

Consultation on Information Call Connection and Signposting services

This is the Clix Connex response to the PhonepayPlus consultation published on 19 July 2012.

Our Company

Clix Connex is a call connection and contact information service provider in competition with Directory Enquiry providers on 118 XXX numbers. The Clix Connex business is web-based, serving those who use “search” when seeking call connection or contact information. We currently focus on offering connectivity to customer service and information numbers provided, along with other contact information, provided by leading UK companies and organisations.

We offer a low priced e-Commerce alternative to the high-cost services offered by Directory Enquiry (DQ) providers, most particularly the two market leaders who appear to operate something approaching a duopoly. Were consumers to lose the choice of our on-line call connection service and reverted to DQ providers the annual cost to consumers could increase by £6m.

While we cannot disclose detailed commercially confidential information in our response, Clix Connex can say that the company has operated in this market for approximately one year. It has handled millions of web searches and hundreds of thousands of calls. The service appears to be an attractive, fast, convenient and cost effective aid to those who use PCs and mobile technologies to access contact information.

Our services were set up after taking extensive advice from PhonepayPlus and Google. We were conscious from the outset of the need to be clear as to our identity and the nature of our call connection service. The near total absence of complaints to the regulator in over a year of operation is evidence of the high level of compliance maintained, based on our commitment to self-regulate and to comply with the PhonepayPlus Code and the detailed terms and conditions set by Google.

Our key messages

We respect and support the regulator’s wish to respond promptly and effectively to possible consumer harm. We do, however, think the consultation and the proposals for a prior permission regime are inappropriate and potentially in contravention of domestic and EU legislation.

We believe the consultation contains a very limited and imprecise evidence base and relies heavily and inappropriately on the circumstances surrounding three small cases that have little or nothing in common with call connection businesses. Insofar as the consultation does seek to address call connection services the proposals appear both disproportionate and discriminatory given their failure to address DQ providers.

Our concerns of proportionality and non-discriminatory competition between online and DQ call connection providers overlap. They are based on law as well as on regulatory principles. Advice in the form of a Legal Opinion has confirmed that call connection services are a form of Electronic Communications Service under the terms of the Framework Directive 2002/21/EC. This requires regulators to apply, objective, transparent, non-discriminatory and proportionate regulatory principles. These requirements are repeated specifically in relation to premium rate services in section 121(2) of the Communications Act 2003.

Setting aside the legal considerations, the changes, if implemented, could result in significant extra costs for UK consumers. We regret that the consultation is all but silent on call costs given DQ charges and the benefits of lower cost alternatives. We believe proceeding to a prior permission regime on the basis proposed would be detrimental for consumers and estimate this could result in UK customers incurring unnecessary additional costs of at least £6m per annum.

We do not believe the newly created service category of “Information, Connection or Signposting Services” has clear meaning. It bundles legitimate call connection services with “information and signposting services” based on little more than an aggregation of the findings of a few adjudications.

We believe it is contrary to statute to include call connection services but would in any event argue that the consultation lacks any evidence-base for action on the lines proposed. We consider the proposals to be wholly disproportionate in a market where we and others are handling thousands of calls daily without complaint.

There is nothing fundamentally different between a call connection service accessed on-line (as provided by Clix Connex) and call connection services offered by DQ providers. Indeed, DQ firms offer connectivity to corporate and public body numbers (including health and benefit lines for the most vulnerable in society), and at higher prices.

Alongside the issue of non-discrimination we have parallel concerns over proportionality and practicality. We do not believe the proposals for prescription relating to Google “ad words”, the content of landing pages, the provision of data for free and on variable in-call price changes are practical and have been tested with industry or Google. The Regulatory Impact Assessment fails to address these costs in any way.

We believe it would be better for consumers and for a healthy and competitive call connection market for PhonepayPlus to remove call connection services from the exercise through some revision of the ICSS definition or by taking a different approach more generally, based not on new definitions and conditions but on the effective use of existing powers to deal with any residual issues around search marketing or information/signposting services.

We hope this response with the data, analysis, legal context and direct operational experience helps PhonepayPlus understand the market in which we operate.

Clix Connex Responses to the specific Questions in the PhonepayPlus Consultation document

Question 1 - Do you agree with our definition of an Information, Connection or Signposting Service?

