

For the attention of

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**Response to PhonepayPlus "The Thirteenth Edition of the
Code of Practice" Consultation**

**Submission by
NebuPAY Holdings Limited**

Introduction

Nebupay welcomes the opportunity to respond to PhonepayPlus Consultation on the proposed edition of the new 13th Code of Practice.

Nebupay is an innovative company which provides mobile payments and billing in 20+ locations all over the world. We consider UK Premium market to be one of the key ones in Europe and globally. Based on our experience the regulation of the UK market has always played a major role in its growth and change, so we place high hopes that the continuous development of the Code of Practice and overall regulation regime will improve the market further in the interests of both consumers and the industry stakeholders.

Nebupay is concerned over developments in the last year which have brought a number of issues in the cooperation and mutual trust between the PhonepayPlus and industry (the Emergency procedures issued Summer 2013, the current progress of the legal case against the PhonepayPlus, etc.). We believe that a better level of understanding and cooperation should be achieved to relieve the pressure from the market and allow all its key players to reach their goals – safe and value-rich services for consumers, perfectly self-regulated market where need for punitive action is low or nonexistent for the Regulator and prosperous and innovative market for industry stakeholders.

Our continuous involvement in the Consultations of OFCOM, PhonepayPlus, AIME and other major regulation and self-regulation bodies have always served towards this idea. Nebupay is always eager to share any help or advice that might be beneficial for the said idea with the Regulator and the industry stakeholders.

Response

List of PP+ Consultation Questions ref. "The Thirteenth Edition of the Code of Practice"

Q1. Do you agree with our graduated approach to caps on live services and the proposed points of intervention? Please evidence your response.

Nebupay agrees in general with the general approach to the caps on live services. We consider the plans to extend the current cap limit from £30 to £45, as the cumulative effect of inflation, market and technology growth, the extension of possible Premium services, growth of consumer demand and other factors has set up a need of the extension of the £30 cap.

Q2. Do you agree with the new consolidated mechanism being introduced at 3.12 to govern spending caps and our proposal to sit the monetary values outside the Code? Please evidence your response.

Nebupay agrees with the new spending cap principles and placing monetary values outside the Code. We think that the latter will prove to be an efficient step for future-proof development of the regulation regime, where the Industry stakeholders will discuss its values in industry workshops or general consultations in close cooperation with PhonepayPlus.

We do, however, have concerns over the fact that some of the most consumer-demanded services (virtual chats and subscription services) have been placed outside this proposed change of spending caps limit. We consider such services to be different from Voice services and explicit regulation which is applied to them, thus we consider a need for an industry consultation on the effectiveness of the proposed exception of subscription and virtual chat services from the general extension of the spending cap limit.

Q3. Do you have any comments regarding the changes being proposed to the definitions listed above in response to Ofcom's NGCS review?

Nebupay does not have comments regarding the proposed changes.

Q4. Do you agree with our proposed changes to Rule 2.2.1? Please evidence your response.

Nebupay agrees with the proposed changes to Rule 2.2.1 as we see it as an improvement of the partially obsolete communication way which was hard-defined in the regulation. The modern technology and service value-chains have a tendency to drift from phone-based Customer Care or Technical Support to the implementation of online help, virtual helpdesks, video explanations, etc. We think that expressing the “customer care” contact demand with the new “contact details” definition will greatly improve the effectiveness of many high-technology services and provide stakeholders with a better ability to contact the customers in ways that would be the most suitable and comfortable for the said customers.

Q5. Do you agree with our proposed change to Rule 2.2.7? Do you agree with our intention to retain the level at which point this requirement is triggered at £3.83 plus VAT? Please evidence any response.

Nebupay does not have objections regarding the proposed changes to rule 2.2.7.

Q6. Do you agree with our proposed change to the vulnerability provision? Please evidence your response.

Nebupay has concerns over the proposed changes to the vulnerability provision. Although we consider that both the Regulator and the stakeholders should pay great attention to protecting the interests of the vulnerable groups of the customers, the said change in vulnerability provision will, in our opinion, place all responsibility for any such issues on the stakeholders. The provided change in definition, “...be promoted or provided in such a way that it results in an unfair advantage being taken” does clearly eliminate any considerations on whether or not was the intent malicious and any possibilities that a consumer might abuse the service are disregarded.

The simplest example can be a user of an adult service (chat, subscription, video on demand), that upon consuming the service claims that he did not comprehend the charges for it due to his physical or mental vulnerability. There usually can be no evidence of the consumer’s alleged vulnerability (due to the nature of electronic communications between consumer and stakeholder), and such cases tend to be resolved via partial or full refund from the stakeholder and discontinuing the access to the service for the said consumer.

The proposed change to the definition if rule 2.3.10 will place all responsibility in this situation on the stakeholders, since it was the service that was promoted and brought consumed harm. Thus instead of resolving any case like this via refund negotiations, the stakeholder might be charged with

breach of the 2.3.10 Rule due to the alleged consumer harm, which will no longer needed to come with intent to seek unfair advantage.

