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06 August 2009

PhonepayPlus

Developing the Next Code of Practice

Association for Interactive Media and Entertainment (AIME)

Submission

AIME (www.aimelink.org)

AIME is a UK based not for profit trade association that promotes excellence in the Interactive Media and Entertainment industry.

We uphold our Code of Ethics and create an environment of consumer trust and industry confidence within which our members' commerce can grow. We are committed to furthering the interests of Interactive Media and Entertainment through the regular exchange of information and communication throughout the value chain, effective engagement with regulators and legislators and the presentation of a successful industry image to media.

We are the only trade association with membership across all elements of the Interactive Media and Entertainment value chain. One of our key aims is to promote communication and better coordination within the chain and a recent example of this is the Broadcast Forum which was created after the 2007 PTV problems, the result of which has seen a growing increase in trust in the broadcast sector as a result of companies working more closely together and taking responsibility for consumer contact issues.

AIME promotes the philosophy that consumers who are accurately and openly informed of the nature, content and cost of participation in an interactive service experience are perfectly placed to exercise their freedom of choice and thereby enjoy the most effective form of consumer protection.

AIME also encourages its members to invest more in consumer care and to recognise that if there is to be sustainable growth in our industry then there must be more investment in consumer contact whether it be dealing with complaints or enquiries. From the latest research carried out by PhonepayPlus (PPP) there is still a significant portion of the UK population that

does not use premium rate services due to trust issues in the main. There is no reason why industry cannot work towards encouraging increased consumer uptake to enlarge the relatively small user base of consumers who do consume premium rate services on a regular basis.

We welcome the opportunity to respond constructively to this discussion paper on developing the next PhonepayPlus Code of Practice for Premium Rate Telephony Services in the UK.

General

More than twenty years of the present regulatory model with its prescriptive Code of Practice style has failed to deliver a stable and responsible environment for industry growth with the result that consumer trust is low and growth has been limited. AIME also believes a major contributor to past crises in the PRS industry has been the lack of genuine engagement between industry and ICSTIS/PPP and both parties must share responsibility for this.

The entrepreneurial nature of the Premium Rate Services industry demands a flexible, responsive and cost effective regulatory regime that does not inhibit industry growth while assisting industry in ensuring the necessary fair and proportional protection that consumers are entitled to expect. AIME believes that it is now generally recognised that this environment cannot be achieved by regulators acting in isolation and that industry and regulatory acting together in a spirit of co-regulation will provide the stability required to encourage conditions of confidence and trust that will enable these services to achieve their true potential. It is encouraging that PPP have issued this Discussion Paper as a prelude to the 12th Code review which presents an opportunity to consider the whole approach to future PRS regulation.

A change in culture from the current and historic business restricting, penal approach to PRS regulation to a system of business enabling encouragement to observe and improve standards in a genuine co-regulatory (industry/regulatory) environment would, in AIME's view, be greatly beneficial to both the consumer and the serving industry.

AIME members continue to voice concerns regarding regulatory overlap and we do believe that while we can see increasing convergence of technologies in the interactive media space there does not appear to be any corresponding convergence of regulation being applied in a technology neutral manner for PRS. A current example of this is the promotion of PRS in print, Television or Internet which currently falls within the scope of PPP while for other service delivery channels the ASA is clearly the responsible regulatory body. This latest review of the PPP Code presents an opportunity to consider this and other instances of regulatory overlap to provide consistency and clarity to our industry.

PPP Chairman's Foreword

AIME welcomes and commends the intent to embrace change and particularly the declared objectives to work closer with industry and take a less prescriptive approach to the Code, although stakeholders will still expect clear guidance on what is expected of them as they take services to consumers.

The emphasis placed by this paper on the shifting balance of consumer complaints or enquiries towards mobile is considered alarmist since this is proportional and should be expected as the population of mobile users continues to expand and dominate the PRS user base. There is clearly no excuse for complacency but it is important to maintain a sense of proportion in this and particularly in dealings with media.

