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## **PhonepayPlus Consultation**

### **Mobile Phone-paid Services and their Marketing**

### **AIME Submission**

#### **AIME ( [aimelink.org](http://aimelink.org) )**

AIME is a UK based not for profit trade association that promotes excellence in the Interactive Media and Entertainment industry, an important component of UK telecommunications.

We uphold our Code of Ethics and 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 trade association with membership across all elements of the Interactive Media and Entertainment value chain including publishers, ISPs and broadcasters; service promoters and content providers; service providers and technologists; mobile and landline network operators. AIME members represent over 90% of Interactive Media & Entertainment traffic generated in UK

We welcome the opportunity to respond constructively to this Consultation on Mobile Phone-Paid Services and their Marketing, and thank PhonepayPlus for presenting this consultation to members at AIME's General Meeting 2<sup>nd</sup> July.

## Background

AIME has constructed its response through meetings and dialogue with members. We would also respectfully request that PhonepayPlus recognise and appreciate commonality in responses received from AIME, MEF and the MDA. This reflects the open conference of a wide range of mobile stakeholders towards a generally agreed, uniform industry position on the key issues and proposals.

AIME agrees entirely with PhonepayPlus that as with any consumer-facing business, trust is key. Our own research suggests that transparency of cost is critical, and that any subsequent receipt of higher than expected phone bills (bill shock), will significantly discourage the consumer from participating in phone paid services in the future.

AIME promotes 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.

We appreciate the need for industry to review and address the three main concerns raised in PhonepayPlus' report:

- Unsolicited text message promotions;
- A lack of transparency and pricing clarity; and
- Subscriptions services

As stated by PhonepayPlus, mobile is now the biggest single element of the UK phone-paid market, having grown rapidly to £464mn in 2007/8, with the number of paid for text messages running in to millions. AIME notes the significant rise in consumer complaints received by PhonepayPlus. Our own survey of members does not reflect the same dramatic increase in complaint levels and our last feedback from ICO first quarter 2008 also demonstrated no rising complaint level about marketing messages. However, we do share PhonepayPlus' concern that on their evidence there is a need to address the three areas above, particularly highlighting problems caused by subscription services (18/25 adjudications, or 80% of Code infringements in first 6mths 2008) and this warrants further inspection of certain types of service such as web advertised subscription services.

AIME supports the action registered in the recent ILP meeting (19<sup>th</sup> August), to establish a working group to understand mobile service research, complaint source and recording process, so that industry can identify and address problems proactively.

We note PhonepayPlus' co-operation with the ICO, but would propose there is further consultation with the ICO regarding guidance on marketing lists and opt-in and opt-out, where all the relevant proposed Helpnotes are co-authored with them so that members can receive clear guidance on these issues.

Key issues highlighted in the Review and proposed measures to deal with problems should be considered within context to market scale. The Consultation document appears to demonstrate that the necessary regulatory principles are contained in the PhonepayPlus Code, and that it should be possible to reduce complaints through thorough Code enforcement. AIME is concerned that elements of the consultation show a trend towards prescriptive rather than principle-based regulation, and we have highlighted this in our answers to the questions. The Consultation document often describes exactly how services should work rather than laying out the regulatory principles that premium services should adhere to. If regulation is overly prescriptive then the overall market will suffer, including legitimate services, while those providers intent on getting around regulations will continue to do so. AIME would like to see forthcoming regulation including the 12<sup>th</sup> code of Practice returning to this principle-based approach, without specifying service design.

The suggested extension of a prior permission regime to service type increases the regulatory burden on service providers. AIME would suggest that such a measure is applied to Information Providers (who promote and manage the services) and that it is triggered by adjudication.

AIME has previously suggested that PhonepayPlus consider a registration scheme for Service Promoters (Information Providers) and advocate that the responsibility for premium services where appropriate should rest with the Service Promoter that ultimately benefits the most commercially from these services.

