



MOBILE DATA ASSOCIATION

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www.themda.org www.text.it

September 11th 2008

PhonepayPlus Mobile Phone-paid Services and their Marketing

The Mobile Data Association (MDA) reflects the common voice of the mobile data industry. The Association promotes the use and benefits of mobile data throughout industry and business in the UK. Press, regular industry conferences and seminars, and the operation of websites (www.themda.org and www.text.it) help promote a high level of awareness amongst users and advisers, directly influencing operational management.

In addition, the Association provides a forum for members of the industry to meet and share information on technical and business issues.

PhonepayPlus should recognise and appreciate commonality in responses received from trade associations, AIME, MEF and the MDA. This reflects the open conference of a range of mobile stakeholders towards a generally agreed, uniform industry position on the key issues and proposals.

Summary

The MDA notes the increase in PhonepayPlus reported complaints, particularly about one specific type of service, but believes there are other factors that may influence this trend:

- Refreshed awareness of PpP since the re-brand, raising their profile, and the associated investment in promoting the organisation
- Openness of mobile network operators to outsource customer complaints to PPP, when traditionally these have been resolved in house
- Increased use of different mobile services and sophisticated handset penetration

A general downward trend of all End User complaint levels has been reported by industry stakeholders, not in keeping with the PhonepayPlus review.

The MDA would urge that headline figures likely to draw most attention in the final release of the review are properly categorised by mobile service type in the appropriate review summaries and media releases.

18 of 25 adjudications against mobile services in the first half of 2008 were levelled against mobile subscription services. This should be appropriately reflected, without broad-brush generalisation of all premium mobile services.



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Consultation Questions and Responses

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

The MDA agrees in general with the PPP analysis.

Q2 – What other evidence do you have about complaints about mobile Phonepaid services that you can share with us?

Appended as Schedule A to this Consultation response, are statistics for End User calls received by MX Telecom in the period December 2007 – Present. MX Telecom is a provider of mobile connectivity and does not provide any services to End Users.

However, in circumstances where a Mobile Network or Phonepayplus are unable to provide an End User with contact details of the Service Provider (such as if the service operates on a Shared Short Code), MX Telecom's End User Care number is provided.

The graph illustrates time during each month when calls were connected to our End User Care number. Whilst the total volume increased during the months of January and February, compared with December, this can reasonably be attributed to and correlated with higher overall traffic volumes during those months. From March onwards, the volume of calls has dropped consistently and significantly.

Comparative total volumes from December 2007 to August 2008 demonstrates that call volumes were 50% less in August 2008. This change can reasonably be construed as a gradual change rather than an anomaly. In the same period, overall premium SMS volumes have increased.

These figures indicate that End User calls (and implicitly, dissatisfaction) of MX Telecom and its clients' services, are at an all time low. It is our experience that End User complaints have consistently fallen during 2008.

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?

The MDA agree with the following contributory factors to risks associated with promotional SMS messages:

- adequate opt-out information not always contained;
- unclear spend amount within designated spend reminder messages, because the message is predominantly promotional in nature; and
- they can be unsolicited.



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The consultation consistently refers to “billed promotional messages”, or variations thereof. This is misleading and confusing, given the existing code.

A promotional SMS should never be chargeable.

A clear distinction between free promotional messages and chargeable billing messages is well understood within the industry and reflected in the 11th COP and Mobile Network Operator COPs.

The MDA believes there is no need for further regulation or definition of “chargeable pushes” as these are simply billed messages and should be treated as such under existing regulations.

The MDA disagrees that WAP push messages are a risk, but agrees that they should not result in users being charged automatically. There is no escalated risk, provided consumers are not charged before being told the price.

The concept of “pushing” is not recognised as users may select the title of a WAP Push, then be directed to a WAP Site. Whether the user solicited the WAP Push is key, and if so, whether the pricing of any purchasable content on the WAP Site is clearly presented.

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?

The MDA agrees that risk exists, but believes this circumstance is already covered under existing regulation, including ICO requirements and therefore also 11th COP, as well as the Privacy and Electronic Communications Directive and Mobile Network Codes of Practice.

The ICO requires that an opt-out facility is provided at point of purchase and on every other subsequent message.

Existing, widely agreed regulations must be enforced.

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?

The MDA believe that promotional messages carrying a charge are in fact billing Messages, so the user should already be informed of the cost of receiving such messages, under existing regulation in 11th CoP.



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Once again, the distinction between free promotional messages and chargeable billing messages is unnecessarily unclear. The first condition is therefore incorrect.

Informed consent to receive charges cannot be provided by opening a WAP Push or selecting a link contained within an SMS. The expectation is superfluous.

The means of opt-out should be the STOP command to a Short Code.

The Short Code must be contained within the sender field or the body of the message in promotional SMS messages, and within the title of promotional WAP Push Messages.

The mandating of wording such as "ADVERT" or "PROMO" within messages is excessive. When the required regulatory information is at the beginning, it serves no additional benefit.

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?

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?

The MDA fully supports the enforcement of an opt-out facility in marketing messages, as already required by ICO and hence also by 11th CoP.

WAP Push titles should begin "Free Msg" followed by the Short Code which the End User can reply to with the STOP command.

This should be mandated as it is unacceptable for users to have to visit a WAP Site to find a Short Code which they can send a STOP command to.