The Foreword mentions four key areas of proposed change:

1. Outcome over Prescription

AIME would welcome a focus on desirable outcomes rather than prescribing a step-by-step guide to compliance within the basic Code. We would like to see a principles based Code document with associated details of requirements and examples contained in Help Notes which will, while accurate and complete, be capable of flexible and timely updating without the need for formal consultations. An associated change in emphasis by the Executive and Adjudications functions of PPP would also need to flow from this approach to obtain the full benefit.

2. Responsibility

AIME supports the placing of responsibility for compliance regarding service promotion, quality, delivery and customer support with the party delivering the activity to the consumer, but would also wish to see final accountability for non compliance, in regulatory adjudication terms, applied at the points in the value chain where failure has occurred. It is appreciated that this will take more regulatory effort but it will be more fair and proportionate and also more effective than the current focus on the Service Provider (as currently defined by PPP).

3. Database

It has been evident for some time that improvements in applications such as Customer Care, Due Diligence and Merchant Promoter Registration require access to common information while supplying different service variants with optional levels of security.

Industry is advanced in its considerations for a central database to offer these, and other, applications which will require timely access to accurate information which is not being achieved using current PPP systems e.g. number checker, customer care forms and IP registration records.

AIME would like to see close cooperation between industry and PPP on this essential requirement.

4. Redress

While the availability of redress is considered vital and is totally supported by AIME we would not expect to see PPP become overly involved in the mechanics and technology of how this is achieved.

Refunds are not justified in all circumstances currently specified within the Code and we believe that while the new Code should specify that refunds may be directed by PPP there will be scope within the Help notes to consider the range of different circumstances that arise and where refunds will be justified and required.

Questions

Given that this is a discussion paper and specifically not a formal consultation AIME will endeavour to avoid detail in its response and attempt to focus more on principles.

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

Answer 1

While we agree with the broad assessment, some concerns have been raised by members regarding the obvious subjectivity of tests to determine, for example, grades of “inconvenience” and “loss of reputation or dignity” in assessing the conduct of a service. It is also important when assessing such “harm” that it be assessed with respect to the contractual owner of the service rather than unauthorised users e.g. a juvenile using an adult verified service.

A subjective approach to assessing harm suggests a need for change in the way the executive and adjudication functions within PPP operate and perhaps this should be considered as part of the Code review.

Q2. Do you agree with our assessment and definition of Outcomes and supporting themes? If not, why not?

Answer 2

The outcomes are considered acceptable and they should be achievable with the minimum of prescription within the core Code supplemented by comprehensive Help Notes which should include interpretation of the terminology used.

Q3. Can you identify any Outcomes for consumer that you consider we may have overlooked?

Answer 3

With regard to transparency we prefer the more complete statement that “consumers who are accurately and openly informed of the nature, content and cost of participation in an interactive service experience are perfectly placed to exercise their freedom of choice”.

The requirement for consumers to have recourse to a simple method of permanent exit from a service agreement is fair but the PPP insistence that it should be immediate for all instances has, on occasion, proved to be unreasonable.

It is not desirable that PPP should become involved in specifying precisely how permanent exit may be achieved.

Q4. Do you agree with our Outcome and supporting themes about complaints handling? Do you have any other suggestions?

Answer 4

The supporting themes surrounding complaints handling are generally supported and, as PPP notes, the scale of response mechanism needs to be proportional and considered alongside the scale of the service and risk of consumer harm. Escalation of a consumer complaint to PPP should only be entertained where industry has failed to provide a satisfactory solution to a justified complaint or where a clear breach of Code has occurred.

Customer care is an important industry responsibility that is recognised as being capable of improvement and for that reason it is the subject of several industry initiatives. It is not desirable that PPP should be involved in the actual provision of customer care facilities rather it would be sufficient for PPP to outline expected facilities in associated Help Notes.