No. Any definition has meaning based on the implications of being defined “in” or “out”. We cannot support a definition that separates one category of call connection services (ours, using search marketing) from another (established DQ providers on 118 numbers) if the consequence is that only one set of providers are subject to regulatory requirements that are disproportionate and discriminatory to the point of being debilitating. Such action would be contrary to the non-

discrimination principle in the Communications act 2003 and the legal duty on regulators in the Framework Directive 2002/21/EC. The net effect would be a further reduction in competition for the DQ duopoly of BT and The Number and higher cost to consumers.

We also question whether the definition seeks to distinguish between services using search advertising or/and on-line websites and those which might offer signposting and information by more traditional means of advertising; most obviously print advertising. We wonder whether PhonepayPlus has given thought to the extent to which their draft definition would sweep in information and signposting services that are long established, non-problematic but with a search/web element.

The examples that seem to anchor the definition are at 1.5, 1.7 and 1.9. All are based on the use of Internet search as the start point – a factor wholly missing from the broad title of an ICSS or the wording at 1.4.

We are not clear whether the definition seeks substantively to distinguish between advice and information services and, advice and information services where the advice and information is the property of some other party and is being sold on in some way? We see great difficulty in distinguishing between services on this basis. We question whether the regime might sweep up App-based sports, financial or other information services where the information may be proprietary or open to all and to counselling and other live services where information and signposting is a key element.

We fear the definition is the product of an amalgamation of 2-3 recent cases taken by PhonepayPlus without thought being given to whether it has meaningful boundaries or/and whether it overlaps with other definitions.

Question 2 - Do you agree with our description of how an ICSS operates? Are there variants?

We have said we do not think the definition is fit for purpose. Question 2 starts with a presumption that an “ICSS” has some very clear and repetitious characteristics. We doubt this to be true. There are consumer, policy and legal questions around the exclusion of DQ providers or, more probably, over the inclusion of call connection ECS services within this definition.

Describing how three existing and clearly problematic services operated, cannot give a basis for a description of how some wide category of services will operate today or in future. This alone highlights the case for keeping regulation at a strategic level as was intended with Code 12 and not seeking to apply prescriptive licensing based on a prescriptive assessment of a small number of unacceptable services.

Such action reinforces a conscious or sub-conscious view that ICSS as defined are, by definition, problematic. This alone gives us grounds for arguing that call connection services cannot be categorised and treated as an ICSS.

Question 3 – Do you agree with the distinction we are making between the connection and signposting aspects of ICSS and DQ services?

No. We argue call connection services deliver the same thing for consumers. We argue, supported by Legal Opinion that differential treatment is in breach of the terms of the Framework Directive and contrary to the provisions of the Communications Act. We believe the duties therein apply to both Ofcom and PhonepayPlus.

We were particularly disappointed by the argument at 1.12 and 1.13. The four differences listed are of questionable accuracy or relevance:

1. People using a DQ or web-search call connection services are generally looking for one number –it is a matter of irrelevance to them whether the provider has a stock of 500 or 20 million numbers
2. Consumers using DQ and a consumer using search starts with the same information – a name or name and address for the party they are seeking. There is nothing differential here. Insofar as there is a differentiating characteristic it lies in the ways in which consumers can use a call connection firm’s landing page to source information including signposting to numbers without incurring any cost. The DQ approach has cost from the very first second. Indeed the very first second of a DQ call to the leading providers (BT118 and 118118) incurs a charge of up to £2.31 to the enquirer
3. The fact that a DQ provider has strong brand awareness is not a differentiating factor. In truth, brand awareness in DQ barely extends beyond the two leading providers with 90% of the UK market. It could well be argued that brand awareness is a direct substitute for price awareness, particularly when the leading provider uses its 118.118.com subsidiary to secure TV sponsorship slots which, by their very nature, are prohibited from giving out price information! It is questionable whether consumers see the difference between sponsorship and advertising; however the one thing they do not see is pricing.

