

**THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS  
TRIBUNAL DECISION**

**Thursday 2 February 2012  
TRIBUNAL SITTING No. 92 / CASE 3  
CASE REFERENCE: 03604**

Network operator: All Mobile Network Operators  
Level 1: Ericsson (IPX) AB, Sweden  
Level 2 provider: R&D Media Europe, Amsterdam

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

**BACKGROUND**

From 5 October 2011, the Executive received four complaints from members of the public in relation to the service djugo.com operating on shortcode 85000. This was a non-subscription competition service which cost £3 per question. To exit the service, users stopped answering questions.

The Executive had previously received a further 41 complaints from members of the public in relation to this service, which were resolved under the Informal/Track 1 procedure and refunds were issued. One of the issues raised by these earlier complaints was that the service was being repeatedly promoted by the method known as ‘typosquatting’, where the route of entry into the service was followed by the consumer mistyping a popular website address, such as Facebook (for example mistyping dacebook.com rather than facebook.com). The Executive had made it clear in the course of the informal procedure that this type of affiliate marketing was misleading to consumers and should not be used. The Executive had also stated that, if the issue persisted, it may be necessary for the Executive to take formal action against the Level 2 provider.

The receipt of four further complaints after 5 October 2011 prompted the Executive to carry out further monitoring of the service and its manner of promotion. The Executive found that the service was again being promoted by ‘typosquatting’.

The Executive found that the service could be located through mistyping websites, such as Wikipedia, YouTube or Twitter. These mistyped websites very clearly resembled the actual Wikipedia, YouTube and Twitter websites, as they used logos and colours that were very similar to those on the actual websites. Having mistyped one of these website addresses, the user was then invited to complete a short online survey and, as a “Thank you” for completing the survey, they were given an opportunity to receive an “exclusive offer”, such as a MacBook Air. In one case, the user was immediately notified that they were a “Winner” and was invited to select a prize without completing a survey. In all cases, to progress their claim to receive the offer/prize, the user was required to enter the service djugo.com. The user would enter their mobile phone number onto the website. Their handset was then sent a unique PIN, which the user would also enter onto the website. After this point, the user would start to receive and answer quiz questions by SMS text message on their handset at a cost of £1.50 per question and £1.50 per answer, totalling £3 for each completed question and answer.

One of the four complaints received after 5 October 2011 specifically stated that he or she felt that had he or she had been misled into entering the service. A further issue specifically

raised by the complaints and the Executive's monitoring of the case was the use of the term "GBP", as opposed to the "£" sign. The Executive also noted, on investigating this matter, that all complainants had received a charge of which they had not previously been informed.

**(i) Complainants' accounts**

The four complainants reported the following:

*"[Complainant 1] I think it was for shopping for up to a year or £10,000 or a dyson vacuum cleaner. It was through a pop up in my mail."*

*"[Complainant 2] I phoned the company in question to ask them how this happens. They said he's put his number into a pop up he's only 11. Then he got a text message the first one just says are you winner it doesn't tell you how much it cost on the so he answered it then the next one he got back says question £1.50gbp. When he's reached the £99 they sent another one saying you've reached the limit for this game then it says £1.50 per message but that's the only time they use the £."*

*"[Complainant 3 report from PhonepayPlus records] Consumer complaining on the behalf of her 70 year old mother who feels she was mislead into using a service. She does not remember what website she was on but she put her number into a competition that looked as though it was promoted by Sainsbury's. She answered a few questions on screen but soon got bored however it then continued on the phone. According to the complainant, she spent £195."*

*"Spoke to the consumer and explained that the service had been used, she does not believe her mother would have understood (1.5GBP) on each message. It's odd that they would use that pricing considering they use the '£' sign in the first and last messages."*

*"[Complainant 4 report from PhonepayPlus records] Consumer complaining about being charged for a service that she has not seen any text messages for. Appears to be djugo. I've explained what the service is but she has no idea, no one has access to her phone and it is a work phone."*

**(ii) How the service operated according to the Executive**

**Monitoring of yootub.com on 1 November 2011**

On 1 November 2011, the Executive visited yootub.com and viewed the content contained in Appendix A. The icon and background colouring was similar to those used on the genuine youtube.com website.

After entering the URL address yootub.com, the Executive viewed a screen containing the following message (Appendix A):

***"Congratulations!*** *You've been selected to take part in our short, anonymous 30 second questionnaire. To say "thank you", you'll have the opportunity to receive one of our exclusive offers including a Macbook Air and win an iPad 2. Start this short survey now. This offer is available today only: **November 1, 2011.**"*

The same screenshot contained the following question:

***"Question 1 of 2 Are you male or female? Male Female."***

The Executive clicked "Male" and viewed the following second question:

**“Question 2 of 2 How often do you use the internet?  Hourly  Daily  Weekly  Monthly  Other.”**

The Executive clicked “Hourly” and was navigated to a new page which displayed a selection of prizes, from which the user was to select one, by clicking either “Airline Travel Voucher”, “Win an iPad2”, or “MacBook Air.” The Executive clicked on the, “MacBook Air” icon and was then guided to a new page which contained a picture of the MacBook Air and the following question:

*“Apple is originally from?  USA  Italy.”*

After scrolling down the page, the Executive was able to gain access to the service terms and conditions.

The Executive stopped monitoring at this point on 1 November 2011.

### **Monitoring of youtube.com on 1 November 2011**

On 1 November 2011, the Executive visited youtube.com and viewed the content contained in Appendix B. The icon and background colouring throughout was similar to those used on the genuine youtube.com website.

After typing the URL youtube.com, the Executive navigated to a screen which contained the heading “ThankYou” and the following message:

*“To mark our 6<sup>th</sup> anniversary of operation, we’ve decided to conduct a short survey of our users. You’ve been selected to take part in a survey. This will only take 30 seconds of your time and will enhance user experience. Upon completion you will have the opportunity to get a Win and iPad2 ®, MacBook Air ®, or Airline Travel Voucher ®. **START**”*

The Executive clicked on the “Start” button and was navigated to a new page which contained one of three questions:

*“Question 1/3 Are you male or female? Male Female.”*

The Executive clicked on “Male” and viewed a new page which contained the second of three questions:

*“Question 2/3 Do social networking sites help you develop closer relationships with friends? Definitely Somewhat Not at All.”*

The Executive clicked on “Definitely” and viewed a new page which contained the third of three questions:

*“Question 3/3 Do you have any ideas for improving your favourite social networking site? Many A Few None.”*

The Executive clicked on “Many” and viewed a new page which displayed a selection of prizes, from which the user was to select one, by clicking either “Win an iPad2”, “MacBook Air” or “Airline Travel Voucher”. (Appendix B, screenshot 1). The Executive clicked on the select button for the “MacBook Air” prize and was then guided to a new page which contained a picture of the MacBook Air and the following question:

*“Apple is originally from?  USA  Italy.”*

After scrolling down the page, the Executive was able to gain access to the service terms and conditions.

