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Action 4 response to 2014/2015 Annual Plan and Budget:
A PhonepayPlus Consultation

Action 4 welcomes this opportunity to respond to your Business Plan and Budget 2014/2015 a PhonepayPlus (PpP) Consultation.

As a membership driven trade association representing commercial businesses operating within the Premium Rate telephony sector we are starkly aware that effective regulation is intrinsically linked to the good levels of industry and consumer trust and in turn a buoyant industry.

As a general note it seems strange to us that whilst you intend to increase your budget by 3.3% in cash terms and 0.7% (inclusive of the registration and 3.8% and 1.2% exclusive) in real terms this is in stark contrast to page 4, para 5 where you state that debt collection "feeds into reducing the overall cost of regulation as borne by the levy in future years" Alongside of your values 1.8 "efficient ….. "challenging ourselves to find new ways of working and improved systems and processes that reduce the costs of regulation" it would appear that these new ways are at this point having the reverse effect.

Below is a paragraph from our response document to the budget of 2010/2011
"It also seems out of kilter that any industry worth £1.2 billion had a regulator costing the industry "just" £2.2million and now an industry you suggest is worth £900 million in your own budget prediction needs £4.2 million as a budget."

It seems incredible that in 2014/2015 the industry is worth circa £763.7 million yet regulation is to cost £4,444,465. Albeit that this figure is now gross of VAT.

You state an increase of calls by 32% - is this due to a real raise? Or it is that the registration scheme has not lead to consumers contacting SPS directly or their networks instead coming straight through to PpP.

Q1: As we commence the review of our next three-year plan, do you have any comments or suggestions about the strategic priorities that PhonepayPlus should focus on over the next three years?

Whilst we agree that the delivery mechanism for PRS have increased, the complexity of delivery is largely an irrelevancy to regulation of the intrinsic components as defined by the communication act of 2003. In particular, 120 section 7 and 8 stand. The key component as to who is liable for the provision of the service goes hand in hand with the revenue stream. Indeed it is those involved in this revenue stream that funds you as the regulator. We do agree more involvement with the industry is a positive thing. You speak of the clear dissatisfaction of the consumer; the balance to this is the many happy consumers who have had the products and services they required delivered. As demonstrated by your own consumer engagement part of your market review (3.5).

We do applaud you for your swift action in relation to the ransomware "services" but note that this largely occurred to due to the non regulation of market affiliates. We again urge that you revaluate the role of these individuals as they are clearly receiving revenue share and therefore fall under the Act.

We are worried by the use of the word litigious and indeed the associated costs in relation to this which one presumes are the figure of £126,708 alongside the 4 in house legal people you have on your organisational chart. Surely if the cases you are bringing are wholly accurate then it would appear to be strange to have such large costs associated with breaches.

We urge you to remember that your role is to regulate the industry to ensure that the consumer has a positive experience: you are not a consumer regulatory authority, but an industry one.

Q2: Do you agree with our assessment of the current and future direction of the market?

We support the polluter pays approach and the attempt to recover fines, hopefully with a view to reducing the levy. In fact it seems strange your budget has increased when so has your ability to collect more fines as demonstrated by the figures you state of every £1 spent on debt recovery ahs produced £3.00 of additional recovered fines and administrative charges. We would ask why there has been such an increase in track 1 (20%) and 2 (50%) cases. Is this due to a raise in consumer complaints or internal monitoring?

Certainly it would seem sensible to try and ascertain where this rise in both calls and complaints is being generated, is this due to Level 1 referrals or conversion due to enquiries to the PpP helpline?

Again you detail the monies and works you are doing in relation to the consumer. Whilst in principle the industry does not object to a better and clearer understanding of that use,

we would question if it is an industry regulator's job to spend industry money in this way. Is it, we would ask, the regulator's or the industry's job to educate the under 7's as to the use of premium rate? Surely this is the job of a parent and one could question why the under 7's have mobile phones.