The fourth point is particularly worrying. The PhonepayPlus claim that the public is well aware of 118 as a premium number range “as compared with 090 awareness” comes without substantiation. In fact PhonepayPlus has itself published evidence to the contrary. In the 2011 report by Analysys Mason 'Current and emerging trends in the UK premium-rate services market' which PhonepayPlus commissioned, the following statement is made:

'With mobile phones increasingly being the DQ access method of choice for consumers, information providers are looking to alternative payment methods in order to bypass what are viewed as “unfair” surcharges placed on the cost of a DQ call by MNOs. This is likely to accelerate the shift away from using phone-paid services as the foremost access method for directory services enquiries’.

This concern is magnified by what appears to be a fundamental difference of understanding in Ofcom and PhonepayPlus over consumer awareness of numbers and cost for services on the 118 and 09 number ranges. In the consultation on non-geographic number and charging Ofcom noted: -

“In other cases, poor price awareness was due to the wide range of tariffs and tariff structures, such as for 118 numbers. We also concluded that poor consumer price awareness often led to consumers over-estimating prices. However, exceptions to this included 09 numbers where consumers were generally aware that the price of these calls was relatively high”

No-one would challenge the proposition that people dialling a DQ provider understand they are dialling a source of numbers and provider of connectivity. It is no surprise that PhonepayPlus does not get complaints over DQ providers coming across as third parties. All research suggests, however, that users of DQ services are not aware of the high and oft-changing costs of using the service.

We really struggle with the failure to address call connection costs and DQ cost most obviously when the single most important thing in a call connection and number information market of over £200m is the day to day charges and how they are communicated.

In recent correspondence with PhonepayPlus, Clix Connex shared information on the cost of call connection services. The following is an extract from that correspondence:

“There are dramatic differences between the prices charged by Clix Connex and the 118 500 and 118 118 duopoly. We highlight below a set of cost comparisons between Clix Connex and BT 118 500 charging. By way of headline example a call from a BT landline to Clix Connex would cost 62p for one minute and £3.72 for six minutes. BT 118 500 would charge £2.31 for a minute or any lesser time and £10.76 for the same six minutes. Those six minute calls on the Vodafone network would cost £ 6.12 via Clix Connex and £16.50 via BT 118 500.”

Setting aside legal considerations for excluding call connection services from this exercise, we would ask that thought be given to the consumer impact of the loss of low-cost competition to the DQ duopoly. A scenario in which many or all users of search/connection services would default to 118 providers would result in extra charges to consumers of over £6m per annum (based on Clix Connex business alone). There is no assessment of this cost/benefit or many others in the PhonepayPlus Regulatory Impact assessment.

We have already highlighted the duty on regulators to be objective, proportionate, transparent and non-discriminatory in their work. This duty lies in domestic and EU legislation. We repeat the point here for the public record.

Question 4 – Do you agree with our assessment of consumer harm in relation to ICSS?

We believe that PhonepayPlus Code 12 provides the right basis for assessing and addressing harm.

We are not convinced the harm assessment approach set out in the consultation is evidence based in a substantive way. We have concerns over assumptions and presumptions at 2.14 which seem to be the untested views of two organisations.

We recognise the risks and harms evident in the three cases described. We see these individually or collectively as issues that can be, should be and were addressed under the core Code provisions relating to misleading behaviour, the protection of privacy and the clarity of pricing and delivery of the service promised.

Only one of the so-called ICSS listed was a call connection service. Unlike Clix Connex it appears the service provider used lay-outs, colouring, logos and text to give the impression theirs was the NHS Direct site. This was addressed effectively through use of existing powers. If repeated today it would also contravene Google requirements that are regularly updated and actively enforced.

We understand the tribunal considering the case was concerned also about the potentially universal vulnerability of those in need on health advice from this source. If there are concerns over health and welfare/benefit numbers where the sole purpose is to aid those in vulnerable circumstances, then we can see an argument for no connection service offering connectivity at premium rates.

We think it is wrong not to see the DQ call connection services assessed in this regard. We understand DQ providers offer numbers and connectivity to these and other “vulnerable” services. We would support some form of prohibition on premium payment to services of the kind described.

We do not, however, accept the conclusion (at 2.15) that call connection services are fundamentally problematic in terms of consumer confusion over the service or the party supplying the service. Here also, is evidence of call connection services being bundled in a definition alongside 2 or 3 individual offerings that were, by general agreement, reckless if not wilful in their intent to mislead.