The Executive clicked on the “USA” button and was navigated to a new page which required entry of a mobile telephone number (Appendix B, screenshot 2). The Executive entered the number of a monitoring phone and clicked on the “Continue” button without ticking the terms and conditions box.

The Executive was then navigated to a new page which contained the following message:

*“Please confirm this is the correct number to complete to win the MacBook Air.”*

The same page displayed the Executive’s monitoring phone number, together with a box to indicate that the user was over 18 years old and agreed to the terms and conditions. The Executive ticked the box and viewed a new page containing a message indicating that the Executive would receive a free message in a few seconds containing a pincode. The Executive received the following message from shortcode 85000:

The Executive received the following message to their monitoring phone:

*“FreeMsg, your Pincode is: 7782. Enter the code on your webpage. (minimum age 18+ with bill payers permission, this service costs £3 per question).”*

The Executive entered the pincode 7782, but there seemed to be a technical problem and was unable to progress.

On 7 November 2011, the Executive re-monitored the service and received the following message:

*“FreeMsg, your Pincode is: 4322. Enter the code on your webpage. (minimum age 18+ with bill payers permission, this service costs £3 per question)”*

The Executive entered the pin on the website and viewed a new page which contained the following question:

*“Text **A** or **B** to **85000** The Cha Cha Cha is a what? Text **A** for dance Text **B** for dog.”*

The Executive stopped monitoring at this point on 7 November 2011.

### **Monitoring of wikipedia.com and wikipedia.com on 3 November 2011**

On 3 November 2011, the Executive visited wikipedia.com and wikipedia.com, and viewed the content contained in Appendix C. The icon and background colouring throughout was similar to those used on the genuine wikipedia.com website.

*“Congratulations Wikipedia User ! You are the London, City of winner [sic] for November 3rd Please select a prize and enter your email on the next page to claim.”*

The Executive noted that the message stated the correct name of ‘Wikipedia’. The Executive also noted that, despite the message above stating otherwise, the next page did not contain a function that enabled users to enter their email address.

The second page (Appendix C) displayed the Wikipedia icon, together with a selection of prizes from which the user was to select one, by clicking “continue”. The same page

displayed a countdown clock which seemed to indicate to the user that there was a deadline for claiming their prize. The Executive noted, however, that once the clock counted down to zero, it was still possible to enter the competition.

The third page contained a picture of the MacBook Air and the following question:

*“Apple is originally from?  USA  Italy.”*

After scrolling down the page, the user could gain access to the service terms and conditions. The Executive answered the question by clicking “USA”.

The fourth page required the user to enter their mobile telephone number. The Executive entered the number of a monitoring phone.

The fifth page contained a message indicating that the Executive would receive a free message in a few seconds which contained a pincode.

The Executive did not enter a mobile number and stopped monitoring at this point on 3 November 2011.

### **Monitoring of twtter.com on 3 November 2011**

On 3 November 2011, the Executive visited twtter.com as opposed to www.twitter.com, and viewed the content contained in Appendix D. The icon and background colouring was similar to those used on the genuine twitter.com website.

After typing twtter.com, the Executive received the following message on the website (Appendix D, screenshot 1):

*“**Congratulations!** You’ve been selected to take part in our short anonymous 30 second questionnaire. To say “thank you”, you’ll have the opportunity to receive one of our exclusive offers including a Airline Travel Voucher and MacBook Air. Start this short survey now. The offer is available today only: **November 3, 2011.**”*

On the same screen the Executive was asked to answer the first of two questions:

*“Are you Male or Female?”*

The Executive clicked ‘Male’ and was navigated to a new page which contained the same message as above, together with the second question:

*“How often do you tweet?  Hourly  Daily  Weekly  Monthly  Other”*

The Executive clicked on “Hourly” and viewed a new screen (Appendix D, screenshot 2), which displayed a selection of prizes from which the user was to select one, by clicking either “Win an iPad2”, “Choose MacBook” or “Airline Travel Voucher.” The Executive further noted that, for each prize, the quantity of prizes available was stated.

The Executive clicked on “Choose MacBook” and viewed a new screen which contained a picture of the MacBook Air and the following question:

*“Apple is originally from?  USA  Italy.”*

After scrolling down the page, the Executive was able to gain access to the service terms and conditions. The Executive clicked “USA” and was navigated to a new page which required entry of a mobile telephone number.

The Executive did not enter a mobile telephone number and stopped monitoring at this point on 3 November 2011.

**(iii) How the service was intended to operate as described by the Level 2 provider**

The Executive requested this information under paragraph 4.2.3 of the Code and was provided with two hyperlinks, as indicated in Appendix E.

**(iv) Track 1 Procedure**

The Executive noted that a member of the PhonepayPlus Complaint Resolution Team attempted to resolve this case through the Track 1 procedure. At this time, the Level 2 provider had been given the opportunity to remedy a number of concerns, as set out initially in an email to the Level 2 provider dated 15 September 2010, and included the following:

*“Affiliate marketing*

- *“The Executive has identified the use of Typo squatting in your affiliate marketing which relies on mistakes such as typographical errors made by Internet users when inputting a website address into a web browser. Should a user accidentally enter an incorrect website address, they may be led to an alternative website owned by an affiliate marketer. One example is where someone is looking for www.facebook.com but types the letter ‘D’ instead of ‘F’ taking them to www.dacebook.com (using similar colours as Facebook) and then onto the Djugo promotion. The Executive has concerns regarding this method of promotion and the potential misleading nature of the route of entry into your service.*
- *“The Executive has identified your service being promoted on discount voucher websites. The Executive believes promoting the service on such websites as potentially misleading as the service has nothing to do with discount vouchers.*
- *“The Executive has identified an affiliate marketing e-mail which states ‘The chances of winning are very high’, ‘it couldn’t be easier and you have nothing to lose’ and ‘click here to win’, the Executive believes the wording used to be potentially misleading.”*

The Executive subsequently issued an ‘Action Plan’ to the Level 2 provider on 28 September 2010 to deal with the issues, including the concern set out above. The Action Plan was signed by the Level 2 provider and was returned to PhonepayPlus on 20 October 2010.