The proposed Merchant Promoter registration scheme will be an essential source of accurate information in support of customer care facilities and it is recommended that PPP work closely with AIME to achieve early implementation of an initial industry scheme. This can be supported by contract conditions in the value chain and can also migrate to an eventual mandatory scheme under the control of PPP if considered necessary.

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

Answer 5

AIME agrees in principle but any action to revoke prior permission or consent must be seen to be fair, proportional and appropriate and take account of where in the value chain responsibility for the breach lies since it is entirely possible for the breach to be beyond the reasonable control of the party holding permission or consent. It would be more flexible if a sanction of suspension were made available.

The process of granting prior permission or consent would benefit from critical examination as many members are concerned over the time taken to process applications. A turn around target of one week would be welcomed.

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?

Answer 6

Enabling the point of sale agent, Merchant Promoter, to apply for prior permission or consent is consistent with the desire to locate responsibility at the appropriate point in the value chain and this is supported. However, the speed of process in granting, or revoking, permission or consent requires review.

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

Answer 7

AIME agrees that an applicant's breach record should be considered for such applications but it is important that a statute of limitations should apply and an applicant's past misdemeanors should expire after an acceptable period of time with a clean record. It is also important that the scale of previous Code breaches and actual harm caused be considered to ensure fairness and proportionality.

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?

Answer 8

AIME supports proportional responsibility down the value chain but would like to see agreement on the actual value chain used for regulatory purposes and has made proposals in this respect. AIME has also called for more emphasis to be placed on responsibility for compliance at the point of sale where the service proposition meets the consumer. Current regulatory focus on the PPP defined Service Provider (present terminology Aggregator) is misplaced as this agency has no connection with consumers nor can it realistically monitor or control all aspects of point of sale activities as these are extremely flexible and likely to change to suit market conditions.

It is essential that responsibility for breaches of Code requirements be correctly located in the value chain and a simple chain with clearly understood demarcations will greatly assist in this process.

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 consumer benefits do you think will arise?

Answer 9

The major impact will likely be a slower adjudication process during the early stages of change but this should improve with experience and the process will be seen to be more fair. Merchants at the point of sale will need to become more familiar with their responsibilities but the impact on the vast majority of stakeholders who have every intention of complying with the rules will not be onerous. However, the impact on the small but dangerous rogue element will be significant, particularly when combined with a registration scheme, as they find it more difficult to find partners willing to risk contracting with them.

Components of the value chain will need a clear understanding of how shared responsibility will work in practice and PPP will need to take account of specified contractual liabilities during any adjudication since this could indicate absence of negligence.

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

Answer 10

AIME agrees that prevention offers more benefit to consumers and industry than punishment after the event and this is a major reason for our suggestion that we should take this opportunity to change the regulatory emphasis and culture from the current and historic business restricting, penal approach to PRS regulation to a system of business enabling encouragement to observe and improve standards in a genuine co-regulatory (industry/regulatory) environment.

Effective due diligence and risk management demands access by key stakeholders in the value chain (including PPP) to accurate and timely information and AIME takes the view that such information should reside in a central database, operated under secure and controlled conditions by industry.

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

Answer 11

AIME's position on a registration scheme as a facts based industry tool is well documented and was also included in the AIME response to the recently closed Ofcom Scope Review consultation.

AIME discussions with a preferred supplier and based on the planning model previously made available to Ofcom and PPP suggests that a registration system for point of sale operators (Merchant Promoters) and capable of extension to other value chain stakeholders could be achieved within a capital budget of £50k and annual operating costs of less than £200k. It is expected that this could easily be funded through registration fees without the need for any increase in levy. AIME disputes the suggested figure of £1m contained in the Ofcom Scope Review for such a system.

AIME notes and agrees with the PPP comment that registration requires an appropriate body which "understands the market and has integrity and independence" and believes that these attributes could best be guaranteed through an industry stakeholder managed company operating in a co-regulatory (industry/regulatory) manner.

