



The Mobile Broadband Group

www.mobilebroadbandgroup.com

28th January 2015

Jo Prowse
Acting CEO
PhonepayPlus
1st Floor, Clove Building
4 Maguire Street
London SE1 2NQ

Dear Jo,

Draft Business Plan & Budget 2015/16

The Mobile Broadband Group ('MBG') welcomes the opportunity to comment on PhonepayPlus' (PP+) consultation on the draft business plan and budget for 2015/16.

The recent judgement in the High Court is a significant event that has occurred since the publication of the draft Plan and so it would be remiss if our response did not provide some input from the MBG with our reflections on that outcome. The first thing to say is that the MBG shares PP+'s desire to stamp out fraudulent and illegal commercial practices in the PRS value chain. We welcome the chance to work collaboratively with PP+ towards that shared goal.

We recognise that the actions taken against the fraudulent affiliate marketers in the case under dispute had this goal in mind. We very much hope that this judgement will not deter PP+ from pursuing illegal and fraudulent practice in the future, because it is in the interests of all stakeholders that wish to trade legally and fairly that the PRS mechanism be a respected and trusted mechanism.

The judgement does present a great opportunity to develop the way PP+ goes about the detection of consumer harm to enable early intervention and closure of the routes of that consumer harm. . There have clearly been some mistakes in process and in the proportionality of the remedies. We are confident that PP+, learning from its experience, will manage the requirements of EU law and deliver new strong evidence gathering and presentation processes in the future. PP+ has also been strongly criticised for acting disproportionately. In our letter to Paul Whiteing in January 2014, we stated that

“It is being fed back to us that some merchants are considering to leave the PRS market, because they do not understand the basis on which fines are being levied and that, on the face of it, they appear to be disproportionate to the harm being caused. It would therefore be beneficial to have greater transparency of the way in which fines are calculated so that they are demonstrably proportionate and fair to all parties. The impression being given (which may or may not be the case) is that a whole service is being held in breach, and fined accordingly, when only a small proportion of the associated affiliate marketing is rogue and is causing consumer harm.”

This view is borne out by the judgement. As a first step we urge that the method of setting fines becomes more transparent. We would welcome an opportunity to meet the Chair of the Panel to discuss how this might be achieved.

On a positive note, it was good to see in the text of the judgement that *“the Claimants accepted that their affiliate marketer had breached the Code and acted illegally”* and that *“The Claimants also accepted their responsibility for this.”*

Furthermore *“In relation to the Optimus service, PhonepayPlus has no complaints logged; however as with the more recent service operated by Ordanduu (above) we believe this may be due to the service being Payforit and not utilising a shortcode which the earlier Ordanduu service did.”* Payforit has fulfilled its intended role in this instance.

Going forward, the MBG will welcome the opportunity to work further in partnership with PhonepayPlus to eradicate fraudulent and illegal behaviour – behaviour that is characteristic of a **very small** proportion of the thousands of businesses registered to use PRS.

We would like to see PP+ devote more time and effort to re-affirming that PRS is a trustworthy and well-regulated market. We would also like to see PP+, in the way it carries out enforcement, create a much sharper divide between those that are generally responsible businesses but fall foul of the code through carelessness and error and those that set out deliberately to trade illegally and deceptively.

With respect to the business plan and budget for 2015/2016, PhonepayPlus is correct to point out the immediate past has proved challenging for PRS as a payment mechanism, in the face of increasing competition in the micropayments space from other forms of payment. That said, PRS remains ubiquitous, flexible and convenient and the MBG remains confident that there is a robust commercial future for it.

One of its key features is that consumers can access properly funded regulator, who has specialist knowledge of its field more easily than for other forms of payment. The MBG would strongly encourage

PP+ to place more emphasis on its positive role, more emphasis on its proportionate approach and thus ensure that brands both large and small can offer it as a very useful payment option.

With respect to the specific questions asked in the consultation, our replies to those that we wish to address are set out below:

Q5. What comments do you have on the priorities for 2015/16? Are there other projects or issues that you think PhonepayPlus should consider for the coming year?

The MBG would like to see greater emphasis in the Business Plan on improving productivity.

As mentioned above, these are challenging times for PRS. The regulator should be seeking to do more with less, in common with many other public bodies. We believe that the following ideas merit further investigation and implementation:

a) More automation in the monitoring of services

The best way to reduce consumer complaints is to weed out non-compliant services before they have an opportunity to cause consumer harm. The MBG strongly believes that a modest investment in monitoring technology would greatly assist PP+ in identifying non-compliant services more effectively and that such investment would reap efficiency dividends immediately.

The MBG would be very happy to discuss this in more detail, based on mobile operator (MNO) operational experience.

b) Improvements in number checker

PP+ must look again at how number checker could be made more comprehensive, accurate and up to date. It should work on the principle of 'capture once', so that customers, PP+ and industry can obtain reliable information. Number checker must also include services that are purchased through the web which are based on URLs and use Payforit, which are not identified by numbers as such but service brand names. L2 must be made to record/register their brand names and the dates they are live for, this is vital as some merchants believe that if the brand name is only used for a short period it makes it more difficult to tie the issues back to themselves, it is in practice a "fly by night" attitude and is designed to obfuscate any malpractice.

PP+ should relook at the issue of batch loading numbers and URLs, to facilitate such a process. The MBG feels that this can be done in a way that does not compromise security or compromise commercial confidentiality.

Ideally, this would obviate the need to send out repeated information requests to networks and L1s to establish the identity of service providers.

c) Better information to providers

At present MNOs receive summary information about complaints received into PP+ from the respective MNO customers. While this is useful, it would be much better to receive more detail about the nature of such complaints. This would enable individual MNOs to follow up and try to eliminate the issues that are giving rise to such complaints far more quickly.

The potential knock-on benefits for the regulator are self evident and would further improve productivity.

Q6. Do you support our proposed resource allocation for 2015/16, having regard to the activities and strategy that drives the changes? If not, please explain why.

The overall budget envelope for 2015/2016 is reasonable, although, as mentioned above, much more effort must be made to be more productive (this will be especially important if revenues continue to fall and fewer are sharing revenue costs). The MBG acknowledges efforts made to reduce the real terms budget. It is not clear how regularly PP+ is reviewing costs of third party support (legal advice, audit, IT support). It would be helpful if this were to be directly referenced. If third party services are not being regularly reviewed and tendered, we would suggest that they are and that PP+ has transparent policy on how frequently such exercises take place.

In sum, we wish to see greater productivity improvements – more on machines – less on people. This will pay dividends in future years and make PP+ much more resilient in challenging market conditions.

We trust that any damages payable as a result of the high court judgement will be paid from the contingency fund. This is just the sort of occurrence for which it is appropriate.

Q7. Do you agree with our approach to the charging model, during 2015/16? If not, please explain why.

Yes. £155 for registration of chargeable providers is reasonable.

The MBG is very willing to discuss further any aspect of what we have written in our response. Over recent years there has been constructive engagement between industry and regulator, with a view to driving out poor commercial practices. We wish to build on this and to make PRS Payofit etc. an attractive option for large service providers to offer as a payment mechanism.

Yours sincerely,

Hamish

Hamish MacLeod
Chair, Mobile Broadband Group