



Bradley Brady  
Director of Strategy & Stakeholder Relations  
PhonepayPlus  
1st Floor, Clove Building  
4 Maguire Street  
London SE1 2NQ

[response@phonepayplus.org.uk](mailto:response@phonepayplus.org.uk)

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## **Consultation**

### **Proposed**

### **PhonepayPlus (PP+) Business Plan and Budget 2010/11**

### **AIME Submission**

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

AIME is a UK based not for profit trade association that promotes excellence in the Interactive Media and Entertainment industry.

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 trade association with membership across all elements of the interactive media and entertainment industry value chain and our membership represents in excess of 90% of annual industry revenues.

We welcome the opportunity to respond constructively to this Consultation on PP+ proposals for Business Plan and Budget for 2010/11 and we compliment PP+ on a greatly improved presentation format and associated information.

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 protection from consumer harm.

## General

This Plan and Budget is prepared against a market that has suffered a significant trend of declining revenues with current value now half of that achieved three years ago. However, this is being countered, with some success, by an industry determination to address its historic problems and see the return of consumer confidence and revenue growth. In the past few months there have been some encouraging signs of modest recovery in certain sectors.

A measure of industry success is the significant reduction in damaging complaints and consumer harm and the green shoots of a recovery in the interactive broadcast services sector where consumers are returning with welcome confidence to this popular medium.

Industry initiatives and newfound co-operation and co-regulatory engagement with regulators will continue to improve services quality and compliance throughout 2010 and one good example of this is the AIME proposal for a registration system for Merchant Promoters which now has the support of Ofcom and PP+. AIME looks forward to working closely together with PP+ in 2010 to further this collaboration.

AIME is obliged to reflect member concerns regarding the scale and costs of PRS regulation and we welcome the clear signals from PP+ that they understand these concerns and are responding with efforts to control and reduce costs in some areas. However AIME must record that while it broadly accepts PP+ plans for 2010 we do have a strong expectation that success in the Merchant Promoter registration scheme and associated improvements in the Number Checker application, as an example, will reduce PP+ resource requirements and therefore, proportionately reduce the budget and levy requirements in following years.

AIME is pleased to see that the Vision and Mission statements have benefited from review although we do question the use of the term “some form of telecommunications account” in the Mission statement which we believe strays beyond the definition and intent for PRS in the Comms Act 2003. Nor, in our view, can PP+ have a responsibility to actually “provide information to allow people to make informed choices” as suggested and we would expect PP+ to focus on ensuring that this is being achieved by industry. AIME would be happy to assist PP+ with suggested wordings for updated Vision and Mission statements if required.

### Key Points Addressed

2010 will bring a new principles based approach to the PP+ Code of Practice and AIME is pleased to see a commitment to fairer and more transparent outcomes for all parties involved in our industry. The Consultation Summary focuses on the following key areas:

- **Consumer Support**

It is clear that the stated reduction in consumer contacts to PP+ is also due to industry efforts in self regulation as well as the recession and PP+ consumer campaigns and it is important that the trend for PP+ and industry to co-operate more in this area continues. For this reason we welcome the introduction of a Consumer Advisory Group, which we assume would be established using PP+ internal resources and operate in close liaison with ILP, which will help to ensure a consistent, useful and accurate message to consumers. However, we would expect normal fines revenues to be adequate to fund this activity and we see no reason why any fines surcharge (which could also introduce significant administrative problems) should be necessary as, assumedly, adjudication based fines are already focussed on the “polluter” thus satisfying the requirement that “polluter pays”.

- **Industry Support and Intelligence**

While the provision of compliance advice is certainly a useful and welcome facility there is a thin line between free advice and consultancy. As with tax advice, while basic advice is available at no charge more comprehensive services are available from professional

consultants and we would ask that PP+ be very critical about allocating additional resource in this direction, particularly given that there are AIME members who offer professional consultancy services for PRS compliance. We would like to see any budget increase in this sector confined to speeding up provision of the current facility rather than stray into consultancy.

PP+ is indeed a “data rich” organisation as quoted although much of this data actually originates from industry and industry will want to use this for its own purposes in addition to PP+. Hence AIME would like to see this data managed through the proposed Central Industry Database (CID) under a system of joint governance yet to be addressed in the current round of discussions.

