

Mark Collins  
Head of Industry Support and Policy  
PhonepayPlus Ltd.  
Clove Building  
4 Maguire Street  
London SE1 2NQ  
United Kingdom

Ref: Comments 2waytraffic Mobile Group B.V. on 12th Code of Practice

BY EMAIL ONLY [mcollins@phonepayplus.org.uk and  
compliance@phonepayplus.org.uk]

Hilversum, The Netherlands, 5 August 2009

Dear Mr Collins,

We refer to your e-mail dated 24 June 2009 regarding the invitation to comment on the PhonepayPlus discussion paper.

2waytraffic fully understands the need to ensure that consumers are afforded adequate protection in the marketing and sales of premium rate services. We highly value customer satisfaction through compliance with the Code of practice. From our experience with offering premium rate services worldwide, we understand the importance of a well regulated market as a whole.

Therefore we are willing to explore appropriate improvements to the 12<sup>th</sup> Code of practice and we welcome the opportunity to discuss with PhonepayPlus how, with continuing input and support of all involved, we can raise standards in this market.

We would like to set out several general comments on the discussion paper below. Attached you will also find our written response to several numbered questions in the discussion paper (**Annex**).

***Value chain (section 3 discussion paper)***

Although we mainly agree with the value chain (as mentioned in the discussion paper), we do feel that clarity and understanding between all parties involved could be increased by adding Affiliate networks to the dialogue.

We consider there are specific issues and challenges in dealing with Affiliate networks given the fact that is hard to fully control whether or not individual Affiliates unilaterally

change online advertisements, which have been carefully prepared in compliance with the Code by the Information provider. In many respects we consider this to be an industry wide issue, and we would like to work with PhonepayPlus and participate in any consultations on measures to reduce problems related to the use of Affiliate networks and their (crucial) role in the process.

2waytraffic does understand that Information providers are solely responsible for their advertisements. Nevertheless, to ensure more overall regulatory awareness, a dialogue should be opened with Affiliate networks as well. With this dialogue we hope to increase understanding from Affiliate networks with regards to consumer trust and possible consumer harm that they can affect.

### ***Evaluation***

During 2waytraffic's two year stay in the UK-market we have seen a lot of growth in the market regulation. This growth resulted in adjustments to the services and its promotional service. We feel that although the intentions of these adjustments are quite clear, more time and effort should be put in the evaluation thereof. Were the goals met? Do they have any unintended side effects? What are the stakeholders experiences with regards to these adjustments?

Putting such an evaluation step in place might keep us more focused on reaching the necessary goals to gain more consumer trust.

### ***Sanctions (section 4 discussion paper)***

In the discussion paper three sanctions are mentioned: a fine, compliance advice and a possible bar on the service. Compliance advice is the one we would like to comment on. Although we feel that compliance advice is necessary within the process, it should be used to focus on the Code of practice (make clear to the adjudicated party how to follow the Code of practice).

Our experiences with compliance advice are different, changes advised by the compliance officer are usually new implementations which create a competitive disadvantage and therefore it can be seen as an addition to the fine (in terms of financial loss).

Please note that this is one of the reasons why we feel a more stricter Code of practice, with clear guidelines in terms of prescribed font size, text in disclaimer/ banner, etc. would create a more even playground within the market.

In our opinion there should be a strict regime that will be applicable to each party at the same time. We also feel that rules should not be multi-interpretable by market parties and PhonepayPlus to avoid unfair competitive advantage and ensure an equal level of consumer protection.

Besides that we would like to see a market which is in constant dialogue with PhonepayPlus to search for the next steps in creating more consumer trust and at the same time, bring the premium rate services market to a higher level.

We hope we have provided you with useful and workable comments. Do not hesitate to contact us, if you have any further questions.

Yours sincerely,

Louis Kinsbergen  
2waytraffic Mobile Group B.V.

