowing consumers the freedom to purchase premium rate products or services confidently and with full knowledge of their commitments when making purchases.

The environment in which PhonepayPlus operates has changed dramatically in the life of the principles based code introduced in 2011 and there are no indications that the pace and rate of change will falter. In 2014, we have seen a significant increase in accessibility to digital services and content by consumers through smartphone technology, decline in traditional voice based services due to competitive products aligned to smartphone access to the internet, an increase in digital content consumption monetised through a combination of micropayment technologies of which premium rate services is now one of many, a material increase in consumer complaints being handled through PhonepayPlus (of which the detailed causes are unknown) including those from consumers who have actively and knowingly engaged in purchasable services and an increase in digital fraud aimed at advertisers and consumers.

Against this backdrop, financial entities are increasingly offering new micropayment services and technologies that overlap and compete with legacy premium rate solutions with a regulatory environment that concentrates only the payment element of the service. These financial entities are also influencing changes to EU regulation that has the effect of limiting the scope of PRS.¹

Increasingly, Blue chip companies and brands with high consumer reputation are openly expressing reluctance to utilise premium rate payment facilities due to perceived unpredictable business and reputational risks in anything but simplistic services.

Additionally, premium rate providers who have found themselves under investigation by PhonepayPlus are seeking legal assistance to ensure that they have adequate opportunities for fair representation and access to justice, which increases costs for all parties.

We would therefore encourage PhonepayPlus to pause its review of the three-year strategy and examine in depth how to react to these major changes and to the issues facing both industry and consumers. This will require detailed engagement with the industry, a detailed examination into consumer behavioural changes, a review of the investigation and adjudication process to ensure maximum opportunities for justice prevail and potentially,

¹ Payment Services Directive 2 and European Central Bank Payments Security recommendations enforcing PIN protection for SMS based transactions.

changes to the technical skill set required to understand modern PRS products and changing market dynamics.

Such review should incorporate consultation with other regulatory bodies engaged in the regulation of digital media, broadcast and financial payments to identify anomalies, disparities and best practice that may be helpful to delivering parity and fair process.

There needs to be a cross industry body formed whose remit is to identify threats which are continually evolving from the new digital age and to be able to act quickly in order to eliminate these threats by continually updating guidance and industry best practice.

Having undertaken this review with the collaboration and assistance of AIME Members that represent a significant majority of the premium rate value chain, we anticipate a more ambitious three-year strategy to evolve that provides market confidence and strength with an evenly regulated and balanced industry.

Our commentary below, input from Members and moderated by AIME executive, will hopefully provide the basis under which a far reaching review could commence.

PhonepayPlus Consultation Questions

Q1: Do you have any views on how changes in technology, the market and/or consumer behaviour could affect the PRS industry over the period 2014-17? What do you think the implications of these changes might be for regulation and do you think we have sufficiently addressed these in our strategic plan?

AIME concurs with PhonepayPlus summary of changes in the market and has added our own view in this introduction.

Smartphone penetration has exceeded 60% and is predicted to reach near full penetration by the end of 2017 with only inactive consumers remaining with basic mobile phone technologies.

Mobile billing for digital services is ubiquitous and an option for consumers of all ages and demographics. With such a wide base, even carefully targeted marketing has the potential to fall into the hands of the wrong audience.

PhonepayPlus will need to take a pragmatic approach in responding to situations where children or vulnerable consumers are affected but have not been targeted, supporting refunding consumers on an individual basis while encouraging parents and carers to educate and manage accessibility to chargeable services.

As rapidly as technology is changing, consumer behaviour is evolving. PhonepayPlus should undertake an industry wide exercise on defining the appropriate consumer journey for PRS that takes these changes into account, and is consistent with other consumer protection agencies and regulator-defined (e.g. FCA and Trading Standards) consumer journeys.

As PhonepayPlus own research has shown, the current consumer support methods are not providing satisfactory outcomes for consumers and the current method of handling consumers through PhonepayPlus is costing the industry between £2-3m per annum additional to PhonepayPlus own costs.