Proactive monitoring and service testing to prevent consumer harm is certainly a key area of PP+ remit and AIME would hope that this important function will be considered for outsourcing to control costs and aid flexibility by enabling resource to be readily adjusted to match demand.

### **Investigations and Enforcement**

Timely, fair and proportionate enforcement action is certainly critical to a healthy PRS sector and we hope to see even more transparency in the adjudications and fines process during 2010. We are particularly keen to see the proposed Complaint Resolution Team be effective in resolving cases “informally” where there is clearly no consumer detriment without resort to a full investigation with resultant regulatory cost savings and minimal interference with legitimate commerce.

AIME believes there is also scope to improve the industry knowledge and understanding of case officers and offers its help in arranging site visits to members to aid this process which is essential to the proposed “informal” procedure.

### **Code Compliance and Development**

AIME welcomes evidence of a more engaging approach with industry and also appreciates that PP+ has responded to industry calls for a less prescriptive approach to Code development.

It is apparent that the downward trend in consumer complaints for both fixed and mobile services is being maintained and the potential for any damaging incident on the scale of the “dialler” scam of 2004/5 or even the unfortunate circumstances surrounding interactive broadcast services of 2007/8, which had no malicious intent, are greatly diminished. The co-regulatory relationship which is developing between industry and regulatory interests will promote improved consumer confidence in responsible services and assist in returning our industry to healthy growth.

### **Working with other Regulators/enforcement Agencies**

We note PP+ efforts to engage with other agencies whose remit may overlap with elements of the PRS market but AIME still has concerns regarding general regulatory overlap which will be more appropriately pursued with Ofcom.

### **Industry Support and Compliance Advice**

As mentioned earlier AIME would prefer PP+ to take a more critical view of this service as we would not wish to see it abused as an opportunity for some industry players to transfer compliance costs into PP+. The experience of the PP+ Call Centre, where increasing numbers of general enquiry calls over time became a significant portion of Call Centre workload, is a clear example of how this can happen and AIME would like to see close co-operation between industry, perhaps ILP, and PP+ to ensure a controlled approach to this important facility.

To address the specific questions raised in the Consultation:

***Q1. PhonepayPlus will be developing a new Three-Year Strategic Plan in 2010. Do you think our purpose and role as set out above still describes the priorities for regulation in the phone-paid services sector? If not, how do you think this should develop?***

Answer 1

With the exception of the previous comments on the wording of the Mission Statement AIME believes the stated Purpose and Role does contain the basis for a 3 Year Plan for PP+. There is however scope to emphasise the desire for a co-regulatory relationship between industry and regulator in all areas except Code enforcement which must clearly be applied independently but in a fair and transparent manner.

***Q2. What information or evidence do you have about market trends and about the overall size of the phone-paid services market in 2009/10?***

Answer 2

Anecdotal evidence suggests that the market trend is much as described last year with the only moderate growth area being the interactive broadcast sector. Consequently we believe the likely PRS consumer billings outcome for financial year ending 2010 to be of the order £0.80bn.

***Q3. What information or evidence do you have about any specific segments or content areas and their potential for real growth or decline over 2009/10?***

Answer 3

We do not see any specific segments or content areas as having potential for significant real growth or decline during 2010. There is growth in the interactive broadcast market and Payforit will be addressing potential growth in web based services but this should be steady rather than dramatic. The possible demise of the Psychic and Adult sectors currently utilising the TV broadcast space could have serious revenue consequences if it transpires that they cannot sensibly be accommodated in the TV Advertising Code under their new Teleshopping categories.

One other threat to be considered is the possibility that BT might succeed in increasing the PRS Bad Debt surcharge from 3.03% to 9.7% in April 2010 under their statutory wholesale SMP (Significant Market Presence) status which would have a devastating affect across all PRS activity. This is under investigation within Ofcom and their findings should be available shortly.