With regard to the issue of affiliate marketing, the Action Plan required that:

*“R & D Media [the Level 2 provider] must ensure its services are not associated with any misleading affiliate marketing as per examples discussed at the meeting – misleading typosquatting, misleading email or misleading web affiliate marketing ie discount vouchers website ...”*

The Level 2 provider’s response on 20 October 2011 was:

*“Action Taken:*

- *“Removed the discussed potentially misleading affiliate marketing*
- *“Stopped cooperation with publishers through affiliate networks who were in breach with R & D Media’s terms of use regarding misleading marketing*
- *“Received reconfirmation from all Affiliate networks that they will comply with our terms of use in which misleading marketing is prohibited.*

- *“Informed Affiliate networks that email marketing is only permitted by R & D Media with its prior consent and approval.”*

Despite the action plan, PhonepayPlus continued to receive complaints and, after further monitoring, noted that the service was still being promoted through the typosquatting process. PhonepayPlus immediately informed the Level 2 provider of its concerns on 16 November 2010. The Level 2 provider responded on 17 November 2011 and stated that, following its own internal investigation, it had again instructed its affiliate marketers to stop promoting the service through this method.

From September 2010 to June 2011, PhonepayPlus had several meetings with the Level 2 provider and offered general compliance advice regarding the operation of premium rate services.

On 12 and 13 July 2011, PhonepayPlus again raised the issue of typosquatting with the Level 2 provider and noted its disappointment:

*“after all the work done that this matter has come up again only a few months later.”*

The Executive warned that, if it continued to see issues with the service, then it may have to be dealt with under formal procedures. The Level 2 provider’s response dated 14 July 2011 stated that it would take the necessary steps to prevent the problem happening again.

The same issue recurred on 28 July 2011 and the Executive wrote to the Level 2 provider on 28 July 2011. The Level 2 provider replied on the same day, stating that:

*“We recently made the (old) involved affiliate who used this type of marketing stop with this type of marketing, but suspect the actual publisher might has [sic] switched to another affiliate. We have just ordered the involved affiliate to stop advertising this way immediately. We expect the advertising to be taken down within a view [sic] hours. Because the affiliates work with different publishers they did not give us an actual deadline we can maintain. We let them know if tomorrow morning the advertisement still shows, we will shut them entirely down.”*

Following receipt of further complaints in October 2011, the Executive re-monitored the service and noted that the Level 2 provider was still promoting the service through typosquatting. For this reason and the continued receipt of complaints from members of the public, the case was escalated to the Track 2 procedure.

#### **(v) Potential breaches of the Code raised by the Executive**

The Executive believed that this service contravened the PhonepayPlus Code of Practice 12<sup>th</sup> Edition (‘the Code’). The Executive sent a breach letter to the Level 2 provider on 10 January 2012 and raised the following potential breaches under the Code:

##### **Part Two Outcomes and Rules:**

- Outcome 2.2 (Transparency and Pricing)
  - Rule 2.2.1 (Full and clear information)
  - Rule 2.2.2 (Easy access to information)
- Outcome 2.3 (Fairness)

- o Rule 2.3.2 (Misleading)

On 23 January 2012, the Level 2 provider responded to the breach letter.

On 2 February 2012, and after hearing an informal representation from the Level 2 provider, the Tribunal reached a decision on the breaches raised by the Executive.

## **SUBMISSIONS AND CONCLUSIONS**

### **ALLEGED BREACH ONE Transparency and Pricing:**

#### **Outcome 2.2:**

*“That consumers of premium rate services are fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made.”*

#### **Rule 2.2.1:**

*“Consumers of premium rate services are fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made.”*

1. The Executive raised a breach of Rule 2.2.1 for the following reason.

The Executive noted that the terms and conditions on the website stated *“Join the quiz for £3 per question...”* and then within the text in the terms and conditions they reiterated *“...£3 per question...”*

The Executive received message logs from the Level 2 provider for each of the four complainants. All four message logs demonstrated that these users received a free message, which contained a unique PIN code which had to be entered onto the website. This free message also stated *“...this service costs £3 per question...”*

The Executive also received the same free message when it monitored the service on 7 November 2011.

The message logs also showed that, once the user had entered their PIN onto the website, they received a question at a cost of £1.50 and, at the same time, a further message prompting the user to respond to the question, also at a cost of £1.50. At this point, the user had incurred a total cost of £3 without having yet answered the question. The users then responded to the question and this again cost them a further £1.50 and, therefore, the total cost to the user for answering the first question was £4.50, and not £3.

After this point, the user experience was that they incurred a charge of £1.50 per question received and £1.50 per message sent, and this equated to £3 in total per question.

It was, therefore, the opinion of the Executive that these complainants were not (and other users would similarly not be) fully and clearly informed of all the information likely to influence their decision to participate in a premium rate service before, as they were not informed at all that there would be an additional cost of £1.50 for joining the service and answering the first question.

In light of the above, the Executive submitted that a breach of Rule 2.2.1 of the Code had occurred, and that in this respect, the Level 2 provider has not achieved Outcome 2.2 of the Code

2. The Level 2 provider stated that the additional £1.50 charge was a game play reminder fee. The fee was communicated to the customer in the advertisement, which stated “£3 per question + £1.5 reminder fee” (for example, at Appendix B, screenshot 2). However, during its informal representation, the Level 2 provider conceded that the pricing information regarding the cost of answering the first question was unclear.
3. The Tribunal considered the evidence and found that users had not been clearly informed, either within the terms and conditions on the websites or those displayed at the point where the users were required to input their mobile telephone numbers, as to the actual cost of using the service. During an informal representation made by the Level 2 provider, it was clarified, with some difficulty, that each question and reply was charged at £1.50 (making a total of £3) and that there was a single start up charge of £1.50 that would only be applied to the first question sent. The Tribunal therefore concluded that there had been a breach of Rule 2.2.1 of the Code.

