



Mobile Broadband Group
PO Box 34586, London SE15 5YA

5th December 2007

Sir Alistair Graham
Chair
PhonepayPlus
Clover Building
4 Maguire Street
London SE1

Dear Sir Alistair,

PhonepayPlus Activity Plan and Budget

The Mobile Broadband Group is glad of the opportunity to comment of PhonepayPlus' Annual Plan and Budget for 2008/9.

There is much in the plan to be welcomed:

- The pre-empt, prevent and protect strategy is in line with the approach we have been advocating. Providing it's proportionately applied, we very much support it, and we look forward to engaging with PhonepayPlus as it develops this strategy during 2008.
- The collection rate for fines has improved dramatically, thus ensuring that there is greater emphasis on the polluter bearing a greater proportion of the regulatory costs.
- We also support the proposed new method of recovering the administrative charges associated with bringing cases against those that breach the Code.
- It is clearly good news that the number of complaints is dropping back to 2001/2 levels.
- The key performance indicators are being met. We look forward to seeing how KPIs will be developed in 2008 in line with the proposals on KPIs in the 'Formal Framework Agreement between Ofcom and PhonepayPlus'.
- We also welcome the reference to efficiency savings. However, MBG would welcome greater focus being paid to this aspect. It is absolutely vital that

PhonepayPlus as a regulator is subject to the same sort of disciplines, in terms of a constant search for productivity gains, as the industry that funds it.

Against these positive points, it is noted that the underlying industry supporting the levy has had a bad year and the outlook, while showing some signs of recovery, is still very uncertain. In such circumstances the MBG strongly questions a budgetary increase of 8.5%.

The budget for the coming year is £4.4 million. This represents an average increase of about half a million pounds every year since 2003, when the ICSTIS budget stood at £2.4m. There is no reason for the budget to be locked into the £4million range. The goal of the pre-empt, prevent, protect strategy should be to improve cost effectiveness and increase public confidence to the point where the budget can be managed downwards over time.

One further point is that Phonepay Plus, according to the most recent filings, has £4.7m in the bank, while the auditors are recommending a contingency reserve of £1.8m. The MBG acknowledges that there is a requirement to maintain a balance to deal with uneven short-term cash flow but maintaining a whole year of running costs would appear excessive and PhonepayPlus should make clear how this money is to be returned to industry.

It would also be very helpful for industry to understand how the cost of regulating 0871 will be borne by the newly regulated industry players, who should not only be bearing the marginal cost of regulation but also be making an equitable contribution to the fixed costs of regulation. It is not at all apparent from the Plan that this will happen or indeed what the expected costs and contribution from 0871 will be. This is particularly crucial when PhonepayPlus are seeking an additional 6.3% of budget just to accommodate the new 0871 services.

The MBG has a few additional points:

- a) MBG strongly questions the assumption that PhonepayPlus' remit will widen during 2008. The budget and plan correctly focus on "pre-empting problems arising" but the plan goes on to say that key to this is additional research into emerging new markets. However, as the Framework Agreement makes clear the scope of the regulatory framework is to be determined by Ofcom and until the outcome of the scope review is known, PhonepayPlus cannot make budgetary assumptions based on an assumed increase in its remit.
- b) We note that 50k is planned for web-development. Industry would welcome the opportunity to contribute ideas through consultation and feedback.
- c) We welcome the intention to benchmark the cost of PRS regulation relative to the size of industry regulated. While recognising that it is difficult to get precise like for like comparisons, it would be very informative to do this against other regulators. The ASA may be appropriate as it has Code development, administrative and adjudicatory functions.
- d) The plan refers to relationships and MOUs with other regulators. The significance of this work is understated. It is very important for external stakeholders to understand the inter-relationships and overlaps between regulators and we urge PhonepayPlus to press ahead with this work. It would be helpful if time could be set aside at a PhonepayPlus Forum (or similar event) for the respective parties

to an MOU to present MOUs formally to stakeholders. We would also welcome clarification as to how Ofcom will participate in the forums under the new Framework Agreement.

- e) The MBG would like more clarity on what is meant by 'the possibility of precedent cases going to the Independent Appeals Body'. Our understanding is that the operation of PayphonePlus regulation is not determined through precedent cases.

Finally, the MBG has noted an improvement in the communication between the executive and the ILP under the chairmanship of Nicola Robbins. In a co-regulatory framework, this is a vital channel of communication between industry and the regulator, which is still being under utilised. We would welcome involvement in initiatives at an earlier stage. For example, much confusion would have been avoided if the proposal to publish informal adjudications had been subject to some prior discussion. Similarly the MBG would urge PhonepayPlus to discuss the budget and plan with the ILP in advance of the formal consultation, this would certainly be beneficial where the opportunity for discussion in a four week consultation period is somewhat limited.

The mobile operators, the MBG and the ILP will be thoroughly engaged in the Ofcom review of PRS regulation and we look forward to making continued progress in the proportionate regulation of premium rate service.

Yours sincerely,

Hamish MacLeod

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Mobile Broadband Group