We think that the proposed change should not be implemented until a different definition is discussed with the industry in order to avoid the miscarriage of justice due to the unclear definition. We would also comment that we consider the presence of malicious intent should remain a main principle in definition of “taking the unfair advantage of the vulnerability” in any regulations aimed to lessen consumer harm and it should not be removed so easily from the Code as it was proposed. Should that fail it could be considered that a possibility and grounds for unjust treatment are present in the regulation document.

Q7. Do you agree with our intention to amend Rule 2.6.2 to make it more flexible and outcomes-focused? Please evidence your response.

Nebupay supports the proposed changes that will allow the use of additional channels for customer engagement and Customer Care. We think that the type of Customer Care connection should reflect the nature of the service, where voice services are still accessible via phone call, and WEB-based are subject to the use of email, online chat, in-app support, etc.

Q8. Do you support the intention to maintain a one-off cap on children’s services at £3? Please evidence your response.

Nebupay cannot show its support for the said change. The current definition of the “children’s service” is unclear and is subject to a PP+ / AIME workshop, thus we cannot express our support for the change of the Rule which changes the governing of the unclear subject.

Secondly we think that since overwhelmingly large amount of the services which are attractive to the children do not have any spend caps (those which are paid with credit cards, cash, electronic currencies, etc.) the presence of the cap itself and its amount should be a subject to further discussion with the industry and consumers.

Q9. Do you support the introduction of a cumulative cap on children’s services? And if so, should this be set at £12, £20 or an alternative amount per month? Please evidence your response.

Nebupay does not object to the proposed changes, however we think that the current EU legislation changes and regulation development of this sphere (“parental spend control” for example) should be taken to notice during the development of the future-proof 13th Code.

Q10. Do you agree with the proposed changes to allow for greater flexibility to exempt services or providers from registration? Please evidence your response.

Nebupay supports the changes, however would like to see that this new system will not be abused in some cases, since the majority of the stakeholders would still need to be registered under the 13th Code and expect that there will be no preferential treatments possible.

Q11. Do you agree with our proposed change to Paragraph 3.3.3 (b)? Please evidence your response.

Nebupay does not have objections regarding the proposed changes to rule 3.3.3 (b).

Q12. Do you agree with our proposed change to the requirement to register numbers? Please evidence your response.

Nebupay does not have objections regarding the proposed changes.

Q13. Do you agree with the changes we propose to the Track 1 and 2 procedures? Please evidence your response.

Nebupay, due to the ongoing Judicial Review of the PhonepayPlus actions which involved the use of some of its Investigations Procedures, considers that the proposed changes to Track 2 procedures should be postponed until industry discussion in Q1 2015 after the closing of the Judicial Review and be based on its results.

Q14. Do you agree with the proposed change to 4.4.6 (now 4.4.7) to ensure the effective retention of revenue made from harmful services and prevent abuse of the review and oral hearing processes? Please evidence your response

Nebupay considers these proposed changes to be controversial in their current form, as, in our opinion, revenue retention is a critical tool which should only be used in extraordinary situations, and not within the ongoing investigation. Use of this tool without the evidence on the company's breach of rules might be considered as an absence of presumption of innocence and be subject to ECHR case.

Q15. Do you support the changes proposed to 4.5.3? Please evidence your response.

Nebupay does not support the changes to point 4.5.3. The right to appeal to such serious sanction should be available to the L2.

Q16. Do you agree with the changes being proposed to reviews? Please evidence your response.

Nebupay is supportive of the proposed changes should the Panel assessing the Review request does not contain any members of the original panel in order for such process to be considered just.

Q17. Do you support our intended changes to oral hearings? Please evidence your response.

Nebupay does not support the changes to Oral Hearings. The Oral Hearing is a procedure which provides the L2 with an ability to defend its case and to explain any questions on which the Tribunal might be unsure. We think that in the absence of the ability to apply for Oral Hearing from the start, some L2 might consider that their case should then be handled by the extensive use of the external legal professionals, which will surely provide a large increase in the administrative costs to both the L2 and the PhonepayPlus.

Q18. Do you agree with the changes to the appeals process? Please evidence your response.

Nebupay agrees with the proposed changes.

Q19. Do you agree with the changes planned to 1.7.2, 5.2.1 and 5.3.8 (c)? Please evidence your response.

Nebupay agrees with the proposed changes.

Q20. Do you agree with our proposed change to Annex, paragraph 3.1? Please evidence your response.

Nebupay has major concerns regarding the changes to paragraph 3 of the Annex. We consider PhoneyPayPlus to be a Regulation body which operates under the mandate from OFCOM and is therefore bound to its general recommendations and approval within the powers given to it by Communications Act 2003. The removing of the OFCOM oversight in the approval of the PhoneyPayPlus budget might raise concerns amongst many stakeholders as the issue of budget authorization for a regulation body plays a great role in its operations.