**Decision: UPHELD**

## **ALLEGED BREACH TWO**

### **Transparency and Pricing:**

#### **Outcome 2.2:**

*“That consumers of premium rate services are fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made.”*

#### **Rule 2.2.2:**

*“All written information which is material to the consumer’s decision to purchase a service must be easily accessible, clearly legible and presented in a way which does not make understanding difficult. Spoken information must be easily audible and discernable.”*

1. The Executive has raised a breach of Rule 2.2.2 for the following reason.

The Executive noted that the [PhonepayPlus General Guidance Note on ‘Promotions and promotional material’](#) states the following:

*“...How should pricing information be generally presented?”*

2.2 *As a starting point, pricing information will need to be easy to locate within a promotion (i.e. close to the access code for the PRS itself), easy to read once it is located and easy to understand for the reader (i.e. be unlikely to cause confusion). Loose or unclear descriptions of price are not acceptable, as they are unlikely to provide a sufficient understanding to consumers of how much they are being charged. Examples of unclear descriptions would include the following:*

- *‘premium rate charges apply’,*
- *100ppm’,*
- *‘1.50 GBP’*

- 50p/min

2.3 *PhonepayPlus strongly recommends the price should be expressed in conventional terms, such as '50p per minute', '£1.50/msg' or '£1.50 per text'. PhonepayPlus accepts there may be different conventions, based upon the amount of space available (for example, in a small print ad, or a single SMS promotion); however, pricing should remain clear. Variations on this, such as charges being presented in per second formats, or without reference to a '£' sign (where the rate is above 99p), may breach the PhonepayPlus Code of Practice.*

*What about SMS promotions where the handset or Mobile Network Operator cannot technically provide a '£' sign?*

2.4 *PhonepayPlus accepts that there are still a proportion of older handsets in use, which are not technically capable of displaying a '£' sign. Given this number gets smaller with each passing year as people upgrade their handsets for new ones, we do not see this as a standalone reason to allow 'GBP' in SMS advertising. However, where an SMS promotion containing a '£' sign has failed to display properly, and led to consumer confusion and/or financial detriment, we would look to resolve such cases informally with the provider, and arrange a refund for the consumer without recourse to raising a breach..."*

The Executive requested message logs for the four complainants which were then supplied by the Level 2 provider. All four message logs demonstrated that the first free message received stated the following:

*"FreeMsg, your Pincode is:#IPX\_PASSCODE# . Enter the code on your webpage (minimum age 18+ with bill payers permission, this service costs £3 per question)"*

Each complainant then received one of the following messages:

*"Are you the winner of free groceries? Answer question. The Cha Cha Cha is a what? A.dance B.dog Reply A or B to 85000"*

*"Are you the winner of your prize? Answer question. The Cha Cha Cha is a what? A.dance B.dog Reply A or B to 85000"*

Each complainant also received the following message:

*"Answer A or B to the question you've received. Good luck! (www.djugo.com, 02033188579, 1.5GBP per msg received and sent)."*

The text messages received after this point all started with, "(1.5GBP)..."

The Executive noted that it was technically possible for the provider to display a '£' sign because the first message contained a '£' sign.

The Executive also noted that two of the four complainants stated the following:

*"[Complainant 2] I phoned the company in question to ask them how this happens. They said he's put his number into a pop up he's only 11. Then he got a text message the first one just says are you winner it doesn't tell you how much it cost on the [sic] so he answered it then the next one he got back says question £1.50gbp.*

*When he's reached the £99 they sent another one saying you've reached the limit for this game then it says £1.50 per message but that's the only time they use the £."*

*"[Complainant 3 report from PhonepayPlus records] Consumer complaining on the behalf of her 70 year old mother who feels she was mislead into using a service. She does not remember what website she was on but she put her number into a competition that looked as though it was promoted by sainsbury's. She answered a few questions on screen but soon got bored however it then continued on the phone. According to the complainant, she spent £195.*

*Spoke to the consumer and explained that the service had been used, she does not believe her mother would have understood (1.5GBP) on each message. It's odd that they would use that pricing considering they use the '£' sign in the first and last messages"*

As part of a request for information under paragraph 4.2.3 of the Code, the Executive asked the Level 2 provider why "GBP" was used and not the "£" symbol. On 17 November 2011, the Level 2 provider responded:

*"Unfortunately the use of GBP is a data entry error, which is the result of an internal miscommunication within R&D [the Level 2 provider]. We will correct this issue to ensure that pricing is consistently displayed."*

It was, therefore, the opinion of the Executive that describing the cost in the text messages by using the term "GBP", as opposed to "£", presented this information (which was material to the consumer's decision to proceed to answer each question) in a way that made it difficult to understand.

The Executive was also of the opinion that to describe the cost in the text messages as "1.5" (whether £ or GBP, but compounded by use of the term GBP), and not as "3" (£ or GBP) was likely to cause confusion and/or was unlikely to provide consumers with a sufficient understanding of precisely how much they were being charged.

In light of the above, the Executive submitted that a breach of Rule 2.2.2 of the Code had occurred, and in this respect, the Level 2 provider has not achieved Outcome 2.2 of the Code.

2. The Level 2 provider stated that it strived to ensure that the consumer was informed properly about all the costs and clearly informed about all information. The Level 2 provider stated that it regretted the use of GBP which had been a data entry error. The Level 2 provider further stated that this was a result of an internal miscommunication. The Level 2 provider stated that it was now making sure that pricing was displayed correctly with the "£" symbol.
3. The Tribunal considered the evidence and noted the Level 2 provider's admission that its use of the term "GBP" had been a data entry error. The Tribunal concluded that use of the term "GBP", as opposed to "£", for the purposes of describing the cost of the service, meant that information which was material to the consumer's decision to proceed to answer each question was presented in a way that made it difficult for the consumer to understand. The Tribunal, therefore, concluded there had been a breach of Rule 2.2.2.

**Decision: UPHELD**

**ALLEGED BREACH THREE**

## Fairness

### Outcome 2.3:

*“That consumers of premium rate services are treated fairly and equitably.”*

### Rule 2.3.2:

*“Premium rate services must not mislead or be likely to mislead in any way.”*

1. The Executive noted that the Level 2 provider had stated that the service was promoted through affiliate partners. The Executive noted that, in accordance with Part Two of the Code, it is the responsibility of the Level 2 provider to achieve the Outcomes of the Code by complying with the Rules in respect of the provision of the premium rate service.

The Executive also noted that, in accordance with Part Two of the Code, reference to a premium rate service includes all aspects of the service, including its promotion and marketing.

The Executive raised a breach of Rule 2.3.2 of the Code for the following reasons:

#### Reason 1:

The Executive noted that the service could be inadvertently accessed on the internet by mistyping websites, such as YouTube, Wikipedia or Twitter. Users were then requested to complete an online survey to ‘receive’ or ‘win’ products such as a Mac Book Air (or were simply informed they had already won a prize). However, to ‘receive’ or ‘win’ these products, users were required to enter the service, enter their mobile phone number and a PIN (sent to their handset) and then answer the questions received on their mobile handset.