We again attach this as an annex and would be happy to work with a PhonepayPlus to develop this proposal (Annex under previous trading name NOC, and CSO Registration).

We would like to see the adoption of a set of common definitions, terms and concepts, agreed industry-wide. This would avoid confusion over terms including “binary message” which we understand to mean “WAP push”. The consultation document seems to concentrate almost entirely on SMS-based services but we have considered other bearers i.e. MMS, voice and video services in our responses.

AIME has responded to each of the consultation questions below. We have also added comments on the use of the word “Free” as it is proposed to ban the use of this word or similar in the promotion of premium services. Although there is no formal question on this point this is a very significant concern for AIME members and hence we have included it in our reply.

We also suggest that when PhonepayPlus has had the opportunity to consider all Consultation responses they convene a “round table” discussion by respondents where PhonepayPlus’ findings can be openly and transparently discussed before any conclusions are reached and announcements made.

- **Q1 - Do you agree with our analysis of the promotion and delivery of phone-paid services? If not, why not?**

AIME agrees in general with the PhonepayPlus overview in Section 1 and we agree with elements of Section 2, which includes the highlighting of the issues to be addressed in the Consultation. However, as said in our opening statement, there are areas of this analysis that require further consideration and which raise a number of questions. We have tried to address these throughout the rest of our response.

- **Q2 – What other evidence do you have about complaints about mobile Phone-paid services that you can share with us?**

AIME notes that PhonepayPlus has seen an increase in complaints but believes there are other factors that may influence this trend:

- Increasing awareness of PhonepayPlus since the rebrand, increased profile of PhonepayPlus in media since 2007 interactive broadcast complaints, and investment in promoting the organisation
- Increasing trend for consumers to call PhonepayPlus first rather than calling their Mobile Network Operators or the Service Provider
- Further to discussions between the MNOs and PhonepayPlus an increasing number of complaints are being referred by MNO Customer Services to PhonepayPlus
- Increased use of services and more sophisticated handsets used by wider percentage of the population
- Seasonal increase in usage in Q1 which therefore means a corresponding rise in complaints

AIME agrees that the levels of complaint shown by PhonepayPlus require further investigation and cause for concern. However, it is difficult for AIME to comment fully on PhonepayPlus complaint levels without being able to see the same data concerning complaints that PhonepayPlus has reviewed. AIME has requested to see this data via the ILP and hopefully this breakdown can be provided – by mobile network operator referral, public, in house, by service, service type.

It is also of note that the majority of complaints made relate to the marketing of services and format of subscription service. This suggests that complaints are about a specific type of service and appropriate attention should be paid to this service type.

It should also be noted, that having surveyed members who represent 90% of the UK market, there has been no discernable reflection of these complaint levels. Most calls to members' call centres are simply to request assistance, for example help in unsubscribing from a service. Significantly in the last three months most of our members have experienced a steady drop in complaints. This is not to say that further attention is not required, but it should be proportionate and directed.

- **Q3 – Do you have further evidence about the issues arising from mobile Phone-paid services in other countries, or the effect of any action taken to regulate those issues?**

Cross industry co-operation with PhonepayPlus and self-regulation, including the Mobile Network Operators own CoPs, have contributed very significantly to the development of a legitimate premium-billed market. This positive trend continues with the development of the Mobile Network Operators Payforit Trusted Mobile Payment Framework which has been developed with the input of AIME members from the Service and Information Provider communities. By its very nature, market growth and technological development raises issues and the UK market has been well equipped for a number of years in building a regulatory environment that promotes business growth in a stable and proportionately regulated environment.

Members who are active in other territories report that the regulatory approach is often different to that of PhonepayPlus. If a service is investigated and found not to be compliant, it is stopped but the Regulator gives clear instructions on how the service should be changed before it can be re-started. This is similar to the Red and Yellow cards system operated by the UK Mobile Network Operators. This approach stops the offence and quickly remedies it. Regulators will pick a particular topic and forewarn industry that they will be investigating a particular topic or type of service. Service Providers then have to ensure that all their services are compliant.