To enable industry and consumers to benefit from this scheme at the earliest opportunity AIME proposes an initial scheme run by industry which would be capable of transfer to PPP at a later date if considered necessary. PPP would be invited to participate in the initial scheme alongside other stakeholders.

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?

Answer 12

PPP currently operates an environment wherein reporting of consumer harm to PPP may (and has) resulted in the reporting company being fined with no apparent consideration given to the intention to prevent further harm. This penalising of self reporting operates as a disincentive to co-operate with PPP and consideration should be given to offering some degree of indemnity where genuine responsible action has been taken.

It would also be useful if PPP would accept that compliance advice provided by PPP could either be binding or, at the very least, be regarded as strong mitigating circumstances during or before adjudication.

As mentioned elsewhere AIME would like to see PPP move away from a penal culture generating fines revenues to one where emphasis is placed more on achieving compliance and improving consumer trust.

Q13. Do you agree with our proposed approach to reforming the Informal procedure? If not, why not?

Answer 13

AIME believes it is more important to address and resolve problems than to raise formal cases for minor breaches and the simple reporting of an informal procedure, perhaps using a red card/yellow card approach, against the party who has received an informal approach would be beneficial and reduce the cost burden of formal investigations.

Informal cases must also be dealt with in a timely manner to avoid damaging legitimate business and should be closed promptly rather than prolonged on the off chance of more breaches. This will require closer analysis of complaint patterns and early heads up notices to those involved. PPP must realise the real difficulties of recovering monies when the time scale of the case is unreasonably long.

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

Answer 14

AIME believes that the standard and emergency procedures should be retained but would like to see a review of the emergency procedure since we are aware of a case in 2009 (details are available if required) where we believe it was applied without just cause.

A major problem with the current system is that, given the difficulty of judging the likely outcome of a case at the outset, the scale of any withhold is problematical. Any delay in concluding an adjudication exacerbates this problem and it would be helpful if PPP could give some guidance on the amount to be withheld at an early stage. There is a proposal that, where best practice can be demonstrated, any possible fine (and therefore withhold) should not exceed 30 days revenue.

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

Answer 15

As indicated in our response to Question 9 we are broadly supportive of the proposed approach provided that the end result delivers the fair, targeted, transparent and proportionate application of regulation to PRS.

The allocation of responsibilities to appropriate stakeholders in the value chain together with an early registration scheme and associated industry database will certainly result in more effective and lower cost regulation. A major benefit to both industry and consumer will be gained from a commitment to achieving a new level of cooperation between industry and regulators.

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

Answer 16

Consumer access to refunds where justified are an important component of building trust in PRS and much industry effort is being directed at achieving this in a cost effective manner. The cost of refunding can be significant and other options can be considered such as donations to charity for amounts less than £1 or credits to bills, either automatic or on request.

It is also entirely possible that consumers have an acceptable service experience from an application that is technically in breach of regulations and that they would not be expecting nor requesting any refunds. Additionally, it is not always possible to readily identify consumers using IVR based services where they withhold their number.

AIME would like to see PPP take a more pragmatic approach to refunds and the circumstances under which stakeholders are directed to make refunds under conditions which might seem unreasonable. One clear example of this is where callers ignore specific information that services are either not yet open or are closed and place calls which are charged but deemed ineffective. Where consumers are exposed to clear scams then refunds must be total but outside of this we should have an environment where refunds may be granted on request and after investigation.

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?

Answer 17

As previously stated AIME would like to see more emphasis placed on achieving compliance in a spirit of cooperation with stakeholders rather than pursuing a penal Code since this has not resulted the desirable outcomes of a growing industry and associated consumer confidence. The PPP focus on the current Service Provider as a channel for compliance and fines revenues is fundamentally misplaced and unfair and AIME welcomes signs that the next

Code will attempt to place responsibility both where it belongs and where it becomes effective without damaging innocent parties in the value chain.

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?