The provision of a WAP Push title would not be restricted by such information, as most handsets would still have approximately 30 characters remaining.

The MDA notes the neglect of MMS and other advanced technologies. Care should be taken to 'futureproof' regulation as much as possible, in order for best practices to apply equally to new technologies as far as possible.

Potential difficulties of an SMS-centric approach can be evidenced by application to MMS messaging. If a consumer receives a promotional MMS it may be expensive for them to reply STOP to opt-out, while it is not even technically possible to reply



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STOP to some voice and video services so another method of opting-out should be provided by the Service Provider.

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?

It is not necessary to prefix this text with the words "ADVERT" or "PROMO", provided the salient spend-reminder information is contained to the fore of the message.

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?

Mobile Network Operators already require Service Providers to remove MSISDNs from databases that have not been active in the last six months.

Six months is longer than the time any MSISDN would be quarantined by a Mobile Network. So if the Mobile Network requirements are adhered to, no End User will ever receive a promotional message that was intended for the previous owner of an MSISDN.

PhonepayPlus should adopt a consistent policy so existing requirements do not become too complicated. The current Network policy addresses this adequately. PhonepayPlus should reinforce that six months is the maximum inactivity period allowed between interactions.

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?

The MDA believes that opt-in lists sold or traded to third party companies should be banned outright, but understands the difficulties surrounding the implementation of such a ban.

Unsolicited marketing represents one of largest sources of justified End User complaints about phone-paid services.

Conditions of acceptable instances of third party communications must be tightened and "evidence" of explicit consent must be defined.

If this is not sufficiently robust and accordingly addressed, many issues within this Consultation will continue unchecked.



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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?

MDA believes services should be promoted according to their type. This is the role of the Information Provider rather than the Service Provider.

Time limits would be onerous and inappropriate for “seasonal” services, although most services would be promoted immediately.

If a user has purchased from a Service Provider, not opted out of receiving promotional material from them, then receives promotional material within six months, no extra requirements should be necessary.

The message would comply with the PECD and provide a route to unsubscribe. Requiring the Service Provider to commence marketing within a period of 2 weeks is unnecessary and could have the effect of quickly generating unwanted promotional messages.

Third party marketing should be prevented however possible. The requirement for third party marketing to begin within two weeks of the date of purchase AND that the End User has provided an opt-in to receive third party communications would be a welcome one.

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

The MDA believes the proposed two week could potentially increase “spam” as Service Providers would be required to send an extra message during the two weeks to say the service would be provided sometime in the future.

First party marketing within six months of the last successful interaction and promotional messages should not be imposed with further regulations as they comply with PECD.

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.



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The MDA does not believe that i) or ii) are likely to cause significant consumer harm.

Method i) This method does not include an MO, although the MDA notes the Mobile Network Operator requirement for an MO opt-in. Therefore this method could not be used for subscription services, but could be used for lower value one-off purchases such as a game under £6.

Method ii) is the preference, being more auditable through a free MT to the user and an MO from them to demonstrate opt-in.

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?

The MDA believes that there has not been a general failure to provide adequate Information across the board.

A small minority of services cause problems, and the issue is one of enforcement rather than regulation.

However, there are certain environments such as the Internet and Mobile Internet which could benefit from improved consumer information. PhonepayPlus could help here by the provision of a Statement of Expectation on advertising, with clear examples of best, or unacceptable advertising practice.

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?

The MDA agrees that pricing needs to be clear and transparent.

Pricing details should appear on the top of the page, directly above a link or selection of links and should be repeated in the service T&Cs.

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.

Imposing prior permission on Service Providers is impractical when Information Providers manage and promote the services.



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The MDA considers prior permission of pay per page services is an option but believes it may be a disproportionate response.

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

Existing regulations (including ASA) cover misleading advertisements, but a Statement of Expectation on advertising best practices across all media: print, web and WAP, could offer some practical benefits.

PhonepayPlus are also asked to recognise that the majority of text based chat services are NOT subscription based. They are often simply 'one in, one out' services, or 'multiple out' services requiring MOs, which do not bind a user to a service.

While there is a lack of clarity associated with promotional messages, which could be addressed by a Statement of Expectation, there is no significant problem across the board with these 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?

If prior permission regime is introduced, it should be applied to Information Providers rather than Service Providers.

Subscriptions services are already the subject of dedicated sections the 11th COP and a separate code by the Mobile Network Operators.

The issue, as with many above, could concern stronger enforcement of the existing COP, and issuing of a Statement of Expectation on advertising such services, rather than continued invention of regulations.

PhonepayPlus should align with Mobile Network policy and mandate the requirement for users to provide an MO SMS message to initiate a subscription service.

Prior Permission should be obtained by companies providing identified high-risk subscription services. Significant deviation from the terms of a licence should be met with revocation of licence, which will be more effective than the imposition of relatively minor fines against companies undertaking fraudulent behaviour.



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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?

The MDA agrees.

Statement of Representation

MDA confirms that this response has been compiled following a process of distribution of the relevant consultation documentation to all The MDA members. A list of MDA members can be found at <http://www.themda.org/mlc/ml.asp>.

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Close

We look forward to your response and assure you that these comments are intended to help achieve an effective, fair and proportional regulatory regime for Premium mobile data services in the UK.

If any clarification to our response is required or if we can be of any further assistance please contact Martin Ballard at 0870-2255-632 or martin.ballard@themda.org