We have operated call connection services for almost a year. We have done so across a range of numbers relating to leading corporate and some public bodies – that are not focused on the vulnerable. We know from an analysis of traffic that a clear majority of those who dial up, choose to stay on and use the connection service, rather than note the number sought for use later by alternative means of dialling.

There is no incentive for the company in offering a misleading message in Google advertising. Every click carries a cost payable by the advertiser to Google. It is in our interests, therefore, to be clear and to seek only to attract those who want to proceed to use the service.

PhonepayPlus refer to a total of 104 complaints. This bundles complaints over non call connection services (the Olympics case, the DSS tenancy case and e-Bay) with some relating to call connection. We understand the majority of the 104 relate to the cases adjudicated upon and had nothing to do with call connection. No breakdown is provided by PhonepayPlus so it is impossible, even within this very small number, to know whether anything more than a handful related to call connection services.

In almost a year of operation and with millions of clicks and hundreds of thousands of calls connected we understand PhonepayPlus has had only four complaints relating to Clix Connex. We discussed each of these and have been told that our service was seen as compliant and that there was no need for any formal or even informal resolution.

If our complaint ratio is about one thousandth of one percent (0.00016%) we simply cannot accept the conclusion at 2.15 that “many consumers are misled” into thinking the ICSS provider is the helpline they are seeking to contact. PhonepayPlus has no substantial, robust and meaningful evidence to this effect.

The “extra” harms and risks at 2.14 appear to have been alleged by parties contacting PhonepayPlus, but not to have been analysed by the regulator. They are, however, listed at length. We believe these points are little more than opinion:

1. Using the data above, we seriously question whether a 0.00016% complaint rate suggests consumers feel misled to an extent and degree likely to cause a loss of trust in public bodies.
2. We note concerns over trademarks and copyright. We never act in ways that would cause this to be an issue. This is a very serious issue for Google who monitor constantly to ensure their strict policies are respected or otherwise services are removed by them and closed down immediately. In addition there are established legal means of addressing such offences. It is right that PhonepayPlus addresses misleading marketing but responsibility for the application of copyright law rests elsewhere
3. We would be interested in the PhonepayPlus position on charging for access to helplines that should be accessible to all, irrespective of spending power. This again raises fundamental issues over the operation of DQ services and invites questions again as to how and why they are excluded.
4. We do not see a real issue with connection services as a “delay” factor for seriously urgent calls. Anyone landing on our site can dial the number as fast as they could the number on the entities own site –and faster if it is not as transparent as the numbers are required to be on our landing pages. We would, in any case, support an end to DQ and other call connection services to provide services universally dedicated to those with vulnerabilities.

The last assertion is over the marginal benefit to those who choose to use a call connection service. We would argue that this is a subjective and unsubstantiated opinion. Our service allows users to search and access contact information quickly, at their convenience and at far lower costs than those operated by the 118 duopoly.

If services are clear and clearly priced, the market is the final arbiter on which services survive or perish. It is not generally for regulators to make value judgements as to the relative value of the services they regulate.

Question 5 – Is there evidence of harm not addressed in the consultation?

It is noteworthy that the exercise does not look in much detail at the aggregate cost of call connection services and at the case, if any, for spend limits or per minute price controls.

Call connections, including those run by DQ providers, are effectively live services. The duration of these calls is largely in the hands of the calling party. There is a strong argument for not imposing price caps and some form of forced-release (cut-off) ending a private call or a call to a customer service department at just the worst and most frustrating moment.

Clix Connex tracks call durations. The average call times are not excessive....although one-off calls can run for extended periods. The same clearly applies with DQ call connection but at 2-3 times the cost to the consumer. Our experience does not suggest there is a need for spend limits or forced release.

We do believe however that to discuss the case for a maximum per minute charge should be considered. Our charge levels are substantially below those of the DQ duopoly and most other providers but we are committed to a long term healthy market in which we can offer new and innovative services. We would support the consideration of as to whether some per minute price cap below the £1.53 currently available on 09 numbers and the uncapped pricing open to DQ providers available would be in the best interests of customer value and market sustainability. We do, however, see this as an alternative and not an addition to the unworkable and disproportionate arrangements tabled.

Question 6 - Do you agree ICSS carry a level of risk which meets the threshold for a prior permission regime?