Answer 18

AIME has made precise proposals in respect of the value chain and the paper submitted to Ofcom in response to the Scope Review consultation is attached as Appendix 1.

Conclusions

AIME is mindful that this is not a Code Review consultation paper and we have attempted so far as possible to keep our comments general and non prescriptive.

It is commendable that PPP have accepted past criticism that the current Code is too prescriptive and inflexible and unsuited to the fast moving business sector that it attempts to address. AIME welcomes the opportunity to assist PPP in the process of revising the Code of Practice for PRS and strongly supports the concept of a principles based core code surrounded by precise Help Notes or Guidelines which can be readily amended to reflect changing circumstances without recourse to lengthy and costly formal consultations.

AIME would not wish to see PPP attempt such a radical change in isolation and suggests that industry and PPP work together in a co-regulatory manner to produce the 12th Code Review and continue this relationship indefinitely to produce and constantly review and update the associated Help Notes that will form an integral part of the document.

We should not imagine that the 12th Code Review can be considered alone as it will form a core element of a larger consideration to improve areas such as Customer Care, Due Diligence and Stakeholder registration which will require industry and regulatory interests to cooperate in an effective manner while using common information.

Statement of Representation

AIME confirms that this response has been compiled following a process of internal discussion and distribution of the relevant documentation to all AIME members. A list of members can be found at www.aimelink.org/currentmembers.aspx

The views expressed in this response are a fair representation of the majority views held by the responding AIME membership. Individual members are actively encouraged to submit their own independent views as they deem fit and at their sole discretion.

Close

We look forward to your response and assure you that, as ever, our comments are made constructively and with the intent of achieving an effective, fair and proportional regulatory regime for Premium Interactive Media and Entertainment services in the UK. As with other past responses AIME strongly recommends that PPP convene a round table of major respondents to discuss their findings and recommendations before taking any policy decisions.

If any clarification to our response is required or if we can be of any further assistance please contact Zoe Patterson at 08445 828 828 or zoe@aimelink.org

Yours sincerely,

Toby Padgham
General Secretary

Appendix 1:

PRS Value Chain Structures & Terminology

July 2009

Single value chain descriptors.

There is functionally very little difference between the 090 TNO and SMS billing TSP – they both contract and connect with ONOs, and provide billing services via premium numbers. One small difference is that SMS TSPs rent premium shortcodes from mobile operators, whereas TNOs are issued their own PRS numbers by Ofcom.

It is possible to have a single terminology and value chain descriptors for all forms of PRS if the following convention and terminology is used:

'Network Operator' (previous PPP name ONO) This is the network who provides the telecommunications service to the consumer and this also applies to Virtual Network Operators.

'Terminating Provider' (Previous PPP names TNO *fixed line*, Service Provider *mobile*) The TP is the contracted party to the Network Operator, terminating PRS traffic, be it premium calls or premium SMS, MMS, shortcode voice and video. In the case of P-SMS and MMS, the TP will also be the point of injection of premium MT messages into the Network Operator. In Payforit the Payment Intermediary would be a Terminating Provider.

'Application Provider' (Previous PPP names Service Provider *fixed*, and not identified in mobile) The AP operates the PRS application platform on which the PRS service runs. An AP may have partners, resellers and agents, but the AP can be identified as the company contracting with the Terminating Provider.

'Merchant Promoter' (Previous PPP name Information Provider) This is the party that promotes to and contracts with the end consumer. The term 'merchant promoter' is used, rather than 'service promoter' as it better reflects the responsibilities of a merchant in consumer law, and describes next-generation services such as application stores. Unique to PRS in broadcast, it is suggested that 'Merchant Promoter' is replaced by 'Broadcaster'. The Merchant Promoter can have an ecosystem of its own, comprising content providers, content aggregators, games developers, media partners, and affiliate advertisers. These are outside of the scope of PRS regulation.

Below are the value chain descriptors, that only operate in the one point in the value chain and it is important to note that individual organisations can perform multiple functions.