## Germany

Members believe the model in Germany to be too draconian and unnecessary in the UK market. Our anecdotal evidence from members suggests that double opt-in has resulted in a 30% drop in the uptake of services. Prohibition of SMS marketing would be considered unnecessary and beyond the scope of current Data Protection regulation.

## The Republic of Ireland

In the Republic of Ireland the regulator Regtel requires that all premium services first obtain prior permission. In practice members report that this has inhibited the market as all premium services are subject to lengthy processes, requiring that all the required information is sent back correctly before the application can be processed. This approval process can take several weeks. Members also report that this is often without any flexibility being shown for different service types.

A problematic area is supplying the final format of adverts before permission is granted. Promotional material including websites must be mocked-up and submitted before being approved. This increases the costs and timescales and deters new, smaller players from entering the Irish market. Typically, as in the UK, media customers tend to make changes to advertising and promotional material right up to the last minute but have already committed to placing the media. If there is a delay in approval due to lack of final information or follow-up questions with Regtel this can lead to promotions being delayed. It is difficult to launch very topical services, which have a short shelf-life e.g. Olympic Games promotions.

In summary members commented that while there is nothing within the code of practice that could be considered as unreasonable, the practical implementation of the code including the processes, has tended to be a barrier to some reputable Service and Information Providers implementing services.

AIME is concerned that if PhonepayPlus were to implement a prior permission regime for some services then they would be subject to similar delays for service approval, which could deter legitimate services from being launched.

## Australia

In Australia members are aware of forthcoming changes that will impact the market. One MNO, Telstra, is bringing in a new requirement for MO opt-in for all services, thus ruling out other methods such as IVR or PIN based registration.

It is feared that the market will fall by around 30% as a result. However this new requirement does not take effect until 11<sup>th</sup> September and so it is not yet possible to determine the results.

## USA

Members report that the requirement for double opt-in for premium services has reduced traffic significantly by between 30-50%. One particular member reported even higher levels of drop off with only 12% of consumers confirming with a second MO.

Participation TV requires a double opt in unless the price point is \$1.49 or less. This usually results in around 50% drop off in participation rates when requesting double opt in, but obviously this varies depending on service and target market.

When the requirement for double opt-in was recently lifted for standard-rated messages, members reported a five-fold increase in that traffic. AIME believes that this shows that double opt-in significantly discourages consumers from using services even when they are legitimate.

- **Q4 – Do you agree with PhonepayPlus’ assessment of the risk of mobile phone-paid services to children and other vulnerable groups? If not, then please provide any data or other evidence you have.**

AIME agrees with the assessment that at present the risk to vulnerable groups is “no greater than the general risk to phone-paid consumers”. We therefore have no further evidence to add but would be

interested to understand what percentage of complaints received by PhonepayPlus related to children's services.

- **Q5 – Do you agree with PhonepayPlus' assessment of the risk caused by promotional SMSs that carry charges or “chargeable pushes” of which a consumer is unaware? If not, why not?**

There is some confusion over what PhonepayPlus mean by 'chargeable pushes'. However we have interpreted this to mean a WAP push which once opened takes the consumer directly through to a WAP page and is immediately charged, without first being aware of the price or consenting to pay.

A promotional SMS should never be chargeable. AIME believes that there is an already very clear distinction between free promotional messages and chargeable billing messages and believes that this is well understood within the industry.

The 11<sup>th</sup> CoP and Mobile Network Operator CoPs already make this distinction clear and so AIME believes there is no need for any further regulation or definition of “chargeable pushes” as these are simply billed messages and should be treated as such under existing regulations.

AIME therefore disagrees with the assessment that WAP push messages are a risk per say, but clearly these messages should not result in users being charged automatically. We believe that there is no higher risk as long as consumers are not being charged before knowing the price.