***Q4. How do you see the phone-paid services market developing in 2010/11?***

Answer 4

We believe that it will be very much more of the same. However, as outlined above we believe that certain sectors may see growth and clearly there is still a real demand for premium rate services. We believe that the key challenge is for consumers who do not use premium rate (circa two thirds of the market from the [2008 Analysys Mason research](#)) to trial and become loyal users. This will only happen if there are value for money services with appropriate content and an industry which operates with a professional approach, investing more in customer service and recognising that loyal customers can be monetised more effectively if they have the required levels of service. We think that there will be further consolidation and over time, organisations will become larger. Within the regulatory area, with the development of the AIME proposed Central Industry Database as an integral part of a Merchant Promoter registration scheme, we are hopeful that associated applications involving Number Checker and Customer Service for example will assist recovery in consumer

confidence in PRS, which should be becoming evident in 2010/11 and be ready to translate into improving revenue.

***Q5. What comments do you have on the priorities for 2010/11? Are there other projects or issues that you think PhonewayPlus should consider for the coming year?***

Answer 5

A major priority for PP+ in 2010 will be to adapt to a new principles led Code environment with an associated emphasis on light touch regulation for those Code infringements which are unintentional in nature and pose minimal risk of consumer harm. This will lessen the currently very real perceived risk of investment in PRS development and encourage legitimate commerce by removing an unnecessary and costly regulatory burden.

It will also be a priority for PP+ to fully engage with industry on the joint Governance of the operation and development of a Central Industry Database facility which will be required to drive a series of applications beneficial to the PRS industry in addition to the registration application which Ofcom has asked PP+ to operate.

***Q6. Do you agree that PhonewayPlus should increase consumers' PRS literacy, in so far as it builds an appropriate level of trust in the market?***

Answer 6

Consumer PRS literacy is, in the opinion of AIME, a fundamental responsibility of the supplier of communications services to the consumer and hence the originator of the telephone bill – the OCP. The role of the regulator is to ensure that the consumer is fully informed in any call to action and, since the method and nature of providing that information can have market and commercial implications, this should not be a role for a regulatory body to undertake in isolation from industry.

For this reason AIME would welcome the idea of a Communications Working Group to enable industry, probably ILP, and PP+ to co-operate closely on the design and delivery of consumer PRS information where a clear need is identified.

***Q7. How should PRS literacy work be funded, through the industry levy or through a new fine sanction imposed for breaching the PhonewayPlus Code of Practice?***

Answer 7

Any agreed PRS literacy project should be funded through existing fines revenue since the basis of any fine imposed by PP+ can only be for breach of the approved PRS code of Practice and there should be no need for any additional fine sanction.

***Q8. What is an appropriate initial level of funding for our PRS literacy programme? As an indicator, the PhoneBrain initiative described below cost in the region of £100,000 as a single campaign.***

Answer 8

PhoneBrain is one example of how a targeted initiative with a relatively modest investment can be put to good use and clearly, on this occasion, this was money well spent. However, unless these initiatives are properly targeted and have real focus on key issues, there is a danger that any amount of budget could be wasted. We believe that similar cost effective initiatives should ideally be conducted in close liaison with ILP to ensure value for money is achieved.

With respect to the budget options suggested we believe that projects should be assessed as needs based rather than budget driven and a provision of £65,000 would be sufficient.

***Q9. What areas should PhonepayPlus focus its core research programme in the coming year? Do you have knowledge of any industry research initiatives in these areas that we could leverage?***

Answer 9

It can only be appropriate for PP+ to incur costs for research in areas that directly affect its core function of the regulation of PRS and not for general market research. As an example it might be appropriate for PP+ to research consumers to identify areas where industry is failing to provide satisfactory PRS information to ensure consumers are fully informed and able to properly exercise freedom of choice. The useful work that Think Tank has carried out should also be tracked so that we can observe changes over time.

***Q10. Do you support our proposed budget changes for 2010/11 having regard to the activity and strategy that drives the changes? If not, please explain why.***

Answer 10

AIME appreciates that PP+ have made genuine efforts to reduce costs and the proposition of a 3% budget reduction is certainly welcomed although perhaps not overly generous in the current economic climate and where many operators in the market are reducing budgets by far larger percentages. The PRS industry is continuing to demonstrate improved compliance and reduced complaints with resultant reduced consumer harm and it should be possible to show associated reductions in regulatory effort and costs in 2010 and beyond.