No.

We do not think the ICSS definition is meaningful. We do not believe it is appropriate or legal to include call connection ECS services in the regime. These arguments have been expressed previously and are addressed in detail in a confidential annex to this response.

It is for others to reflect on the justification of a regime that did not include call connection services. We however, are not persuaded by the arguments – and we are certainly not persuaded by the conditions that PhonepayPlus suggest be attached to this prior permission regime.

Prior permission was used historically to put new or problematic services on probation – and to give the regulator the chance to “kick the tyres” before a service got up and running. In one or two cases the requirement for prior permission associated with costly and unachievable conditions might have seemed to some to be designed to halt a service in its tracks without having to ban it per se.

The rogue services referenced in the consultation have been closed. Some or all of the parties involved have been told they cannot run any new service without that new service having prior permission. This is a targeted and proportionate use of prior permission as a combination of safeguard and sanction.

Given this, given the rules and compliance mechanisms operated by Google, given the unambiguous framework already communicated by PhonepayPlus and on the understanding that this form of licensing cannot be applied to DQ and other call connection services, we fail to see any value in prior permission.

The approach raises worries over the PhonepayPlus commitment to principles and outcome based regulation if 3-4 questionable but differing services, and a very small number of complaints across a variety of services, can prompt proposals for a regime of such prescription and specificity. This is particularly unfortunate given we are dealing with e-Commerce web-based activity that the State seeks to facilitate and EU Directives protects from regulatory discrimination.

Question 7 – Do you agree with our proposed exemptions to prior permission?

No – on the basis we are not persuaded of the case for prior permission and challenge the exclusion of DQ providers and/or the inclusion of call connection services.

Question. Do you agree with PhonepayPlus’ conditions around Search Engine Marketing?

We are concerned that PhonepayPlus is seeking to impose prescriptive and unworkable requirements in relation to search engine marketing (SEM) and search engine optimisation (SEO).

We note, for example, that the regulator reaches a general view as to the public’s capacity to understand search and paid for advertising at paragraph 4.8. By paragraph 4.13 we have proposals for prescriptive metatags that refer to “premium rate telephone services”.

Nothing similar seems to be applied in any way to DQ providers who use the existence of associate web-search (.com) services to signpost their numbers and seemingly to circumvent broadcast pricing requirements.

It is doubtful whether such an approach is technically possible or acceptable to Google, Bing and other search providers. Advertisers “bid” on a wide variety of search words with a view to having their advert appear before relevant prospects. These bids extend beyond the most likely language e.g. “XXXX Customer service number” and might take in “contact address” or “contact location”. Technical and other barriers aside, a requirement to link “Premium Rate telephone service” to every search hit could confuse users who are searching for numbers. It would be a worry if this sort of detail had not been tested for practicality as well as proportionality.

We are not aware of any other “premium rate telephone service” being obliged to carry this descriptor – but know the web carries a wide range of competition, adult, mobile apps, ringtone and other content where payment is generally or exclusively through a premium rate call – as defined in the Code. Nor do we see any equivalent in conventional advertising. It seems, therefore that this is an approach that is both discriminatory and inconsistent, that is particularly hard to justify in a situation where harm has been minimal and only concentrated in some services already addressed.

We also think it is a retrograde step to seek to make use of language anchored in “premium rate”. It is not clear this language would be well or widely understood by those using search tools and it feels a step back to stigmatic language at a time when PhonepayPlus is talking about phone-paid services and the regulation of a wider range of payment instruments.

We think it important to recognise and value the work done by search engine providers, and Google in particular. Google has repeatedly reviewed and updated their policies around ad-words and on call connection more generally. They monitor services on a daily basis and intervene without

hesitation when there are concerns of anything that misleads, passes-off or otherwise may confuse users.

We understand that regulatory agencies should not allow gaps in their coverage to develop, based on their reliance on self-regulatory partners and players. However, PhonepayPlus does not have gaps in its regulatory scope or powers of compliance – they are broad and extensive. This must be ground, therefore, for questions over the need to introduce additional layers of prescription at a time when regulatory and market-based actions have been taken and are taking effect.

Q10 – Do you agree with this assessment and PhonepayPlus’ proposed conditions around promotion of ICSS? If not, why not?