We agree with the works you are and have undertaken in relation to reviewing and monitoring the implementation of the Code.

We welcome your reviewing the role of the market affiliate: this work needs to be clear and robust; as stated above revenue share must be the key to who is responsible in the keys of regulation.

Overall we agree with your view of the market, but again urge you to focus on your role as an industry regulator not a consumer protection body.

Q3: Do you agree with our proposed priorities and work plans for 2014/15? If not, why not?

In 4.3 you talk of targeted regulation bearing down more heavily on the end user. Whilst we support, as already said, the polluter pays approach, we urge that intermediaries such as market affiliates are not allowed to become effectively absolved of responsibility.

We agree with your desire to work alongside the industry.

We agree and support your work in relation to DDRAC however are worried in light of the increase in calls and complaints that it appears that the consumer is not able to use the registration system (number checker) to be able to indentify the provider of the service they are questioning and resolve their issue directly with them.

We are worried when you talk re billable hours: your work is funded by the industry. The level of administrative charges whether a company is guilt of a breach or not are also worrying. In a court a defendant only pays legal costs if found guilty.

You also talk about networks and the varying ability they have internally of pointing customers to you. Surely it is the right of a network to handle their customers issue and enquiries in relation to PRS on the front line and to only pass the consumer to you if they themselves can not resolve the issue. In turn by them doing this they would reduce the need for the levy to be so high.

We recognise that you are seeing an increase in complaints from children via their parents. This has been an age old industry problem and one which is a fine balancing act of industry duty re promotional and parental control and access to the devices allowing access to the services.

Parents are responsible for putting safe guards in place in relation to internet usage and surely this must be the same for the use of PRS. The industry should be held accountable for unscrupulous marketing activities but can not physically stop a child from calling a service. Only the child themselves or a parent can do this.

We agree with your priority to work with other regulators and also to take account of changes to EU law and how this may or may not affect the industry.

We feel them that your use of the term “our business” is an unfortunate one: is regulation really now a business?

You talk of efficiency savings and we note your budget with interest this is a much simpler version of previous budget documents and seems woeful in its lack of detail in light of the amount of money you charge the industry.

Q4: Do you support our proposed resource allocation for 2014/15? If not, why not?

It would be helpful to have a much more detailed break down of how monies are spent, for instance if one is to take your current organisational chart then you have 47 people working outside of the board, compliance and appeals body. This would equate on your budget of £2,563,700 to be an average annual salary of £54,546.81 per person. If you include the other 16 individuals working on the board, compliance and appeals body, then this equates to £40,693.65 excluding the 2 individuals who work both on the board and for the secretariat.

You state an increase of 5.9% in relation to staffing costs partly due to a rise in complaints and also an increase by 200% in oral hearings surely it is time to analysis in detail why these increases have come about. Perhaps an independent external audit on your accounts and processes could help establish the reasons.

Surely this merits closer examination and explanation. Perhaps as previously mentioned, a it is time to look outside of London for premises - we note premises and overheads run at £705,104 combined. With a 6% increase in premises costs.

What falls under the figure of intelligence which is billed at the figure of £180,000? What falls under the figure External expertise which is billed at the figure of £114,887?

How much is being spent on consumer education activities such as phone brain?

Why has there been an increase from 1% to 17% in relation to consumer support? You are not a consumer facing regulator.

Nowhere in your document do you state the number of complaints you receive and how these are generated. You mention 38,000 number checks but no more granular details; so no-one can actually assess how much each real complaint resulting in a breach costs industry.

Part of the role of the registration scheme was to enable consumers to be able to contact the provider of the service they had accessed. This does not appear to be efficient when the industry is funding this tool to the tune of £356,472.

Q5: Do you agree that the charging model should remain unchanged during 2014/15? If not, why not?

We can not see why you need to increase the charging on the registration scheme form £135.00 plus VAT to £150.00 plus VAT.

