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15 January 2010

Response to Phonepay Plus Consultation on Business Plan and Budget 2010/11

INTRODUCTION TO THE NUMBER UK LTD

Launched in 2002, The Number is the market leader in directory assistance in the U.K. 118118 is Britain's most called number for an extraordinary range of reasons. Each month, ten million calls and texts are handled by trained and skilled operators helping people get more from their busy lives.

We give consumers and businesses the information they need to reach the people, places, and companies they want to connect with...fast. We strive to make information retrieval simple, direct and easy, whether you are calling texting or using the web.

We are part of the largest independent provider of such services in the world. Our core vision is to be a knowledge generation business that is objective, accurate, comprehensive, neutral and, above all, phenomenally easy to use. We are also the only UK 118 provider to offer a wholly free telephone directory service for callers from all major fixed networks.

I. EXECUTIVE SUMMARY

As regards the DQ industry, Phonepay Plus has done a good job of regulating the industry effectively and this is evidenced by the low level of reported complaints from consumers.

The coming year is a critical one (and a challenging one) for Phonepay Plus as it seeks to promote a smooth transition to the 12th Code, whilst ensuring that consumers are effectively served and confident in using premium services during a period of significant technological and commercial changes.

Convergence is increasingly a reality influencing consumers' lives. Billing methods are also changing and adapting to new demands, ranging from premium SMS to in-app billing via iTunes. These changes present real challenges for effective regulation.

Phonepay Plus must seek to achieve simple regulation focussed on practical outcomes for consumers.

To face these new challenges, it will be crucial for Phonepay Plus to take a **dual approach**:

- On the one hand, Phonepay Plus must highlight good practise and enable innovation;
- And on the other hand, it is equally important for Phonepay Plus to continue regulating in order to stop bad practises that harm consumers.

This dual approach will have to have at its core a technologically neutral stance that ensures consumers are well served and protected, and that regulation does not just displace problems to adjacent technologies. Moreover, Phonepay Plus will need to be increasingly mindful that regulation is not causing asymmetries where certain services delivered via one technology and billed for in one manner are regulated entirely differently to another similar service using a different delivery method or billing method.

Phonepay Plus should focus on clear goals:

1. The provision of simple and practical solutions for consumers
2. Playing a role in building confidence amongst consumers (to use phone-paid services), that goes beyond the highlighting of concerns by adopting a positive approach.
3. Promoting rules that create flexibility to enable new services and technologies to develop effectively to serve consumers better
4. Adopting regulation only where there is evidence of a detriment to consumers and prioritising efforts where most harm is experienced.

II PRELIMINARY REMARK: THE BUDGET

The Number welcomes the efforts made by Phonepay Plus to reduce the budget to reflect the wider commercial context being faced by the industry it regulates. Broadly this has been done well and responsibly.

There are a small number of areas that The Number would like to comment on and which it hopes Phonepay Plus will consider addressing:

1. It would be useful to see benchmarking of key budget areas to see how Phonepay Plus compares to other regulators (e.g. Ofcom) in terms of % spent on overheads, premises costs per staff member and per square foot etc.
2. It is an inappropriate goal to seek to “*remain at the current premises*”. The goal should be to ensure appropriate premises in a cost-effective manner.
 - In the risk analysis section, there is a budget assumption that “*Phonepay Plus remains at current premises*”.
 - This implies that the goal is to remain at the current premises.
 - That goal seems inappropriate and the goal should be to have appropriate premises to enable the organisation to function at a cost that is no higher than the current lease (or, preferably, at a lower cost).

- If that goal can be achieved by staying in the current premises, that is acceptable. If not, then the organisation should seek to find an alternative. The Number does not require Phonepay Plus to move premises, but it does think that Phonepay Plus needs to be able to defend why this premises is value for money, and essential to it continuing its work.
- 3. A 9% increase in overheads seems high.
 - Whilst an explanation has been given of some increased costs, in the current economic environment most of Phonepay Plus' stakeholders and funders would take an approach whereby they would cut other costs or create other savings to pay for the added costs that have been identified. Ideally Phonepay Plus should be doing the same thing and seeking savings elsewhere in the overheads budget to pay for added licenses.
- 4. A 9% increase in premises costs seems inappropriate.
 - a. The stated reason is due to delapidations costs due to the lease renewal. It would seem to be better practise if delapidations were accrued for each year of the lease or were paid from Phonepay Plus reserves so as to spread the costs evenly across the period of a lease rather than to have single increased charges that are reclaimed via a single year of the levy.

