



Tribunal Sitting Number 136 / Case 2

Case Reference: 30876
Level 2 provider: Amazecell Ltd, Israel
Type of Service: Competition
Level 1 provider: N/A
Network operator: N/A

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 Amazecell Ltd was the subject of a PhonepayPlus investigation and adjudication (case reference 08341), which resulted in sanctions being imposed by a Tribunal on 27 September 2012. The sanctions imposed by the Tribunal included a fine of £300,000 and general refunds. In addition, an administrative charge of £10,117 was imposed.

The Level 2 provider was advised of the fine and administrative charge by the Executive in an adjudication letter sent by email on 10 October 2012.

The Level 2 provider made an application for a review of the Tribunal's decision on 24 October 2012. The application was refused on 31 October 2012. On 14 November 2012, the Level 2 provider made an application for an Oral hearing and requested that the payment of the fine be suspended pending the outcome of the Oral hearing.

Pursuant to a direction from PhonepayPlus, the Level 1 provider had withheld monies in the sum of £105,463.65 from the Level 2 provider.

On 30 April 2013, the Chair of the Oral hearing agreed to suspend a portion of the fine in the sum of £194,536.35. On 24 May 2013, the Level 1 provider paid the withheld revenue to PhonepayPlus. This revenue was used to pay the administrative costs of £10,117 and £95,346.65 of the fine.

During correspondence with the Executive, the Level 2 provider stated it was experiencing financial hardship. On 13 June 2013, the Executive notified the Chair of the Oral hearing of the Level 2 provider's disclosure regarding its financial situation. On 15 June 2013, the Chair of the Oral hearing directed the Level 2 provider to pay a security for costs for the Oral hearing in the sum of £50,000 but agreed that £45,346.65 of revenue withheld by the Level 1 provider could be diverted to contribute to the security for costs. As a result, the Level 2 provider was required to pay £4,653.35 as security for costs. The Level 2 provider failed to pay the £4,653.35 and as a result the proceedings were struck out on 5 August 2013.

Consequently, the total amount outstanding to PhonepayPlus is £252,074.77, which is made up as follows: the original fine of £300,000, the original administrative charge of £10,117 and the administrative charge for the Oral hearing £47,421.42 less the amount withheld by the Level 1 provider of £105,463.35 (which has been paid to PhonepayPlus).

The Investigation

The Executive conducted this matter as a Track 2 investigation in accordance with paragraph 4.4 of the PhonepayPlus Code of Practice (12th Edition) (the "Code").



The Executive sent a breach letter to the Level 2 provider on 24 September 2013. Within the breach letter the Executive raised the following breach of the Code:

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

The Level 2 provider responded on 7 October 2013. On 17 October 2013, the Tribunal reached a decision on the breach raised by the Executive.

SUBMISSIONS AND CONCLUSIONS

ALLEGED BREACH 1

Paragraph 4.8.4(b) Failure to comply with a sanction

“The failure of any relevant party to comply with any sanction within a reasonable time will result in a further breach of the Code by the relevant party, which may result in additional sanctions being imposed.”

1. The Executive noted that on 27 September 2012, the Tribunal adjudicated on a service operated by the Level 2 provider that had been the subject of a PhonepayPlus investigation (case reference 08341). The adjudication resulted in the imposition of sanctions, including a fine of £300,000 and a requirement that the Level 2 refund all consumers who claim a refund, for the full amount spent by them on the service, within 28 days of their claim, 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.

On 10 October 2012, the Executive sent the Level 2 provider a post adjudication letter which included an invoice for payment of the £300,000 to be made within ten calendar days. Payment was not made within the time period specified.

As set out in the “Background” section the fine remains unpaid, although a sum withheld by the Level 1 provider has been paid to PhonepayPlus and applied in part satisfaction of the total amount outstanding to PhonepayPlus. Accordingly, the Executive submitted that the Level 2 provider had failed to pay the fine within the time period specified (or at all) in breach of the paragraph 4.8.4(b) of the Code.

2. The Level 2 provider accepted the breach and submitted that it had not been able to pay the fine due to financial hardship. It submitted that this was as a result of the Level 1 provider withholding revenue during the investigation. The Level 2 provider stated that it had disagreed with the original Tribunal decision and wished to have the case revisited at an Oral hearing. It admitted making some mistakes in relation to the operation of the service but stated none of the breaches were caused intentionally. It asserted that, had the original Tribunal taken this into consideration, the breaches would have had a lower seriousness rating and it would have been reflected in the sanctions. The Level 2 provider stated that despite the Chair of the Oral hearing having extended the deadline for payment of the security for costs and it having attempted to collect small debts owed to it, it had not been able to pay the security. The Level 2 provider asserted it had notified PhonepayPlus of its inability to pay the fine from the outset but since that time its financial situation had only got worse.

Finally, the Level 2 provider stated that the imposition of a further breach would not be fair, relevant or efficient as it was no longer in operation.

3. The Tribunal considered the evidence, including the Level 2 provider’s submissions in relation to its financial situation. The Tribunal noted that part payment of the fine had occurred from the

withhold post expiry of the deadline for full payment of the fine. Further, the Tribunal noted that the breach related solely to the non-payment of the fine of £300,000 within the time period specified (or at all). The Tribunal concluded there had been a further breach of the Code due to non-payment of the fine. Accordingly, the Tribunal upheld a further breach pursuant to paragraph 4.8.4(b) of the Code.

Decision: UPHELD

SANCTIONS

Initial Overall Assessment

The Tribunal's initial assessment of the breach 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.

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

Final Overall Assessment

The Tribunal did not find any aggravating or mitigating factors. The Tribunal noted that the Level 2 provider stated it had ceased to operate and that it was experiencing financial hardship.

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 service for a period of three years (starting from the date of publication of this decision), or until payment of the full amount due in the sum of £252,074.77 and the instant administrative charges of £3,875 whichever is the later.