AIME fully supports the principle that consumers should be fully informed of the price as detailed in its Consumer Charter.

To prevent further confusion AIME suggests that an industry-agreed glossary of terms should be produced. We would like to support the development of such a glossary.

- **Q6 - Do you agree with PhonepayPlus' assessment of the risk caused by promotional SMS messages with no clear opt-out facility? If not, why not?**

AIME agrees that there is a risk but believes this circumstance is already covered under existing regulation, including ICO requirements and therefore also the 11<sup>th</sup> CoP. The ICO requires that an opt-out facility is provided at point of purchase and on every other subsequent message.

We therefore question the need for more regulation and ask why PhonepayPlus believe that premium mobile services should be treated any differently to any other type of promotion?

- **Q7 – Do you agree with the proposed conditions, to be included in a Statement of Expectation for mobile phone-paid services? If not, why not?**

AIME's view is that promotional messages that carry a charge are in fact billing messages and therefore the user should already be informed of the cost of receiving such messages under existing regulation in 11<sup>th</sup> CoP. We are concerned that this may only blur the distinction between free promotional messages and chargeable billing messages.

Promotional messages should always be free of charge and headed “FreeMsg” or similar. If promotional messages are promoting WAP sites, then the user must be clearly informed of any charges before using that site, including any charges for accessing a landing page. They must also be able to exit the site without being charged.

We also believe that industry is complying with this requirement.

- **Q8 - Do you agree with PhonepayPlus' assessment of the risk caused by promotional SMS messages with no clear opt-out facility? If not, why not?**

Duplicate of question 6

- **Q9 - Do you agree with PhonepayPlus' assessment that providing the originating shortcode as part of the title, and clear instructions regarding the texting of STOP to opt-out within the body of the message, is the best practice for all promotional SMSs that do not use the binary format? If not, why not?**

AIME entirely supports the principle that there should be an opt-out facility in marketing messages as this is already required by ICO and hence also by the 11<sup>th</sup> CoP.

However it does not agree that PhonepayPlus should be suggesting the method/s by which this should be achieved. Again AIME believes that PhonepayPlus should be defining the principles for regulation but not defining how they should be implemented. It is for the Service Promoters to incorporate these regulatory principles into their service design. PhonepayPlus should remain technically neutral and avoid prescribing technically specific mechanisms.

We also note that this question only addresses SMS promotional messages and not other bearers such as MMS. If a consumer received a promotional MMS then it may be expensive for them to reply STOP in order to opt-out. Furthermore it is not technically possible with some voice and video services to reply with STOP and so another method for opt-out should be provided by the Service Provider.

- **Q10 - Do you agree with PhonepayPlus' assessment that option a) is the best practice opt-out facility for promotional SMSs using the binary format? If not, why not?**

Again whilst supporting the principle of providing clear opt-out, AIME does not agree that option a) should be the preferred method.

Technically we note that there are only 11 characters available in a WAP push message header and therefore question whether this is a practical solution to include STOP, a keyword and service information in only a few available characters.

We would suggest that it is equally acceptable to provide opt-out on the WAP landing page, provided that it is positioned towards the top of the WAP landing page. AIME has received guidance from the ICO supporting this approach.

Again it should be for Service Providers to choose how to implement the principle of opt-out best suited to their service.

- **Q11 - Do you agree with the proposed Statement of Expectation condition? If not, why not?**

AIME has no issues with the SoE as we believe this reflects existing regulations but asks that is it co-authored with the ICO.

- **Q12- Do you agree with PhonepayPlus' assessment of the consumer risk arising from cross-promotion, and the proposed Statement of Expectation condition? If not, why not?**

As stated, it is standard practice and accepted under PECR that merchants can cross promote on receipt and AIME agrees that promotional material in a charged or reminder message should not mislead.