The Executive noted from the monitoring carried out that the landing pages on the mistyped websites very clearly resembled the actual Wikipedia, YouTube and Twitter websites as they by used logos and colours that were very similar to those used on the genuine websites.

The Executive further noted that one of the four complainants (on behalf of their 70-year-old mother) stated that she had felt she had been misled into using the service.

In addition, the Executive also referred to its own monitoring:

#### **Monitoring of yootub.com and yooutube.com**

The Executive visited the websites yootub.com and yooutube.com. In both cases, the Executive viewed a landing page with the heading “Thank You”. This icon was presented in a very similar style to the genuine YouTube branding and the Executive submitted that users therefore believed that the website was part of the genuine youtube.com website. This promoted users to progress and enter their mobile phone number onto the website, and proceed with the steps to claim the offer. One of these websites stated “Congratulations” and, in both cases, gave the user the opportunity to “receive” or “get” an “offer” or “reward”, after completing a short questionnaire or survey. The “Thank You” icon featured on every page of the questionnaire or survey. On completing the questionnaire or survey, the user was then given the option to pick their prize. The wording on the website stated “Congratulations” and suggested that

the user had already won the prize chosen. The Executive also noted that, when invited to choose their prize on youtub.com, the wording stated: *“Choose your prize now to start this short survey now”*. The Executive stated that this suggested that the user had not yet done, or had not yet completed the questionnaire or survey, as a thank you for which the user had been informed that he or she would have the opportunity to receive one of the exclusive offers. It was the opinion of the Executive that, in the case of both websites, users would or would be likely to be unaware that they would have to answer questions incurring premium rate charges for a chance to win the prize they originally chose. The Executive submitted that in these circumstances, users would be likely to be misled.

### **Monitoring of wikipedia.com and wikipedia.com**

With regard to the Executive’s monitoring of both wikapedia.com and wikipedia.com, the Executive noted that the first pop-up screen displayed the statement:

*“Congratulations Wikipedia User ! You are the London, City of winner for November 3rd Please select a prize and enter your email on the next page to claim.”*

After clicking the “OK” button, the user was given the option to “...Claim...” one of three prizes. The Executive noted that the wording within this service stated, “...Winner...” and then “...Claim...” and, therefore, it was the opinion of the Executive that the use of such language gave users the impression that they had already won a prize, and that all they had to do to claim it was to enter an email address and shipping information. At this point, there was no indication that to “...Claim...” a prize, a user would have to enter a competition at a premium rate cost. The terms and conditions for the service were not presented to the user until after he or she saw the wording “...Claim...” and “...Winner...”

The Executive noted in particular that the service also featured the correct spelling of Wikipedia and that it further displayed the well-known Wikipedia icon. The Executive submitted this would be likely to mislead consumers into believing that this was an actual Wikipedia prize and enticed the user to proceed to enter his or her mobile phone number onto the website, and to proceed with the steps necessary to claim the prize. The Executive submitted that, in these circumstances, users would be likely to be misled.

### **Monitoring of twttr.com**

When the Executive mistyped Twitter as “twttr”, a screen displayed a page which clearly resembled the actual Twitter website, as it displayed the same colours and the Twitter bird icon. The Executive submitted that this enticed users to proceed to enter their mobile phone number onto the website, and to proceed with the steps to “receive” the “exclusive offer”. The wording within the service suggested that users could complete a 30-second questionnaire and, to say “thank you”, the user had the opportunity to receive one of Twitter’s exclusive offers. On completing the questionnaire, the user was then given the option to pick a prize. Again, the wording within the service stated “Congratulations” and suggested to the user that he or she had already won the prize chosen. The Executive also noted that, when invited to choose their prize, the wording stated:

*“Choose your prize now to start this short survey now”*

This suggested that the user had not yet done, or had not yet completed the questionnaire or survey, as a thank you, for which the user had been informed that he

or she would have the opportunity to receive one of Twitter's exclusive offers. It was the opinion of the Executive that users would or would be likely to be unaware that they would have to answer questions incurring premium rate charges for a chance to win the prize they originally chose. The Executive submitted that, in these circumstances, users would be likely to be misled.

Reason 2:

The Executive monitored the service on 1 November 2011 and typed "www.yootub.com" into the search engine. The Executive also monitored the service on 3 November 2011 but typed in "www.twitter.com". The Executive noted that, in both cases after completing the survey, there was an option available to receive one of three prizes. Below each prize, the "Quantity" remaining for each of the prizes available was stated.

The Executive noted that, in the monitoring for the YouTube typosquatting service, the "Quantity" of prizes available were the following (18 in total):

*"5 for the 'FLY HERE FREE', 8 for the 'iPod 2' and 5 for the 'MacBook Air'".*

With regards to the monitoring for the Twitter typosquatting service, the "Quantity" of prizes available were the following (18 in total):

*"5 for the 'iPod 2', 6 for the 'MacBook Air' and 7 for the 'FLY HERE FREE'".*

When the Executive viewed the terms and conditions, there was no mention of the number of prizes available.

Under paragraph 4.2.3 of the Code, the Executive asked the Level 2 provider to clarify the number of prizes available. The Level 2 provider responded on 17 November 2011 and stated:

*"At this moment we offer 8 prizes within the service."*

It was the opinion of the Executive that participants were more likely to participate in the service if they were under the impression that the quantity of prizes available was far greater than it actually was.

In light of the above, the Executive submitted that for Reason 1 and/or Reason 2, a breach of Rule 2.3.2 of the Code had occurred in respect of the service and/or its promotion and/or marketing, and therefore, the Level 2 provider had not achieved Outcome 2.3 of the Code.

2. The Level 2 provider stated that, as a business, it took its obligations towards compliance very seriously and had worked proactively with PhonepayPlus to maintain compliance of its services. Despite strenuous efforts on its part, the Level 2 provider stated that it regretted that its marketing continued to be linked to typosquatting traffic. The Level 2 provider further stated that, in this instance, the typosquatting traffic came via one of its UK affiliate partners, which was a UK-based lead generation and affiliate network who, via their own platform, offered its campaigns to the Level 2 provider's network of independent online publishers. The Level 2 provider stated that it had an established relationship with this UK affiliate partner, who it considered to be a reputable and trustworthy partner. The Level 2 provider further stated that it made it absolutely clear to its affiliate partners that it did not allow typosquatting as a traffic source and this was something that was clear to its UK affiliate partner and was a

condition of business that it took very seriously. The Level 2 provider stated that, in this particular case, a publisher took one of the Level 2 provider's campaigns from the Intela UK affiliate partner platform and confirmed that this was an unauthorised use of its campaign and a breach of its terms and conditions. As soon as the issue was identified, the Level 2 provider stated that the traffic source was terminated with immediate effect and the publisher was ejected from the UK affiliate partner network.