AIME is obliged to reflect member concerns regarding the overall costs of regulation and has for some time requested the introduction of Key Performance Indicators (KPIs) to assist management by identifying trends in overall Corporate measurement rather than internal performance targets and this might be an appropriate time to offer an example of one possible KPI to track the regulatory cost against industry gross revenue.

Year	Regulatory Cost £m	Industry Revenue £bn	Regulatory cost £ per £000 Revenue
2006	3.6	1.6	2.25
2007	3.9	1.2	3.25
2008	4.3	0.9	4.77
2009	4.8	0.75	6.40
2010 FC	4.22	0.80	5.28

This clearly shows that regulatory costs have increased significantly over the years in proportion to industry size and 2010 will incur regulatory costs more than double those in 2006 when industry revenues were much greater than today. We would hope to see an early reversal of this trend and a corresponding reduction in the levy imposed upon our industry to reflect proportionate regulatory effort and improved efficiency.

As AIME pointed out in the previous 2009 Budget review a successful regulatory body should be able to demonstrate a reducing “hands on” role over time as compliance improves and industry takes on a more responsive role in a co-regulatory environment and by building in compliance and reducing the need for applied regulation.

***Q11. Do you have any comments as any other risks that PhonepayPlus might face that are not identified above as part of the business plan design?***

Answer 11

AIME is not aware of any risks from PRS that might significantly impact PP+ during its Plan design period.

**Conclusions**

Summarising our conclusions:

- We welcome continuing improvement in the presentation of PP+ plans and budget and particularly the recognition of the need to respond to market conditions with a proposed budget reduction of 3%. However, we do believe that there is scope for more improvement on costs control and budget reduction and we would like to see other opportunities for cost savings being explored within PP+. One example previously identified by AIME is the potential for PP+ to relocate to less costly accommodation and this could now be expanded to consider co-location with Ofcom to also share some aspects of corporate resource in addition to office space.
- AIME believes that an improving regulatory scene with improved compliance and reduced incidence of significant consumer harm is an opportunity for successful regulation to reduce its presence in a planned and controlled manner over time and hence its costs to industry. There is perhaps scope for an action group within ILP to address this area and continually ensure that regulatory costs are proportionate to needs.
- AIME would like to see more emphasis on differentiation between PP+ core remit activities, which are clearly justifiable use of levy revenues, and other activities which can, in a non core manner, demonstrate clear benefits to industry and consumers. The ILP and its associated trade bodies are an ideal source of liaison and monitoring of expenditure for non core projects.
- While we acknowledge improvements on the ground we would like to see the Business Plan formally commit to developing a co-operative, co-regulatory relationship with industry and demonstrate a planned reduction in regulatory resource over time behind such co-operation.
- The proposal to focus more on an informal procedure in cases where non compliance is non malicious, unlikely to result in significant consumer harm and clearly an administrative error which is capable of early correction, is an area that AIME takes very seriously and offers total support to PP+. This procedure, if successful, will go a long way towards restoring industry confidence by the removal of unjustified risk to investment and the presence of an associated speedy resolution process. However AIME also believes this will require improved industry knowledge and understanding by case officers and offers PP+ every assistance in this.
- AIME entirely supports the principle of “polluter pays” but believes this principle is satisfied by the current adjudication procedures where those acknowledged to have breached the PRS Code are fined. There should be no need for another layer of penalty to fund projects.

In closing, AIME would like to reiterate its appreciation of clear efforts on behalf of PP+ to improve relations with industry and AIME and is hopeful that this will continue and begin to demonstrate benefits for our industry and PP+ alike.

### **Statement of Representation**

AIME confirms that this response has been compiled following a process of circulation of the relevant Consultation documentation to all our members together with appropriate group discussions. A list of our members may 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.

We look forward to your response and assure you that, as ever, our comments are made constructively and within our overall aim of achieving an effective, fair and proportionate regulatory regime for the premium telecoms industry.

If any clarification to our response is required, or if we can be of any further assistance, please contact Zoe Patterson +44 (0) 8445 828 828 or [zoe@aimelink.org](mailto:zoe@aimelink.org).