**Annex:** *Feedback 2waytraffic to questions mentioned in the PhonepayPlus Discussion Paper.*

**Q1: Do you agree with our broad assessment for the range of harms that may impact upon consumers. If not, why not?**

*Yes, we agree.*

**Q2: Do you agree with our assessment, and the fitness for the purpose of our suggested outcomes and supporting themes? If not, why not?**

*Yes, we agree.*

**Q3: Can you identify any outcomes for consumer trust and confidence that you consider we may have overlooked?**

*We think the outcomes are clearly formulated and cover the most important parts for consumer trust and confidence.*

**Q4: Do you agree with our outcome and supporting themes about complaints handling? Do you have any other suggestions?**

*We feel that the formulation of the outcomes are quite unclear. We would like to see more specified goals and solutions.*

**Q5: Do you agree that PhonepayPlus is right to suggest that it should be able to revoke permission or authorization where it is proven that conditions have been breached and where such an action would be justified and proportionate? If not, why not?**

*As long as the guideline makes reasonably clear what is 'justified' and 'proportionate'.*

**Q6: Do you agree that PhonepayPlus is right to consider allowing parties along the value-chain to apply for prior permission when in a contractual relationship to provide a service?**

*Yes, as long as the responsibilities for these partners are made fully clear.*

**Q7: Do you agree that PhonepayPlus is right to suggest that an applicants previous breach record is a factor that is entitled to consider as part of a consideration of an application for permission or consent? If not, why not?**

*No, not if a service/information provider has taken affirmative action after PhonepayPlus' concerns where made clear.*

**Q8: Do you agree with our assessment that ALL participants in the value chain for delivery of phone-paid services have responsibilities for compliance? If not, why not?**

*We agree, all participants have their own responsibilities they need to be fully aware off. Please note though that we would like to introduce Affiliate networks in the dialogue as well. We do understand that we as a Information provider are carry full responsibility,*

*but we feel that adding the Affiliate Networks to the dialogue can give the Affiliate networks a better feeling with regards to both consumer trust and consumer harm.*

**Q9: Such a change in approach may have differential impacts on different providers in the value-chain. What are these impacts likely to consist of and what business or consumers benefits do you think will arise?**

*With clear responsibilities for all parties involved we think that this will have a positive effect on the consumers, as better cooperation between PhonepayPlus IP's and SP's will most likely result in reaching the intended outcomes.*

**Q10: Do you agree with our analysis of the outcomes of Assessment and Control? If not, why not?**

*Yes, we agree.*

**Q11: What thoughts do you have on our suggested approach to a registration scheme?**

*It depends if it's accessible by public, please bare in mind that it shouldn't compute with the privacy policy.*

**Q12: What other suggestions do you have for how we could create greater incentives for providers to co-operate with PhonepayPlus in the event of investigations?**

*No comments at the moment.*

**Q13: Do you agree with our proposed approach to reforming and renaming the informal procedure? If not, why not?**

*Yes, we agree.*

**Q14: Do you agree with our proposal that our arrangements for Standard and Emergence procedures should be retained? If not, why not?**

*Yes, we agree.*

**Q15: Do you agree with our approach and what regulatory impacts, costs and benefits do you foresee?**

*At first glance we do not see any major impacts costs and/or benefits.*

**Q16: What would be the costs and business impacts associated with such proposals? What consumer benefits do you think would accrue?**

*Further professionalise the customer care market wide would certainly increase consumer trust. We feel that this next step is inevitable and as far as we could see the business impact would be acceptable.*

**Q17: What thoughts do you have about improving PhonepayPlus' effectiveness of fine collection and do you have any specific proposals for how we could better secure fine collection through changes to the code?**

*No comments at the moment.*

**Q18: Do you agree with PhonepayPlus' proposals for new terms in respect of the current terms "Service Provider" and "Information Provider"? If not, can you suggest alternative terms?**

*Yes, we agree the both "Service Provider" and "Information Provider" are acceptable and clear terms to be used by PhonepayPlus.*