3. The Tribunal considered the evidence, including the Executive's monitoring, and concluded that, with respect to reason 1: (i) the use of similar colours, icons and logos misled users into believing the service was from or related to a trusted brand, and (ii) wording used on the initial promotional web pages misled consumers into believing that they had already won a prize and did not provide any indication that they would be required to enter a premium rate competition in order to obtain the prize.

With respect to reason 2, the Tribunal considered that, following completion of the survey (referred to in the Executive's monitoring of yootub.com and twitter.com), there were three different prizes stated as available and the quantity remaining (displayed below each) was shown to be five or more. However, information received subsequently from the Level 2 provider confirmed that there were eight prizes available within the service. Consumers were therefore misled as to the quantity of prizes that were available to be won.

The Tribunal accordingly found that the Level 2 provider was in breach of Rule 2.3.2 of the Code.

**Decision: UPHELD ON REASON 1 AND REASON 2**

## **SANCTIONS**

### **1. Service Revenue**

The revenue in relation to the service was in the high range of Band 3 (£100,000 - £250,000).

### **2. Initial Overall Assessment**

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

#### **Rule 2.2.1 (Full and clear information)**

The initial assessment for the breach of Rule 2.2.1 of the Code was **significant**. In determining the initial assessment for this breach of the Code, the Tribunal applied the following criteria:

- The nature of the breach had the potential to cause a drop in consumer confidence in premium rate services.

#### **Rule 2.2.2 (Easy access to information)**

The initial assessment for the breach of Rule 2.2.2 of the Code was **moderate**. In determining the initial assessment for this breach of the Code, the Tribunal applied the following criteria:

- The cost incurred was more likely to be material to consumers as the breach was capable of inflating revenue streams relating to the service.

### **Rule 2.3.2 (Misleading)**

The initial assessment for the breach of Rule 2.3.2 of the Code was **serious**. In determining the initial assessment for this breach of the Code, the Tribunal applied the following criteria:

- The service made a clear, detrimental and damaging impact on consumers; and
- The nature of the breach meant that the service damaged consumer confidence in premium rate services.

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

### **3. Final Overall Assessment**

In determining the final overall assessment for the case, the Tribunal took into account the following aggravating factor:

- PhonepayPlus had given relevant compliance advice to the Level 2 provider in relation to the cessation of typosquatting marketing and other issues. The Level 2 provider had failed to implement that advice on more than one occasion.

The Tribunal noted the Level 2 provider's comment that it had reduced the number of affiliate marketing partners and had limited its promotions to banner advertising, but it did not consider this to be a mitigating factor. The Tribunal therefore determined that there were no relevant mitigating factors to take into consideration in this case.

Having taken into account the aggravating factors, the Tribunal concluded that the final overall assessment of the case should be regarded overall as **serious**.

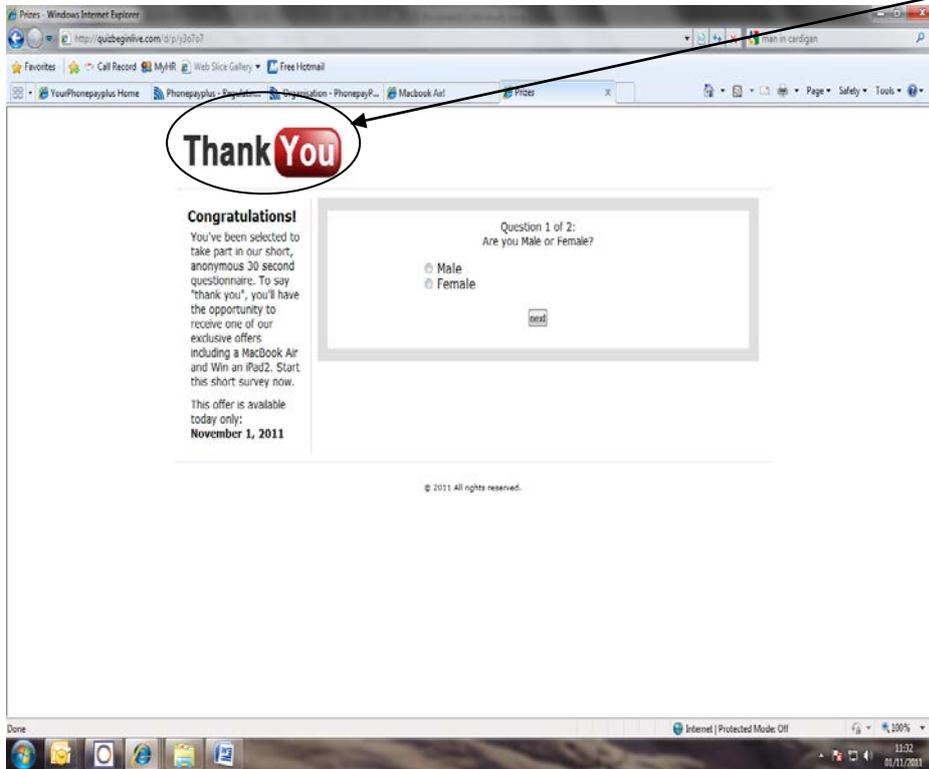
### **4. Sanctions Imposed**

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

- A direction to remedy the breaches of Rules 2.2.1 and 2.2.2 of the Code;
- A fine of £100,000; and
- A direction for refunds to be made to all consumers who claim a refund, for the full amount spent by them for the service, save where there is good cause to believe that such claims are not valid, and provide evidence to PhonepayPlus that such refunds have been made.

