

Consultation

Proposed

PhonewayPlus (PP+) Business Plan and Budget 2010/11

Cellcast UK Ltd Submission

To address the specific questions raised in the Consultation:

Q1. PhonewayPlus 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 we believe 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 PhonepayPlus 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 PhonepayPlus 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 our opinion, 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 we 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 PhonepayPlus 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

We appreciate 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.

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

We are 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.
- We believe 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.
- Cellcast 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 Cellcast 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 we also believe this will require improved industry knowledge and understanding by case officers and offers PP+ every assistance in this.
- Cellcast 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, we would like to reiterate its appreciation of clear efforts on behalf of PP+ to improve relations with industry and are hopeful that this will continue and begin to demonstrate benefits for our industry and PP+ alike.