Q11 – Do you have any views on whether condition B ii) should be applied to all ICSS, or whether an altered condition, as outlined above, should apply only to connection and signposting services which can prove they are not used mainly by vulnerable people and link to genuinely hard to find numbers? If so, please provide them, and any evidence which supports them.

There appears to be a serious lack of evidence to suggest calls via call connection services using online marketing are based on any misunderstanding over the identity of the provider. On the other hand there is hard evidence of the differential in cost between Clix Connex services and those offered by DQ providers; the latter being two to three times more expensive.

Our support for controls on services is, therefore, limited to 4.18 a, c and d. All of these requirements already exist in clear unequivocal form in the PhonepayPlus Code. It is not clear how their repetition in prior permission arrangements adds anything. Paragraph 4.18b is a new, additional and prescriptive suggestion – yet comes with the suggestion that it could be lifted from call connection (and signposting) services subject to two possible conditions.

4.18b goes to the heart of the issues of proportionality and discrimination. We fail to see why some providers of call connection services should be required to provide connection numbering for free while others do not. There is no duty on a DQ provider to give out the number sought by a caller for free. Indeed, any call to the leading DQ providers involves a charge of up to £2.31 “immediately” – even if the caller hangs up after a few seconds or notes the number sought and then hangs up. The leading DQ providers apply a connection fee and charge parallel “per minute” tariffs for the first minute even if the caller uses just a fragment of that minute.

The document offers two scenarios in which a call connection provider might be permitted to continue to charge for providing connectivity or number information. One scenario is based on the condition that the body and service sought is not one used primarily for vulnerable consumers. We are sympathetic to the proposition that call connection services should not operate when the services are universally dedicated to meeting the needs of the vulnerable. This appears the case in relation to health and care/benefit regimes and emergency services of various kinds. There is clearly an argument that this is a rule as applicable to DQ providers as any others.

We do not think the second condition is necessary or workable. We do believe a number of companies and some public bodies structure their web, print and other material to channel

customers through online, automated services. We do believe there is a value to consumers who want to speak with companies and other bodies in getting this quick access and without succumbing to the barriers created.

We do not believe, however, that this can be created as a test or barrier to operating call connection services. It is not applied, as things stand, to DQ providers and it is a test that is utterly subjective. It would leave providers continually uncertain as to whether numbers they service are or are not considered accessible or have or have not been moved around on websites or in published material.

It is for leading companies to decide how far they choose to promote live call centres. If they do so clearly and widely then customers would seem less likely to need to turn to DQ or online providers. Therefore DQ and online providers cannot be held to account for the policy decisions of these companies or for preferences exercised by consumers.

It must be for consumers in the market to decide whether there is value enough in using different services. There is cost to Clix Connex but no cost to consumers in offering web advice and signposting and the option of call connection. It is for consumers to decide if the offer is tempting; not for PhonepayPlus to decide whether the alternative (a trawl of a corporate website) is sufficiently slow and obstructive as to justify the offer of a “search and connect” alternative.

Questions 12 and 13 – do you agree the proposed conditions on connection to an “ICSS” and do you have a view on the conditional dis-application of 4.34b?

It is unfortunate the consultation is drafted in a way that requires a degree of repetition in the answers to various question but we must say we do not agree with the conditions proposed.

The conditions address cost as well as the issues of potential delay and confusion as the provider of the service. Others relate to services that have no call connection element.

Paragraph 4.32 addresses call queuing and cost. These are not unique to search-based call connection services. There is a clear distinction between delays that are within the gift or control of a service provider and delays that can be caused by the conduct of the calling party or the entity sought via the call connection provider. There is no duty on DQ providers to manage the conduct of callers or prepare them for, or protect them from, the conduct of the called party – most obviously in terms of call management and queuing.

The last of these is an understandable concern though largely managed through the extensive use of call-options and channelling to minimise the duration and cost of calls...a mutual concern of the caller and the party called.

In this regard, items 4.34 d and g relate not to call connection services but to others of the kind described elsewhere and where the intent is not to facilitate connection but to maximise call revenue through delay in call management or the introduction of extraneous and unnecessary questions. This is further evidence of the negative consequences of bundling services of fundamentally different character.