In relation to the levy why are you increasing this in a declining market - is this because of a real rise in complaints or is this due to more complaints internally generated due to the activities of PpP?

We would suggest a funding review is held but only once a full independent internal audit is carried out of how complaints result in breaches and how the current budgets in terms of staffing and premises is conducted.

We are well aware that the cost of regulation is not based on market size alone, but we must stress that PpP must be very aware in their actions and budgetary demands on diligent companies. With this in mind we are keen to encourage best value regulation which includes seeking cost savings for compliant businesses wherever possible and, therefore, fully support the "polluter pays" environment described. We currently have an industry which has suffered a massive reduction in revenues and a reported drop in consumer complaints when looking at past years and believe that the regulator must take these factors into consideration when setting its final budget figure.

We welcome a strategic plan and hope that this will mean involvement with the industry to establish the exact role and remit that PpP should fulfil to benefit all involved parties. We would however question whether it is PpP's job to educate consumers. We would urge PpP to work with the providers of the service to ensure that consumers seek and get resolution from those that have provided the goods to the purchaser.

We would agree with PpP that there is a market decline due to economic pressure, and ask PpP to therefore reduce their budgetary requirement in line with this decline.

We support the gathering of public market intelligence and the working and involvement of consumer agencies such as *Which?* But surely your intelligence will increase through dialogue with the industry and those that actively engage with consumers on a day to day basis. We question the level of spending and focus and emphasis being placed on work in consumer education. This is not to say that we do not believe that you have a role to play in such activity; it is the level that we believe should be discussed and set with industry support and agreement.

We have previously mentioned in other responses that at some point it may be worth the industry calling for an external auditor to look at the budgets as set. As your overheads are high, a more detailed breakdown of how many staff and their wages along with the clarity as to your tendering process for your printing and other supplying companies may allow the industry to help reduce such costs.

Conclusion

When looking at the split of regulatory activity our main and recurrent comment is that PPP should always strive to offer effective, proportionate and best value regulation. Which means keeping costs firmly confined within their scope of regulation and remit; PpP must not be drawn into other arenas of regulation.

Echoing our comments above we are very happy to see a collaborative approach to regulation which will explore the potential of working with the ILP and industry and are pleased to note the commitment to share information with stakeholders.

Outsourcing can deliver a business with immediate, skill specific and expert resource to cater for most eventualities and therefore setting aside funds for these services is a must. But we would have certainly expected to find cost savings in staff cost as a result. This has not happened.

In regard of "depreciation" it would be useful to know what is being depreciated.

On a related note, a common question regarding premises cost is whether PpP would not be better positioned away from Central London to provide better value regulation. We again note your point re staff but many businesses relocate for cost saving reasons and their staff move with them; in terms of a PpP relocation this could be on the outskirts of London.

In summing up our response, the main comments revolve around whether an increased budget is required or suitable when considering the current market. Perhaps it is time to discuss with industry how many more calls could be handled internally at network level directly with their consumer. The registration scheme and due diligence internally should allow for direct information in relation to the providers of services to be given directly to the network's own consumer. This therefore reduces PpP's costs due to a decrease in enquiries, from day to day number checks and therefore allowing PpP to concentrate on true regulatory issues.

We also must make it clear that this year's budget document is vague in its description of the financial requirements listed. Consequently, the document makes it very hard to make constructive comments. It would also be of benefit when repeating this exercise to make the previous period's accounts available for comparison. This point was reiterated on presenting this budget document to a chartered accountant who was amazed that a budget of this size could be authorised on the back of a proposal with such a lack of financial information and justification.

We are aware that PpP do not need "sign off" regarding the budget proposal from any party other than Ofcom but hope that PpP still see the value in public consultation and the positive results that can be achieved from undertaking such an activity. This can only be realised if the consultation documentation is clear and fully descriptive in its reasoning.