

Call for inputs around the extension of PhonepayPlus regulation to remaining revenue-sharing ranges

UKCTA Response to PhonepayPlus

Submitted to PhonepayPlus: 30th January 2012

UKCTA is a trade association promoting the interests of competitive fixed-line telecommunications companies competing against BT, as well as each other, in the residential and business markets. Its role is to develop and promote the interests of its members to Ofcom and the Government. Details of membership of UKCTA can be found at www.ukcta.com.

UKCTA members welcome the opportunity to comment on PhonepayPlus' Call for inputs around the extension of PhonepayPlus regulation to remaining revenue-sharing ranges. We do not however agree with the implied assumption made by the use of 'remaining' in the consultation's title. UKCTA does not believe that it is a foregone conclusion that 084 numbers, just because they are revenue sharing or indeed deemed to be controlled PRS, should automatically sit under PhonepayPlus regulation. Nor do we believe that it would represent an appropriate, cost-effective or evidence-based level of regulation for these ranges. Rather it is an act of expediency in order to satisfy the NGCS review's pricing transparency requirements which could easily be achieved in an *ex-post* manner via enforcement of existing ASA / BCAP regulations or Ofcom's General Conditions (in particular GC 9 and GC 14). Indeed if an unbundled tariff were to be chosen by Ofcom the billing requirements would make the Access Charge element of these calls perfectly transparent to users and we expect current price transparency concerns to largely evaporate. If not, there is a strong argument to say that Ofcom's policy has failed. Indeed it is worth noting that Ofcom has yet to publish its second-phase consultation document which makes it difficult to comment in more detail at this stage.

UKCTA does not believe there is an evidence-based, consumer protection justification to extend the high costs associated with PhonepayPlus' brand of *ex-ante* regulation (registration scheme, code of practice, prior permissions etc.) to the remaining revenue share ranges. We explore the extent of these costs separately in our response to PhonepayPlus' Business Plan & Budget 2012/13, and refer PhonepayPlus to this response rather than repeat the content here. However we would take the opportunity to stress the overriding point, which is that it is both unjustifiable to apply disproportionate costs of regulation in the absence of cost causation and untenable to expect 08x services to cross-subsidise the regulation of 09 services.

UKCTA is disappointed to note that PhonepayPlus' recent documents are contradictory in their analysis of regulatory activity on the 087x ranges. Paragraph 2.9 in the Call for Inputs cites 68 informal cases in the first two years whereas paragraph 3.7 in the Business Plan states 91 for the year. Irrespective of this contradiction, if we assume the 400 complaints cited against 087x services during the first two years to be accurate and set against that the funding raised from the 087x service providers' levy we can see that each of the 400 complaints cost £862.50 in levy contribution. This cannot represent a proportionate or justifiable level of cost for regulation for 087x services. It is undeniably even less suitable for the 084x ranges where the potential for consumer harm is significantly reduced due to the fact that the retail price points are considerably below those for 087x services.

UKCTA questions the generous interpretation of PhonepayPlus' successes in the 0871 market. We find that many of these are likely to have occurred without the regulatory regime rather than as a result of it. Granted, PhonepayPlus was the agency that acted at the start of its regime against three "missed call" scams, but since then there has been little to warrant the costs of extensive *ex-ante* regulation.

Similarly the credit for static revenues in the 087x market which PhonepayPlus attributes to its regulatory regime is an inappropriate measure. PhonepayPlus regulation of 087x occurred because of the demise of its close neighbour 0870 in 2008. All things being equal the natural migration path for the majority of 0870 numbers would have been to 087x. However according to the Flow of Funds study carried out on behalf of Ofcom, whilst 0870 revenues between 2008 and 2009 declined 35% and some 700m minutes, only 93 million of these were captured by the 0871 range (891m vs 984m). It may be true that PhonepayPlus regulation has not had the detrimental effect on 0871 that some expected (these things are ultimately difficult to predict), but it is undeniable that it was a major factor that deterred Service Providers from migrating to the 0871 range. Had the industry perception of PhonepayPlus been different for some reason (e.g. not a premium-rate regulator), PhonepayPlus might have been presiding over a much more successful range. As a matter of fact, having observed the tiny number of complaints regarding this number range, UKCTA believes there is an increasingly strong argument that says that PhonepayPlus regulation of 0871 numbers is disproportionate and represents an unfair financial burden on industry.

Furthermore, in relation to the NGCS review major corporate Service Providers on 084x services will not have the luxury of an alternative revenue-sharing range. We fear their reaction to be a significant number of service providers exiting the revenue-sharing market, whilst smaller operations are hindered by high costs of compliance. We base this assessment on the views of those UKCTA member's Service Provider partners, who have made it clear that corporate business cannot and will not be tarnished by "porn and scam" lines. They view any association with Premium Rate as being anathema to customers and shareholders alike and have cited Corporate and Social Responsibility obligations which would prevent them from being associated with both the market and PhonepayPlus as the regulator of Premium Rate Services.

UKCTA strongly refutes the suggestion made by PhonepayPlus in paragraph 4.5. Ofcom's research does not state that "many consumers already consider 08xx numbers to be premium rate" and the subsequent extension to suggest that PhonepayPlus regulation would not materially change the perceptions of consumers is disingenuous to say the least. What Ofcom's research actually says is: "1.71 Calls to 08xx numbers were seen as expensive, even premium rate, but they were considerably cheaper..." The sentence construction, if the grammar is read correctly and the use of the word "even" given normal usage, makes it clear that any premium rate perception is an exceptional, potentially extreme, view. Furthermore the research goes on to say: "1.110 A few respondents claimed that they had been surprised by the cost of calls to 08xx numbers. However on close examination of their bill, all were surprised at how little these calls actually cost". This does not delineate a scenario where PhonepayPlus regulation would not materially change perceptions; instead it is a picture where Premium Rate association reinforces for consumers a mistaken inflation of the cost of calling 08x numbers. Indeed one could argue that the very association with PhonepayPlus and Premium Rate itself undermines some of Ofcom's attempts to restore consumer trust in 084x ranges.

If Ofcom were to decide to apply PhonepayPlus regulation to 084x ranges, a modification of branding would be essential. This was an argument UKCTA made strongly in relation to the 087x code of practice in order to prevent the failings of the 09 market from being associated with 087x services and it's a position that is even more vital now. Even if Communications Providers internally do not distinguish heavily between ranges it is clear that Service Providers of 084x services believe that they cannot be seen to be cross subsidising traditional Premium Rate Service regulation and that this even extends to the PhonepayPlus

branding. It does not necessarily preclude PhonepayPlus from all involvement, there may be a role to continue its consumer facing work under Ofcom branding, for example as a subset of their existing consumer protect activity.

UKCTA does not see any justification or evidence to support the retrofitting of PhonepayPlus' intrusive and disproportionate *ex-ante regulation* and existing Code of Practice, no matter how light touch, to the 084x ranges. We call upon PhonepayPlus to work with Ofcom to identify how a more proportionate *ex-post* regulatory approach could be lightly applied to realise the benefits of Ofcom's unbundled tariff.