PhonepayPlus states that the majority of subscription services include cross-promotional messages. The Mobile Network Operator Premium Text - Code Extension (V5.0) defines what messages should be received as part of a subscription service. Under this Code Service Providers are not excluded from including cross-promotional text in billing messages and in fact some companies use billing confirmation messages on pay per view services to remind customers to stop browsing if they don't want to be charged.

While in theory there may be consumer risk as cited by PhonepayPlus' example of cross promotion, from surveying members we are unaware of any particular problem that exists. We do agree with PhonepayPlus' Statement of Expectation as far as promotional messages should follow after information on the original service and also that the message should clearly distinguish between the original service information and promotional message. However we disagree that it should be necessary to use further prescriptive labelling such as the prefix "ADVERT" or "PROMO" as suggested.

- **Q13 - Do you agree with PhonepayPlus' assessment of recycled MSISDNs, and our proposal that service providers prove the MSISDNs on their opt-in lists have not recently been recycled? If not, why not?**

Service Providers do not compile or own the MSISDN databases, this is the role of the Information Provider or Content Provider. Information Providers manage their own marketing lists containing the MSISDNs of individuals who have purchased from them.

The proprietor of individual MSISDN is the Mobile Network Operator. Mobile Network Operators offer bespoke services to help ensure that recycled numbers are removed from databases. They also require the removal of MSISDNs from databases that have not been active in the last six months

Requesting Information Providers to prove MSISDNs on their opt-in lists have not been recently recycled is not practical without a consistent and agreed cross-operator solution that would allow companies to check the status of MSISDNs. Access to such information currently varies by Mobile Network Operator as does the length of time a recycled number remains in quarantine.

To be practical a universal MSISDN look up system should be an automated service that all Service Providers can use without needing to involve the Mobile Network Operators on each request, and should provide an immediate response. AIME would support any initiatives to solve this problem as members do not want to promote their services to the wrong consumers, especially as it costs them approximately 3p each time they do so. However, such a facility is not best applied through regulation but by industry continuing to work together and develop sensible service procedures.

With better enforcement of clear opt-out processes any problems that exist should improve. In summary AIME does not agree with the PhonepayPlus proposal.

- **Q14 - Do you agree with PhonepayPlus' assessment of opt-in lists sold or traded to third party companies, and our proposed conditions? If not, why not?**

AIME believes that the rules for opt-in are already covered by existing regulation and that PhonepayPlus appears to be trying to treat mobile premium services differently.

AIME questions whether this proposal would outlaw certain methods of opt-in. For example, a consumer may enter a competition by post and choose to opt-in for further promotions by entering their MSISDN on a coupon. We believe that this is an example of a valid opt-in under ICO guidance but this proposal appears to rule out this method?

We agree that the practice of trading or selling lists has damaged the industry's reputation. However this practice has declined significantly recently. Most Service Providers realise that good quality databases with legitimate opt-in are vital and have therefore focussed their efforts on building these up in-house. In-house lists are too valuable to be traded.

We also think that PhonepayPlus should consider that the promotional and billing messages for a service are often managed by different Service Providers and that this should be taken into account when investigating services.

AIME would support the proposed Helpnote as it confirms existing regulation though ask that it should be co-authored with the ICO.

- **Q15 – Do you agree with PhonepayPlus' assessment of the issues that could lead to consumer confusion about a previous opt-in, and our proposal that marketing must begin within 2 weeks of the consumer opting to receive it? If not, why not?**

AIME believes that the key point is that services should be promoted in an appropriate manner according to the type of service. This is the role of the Information Provider rather than the Service Provider.

Given the interactive nature of the mobile medium many services will be promoted immediately. However as indicated this will not be appropriate for "seasonal" services and AIME feels is it overly

prescriptive to set a time limit. Again, we feel the principle of appropriate promotion should be set out rather than the specific timeframes.