III. ANSWERS TO SPECIFIC QUESTIONS

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?

PhonepayPlus' vision is described as being that *"anyone can use phone-paid services with absolute confidence."*

In a world where convergence is increasingly blurring the boundaries between devices, technologies and payment methods, it will be important for Phonepay Plus to address these changes when making its next 3-year plan.

Regulation needs to be approached in a technologically neutral manner to ensure that consumers get the best outcome, and to ensure that companies can innovate effectively to deliver services to consumers. **Phonepay Plus will need to be increasingly mindful that regulation is not causing asymmetries where certain services delivered via one technology and billed for in one manner are regulated entirely differently to another similar service using a different delivery method or billing method.** This may not require more regulation, but does require regulation to achieve a level playing field across technologies and billing methods, otherwise

innovation will be stifled and scamsters will merely migrate to equivalent services using adjacent technologies and billing methods.

It is disproportionate and a poor use of resources to invest significant time and effort focused only on PRS price transparency, where Ofcom can only gain limited benefit for consumers. Focus should be placed on ensuring that broader consumer law addresses consumer concerns over transparency for all communications services including but not limited to PRS. Ofcom should only add regulation where particular gaps then remain.

Some customers clearly do want to know more about pricing than they can easily access today. This is as true for an international call as a PRS as a geographic call, so it seems flawed to focus on PRS in isolation, rather than this wider issue. As Ofcom states:

“the rationale for having specific PRS regulation is to target and prevent consumer harm in respect of those services, which, based on their characteristics, could give rise to a particular type of risk for consumers and which are not effectively covered by other existing means of consumer protection.”

PRS-specific regulation should focus on areas that are unique to PRS. All other consumer issues that are more generic to communications services or general consumer protection should be handled through general consumer regulation and laws, even though regulators can clarify those rules or offer advice and guidance on how to transpose them effectively for the PRS sector.

Failure to adopt this approach will risk creating significant problems in an ecosystem characterised by convergence, as there will be asymmetric regulation for similar products with similar consumer issues, but based on different technologies. Rules need to be technologically neutral to be coherent, useful and relevant. For example, rules that relate to purchasing music via mobile phones fall under PRS regulations, whilst the same set of rules do not apply to iTunes on the web. This has created an imbalance that has slowed the ability of mobile operators to compete in this market and serve customers effectively. It is not clear that consumers, nor businesses have gained from this imbalance as iTunes has progressively grown to a market dominant position that others are unlikely to rival for years to come, if ever. The consumer issues of each of the purchase methods are equivalent, the product is substitutable, but the regulations have created an imbalance. This is a good example of how well-intended selective regulation of a single communications technology or aspect can have unintended, negative consequences for consumers.

A joined up approach must be taken to consumer issues across technologies, applying generic rules and protections to consumers everywhere. Industry-specific regulation should be limited only to addressing unique issues of particular added harm or urgency, otherwise consumers will be poorly served, investment in

industries will be stymied and rogue traders will still be able to serve consumers by focusing on technologies that are not covered in the PRS review.

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

There will be increasing pressure on traditional phone-paid services as mobile phone usage becomes increasingly dominant, whilst mobile pricing for such services is typically significantly higher than fixed line pricing and un-regulated.

In addition, new technologies and the development of the mobile web will present a range of new opportunities for innovative services and billing methods that may not fit into the traditional view of phone-paid services. In-app billing via iTunes is just one example of the changes afoot.

The growth of VoIP services presents another challenge for the sector and the regulator because large services like BT's Broadband Talk product and BT Softphone (which BT reported as having more than 2 million customers in 2008) do not offer standard access terms to all services (e.g. you cannot dial 118118 and reach our services via this product, even though you can connect to some of our competitors).

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 Number strongly believes that Phonepay Plus should focus on OCP mark-ups and how to lower them to grow the industry, reduce prices to consumers, and ensure consumers get suitable and adequate refunds.

The current scenario where an OCP may have charged a 180% mark-up that the service provider is liable for seems unsustainable and puts pressure for a poor refund process for consumers.

The Number considers that Phonepay Plus should notably seek to do benchmarking of mobile mark-ups to see how fair the outcome is for consumers, both in terms of various PRS services and beyond the UK.

We agree however with Ofcom's comment that,

"...the supply structure of the industry can make it difficult to communicate to consumers the price of a particular PRS, when the PRS supplier is not able to set a uniform price for that service¹;"

Requiring all OCP's to offer the same retail price to a PRS number would be very helpful to consumers and would help service providers to provide clearer pricing information for all. On BT's fixed network today, the system of NTS mark-ups means

¹ 4.8 – The PRS Scope Review

service providers can effectively select a retail rate. Many other landline networks mirror these prices and this has resulted in consumers having clear awareness of PRS pricing on these networks. Mobile networks do not typically follow the same practise, and so pricing can be less clear at times.

