

Business Plan and Budget 2010/11

A PhonepayPlus Consultation

MX Telecom Response

Introduction

In commenting on the proposed Budget, it would be helpful to understand the status of the fines of £4,243,500 levied in 2009/10, an increase of 80% on 2008/09, and what this revenue is being used for? This does not seem to be an area covered in any detail by the current Consultation. What is the polluter actually paying for if an 80% increase in fines does not lead to a significant levy reduction for the rest of the industry in the following year, particularly given reserves are proposed to stay at the same level during the next financial year as in this? Whilst we appreciate there is a proposed levy reduction for 2010/11, this does not seem to take into account hugely increased fine levels as a determining factor. The answer to this question is surely paramount to ascertaining the value and efficiency of the budget proposals.

Reviewing the stated achievements for the 2009/10 period:

Consumer Support

Some detail has been given as to the proposed output from a Communications Advisory Group, further consultation would be necessary to understand the additional benefit this would deliver, particularly in light of the significant additional overhead.

Industry Support and Intelligence

We agree that the Industry Support function is valuable and can be used as a means of pre-empting problems and enabling co-operation between industry and PhonepayPlus. Compliance advice is an area that would benefit from KPI's, as for the service to be useful and to be seen to be useful, responses need to be turned around in a consistent and prompt manner.

Investigations and Enforcement

The creation of the Code Compliance Panel constitutes an excellent development over the past two years.

Our experience suggests that in many cases, a number of months can elapse prior to investigations being undertaken. This is evidenced by investigations which cite complaints over several months. As a result, potential consumer harm can take place which would have been avoided had action been taken earlier. It would be helpful to achieve greater clarity as to the process determining when Investigations are undertaken and then presented to the CCP because at present and on the basis of the information available, fine maximisation as opposed to the cited aims of prevention and pre-emption, seem, in some instances, to be a driver.

Code Compliance and Development

- ***Developing a New Code of Practice***

The work done thus far on the 12th Code has been excellent and the thorough pre-Consultation work and co-operation well received.

- ***Ofcom Scope Review***

The work that has been commenced further to the outcome of the Scope Review has been encouraging, particularly in respect of the need for a Merchant Promoter Registration Scheme and the urgency with which this initiative needs to be introduced.

- ***0871 Regulation***

No comment

- ***Mobile Services and Compliance***

The policy coming from this work has had a positive effect on reducing problems with subscription services. The turnaround of license applications, which in some cases were applied for several months ago, is extremely slow and would also benefit from KPI measurement.

- ***The Consumer Experience and Complaint Handling***

This is vital, long overdue work which is still at a very early stage. It is important that the momentum is maintained so the Consumer Experience across the entire value chain can be properly understood, before it can be significantly improved.

- ***Making 'polluters' pay more of the cost of regulation***

As referenced in the introduction, it is unclear how 'polluters' are paying, as opposed to the entire Industry, given this 80% surge in fine levels has not manifested itself in a reduction in the levy.

- ***Transparency of reporting adjudications and emergency procedures***

The reporting of Emergency Procedures and what achievements there have been in this respect are unclear. It is fair to say that there has been more publicity and Press Releases from PhonepayPlus where Emergency Procedures have been issued. We would disagree with the transparency as to why they are applied in some cases and whilst they attract publicity they do not always constitute the most effective means of consumer protection.

- ***Broadcast PRS***

No comment.

- ***Funding Model Review***

No comment.

- ***Working with other regulators and enforcement agencies***

In our view, the Scope Review did not adequately determine the actual scope of PRS activity and how this may apply to new services and technologies in future. This remains an area where clarity is required.

The Mobile Review suggested an ICO Marketing List Help Note was forthcoming. It is our understanding that this has not been produced.

- ***Industry Support and Compliance Advice***

As with Industry Support and Intelligence, this is a valuable service, subject to being provided within consistent measurable time scales.

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?

Yes, we believe the purpose and role still describes the priorities for regulation. The outcome of the Mobile Review provides an example of where these values have been applied successfully. However, the stated purpose and role do not always reflect the practical actions being taken. Prevention and pre-emption are not always in evidence – the ongoing lack of priority given to providing consumers accurate information through simple improvements to the Number Checker service, the numerous examples of investigations being gestated for several months despite PhonepayPlus receiving numerous complaints in the meantime, the use of Emergency Procedures despite not representing a useful means of consumer protection – are all examples at odds with the stated aims of pre-empting and preventing consumer harm.

In order to ensure these purposes and roles remain valuable, actions need to be taken which can, at all times, be anchored and explained against them.

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?

We anticipate the market contraction to be ending and, in line with PhonepayPlus's projections, anticipate a slight increase in total market size in 2010/11.

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?

Subscription services have declined considerably in 2009 – chiefly as a result of non-compliant services being removed from the market further to the good work undertaken by PhonepayPlus in the Mobile Review.

Based on 2009 figures and our forecasts for 2010, we do not see any particular areas that have been disproportionately affected by the slight market contraction or that will be in decline going forward. We therefore expect all areas of the mobile market, *ceteris paribus*, to show growth in 2010 and 2011.

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

As above.

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?

The Merchant Promoter Registration Scheme must be the number one priority for the coming year. Fine levels are affecting investment and the reputation of the Industry. Until companies responsible for harm are properly held accountable for their actions through a registration scheme, this will continue to undermine all of our efforts. Once an effective scheme is in place, we will quickly see a reduction in the number of investigations, fine levels and overall compliance.

PhonepayPlus should also press home the urgency and lobby Ofcom to resolve the uncertainty associated with calling non-geographic numbers from mobile phones, which was disappointingly sidelined further to the Scope Review. This represents a significant ongoing factor affecting confidence in the phone paid services market, one which dwarfs the regulation of 0871 numbers which PhonepayPlus has instead taken on.

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?

Yes. The Phone Brain initiative is a good example of successful education of consumers. This increase in literacy needs to be clearly defined, however, to ensure that a balanced view is presented of phone paid services, with more examples of the utility of phone paid services, rather than a bias towards negative reporting and focus on non-compliant services.

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?

Subject to the parameters of a PRS literacy programme being agreed, it should be funded through existing fine revenues and if these deplete in future, through the industry levy.

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.

Options A or C may both have merit, again subject to further clarity as to the underlying principles of the campaigns.

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?

Consumer research and understanding remains key to understanding how to protect consumers and we would endorse further work in this area. PhonepayPlus needs to also continue, perhaps more methodically, to engage with Industry to ensure that all of its staff are sufficiently trained, on an ongoing basis, in the market and the technologies they are regulating.

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.

The cost of regulation is now much higher than was the case three years ago. We endorse the figures provided by AIME which demonstrate that given the market contraction, we could reasonably expect a corresponding reduction in the levy. We do appreciate that this may be a longer term goal, but one we would expect to be realized once the Merchant Promoter Registration Scheme is implemented.

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?

There are no significant risks that have not been identified.