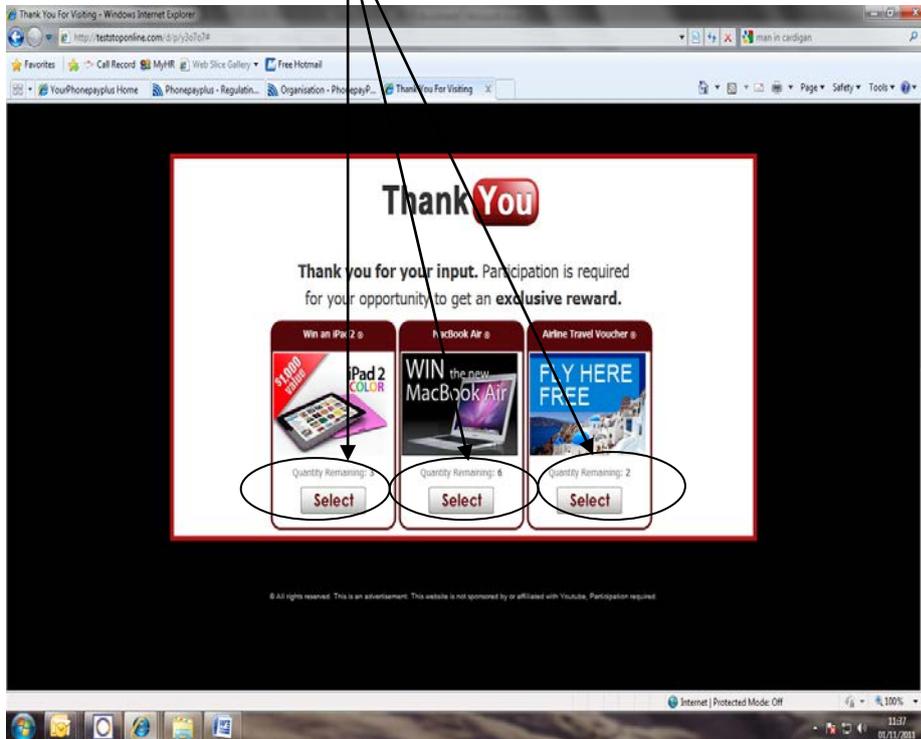
## Appendix A - Monitoring of yootub.com

Message headed “Congratulations”. The Executive noted that the icon was similar to ‘YouTube’:

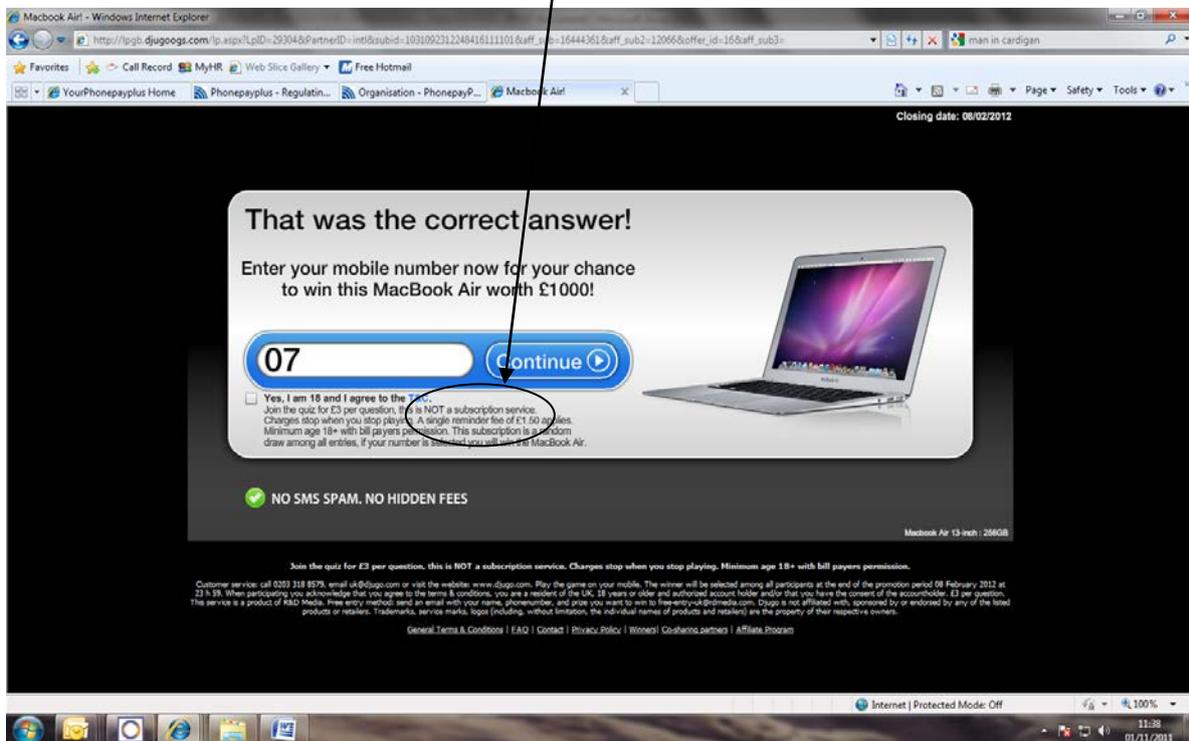


## Appendix B - Monitoring of youtube.com

Screenshot 1 – The quantity of prizes available was stated:



Screenshot 2 - The Executive was required to enter a mobile telephone number. Pricing information includes a “single reminder fee of £1.50”:



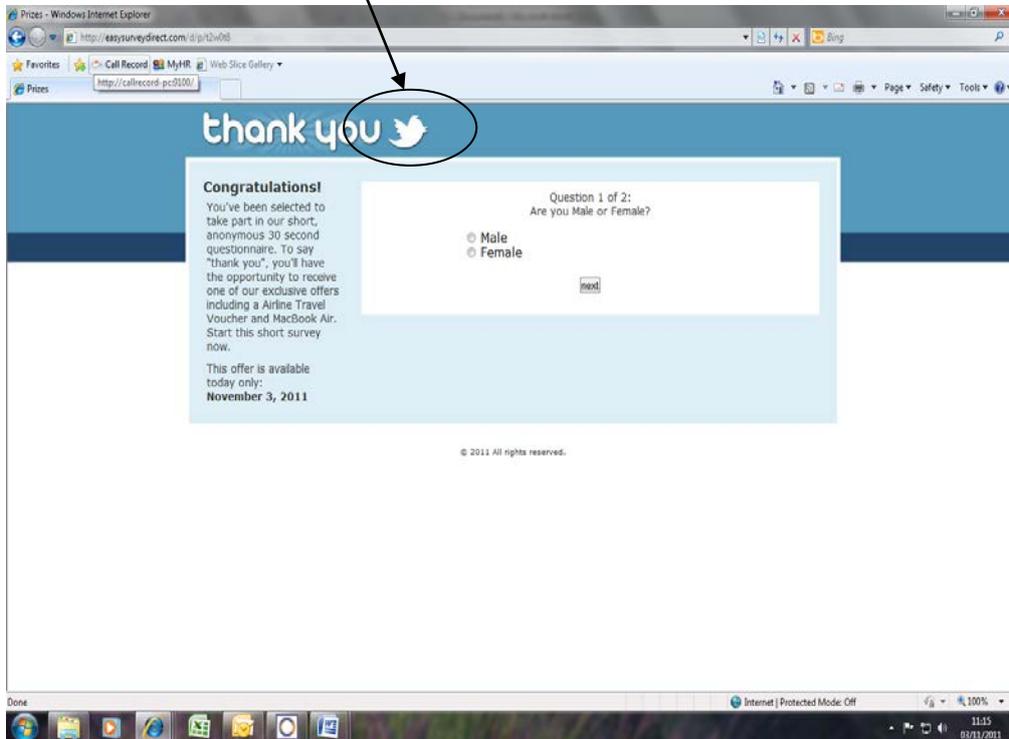
## Appendix C - Monitoring of wikipedia.com and wikipedia.com