We are inclined to see the PhoneyPayPlus budget be approved by a 3d party, authorized to do so by either OFCOM or the Government. This body may as well be AIME or a special panel with representatives of OFCOM, PhoneyPayPlus, AIME and industry stakeholders.

Q21. Do you agree with our new approach to existing prior permissions regimes? Please evidence your response.

We agree with the new approach and migration of Prior Permission regime to the Special Conditions scheme which will be present in the Code itself and not provided as an ancillary information that can be missed by some of the new-to-market L2. The exact details of the new Special Conditions regime should still be discussed in the format of Industry roundtables before they become the 13th Code.

Q22. Is the process of implementing the new regime clear?

Nebupay considers the disclosed process of implementing the new regime to be of 2 sides. On the one side it continues the steady process of improvement of the UK Premium market regulation regime in both quality and provision of beneficial outcomes to all participants of the market. On the other side there are some controversial developments like the matter of signing-off the PhoneyPayPlus budget, creating restraints on the access of stakeholders to the Oral hearings, the unclear definitions of the “vulnerability of the consumer” and “children services”, etc, which, in the light of the ongoing judicial case against the PhoneyPayPlus raise some concerns within the industry.

We are eager to work further with PhoneyPayPlus, OFCOM and industry self-regulation bodies like AIME on the improvement of the market and its regulation regime and would like to have all relevant parties agreed on the beneficial origin of the changes that would be included in the final draft of the 13th Code.

Q23. Do the three illustrative examples attached to this consultation at Annex 2 help explain how we intend to implement this new system?

Nebupay considers the said examples to be mostly illustrative, with those being not are to be covered in more detail by the general AIME response to this consultation which has our approval.

Q24. Are the 24 special conditions fit for purpose? Have we missed anything?

As per above, Nebupay considers that some examples have a need to be more broadly discussed and defined within the Industry workshops to reach their final form where they would provide a clear explanation of the PhonepayPlus vision regarding the cases which they illustrate.

Q25. Do you agree with the insertion of this Rule at 2.1.4? Please evidence your response.

Nebupay agrees with the goal of Rule 2.1.4 should the responsibility of its enforcement placed under the jurisdiction of the relevant licensing body.

Q26. Do you agree with the changes to 4.8.2? Please evidence your response.

Nebupay agrees with the changes to Rule 4.8.2 and the overall use of targeted refunds policy.

Q27. Do you agree with the change being proposed to the naming of individuals provision? Please evidence your response.

Nebupay agrees with the proposed changes.

Q28. Do you agree with the proposed change to 4.9.3? Please evidence your response.

Nebupay agrees with the proposed changes.

Q29. Are there other areas of change that we have not considered here but should? If so, please provide appropriate evidence of the likely impact of the change.

Nebupay considers that the proposed changes which raise significant doubts, as disclosed within this response, are of utmost importance and need to be resolved in cooperation with the industry stakeholders until the creation of the final draft of the 13th code. Therefore we would suggest additional industry workshops to be planned which would allow the questionable issues to be solved.

Q30. Do you agree with our assessment of the potential impact of the changes proposed to the Code in this consultation? Please provide appropriate evidence to support any assertion.

Nebupay does not have any specific comments to the impact assessment rather than those made within the responses to consultation questions.

Q31. Do you have any comments about the contents of this document? To you agree with our overall approach to the thirteenth edition of the Code? Have we neglected anything?

Nebupay has expressed its concerns over some changes of the Code which seem to be counter-effective if applied to the market or controversial in the light of some of the justice principles. We think that these concerns, if shared within the industry stakeholders or self-governing bodies, should be addressed and re-defined in close cooperation to achieve the final draft of the 13th Code which will be seen as beneficial to the whole market and will not raise serious concerns upon implementation.

Conclusion

The development of 13th Code of Practice comes during the times of change. The impact of the still declining revenue of the Premium market, the change in the PhonepayPlus leadership, the ongoing judicial processing against PhonepayPlus, the changes to the EU Data protection and Premium regulation legislations, the concerns within the industry regarding the recent use of Emergency procedures and the overall rapid growth of technologies and the emergence of new services and value chains demands the changes within the regulation regime.

This consultation and the ongoing process of shaping the future grounds of the market within the 13th Code shows that it is the cooperation of the Regulator and the Industry that will define the market and its prospects. The well-received and successful tradition of close cooperation between PhonepayPlus and the Industry Stakeholders should ensure the continuation of the development



of one of the world's best Premium markets, both within the regulation regime and in consumer satisfaction and trust in the Industry.

We at Nebupay Holdings Limited hope that this tradition will again prove beneficial to all participants of the market and will allow the creation of a better 13th Code and a better future of the market.

Further contact

The comments provided within this reply to Consultation are of constructive nature, aimed to help the process of improvement of the regulation regime of the UK Premium market and ensuring a close cooperation of its participants.

If any detailed clarifications, comments or other information might be needed – please contact Andrew Vinnichenko, Compliance Manager at Nebupay Holdings Limited at +38 067 295 5346 and avinnichenko@nebupay.com, or our Compliance Team directly via compliance@nebupay.com.