- **Q16 – Would you exempt promotions tied to a specific date (e.g. consumer’s birthday, Easter, start of the football season) from the 2 week requirement in Q13, as long as the consumer is clearly informed of the intention to use date-specific promotions when they opt-in? Please give your reasons.**

AIME believes that the proposed two week rule is not realistic and could potentially increase “spam” as Service Providers would need to send an extra message in the two weeks to say the service would be provided sometime in the future.

As long as marketing messages meet ICO requirements then no time restrictions should apply. Also setting time limits potentially impacts new technology and service developments.

However if it is still thought necessary to put a time limit on promotional messages, then any proposed solution should be proportionate to the nature of the service.

- **Q17 - Do you agree with PhonepayPlus’ assessment of MSISDN verification on PC based websites offering phone-paid service, and the risks to consumers in terms of fraudulent opt-in? If not, why not?**

AIME understands that there have been past problems on web-based services caused by consumers entering other people’s mobile numbers without their consent. The question posed seems to be only concerned with the creation of marketing lists with fraudulent opt-in rather than any unsolicited billing messages that follow. However we have addressed our comments to unsolicited billing messages also as this is the issue causing most consumer harm.

We do not believe that these types of services have caused significant consumer harm or that these practices are being employed to create fraudulent opt-in lists. For example, the scenario suggested (in 5.38 ) would require an end user to receive an unsolicited password by SMS, go onto the internet and type the URL and (presumably having seen the website terms and conditions) input the password to subscribe to the service. That seems a particularly convoluted way of attracting subscribers through unsolicited marketing.

AIME accepts that a temporary IP address is not acceptable as conclusive proof of an opt-in (5.44). However PhonepayPlus would appear to be endorsing this method in the proposed confirmation for subscription services “To confirm click the CONFIRM button below” (sections 7.26, 8.6, Annex B p3). Can the position please be clarified?

Other methods should not be prescribed providing there is a robust and auditable trail, e.g. name, address and mobile number.

Some members felt that the Mobile Network Operators should not require an MO opt-in as this may cost the user more than other equally valid methods of opt-in.

- **Q18 – Do you have any view of evidence as to whether methods i) or ii) are likely to cause consumer harm? Please provide any viewpoint or material evidence you have.**

AIME does not believe that methods i) or ii) are likely to cause significant consumer harm with regard to marketing opt-in.

Members are concerned that MO should not be the only method for marketing opt-in as users are charged which discourages uptake. One member gives the example of a test marketing campaign where the registration rates for PIN only method were 70%, whereas for methods involving an MO they were 36%.

We suggest that the message containing the PIN number should not reference the original website. If a consumer has not entered their MSISDN and then receives an unexpected message they are more likely to just reply with “ok” without having read the terms and conditions. So once the user enters their MSISDN

into a website the service must send a unique PIN to the handset. The user is much less likely to simply reply “ok” to an unexpected PIN number.

With regard to subsequent billing messages we have commented on each of the methods below:

Method i) This method does not include an MO. However, AIME notes the Mobile Network Operator requirement for a MO opt-in so this method could not be used for subscription services. This could however be used for lower value one-off purchases e.g. a Java game costing less than £6.

Method ii) AIME thinks that this method could be used for high value services costing over £6 which could include subscription services as this includes an MO reply.

Method iii) AIME is concerned that when instructions become too complex, users will not complete the transaction. We believe that this method is over-complex, especially for one-off transactions.

- **Q19 - Do you agree with PhonepayPlus’ assessment of the general failure to provide adequate consumer information in respect of mobile phone-paid services, and our proposed conditions? If not, why not?**

AIME strongly believes that there has not been a general failure to provide adequate information. It is our view that there are a small minority of services which cause problems. The issue therefore is one of enforcement rather than regulation.

AIME has previously suggested a Service Promoter registration scheme to PhonepayPlus where rogue service promoters could be more readily identified. AIME is happy to meet with PhonepayPlus to further consider such a scheme.