“The research also asked respondents about main reasons for concern about calling 09-numbers from landlines and mobiles...cost is mentioned more frequently regarding calls from mobile compared to calls from a landline.²”

Ofcom should investigate how to enable fixed cost-orientated mark-ups on mobile networks so that Service Providers could achieve uniform retail prices for their own services across networks. This would truly enable simpler communication of prices for consumers and considerably increase consumer confidence by creating predictability and coherence.

Ofcom would need to investigate possible options. Examples that merit evaluation include the following:

1. Mobile Voice Shortcode methodology (used today for some services): Service providers can select a single retail price across networks, knowing what outpayments they will receive from each network (which may vary by network). This is operated today for mobile Voice Shortcodes.
2. Recommended Retail Rate: Service providers would set a recommended retail rate. If OCP's chose to charge more, then the OCP would be obliged to add messages to billing information, prepay cards and other marketing stating the mark-up or policy (eg “Network X charges 10% on top of the recommended retail rate for calls to numbers starting with 08 and 09.”)

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, and we refer to our response above in terms of some of the options that could facilitate this literacy.

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?

The Number believes it is appropriate for the fine sanction to be used.

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?

² 3.32 – The PRS Scope Review

The proposed areas of research seem appropriate, particularly any research or economic studies seeking to quantify the contribution of the premium rate industry and premium rate services to the UK economy. For example, it is worth noting that DQ makes up a sizable part of Phonepay Plus' volumes and the majority of DQ enquiries relate to finding businesses and enabling purchases. There is significant added benefit to the economy if this functions well, as it enables more commerce, particularly for small businesses. There is no other service in the UK that offers consumers such easily accessible and complete coverage of UK businesses of all sizes. So DQ enables a multiplier effect to the UK economy in terms of being a trade-enabler. It would be valuable for Phonepay Plus to assess this in order to understand what value and priority can be placed on effective functioning of this sector.

An added area of research that needs further investigation from Phonepay Plus fee payers is the areas of OCP mark-ups and revenue shares. It would be very beneficial for added transparency and benchmarking of these levels versus other countries. This data may also be useful for the industry and consumers as the new EU Telecoms Package is implemented into UK law, as this package requires fair access charges to be applied to DQ services by access operators. It is also important to understand this issue better to see how to ensure that consumers receive fair and appropriate refunds from all parties in the PRS value chain.

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.

In the move to developing proactive monitoring and service testing, it will be key for Phonepay Plus to be using this to respond rapidly to problems experienced and reported by consumers. **The primary emphasis should be on rapid reaction to actual reported consumer harm**, not just on research related to potential harm, nor on looking for a problem; that has not been reported.

There is no clearer way to quantify harm than to measure quantity of complaints as evidence (allowing for the fact that some complaints may be more serious than others). Opinion research is a poor substitute as it may identify 'claimed' problems rather than real ones that will alter consumer behaviour. It is key that when opinion research is being used, valid control studies or benchmarking is used to show where opinion is 'unusual' or 'unusually strong' as opposed to just reporting back normal average statistics that would be true of any products surveyed with similar questions (i.e. reflecting consumers' views of pricing, as opposed to identifying areas of particular consumer harm to address).

There should not be additional regulation to take account of possible problem areas where there is not clear proof of harm or sufficient harm as to merit added burdens of regulation and costs that may be detrimental to businesses and consumers. There are too many references in the Scope Review to hypothetical harm, referring to harm that 'may' be happening, or 'may' happen in the future, rather than focusing on areas of proven harm.

It should be an essential part of any proposed PRS regulation resulting from this Scope Review that it should need to show empirical proof of actual harm. It is not acceptable that services can be put at risk of extra cost burdens and diminished sales now on the basis of *possible* harm rather than proven harm. It is contrary to Ofcom's duties and is disproportionate.

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?

As a general comment, it is important to note that there may be a new government during the 3-year plan. This could impact the approach to regulatory activities and responsibilities and that could present risks or opportunities for Phonepay Plus.

We thank you in advance for taking consideration of these views. Feel free to contact Nik Hole, Executive Director, Government and Business Affairs (Europe) for The Number, by phone (+44 7973 748952) or email (nik.hole@118118.com) should you need further information.

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