New technology and new usage of the technology will naturally result in service innovation. To support the development of new services and to comply with Phonepayplus' remit of "supporting growth and innovation", regulation must remain technology neutral and the regulator should approach new market initiatives in a spirit of mutual cooperation, supported by a clear undertaking to address any unforeseen issues through efficient and non-penalising methods where appropriate.

Consumer confidence is in everyone's interest. PhonepayPlus regulation should not stand out when compared to other consumer regulation across the UK and importantly, PhonepayPlus should strive for its oversight to not be viewed as a burdensome and resulting in unpredictable and unmanageable business risks. In parallel, PhonepayPlus should review its approach to media engagement to ensure that risks are neither exaggerated nor sensationalised.

Mobile commerce is an increasingly important part of retailers consumer engagement mix and awareness of the opportunity of generic mobile payment facilities is growing. However, PRS style payments are losing ground to other forms of payment, including banks entering the market with their own mobile solutions. To ensure PRS can compete, a uniform regulatory approach across all payment methods will be of increasing importance particularly when other payment method regulations separate promotion, payments and products into discrete elements.

AIME fully supports technology neutral regulation for the benefit of both suppliers and consumers, and would like to see developments to bring technology neutrality into PRS regulation. Seeking to work with, rather than replicate (or even replace) the role of other UK regulators, would provide a greater level of consistency in applying regulatory standards across different payment types.

Q2: Do you agree with PhonepayPlus' proposed vision statement for 2014-17? If not, what alternative would you propose and why?

AIME notes that the vision takes no account of the aspect of PhonepayPlus's remit summarised in the Introduction as "supporting growth and innovation".

AIME supports the principle that all providers utilising PRS billing should be subject to the same regulatory standards. We would not favour exemptions on account of company size, or other criteria separate from the test laid down by Ofcom for defining controlled PRS services, which would otherwise distort the market.

AIME agrees with the aspiration introduced by the statement "Consumers of equivalent services are entitled to the same level of confidence" but we believe that inclusion of this vision by PhonepayPlus is impractical due to PhonepayPlus remit and funding mechanisms.

Regulatory standards should not be set in isolation. We have seen global players, relocating to territories with favourable taxation or regulation to suit their business goals. Similarly, to avoid a market exodus from Premium Rate, PhonepayPlus must ensure standards are sufficiently similar to alternative regulatory frameworks, or strike a careful balance between more restrictive standards (as may be needed with this form of payment) off-set by other operational benefits.

AIME supports the goal of applying similar standards across all payment types to provide correct consumer protection and support, though we believe - and as outlined by PhonepayPlus - that this has to be achieved at government level by influencing legislation to support and enforce a similar set of outcomes.

PhonepayPlus Consumer Journey research indicated that other forms of micropayments had fewer issues, better consumer outcomes and better post-sale consumer support than PRS. As a result, we believe that PhonepayPlus efforts should focus on working with industry to raise standards in the PRS micropayment environment to match the other digital payment methods highlighted by the research.

PhonepayPlus derives its powers from the Communications Act 2003 routed through Ofcom's delegation of its statutory role for PRS. This limits PhonepayPlus application of remit outside of the telecommunications industry.

PhonepayPlus funding is derived exclusively from providers of PRS services. The industry at large is of the firm view that if PhonepayPlus wishes to pursue non PRS regulatory activities (other than documenting a vision), alternative funding must be sourced to finance the costs incurred. This alternative funding should be secured in advance of any resource being committed. As no mention of this new activity was placed into the 2014-15 budget submission, we understand that this vision statement remains aspirational.

In the meantime, in pursuit of technology neutral regulation, AIME supports separating out matters concerning marketing and privacy (which apply to all payment mechanisms) from those rules specific to the PRS payment technology (such as the operation of the 'STOP' command). Other regulators (e.g. ICO, ASA, and FCA) who have existing responsibilities in

this area and jurisdiction across payment mechanisms should be encouraged to collaborate with PPP on matters that are not unique to PRS. We believe this collaboration could also have the effect of a cost saving to the industry.