- **Q20 - Do you agree with PhonepayPlus’ assessment of the transparency issues around Services that charge per page viewed, and our proposed conditions? If not, why not?**

AIME agrees that pricing needs to be clear and transparent however we disagree with some of the proposed conditions.

We believe that payment details should appear on the top of the page and should also be repeated in the service T&C’s. However we disagree that the price should be repeated above the link to the next page but would support the idea that it should be repeated below the link.

Members do not support the proposal for a dynamic billing counter giving a running total. There is concern based on Service Providers’ experience that this type of running total encourages many consumers to stop using services immediately. This would therefore put these services at a commercial disadvantage as this is a different approach to those used for other premium services e.g. chat and sexual entertainment services.

In order to bring this into line with other premium services, we suggest that a reminder is sent when £10 has been spent and that services would automatically disconnect when £30 has been spent.

We agree there should be no additional charging to scroll backwards through the service in order to exit the service.

- **Q21 – Do you have any view of evidence as to whether a Prior Permission regime should be introduced for Services that charge per page viewed? Please provide any viewpoint or material evidence you have.**

AIME questions the practicality of imposing prior permission on Service Providers when it is the Information Provider who manages and promotes the service. Requesting Service Providers to obtain prior permission for multiple Information Providers and multiple services dilutes the effectiveness of such regulation. AIME does view prior permission of pay per page services as an option but believes this may be a disproportionate response to the issue. (Please also refer to our answer to Q23 for our comments and suggestions on prior permission.)

We also note that Vodafone has already mandated that pay per page services can only be offered under the Payforit scheme rules under which PhonepayPlus propose to exempt services from prior permission. This may cause a natural migration of such services across to Payforit.

We therefore suggest that these services should be reviewed in a further six months to determine if they are causing significant issues.

- **Q22 - Do you agree with PhonepayPlus' assessment of the transparency issues around Text-based Chat Services and our proposed conditions? If not, why not?**

AIME agrees that promotional messages should be clear and transparent as for any type of premium service. If adverts are misleading then existing regulations (including ASA) cover this and again AIME believes that PhonepayPlus should set out the principles for regulation rather than defining how a service should be designed.

AIME is not in favour of the practice of using 07 numbers to imply a personal message as this may mislead consumers, or, may be used to circumvent AVS mechanisms in place that would apply to an adult shortcode.

However the text-based chat services are role plays with a fantasy element. We believe that users of these types of service fully understand that there is a fantasy element to them and therefore that personal meetings might not happen. Should providers of premium rate IVR services include a warning message that consumers might not meet the individual girl pictured in the advert they have seen? Similarly we all know Santa Claus doesn't exist but still enjoy the Christmas spirit! We also believe that it would be hard to enforce this in practice.

These consumers should be fully informed but still able to enjoy their freedom of choice to use the services. Text-based chat services have been run successfully for many years with low rates of complaints compared to other types of services.

- **Q23 - Do you agree with PhonepayPlus' assessment of phone-paid services using subscription billing or joining fees, and our preferred option c) - that ringtones, wallpaper and music downloads provided using subscription charging or joining fees should seek prior permission under the conditions set out above? If not, why not?**

AIME believes that this proposal is too broad and fears it will negatively impact providers of legitimate services. If a prior permission regime were introduced it should be applied to Information Providers rather than Service Providers and should target only certain services.

Subscriptions services are already the subject of dedicated sections the 11<sup>th</sup> CoP and a separate code by the Mobile Network Operators. Again AIME suggests that the issue here is one of enforcement rather than regulation. We are concerned that a few rogue services negatively affect the whole industry and that this proposal will apply to all providers of services even if they have been entirely compliant with the existing regulations.

AIME believes that prior permission for all services of these types is too generic an approach. We also need to consider whether permission should be given at the Service Provider, Information Provider or by individual service.

As explained in Question 21, granting prior permission at the Service Provider level for these services is too generic. Granting permission at the service level would create a significant administrative burden with promotional material needing to be reviewed for each new or modified service.

