

## THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

Thursday 25 October 2012  
TRIBUNAL SITTING No. 112 / CASE 3  
CASE REFERENCE: 11494

Level 2 provider: OOO Коннект (“**Connect Ltd**”)  
Type of service: N/A  
Level 1 provider: Tribecton Trading Limited, NTH AG, TxtNation Limited,  
OpenMarket Limited  
Network operator: All mobile network operators

### THIS CASE WAS BROUGHT AGAINST THE LEVEL 2 PROVIDER UNDER PARAGRAPH 4.4 OF THE CODE

#### BACKGROUND

A service provided by the Level 2 provider, Connect Limited, was the subject of a PhonepayPlus investigation and adjudication (case reference 11494) which resulted in sanctions being imposed by a Tribunal on 16 August 2012. The sanctions imposed by the Tribunal included a fine of £50,000. In addition, an administrative charge of £9,477.50 was imposed. The deadline for payment of the fine and administrative charge was 9 September 2012.

The Level 2 provider was advised of the fine and the administrative charge by the Executive in an adjudication letter sent by email on 29 August 2012. The Level 2 provider did not respond to the formal breach letter or pay the fine or the administrative charge.

#### The Investigation

The Executive conducted this matter as a Track 2 procedure investigation in accordance with paragraph 4.4 of the PhonepayPlus Code of Practice (12<sup>th</sup> Edition) (the “**Code**”).

The Executive sent a breach letter to the Level 2 provider on 11 September 2012. Within the breach letter the Executive raised further breaches of the Code under the following provisions:

- Paragraph 4.8.4(b) – Failure to comply with a sanction
- Paragraph 4.10.2 – Non payment of an administrative charge

The Level 2 provider did not respond to the alleged breaches. On 25 October 2012, the Tribunal reached a decision on the breaches raised by the Executive.

#### SUBMISSIONS AND CONCLUSIONS

##### ALLEGED BREACH ONE Paragraph 4.8.4(b)

“The failure of any relevant party to comply with any sanction within a reasonable time will result in:

(b) a further breach of the Code by the relevant party, which may result in additional sanctions being imposed...”

1. The Executive noted that on 16 August 2012, the Tribunal adjudicated on a service that had been the subject of a PhonepayPlus investigation (case reference 06161) and had been operated and promoted by the Level 2 provider, Connect Ltd.

The adjudication resulted in the imposition of a fine of £50,000. The deadline for payment of the fine was 9 September 2012.

The Level 2 provider was advised of the fine, and sent an invoice, by the Executive on 29 August 2012. On 6 September 2012 the Executive issued a reminder to the Level 2 provider advising that payment had not been received, restating the deadline for making payment and advising that failure to make payment would be likely to result in further regulatory action being taken.

The Level 2 provider did not respond to the notification of the outcome of the adjudication, the reminder letter or the breach letter, or pay the fine.

In light of the above, the Executive submitted that a further breach of the Code had occurred under paragraph 4.8.4(b).

2. The Level 2 provider failed to provide any response to the breach letter or settle the invoice.
3. The Tribunal considered the evidence and concluded on the basis of the Executive’s evidence that there had been a further breach of the Code. Accordingly, the Tribunal upheld a further breach of the Code under paragraph 4.8.4(b).

**Decision: UPHELD**

## **ALLEGED BREACH TWO**

### **Paragraph 4.10.2**

“Non-payment of the administrative charge within the period specified by PhonepayPlus will be considered a breach of the Code and may result in further sanctions and/or legal action.”

1. The Executive noted that on 16 August 2012, the Tribunal recommended that PhonepayPlus invoice the Level 2 provider 100% of the £9,477.50 administrative costs incurred as a result of the investigation and Tribunal proceedings.

The Level 2 provider was advised of the administrative charge, and sent an invoice, by the Executive on 29 August 2012. On 6 September 2012 the Executive issued a reminder to the Level 2 provider advising that payment had not been received, restating the deadline for making payment and advising that failure to make payment would be likely to result in further regulatory action being taken.

The Level 2 provider did not respond to the notification of the outcome of the adjudication, the reminder letter or the breach letter, or pay the administrative charge.

In light of the above, the Executive submitted that a further breach of the Code had occurred under paragraph 4.10.2.

2. The Level 2 provider failed to provide any response or settle the invoice.

3. The Tribunal considered the evidence and concluded on the basis of the Executive's evidence that there had been a breach of the Code. Accordingly, the Tribunal upheld a breach of the Code under paragraph 4.10.2.

## **Decision: UPHELD**

## **SANCTIONS**

### **Initial Overall Assessment**

The Tribunal's initial assessment of the breaches of the Code was as follows:

#### **Paragraph 4.8.4(b)- Failure to comply with a sanction**

The initial assessment of paragraph 4.8.4(b) of the Code was **very serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criterion:

- The Level 2 provider's failure to pay the fine incurred demonstrates fundamental non-compliance with the obligations imposed by the Code, which in the view of the Tribunal, undermines public confidence in the regulatory regime and premium rate services.

#### **Paragraph 4.10.2- Non payment of an administrative charge**

The initial assessment of paragraph 4.10.2 of the Code was **very serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criterion:

- The Level 2 provider's failure to pay the administrative charge demonstrates fundamental non-compliance with the obligations imposed by the Code, which in the view of the Tribunal, undermines public confidence in the regulatory regime and premium rate services.

The Tribunal's initial assessment was that, overall, the breaches were **very serious**.

### **Final Overall Assessment**

There were no aggravating or mitigating factors.

The Tribunal concluded that the seriousness of the case should be regarded overall as **very serious**.

### **Sanctions Imposed**

Having regard to all the circumstances of the case, the Tribunal decided to impose the following sanctions:

- A formal reprimand; and
- A prohibition on the Level 2 provider from providing, or having any involvement in, any premium rate services for a period of five years (starting from the date of publication of this decision), or until the breaches are remedied by payment of the original fine and the original and instant administrative charges, whichever is the later.