Involvement with other regulators might consist either of a straight referral of cases to these bodies when an issue relates only to matters in their jurisdiction, or where an alleged breach relates to matters spanning more than one regulatory agency that a multi-regulator adjudication panel is convened.

AIME would propose the revised statement:

"Anyone can use premium rate services with absolute confidence. Consumers are best served by a healthy, competitive, innovative market, achieved through PhonepayPlus working in collaboration with industry and other regulators towards a consistent application of consumer protection standards."

Q3: Do you agree with PhonepayPlus' proposed mission statement for 2014-17? If not, what alternative would you propose and why?

AIME supports the proposed mission statement. In addition we would request the inclusion of the following clause:

"Facilitating and encouraging consumers to seek redress through the Merchant's customer service process in the first instance, with regulatory intervention operating only as a backstop."

AIME appreciates, that with any principles-based code, there will be occasions where the interpretation will differ between PhonepayPlus and the provider. Where this exists and there is no evidence to indicate intentional harm, independent (e.g. external) views should be sought on the interpretation of principles.

To encourage collaboration with industry and to address existing negative perceptions, AIME would encourage PhonepayPlus to consider using the word "apply" instead of the word "enforce". In context has the same meaning, but with a more favourable connotation.

Q4: Do you agree with PhonepayPlus' proposed core values for 2014-17? If not, what alternatives would you propose and why?

If successfully and consistently applied, AIME believes these new values are an appropriate foundation for PhonepayPlus to move forward from its current position. Certainly, replacing a long list of adjectives with well thought through set of values is an important step and needs to be followed by concerted approach towards upholding those values.

In the first value ("Forward looking") we suggest that the expression "consumer protection" should be replaced with "consumer confidence". This change reflects the goal of educating users so that they exercise their freedom of choice wisely.

In the third value, we suggest that "Intelligent" should be replaced with "Reasonable" and the value extended to say: *"Reasonable: We demonstrate sound judgment and act on the basis of evidence. We are principled and pragmatic towards providers and are aware of the commercial and technical environments under which industry operates."*

In the fourth value, we suggest that "consumers" be replaced with "consumer confidence". Focusing solely on consumers, subordinates the aspect of PhonepayPlus' remit described in the Introduction as "supporting growth and innovation".

We would also like to add a self-describing value that captures aspects of PhonepayPlus' Objective 2 (described in the next section):

"Prompt, Open and Transparent" – *We understand that both consumers and providers benefit by the prompt identification of issues, enabling appropriate action to be taken. We seek to share intelligence immediately and transparently with the parties involved in either the service marketing or product delivery to remove identified consumer harm."*

Q5: Do you agree with PhonepayPlus' proposed key strategic objectives for 2014-17? If not, what alternatives would you propose and why?

AIME supports the proposed objectives, though feel that these fall short on ambitions to drive external and internal operational standards towards improved consumer support processes, improve the reputation of the industry as a whole, improve access to proportionate and reasonable regulatory treatment when consumer issues arise and improve positive engagement with the industry. An ambitious set of objectives will drive positive development of the premium rate industry, encourage innovation and encourage new market entrants.

We would also suggest that PhonepayPlus should promote confident usage of premium rate services and Objective 1 should be reworded to state "To help consumers to use premium rate services with confidence" to support the narrative in the introduction and in the vision statement.

Statement of Representation

AIME confirms that this response has been compiled following a process of internal discussion and distribution of the relevant Consultation documentation to all AIME members.

A list of members can be found at <http://aimelink.org/company/>

The views expressed in this response are a fair representation of the majority views held by the responding AIME membership. Individual members are actively encouraged to submit their own independent views as they deem fit and at their sole discretion.

Close

We assure you that, as ever, our comments are made constructively and with the intent of achieving an effective, fair and proportional regulatory regime for Premium Rate 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 in the first instance, Andrea Putnam-Moorcroft at andrea@aimelink.org

Sincerely

AIME