There is a major issue of discrimination in any proposal that a search-based call connection service should be required to give out for free, information that its DQ counterpart currently charges up to £2.31 to provide. There is no free message element in a DQ call. It is questionable also whether it is technically possible or commercially viable to set up such dual charging. None of this is addressed in the Regulatory Impact Assessment?

Unfortunately the overall impression is of over-engineering and unnecessary prescription based on an assessment of a few past problem services and the belief that search-based call connection cannot really be the wish of consumers, notwithstanding the aggregate statistical evidence to the contrary.

Question 14 – Do you agree with the assessment and PhonepayPlus proposed condition on the collection of personal data?

As a call connection service we do not collect personal data. Our service has nothing in common with the service described in the consultation and the clear genesis for this section.

The Information Commissioner's office (ICO) deals with data protection. It is legitimate for PhonepayPlus to be concerned if the data collection is little more than cover for extending the duration and cost of a call. It is not clear whether the ICO has approved PhonepayPlus to act as their surrogate or alternative compliance body. It is not clear whether PhonepayPlus should be applying the ICO regulations and not the PhonepayPlus Code.

There is a need for regulators with overlapping interests to work in ways that are not inconsistent and that are, hopefully, mutually supportive. There is a risk, however, if one regulator (PhonepayPlus in this instance) is claiming a role and responsibility that is anchored not in its own code but in the regulations of others. Different regulators have different responsibilities, different powers and different burdens of proof. Regulated parties have a legitimate right to know to whom they account and the basis of that accountability. None of this is clear in this case.

Question 15 is a bond necessary?

Paragraphs 5.5 and 5.6 offer no analysis of the case for a bond tied to prior permission.

We have made clear we do not believe call connection services can be the subject of a prior permission regime and that there are issues over whether the proposals meet proportionality and non-discrimination tests.

We would not support a bond in this case in any event. PhonepayPlus may be under a duty to consider having a bond in every situation in which it considers introducing prior permission. We do not see any evidence of harm in relation to call connection services as we run them – and as they are required to be run by PhonepayPlus and Google under existing arrangements. The complaint statistics for call connection services are minimal across many months. Most of these, and all of those for Clix Connex, seem not to relate to any breach of your Code. It is therefore difficult in these circumstances to see why there is a consultation on prior permission, let alone any suggestion of bonds.

We think any assessment of complaints by volume and by nature would point PhonepayPlus to a number of other “premium rate” services where the consumer harm is evident and where the risks are greater.

Question 16 – Do you agree with our impact assessment? If not, why not?

It is impossible to agree or disagree with the Impact assessment, given that there is no substantive assessment to consider.

The single financial figure in the assessment was the £300.00 fee levied for a prior permission.

There is no assessment of the likely number of applicants.

There is no assessment of the size and nature of any likely applicants vis a vis large and small enterprises.

There is no assessment of the costs of complying with a wide number of prescriptive requirements with direct costs. These include new rules on ad-words, on connection price alerts at zero costs, changes to all web pages to accommodate new requirements, due diligence duties around the visibility and accessibility or otherwise of entity numbers.

There is no assessment of the cost to businesses of completing the documentation for a prior permission certificate. We have noted elsewhere that we have been advised that such prior permission is contrary to Article 8 of the 2002/21/EC Framework Directive.

There is no assessment of the extent to which search-based call connection business would face aggregate compliance costs that are not imposed on DQ providers.

Critically, there is no assessment of the costs or benefits to consumers of having access to search based call connection services where this option is differentially priced. The regime proposed is so prescriptive and so fundamentally discriminatory vis à vis DQ providers that implementation would decimate search-based call connection as a form of e-Commerce and as a competitor to DQ. At current cost differentials and based on just our current levels of activity, a shift in traffic back to the DQ providers would result in additional costs to the consumer of around £6m per annum.

As there is no assessment of these or others costs there is no assessment of whether the costs are one-off or recurring, or whether they might be minimised if they were capable of incorporation in the natural cycles within which services are updated.

We understand that the consultation exercise is designed to draw out issues and facts but it is really disappointing that the regulator has failed to expose the issue and not offered a single estimate of the costs associated with the new compliance requirements proposed. As such, this is really not an Impact Assessment.