AIME agrees it should be given at the Information Provider level. We believe this reinforces our view that the liability for services should rest with the promoter, and that Service Promoters should be subject to a registration scheme. This mirrors Ofcom's recent statement that in their view the liability for premium rate broadcast services should rest with the Broadcaster who is the service promoter.

It appears that many complaints concerning subscription services are caused by unclear pricing and perceived over-charging. AIME suggests that prior permission given at the Information Provider level is further refined by price as follows:

Services up to £X\* a week require double opt-in  
Services over £X a week require prior permission

\*suggested price of £10 - this price includes 1<sup>st</sup> weekly subscription plus joining fee and reflects RPI

- **Q24 – What evidence do you have that other types of content which is provided using subscription charging or joining fees causes consumer harm, and should also seek prior permission under the conditions set out above, that you can share with us?**

Any service that is insufficiently transparent risks causing consumer harm, irrespective of the content type. Providing that joining fees are clear and transparent to the consumer there is the potential benefit of reducing the on-going subscription cost.

The regulatory principle should be that the consumer is clearly informed of all pricing before purchase rather than determining service design.

- **Q25 – Do you agree with PhonepayPlus’ assessment that subscription services which offer ringtones and are facilitated through Payforit should be exempt from and prior permission requirement? If not, why not?**

AIME agrees that subscription services facilitated through Payforit should be exempt from prior permission. However we do not therefore accept that all other subscription services should be subject to Prior Permission – please refer to our answer on Q23

- **Q26 – Do you have any further evidence of other compliance costs we have not identified in this Regulatory Impact Assessment? Please provide data where appropriate.**

No additional points to add.

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#### **Additional point – use of the word “Free”**

AIME wishes to comment on the use of the word “Free”. We note that there is no specific question on this point in the consultation, despite it being proposed that the word “Free” should be excluded from all promotional material for premium rate services (7.26).

AIME believes that this proposal is too restrictive and treats premium services unfairly compared to other consumer goods. The use of FREE in promotions for premium rate services does need clear rules in an updated help note, but we don’t think the blanket proposed rule above should be applied. If consumers can go to their local supermarket and benefit from a BOGOF (Buy One Get One Free) offer, why should the same type of promotion be prevented for premium services?

Indeed AIME believes that consumers can benefit if they use a service for free and cancel within trial period without being charged. AIME members report that these services when run legitimately are very popular. There has been no recognition of consumer satisfaction by PhonepayPlus in its recent market research.

## **Conclusions**

AIME has a core philosophy that consumers who are fully informed at the point of sale and able to exercise freedom of choice enjoy the most effective consumer protection available. This philosophy appears to be reflected in the PhonepayPlus Consultation, in that it makes proposals to tackle particular issues of concern, with the aim of building trust in mobile phone-paid services.

PhonepayPlus note in the Consultation document that they have already consulted with several service providers who share PhonepayPlus analysis of the problems. We would ask that PhonepayPlus consider fully the AIME response co-ordinated with its members, including service providers, mobile network operators and information/content providers (who are representative of over 90% UK business), because while the analysis may be a shared view there does appear further consideration is required on the measures that are most proportionate.

As stated above, AIME would welcome the opportunity that when PhonepayPlus has had the opportunity to consider all Consultation responses they convene a “round table” discussion by respondents where PhonepayPlus’ findings can be openly and transparently discussed before any conclusions are reached and announcements made.

## **Statement of Representation**

AIME confirms that this response has been compiled following a process of distribution of the relevant Consultation documentation to all AIME members. A list of AIME members can be found at [www.aimelink.org/currentmembers.aspx](http://www.aimelink.org/currentmembers.aspx) .

The views expressed in this response are a fair representation of the 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 look forward to your response and 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 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 Zoe Patterson at 08445 828 828 or [zoe@aimelink.org](mailto:zoe@aimelink.org) .

Sincerely,

Toby Padgham  
General Secretary