Display of the Wikipedia icon and use of the word “Winner” and “Claim”:

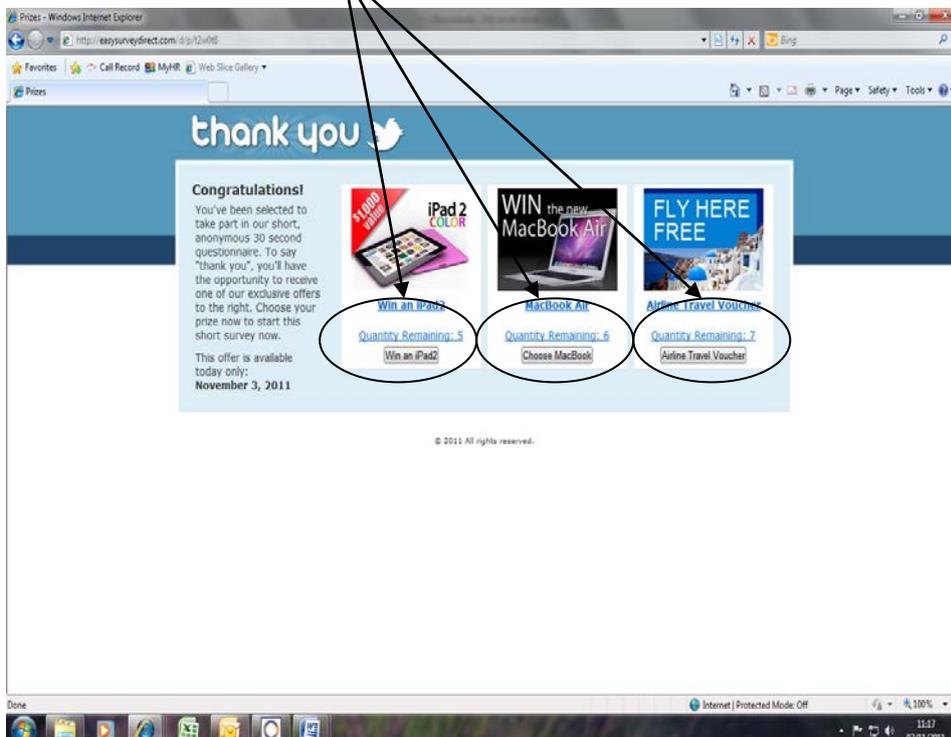


## Appendix D - Monitoring of twitter.com

Screenshot 1 – The icon used for the service was similar to the genuine ‘Twitter’ website:

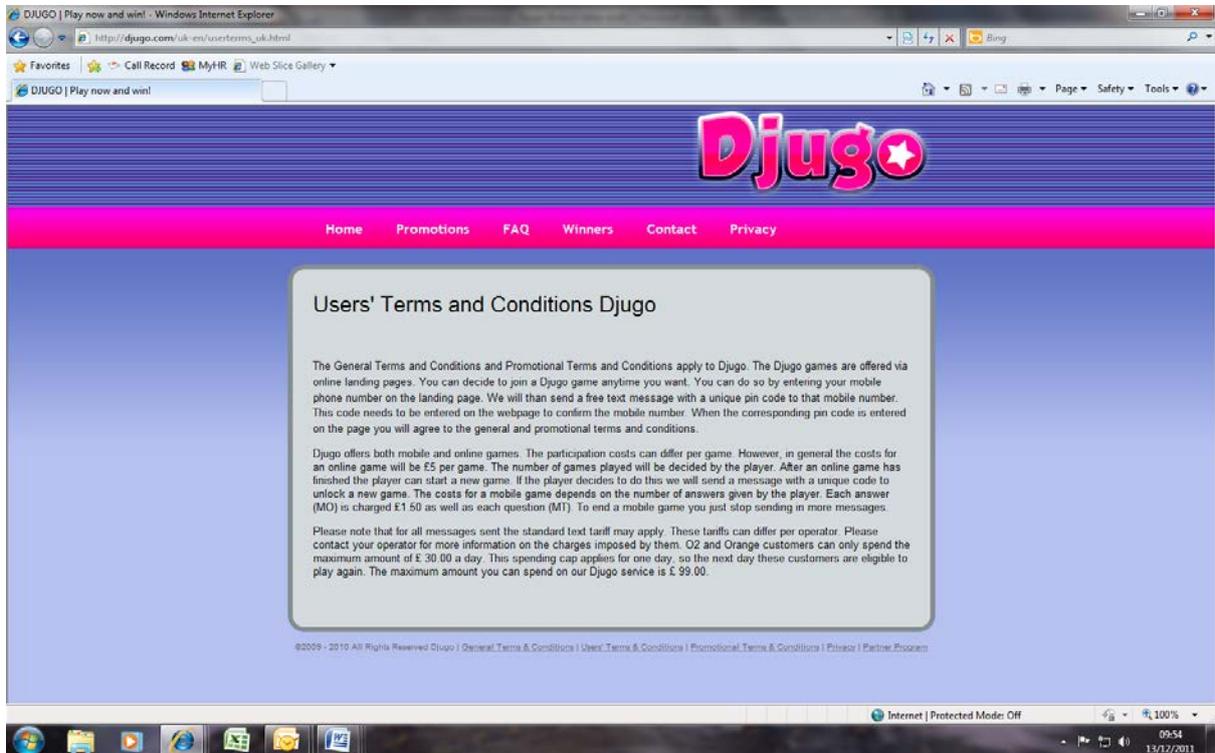


Screenshot 2 - The quantity of prizes available was stated:



## Appendix E - How the service was intended to operate as described by the Level 2 provider:

### The First Hyperlink navigated to the Users' Terms and Conditions:



### The Second Hyperlink navigated to the General Terms and Conditions:

