



Tribunal Meeting Number 141 / Case 1

Case Reference: 09739
Level 2 provider: Zamano Solutions Ltd (Dublin, Ireland)
Type of Service: Competition - non-scratchcard
Level 1 provider: N/A
Network operator: All Mobile Network operators

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

BACKGROUND

Between 2 May 2012 and 9 September 2013, PhonepayPlus received 587 complaints from consumers in relation to a competition subscription service (the “**Service**”) operated by the Level 2 provider Zamano Solutions Ltd, under the brand name “PlayN’Win”. The Service operated on the premium rate shortcodes 60699 and 81002 and cost £4.50 per week. The Service operated between April 2012 and 13 June 2013 when it was voluntarily suspended by the Level 2 provider. The Service was promoted online using affiliate marketing.

Consumers subscribed to the Service (using a key word SMS or an online PIN code opt-in) and were entered into a weekly draw to win prizes such as iPhones, iPads or £50.

Complainants either stated that they had received unsolicited, reverse-billed text messages and that they had not engaged with the Service, or acknowledged engaging with the Service but stated that they believed it was free. PhonepayPlus monitoring revealed concerns about affiliate marketing promotions for the Service.

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 2 December 2013. Within the breach letter the Executive raised the following breaches of the Code:

- Rule 2.3.1 - Fair and equitable treatment
- Rule 2.3.2 - Misleading

The Level 2 provider responded on 16 December 2013. On 9 January 2014, after hearing informal representations from the Level 2 provider, the Tribunal reached a decision on the breaches raised by the Executive.

Monitoring

Monitoring of the Service was conducted by the PhonepayPlus Research and Market Intelligence Team (the “**RMIT**”). On 4 April 2013, the RMIT monitored the Service after advertising-supported software (“**Adware**”) identified as “Yontoo” was inadvertently downloaded on to its computer.

The RMIT searched for “Wikepedia” (which was deliberately misspelt) on the Google search engine and clicked on the first search result, which was a link for the official website for Wikipedia (**Appendix A**). Upon clicking on the link, two tabs opened in the RMIT’s web browser. The first tab contained the official Wikipedia homepage and the second tab contained an unofficial webpage not



associated with Wikipedia but containing a headline which reflected the initial spelling error (**Appendix B**). The RMIT noted that on clicking the link to the official Wikipedia website from the Google search (**Appendix A**), it was immediately directed to the second tab. The RMIT noted that the first tab containing the official Wikipedia page was overlaid by the second tab. The second tab contained a third party affiliate marketing survey that purported to be the “2013 Annual Visitor Survey” for “Wikepedia”. The RMIT noted that the survey appeared to use the same search term that had been entered into Google (“Wikepedia”). The RMIT answered three survey questions and then selected “Next”. The following screen stated:

“Survey complete, thank you for your participation!
You may be able to win a brand new Apple ® iPhone 5 or iPad2, please hold...
Checking gift offer inventory.”

The RMIT was directed to a new webpage which invited the RMIT to select a prize (**Appendix C**). The RMIT selected the iPad prize and was directed to the Service landing page (**Appendix D**). Upon answering the trivia quiz question on the landing page, the RMIT was led to a webpage containing the Service terms and conditions, including the pricing information (**Appendix E**).

Complaints

The Executive noted the content of all the complaints received, examples of which include:

“I was just logging onto moneysavingexpert.com and a survey screen came up an asked a few questions and at the end asked if I wanted entering into a prize draw. As I thought it was from MSE I did.”

“When I was doing the registration with Sky and following the procedure, I clicked an item needed and a pop up says I need to do a 30 second survey. As I had logged into my account, I did not aware and do it step by step requested by Sky [sic].”

“I inadvertently clicked on a pop up which stated about the chance to win an iPad. As it popped up on a trusted site I thought the site felt that this competition was fine”

“Very deceitful way of getting subscribers. No notification of what was really being offered. Said it was free draw when clearly it isn’t. Please get them to stop!!!”

“Website pop up suggesting you could win i-phone if you completed a survey...I stupidly gave my phone number to the site, at no time was I aware that I would be paying for texts...”

SUBMISSIONS AND CONCLUSIONS

ALLEGED BREACH 1

Rule 2.3.1

“Consumers of premium rate services must be treated fairly and equitably.”

1. The Executive submitted that the Level 2 provider was responsible for a breach of rule 2.3.1 of the Code as consumers were not treated fairly and equitably as a result of Adware which automatically diverted consumers to affiliate marketing promotions for the Service without their knowledge.

The Executive relied on the monitoring of the Service conducted by the RMIT and detailed above under the “Background” section.



The Executive relied on data taken from www.alexa.com (a website information company which provides free website analytics). The data revealed the URLs for websites that consumers visited immediately before arriving on the Service landing page. The RMIT was directed to the Service landing page from the worldsocialsurvey.com website (the second tab). According to Alexa data, 16.99% of the traffic to the Service landing page was from the worldsocialsurvey.com website. Consequently, the Executive submitted that a significant percentage of the Service's traffic came from the worldsocialsurvey.com website and a significant number of consumers were likely to have experienced a similar consumer journey to that experienced in the monitoring.

The Executive asserted that consumers were not treated fairly and equitably, as they were unknowingly diverted to a promotion for the Service after they had selected the correct link for the official Wikipedia website. Accordingly, the Executive submitted that for the reasons outlined above rule 2.3.1 of the Code had been breached.

2. The Level 2 provider accepted that a breach of the Code had occurred but stated that it had occurred without its knowledge and consent. It accepted that some affiliate marketing promotions for the Service had utilised a trusted brand and were potentially unfair to consumers.

The Level 2 provider confirmed that the Service was promoted online using affiliate marketing promotions but stated that it did not condone the methods encountered by the Executive during the monitoring session.

The Level 2 provider explained that only a small number of subscribers, "were acquired by affiliates using re-direct traffic". The Level 2 provider added that the majority of consumers were treated fairly, as the pricing and the terms and conditions of the Service were clearly displayed on the Service's webpages.

The Level 2 provider asserted that it had conducted an analysis of its subscriber database which had revealed that the maximum number of consumers that could have been affected by the non-compliant affiliate marketing promotions was 784 (0.46% of the total number of consumers that had subscribed to the Service between April 2012 and June 2013). The Level 2 provider produced a graph from its internal reporting systems that it stated demonstrated that there was a low number of "clicks" generated from the worldsocialsurvey.com website compared to the Service as a whole.

The Level 2 provider stated that since April 2013 Service complaint levels had dramatically decreased and that this had been recognised by PhonepayPlus in a presentation at an AIME Regulatory Roundtable meeting in November 2013. The Level 2 provider stated that this was as a result of its increased affiliate marketing monitoring and the application of more stringent marketing rules.

The Level 2 provider confirmed that the non-compliant promotional activity was linked to the worldsocialsurvey.com website. The Level 2 provider had obtained data from Alexa which revealed that the website was only live between mid-March 2013 and mid-May 2013. The Level 2 provider stated that not all traffic from the worldsocialsurvey.com website was non-compliant. It had obtained unique identifiers for each transaction. The identifier enabled the Level 2 provider to identify the marketing partner and the source that had generated the traffic. The Level 2 provider confirmed that the identifier associated with the Executive's monitoring, and generated by the Yontoo toolbar, accounted for 21% of the traffic from the



worldsocialsurvey.com website. It confirmed that the other identifiers from the worldsocialsurvey.com website were associated with pop-unders and display banners, as opposed to overlay advertisements.

The Level 2 provider stated that “pop” traffic is typically high volume and low conversion. The high volumes of traffic do not necessarily translate into a proportionate level of subscriptions and this was the case with the traffic from the worldsocialsurvey.com website.

By way of background, the Level 2 provider explained that the Executive raised a preliminary investigation in October 2012 but no evidence was provided to indicate that consumers were being misled in the manner encountered by the RMIT during its monitoring. As a result of its co-operation, the case was closed on 19 February 2013.

The Level 2 provider summarised a number of controls that it had in place to manage the risks associated with affiliate marketing which include:

- i) Pre-approval of the affiliate marketing “lead in” webpage.
- ii) Marketing partners are required to provide the full URL referrer for all “clicks” to the Service. Referrers were checked on a daily basis to ensure that they meet compliance standards.
- iii) “Wild monitoring”, which involves searching the web looking for the Service promotions to identify concerns.
- iv) Blacklisting publishers who have breached the prohibited practices (evidenced by correspondence addressing previous issues that had been identified by the Level 2 provider).
- v) Notification of the Level 2 provider’s prohibited practices to the affiliate networks.
- vi) Affiliate marketers are required to agree to stringent terms and conditions containing prohibitions.

The Level 2 provider stated that on this occasion the controls in place did not capture the non-compliant promotions for the following reasons:

- i) The volume of traffic generated from the worldsocialsurvey.com website was relatively small and consequently there were no peaks in traffic.
- ii) The webpage submitted for approval did not contain the names of any trusted brand names. Survey style landing pages had previously been submitted to PhonepayPlus and they were not deemed inappropriate. Since July 2013, the use of survey style pages had been added to its list of non-permissible marketing practices.
- iii) When the marketing partner gave the Level 2 provider the URL referrer it hid an element that detailed names of the sites and brands that would be seen by the consumer. The Level 2 provider reviewed the referrers but only saw “Visitor Survey” in the header and not a trusted brand name.
- iv) Difficulties can be experienced when conducting monitoring outside of the UK. The Level 2 provider attempted to replicate the Executive’s monitoring by downloading the Yontoo toolbar. Despite this, it did not reproduce the same results as the Executive’s monitoring and accordingly asserted that Adware is extremely difficult to monitor.
- v) Search term re-direction was not commonly known about by premium rate service providers. There had not been any industry notification or PhonepayPlus adjudications relating to the use of Adware. The Level 2 provider’s monitoring focused on movie downloads and streaming sites.



The Level 2 provider stated that the Service landing pages had clear pricing information which was prominently displayed in the middle of the page and was proximate to the means of access to the Service. However, the Level 2 provider asserted, that the Executive had not always displayed the Service landing page during the monitoring in a representative manner. One screenshot was taken after the RMIT had scrolled down the page and the pricing information was obscured.

The Level 2 provider stated that some screenshots taken by the RMIT displayed banner advertisements on some of the Service webpages. The Level 2 provider asserted that the banner advertisements had no connection to it and had been injected as a result of Adware installed by consumers on to their computers. It highlighted that the banner advertisements on its webpages are detrimental to its business model, as they distract the consumer during the subscription process and could lead to potential consumers moving away from its webpages. The Level 2 provider asserted that the Adware banner did not push the terms and conditions below the fold as the Adware banner floated at the bottom of the page and could be shut down.

Finally, the Level 2 provider explained that Adware is normally bundled with free software downloads from the internet, which is inadvertently downloaded on to the user's computer. The advertising generated from the software is sold to advertising networks, who sell it to affiliate marketers and direct media buyers.

During informal representations, the Level 2 provider expanded upon its written submissions and confirmed that it accepted that a breach of rule 2.3.1 of the Code had occurred and that it was responsible for the actions of its affiliate marketers. However, it believed there was substantial mitigation.

The Level 2 provider explained the nature of the Service and the flow of the Service's promotional webpages. The Level 2 provider asserted that a consumer would have been fully aware of the nature and the pricing of the Service prior to incurring any charges.

The Level 2 provider stated that after it had become aware of the issues identified by the Executive, it sought to replicate the consumer journey by installing the Yontoo toolbar. The Level 2 provider produced screenshots of its monitoring, which it stated demonstrated that the Level 2 provider did not encounter the same overlay issues as the Executive. It stated that it attempted to replicate the UK environment as best it could. It submitted that its attempt at replicating the RMIT's journey was not as straightforward as installing the Yontoo toolbar. The Level 2 provider stated that this highlighted the difficulty it had with monitoring Adware. The Level 2 provider stated that it had conducted its monitoring in Ireland by using a proxy that mimicked a UK IP address. It accepted that this was not as effective as monitoring in the UK, as the Adware may have been able to detect that it was using a proxy.

In relation to the Executive's evidence from Alexa, the Level 2 provider stated that the analytics showed the traffic to the Service's website but that it was not able to show the number of consumers who subscribed to the Service. Further, the data did not provide information about the period of time over which it had been collated. The Level 2 provider highlighted that the data from Alexa showed all the traffic from the worldsocialsurvey.com website. However, it believed that only a small percentage of that traffic would have come from the Yontoo toolbar, as there would have been other methods of promotion. The Level 2 provider stated that the Alexa data is collated from users who have the Alexa toolbar installed and therefore the figures are only indicative.



The Level 2 provider gave a detailed explanation of the way in which it could identify the sources of traffic to its Service. The Level 2 provider drew the Tribunal's attention to the length of time it had taken the Executive to investigate the breaches and stated that it had not been able to operate and/or promote the Service, which had had a considerable effect on its revenue.

3. The Tribunal considered the evidence and submissions before it, including the Level 2 provider's detailed written and oral submissions. In particular, the Tribunal noted that the Level 2 provider admitted the breach of the Code. The Tribunal accepted the Level 2 provider's assertion that 784 consumers had entered the Service via the worldsocialsurvey.com website but noted that 784 was still a high number of consumers, who could have potentially been affected by the Adware (which promoted the Service). Further, the Tribunal noted the large number of consistent complainant accounts which reported similar concerns over an extended period of time (outside the period when the worldsocialsurvey.com website was believed to have been operating). The Tribunal found that, in light of the monitoring evidence, it was likely that a significant number of consumers had been diverted to a website of which they had no knowledge and had no connection to the consumers' initial search. The Tribunal found that these consumers were inadvertently led to a premium rate service. Consequently, and for the reasons given by the Executive, the Tribunal found that consumers had not been treated fairly and equitably. Accordingly, the Tribunal upheld a breach of rule 2.3.1 of the Code.

Decision: UPHELD

ALLEGED BREACH 2

Rule 2.3.2

"Premium rate services must not mislead or be likely to mislead in any way."

1. The Executive submitted that the Level 2 provider had breached rule 2.3.2 of the Code as consumers were misled into using the Service for the following reasons:
 - i) Consumers were misled into believing that they were completing a survey for a trusted brand (or that the survey was affiliated to a trusted brand); and
 - ii) Consumers were misled into believing that if they completed the survey they would have a chance of winning a prize, when in fact they were required to enter a premium rate subscription service at a cost of £4.50 per week in order to have the opportunity to win a prize.

Guidance

The Executive relied on the content of the PhonepayPlus Guidance on "Promotions and promotional material". The Guidance states:

Misleading promotions

Paragraph 3.1

"If consumers are to have trust and confidence in using PRS, it is important that they have available all the key information about a service as part of their consideration of whether to make a purchase or not. For this reason, it is important that promotions do not mislead consumers by stating an untruth or half-truth. It is also important that promotions do not



omit, or make insufficiently prominent, an important term or condition likely to affect their decision to use the service.”

Controlling risk when using affiliate marketers

Paragraph 6.2

“In these circumstances, PhonepayPlus recognises that the Level 2 provider, while retaining responsibility for the promotion under the PhonepayPlus Code of Practice, may not have immediate, day-to-day control of each individual action that an affiliate takes. However, the use of affiliates to market PRS products on a provider’s behalf does carry a greater risk than marketing which is under the direct, day-to-day control of the provider.”

The Executive relied on the monitoring of the Service conducted on 4 April 2013 by the RMIT and the complainants accounts detailed above in the “Background” section.

Reason one: Consumers were misled into believing that they were completing a survey for a trusted brand (or that the survey was affiliated to a trusted brand)

The Executive noted the content of the affiliate marketing promotions that the RMIT had been directed to during its monitoring session (**Appendix B**). The Executive asserted that the promotions appeared to have been deliberately designed to look like a “visitor survey” for Wikipedia, a well-known and trusted brand.

The Executive noted the content of the complainant accounts, which predominantly referred to complainants entering the Service through pop-ups that appeared when they were using trusted websites. One particular complainant provided a screenshot of a pop-up that appeared whilst s/he was using a website and directed the complainant to a survey style promotion.

The Executive asserted that consumers were misled by affiliate marketing promotions, which utilised Adware, as consumers were led to the Service landing page in the mistaken belief that they were participating in a survey which was affiliated with a trusted brand.

Reason two: Consumers were misled into believing that if they completed the survey they would have a chance of winning a prize, when in fact they were required to enter a premium rate subscription service at a cost of £4.50 per week in order to have the opportunity to win a prize.

The Executive asserted that the affiliate marketing promotion (**Appendix C**) was likely to have misled consumers into believing that once they had selected their chosen prize they would then be entered into a prize draw. The webpage contained no indication that a consumer was required to subscribe to the Service (and incur charges) to have a chance of winning a prize.

Consequently, the Executive submitted that in light of the affiliate marketing promotions for the Service, the Service misled or was likely to have misled consumers into believing that they were completing a survey for a trusted brand and that completion of the survey would automatically enter them into a prize draw. Accordingly, the Executive submitted that for the reasons outlined above rule 2.3.2 of the Code had been breached.



2. The Level 2 provider accepted that some consumers may have been misled due to the use of a trusted brand name, however it strongly refuted that consumers had been misled into believing that if they completed a survey they would have a chance of winning a prize.

Specifically in relation to reason one outlined by the Executive above, the Level 2 provider stated that it was able to see how a consumer may potentially view the affiliate marketing promotions as misleading. However, it clarified that the vast majority of consumers were not misled into engaging with the Service for the following reasons:

- i) The maximum number of consumers that could have been affected by the misleading affiliate marketing promotions was 784 (0.46% of the total number of consumers for the duration of the Service).
- ii) Only 3.6% of the complainants referred to a survey for a trusted brand accordingly, only a small percentage of consumers were affected by the issue.
- iii) The worldsocialsurvey.com website was only live and generating traffic between mid-March and the mid-May 2013.

The Level 2 provider stated that it did not knowingly allow its Service to be marketed using Adware as it did not know of its existence and usage in the promotion of premium rate services. There had been no prior industry notifications or adjudications relating to the use of Adware and the industry were generally unaware of the issue. It stated this was evident from an affiliate marketing workshop held by Vodafone on 20 June 2013.

The Level 2 provider reiterated the measures and controls it had in place to manage the risks posed by affiliate marketing as detailed above in its submissions regarding the breach of rule 2.3.1 of the Code.

The Level 2 provider submitted that the screenshots provided by the complainant contained different dates, therefore the screenshots were, "...unrelated and should not be considered during [the Tribunals'] deliberations".

In relation to the second reason advanced by the Executive, the Level 2 provider strongly maintained that, throughout the entire consumer journey, consumers were informed that they only had a "chance" to win. The language used was always conditional, "you will have an opportunity to win a prize," "you may be able to win," and, "you could win (1) prize from the list below".

The Level 2 provider asserted that the pricing information was presented prominently and proximately on the "MSISDN entry page" (**Appendix F**) and the "pin entry page" (**Appendix G**).

During informal representations, the Level 2 provider clarified its written submissions and stated that it accepted there had been a breach of rule 2.3.2 in relation to the first reason outlined by the Executive, but that it had only affected a small part of the whole customer base. In relation to the second reason for the breach, the Level 2 provider strongly refuted that a breach had occurred as it stated that it always made clear to consumers that they had a "chance" to win a prize. The Level 2 provider stated it was a cumulative process and by the time the consumer reached the Service webpages, consumers would be informed of all the key Service information and it was made clear that it was a premium rate service. The terms and conditions and pricing information were on the Service webpages closer to the call to action. The Level 2 provider stated that it was not aware of the use of Adware to



divert consumers to the promotions of premium rate services but it accepted that it was aware of pop-up advertisements.

3. The Tribunal considered the evidence and submissions before it. In particular, the Tribunal noted that the Level 2 provider accepted that some consumers may have been misled into believing that they were completing a survey for a trusted brand. The Tribunal noted that the survey was entitled “2013 Annual Visitor Survey Wikipedia” and found that as consumers were diverted to the Service promotion when searching for “Wikipedia”, the nature of the promotion would have reinforced the mistaken impression that the survey was connected to a trusted brand. The Tribunal noted the language used on the survey and found that phrases such as, “You’ve been selected to take part in this year’s Annual Survey...and to say thank you will have the opportunity to win the new Apple ® iPhone 5 or iPad2”, were likely to create the impression that if a consumer completed the survey they would have a chance of winning a prize (when in reality they had to subscribe to the Service and pay a £4.50 weekly subscription). The Tribunal noted that the Level 2 provider had stated that its own landing pages were clear about the requirement to subscribe to the Service in order to have a chance to win, and that this therefore corrected any false impression given. However, the Tribunal did not accept this and found that the overall effect of the consumer journey was misleading. The Tribunal also noted that there had recently been a PhonepayPlus Track 1 procedure in relation to the display of pricing information on the Service’s webpages. Overall, the Tribunal concluded that consumers were or were likely to have been misled into believing that they were completing a survey for a trusted brand and consumers were or were likely to have been misled into believing that if they completed the survey they would have a chance of winning a prize rather than being required to enter a premium rate service to have the opportunity to win a prize. Further, the Tribunal noted that the Level 2 provider was responsible for the content of the promotions by its affiliates marketers. Accordingly, the Tribunal upheld a breach of rule 2.3.2 of the Code.

Decision: UPHELD

SANCTIONS

Initial overall assessment

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

Rule 2.3.1 - Fair and equitable treatment

The initial assessment of rule 2.3.1 of the Code was **serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criterion:

- Serious cases have a clear detrimental impact, directly or indirectly, on consumers and the breach had a clear and damaging impact or potential impact on consumers.

Rule 2.3.2 - Misleading

The initial assessment 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 criterion:

- Serious cases have a clear detrimental impact, directly or indirectly, on consumers and the breach had a clear and damaging impact or potential impact on consumers.



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

Final overall assessment

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

- At the time of the monitoring, there had been a number (approximately nine) of prior adjudications concerning affiliate marketing.
- The Level 2 provider had been subject to an adjudication in March 2012 in which sanctions, including a fine of £35,000, had been imposed as a result of misleading affiliate marketing.

In determining the final overall assessment for the case, the Tribunal took into account the following three mitigating factors:

- The Level 2 provider stated that it had the following measures in place to identify and mitigate against the risks associated with affiliate marketing:
 - Pre-approval of the affiliate marketing "lead in" webpages.
 - Marketing partners are required to provide the full URL referrer for all "clicks" to the Service. Referrers are checked on a daily basis to ensure that they meet compliance standards.
 - "Wild monitoring", which involves searching the web looking for the Service promotions to identify concerns.
 - Blacklisting publishers who have breached the prohibited practices (evidenced by correspondence addressing previous issues that had been identified by the Level 2 provider).
 - Notification of the Level 2 provider's prohibited practices to the affiliate networks.
 - Affiliate marketers are required to agree to stringent terms and conditions containing prohibitions.
- On being notified by PhonepayPlus of the Adware affiliate marketing, the Level 2 provider:
 - Voluntarily suspended the Service.
 - Blacklisted the relevant publisher.
 - Outsourced UK monitoring to an independent third party.
 - Increased its monitoring (which was conducted by a dedicated team within the Level 2 provider).
 - Imposed traffic restrictions that only permit affiliate marketers to use display and pop-under promotions.
 - Encouraged Level 2 providers to work with affiliate publishers directly, rather than the affiliate networks, in order to exercise greater control of the promotions for services.
- The Level 2 provider stated that it had created a platform for information sharing amongst the premium rate industry to raise awareness of potential issues.

The Tribunal noted that the Level 2 provider stated it has a "no quibble" refund policy since January 2012 but that it had not provided evidence to demonstrate that refunds had been administered to the complainants in this case. The Tribunal also noted that the Level 2 provider stated that on 30 July 2013 it had sent a free clarification message to consumers who had entered the Service via the worldsocialsurvey.com website to inform them that they had previously



subscribed to the Service and the cost of the Service, but it did not consider this was comprehensive enough to amount to mitigation.

The Tribunal noted that the investigation had taken a considerable period of time and that the Service had not been operational for approximately seven months. Accordingly, the Tribunal noted the potential lost revenue during that period.

The Level 2 provider's revenue in relation to this Service was in the range of Band 1 (£500,000+). Having taken into account the aggravating and mitigating factors, the Tribunal concluded that the seriousness of the case should be regarded overall as **serious**.

Sanctions imposed

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

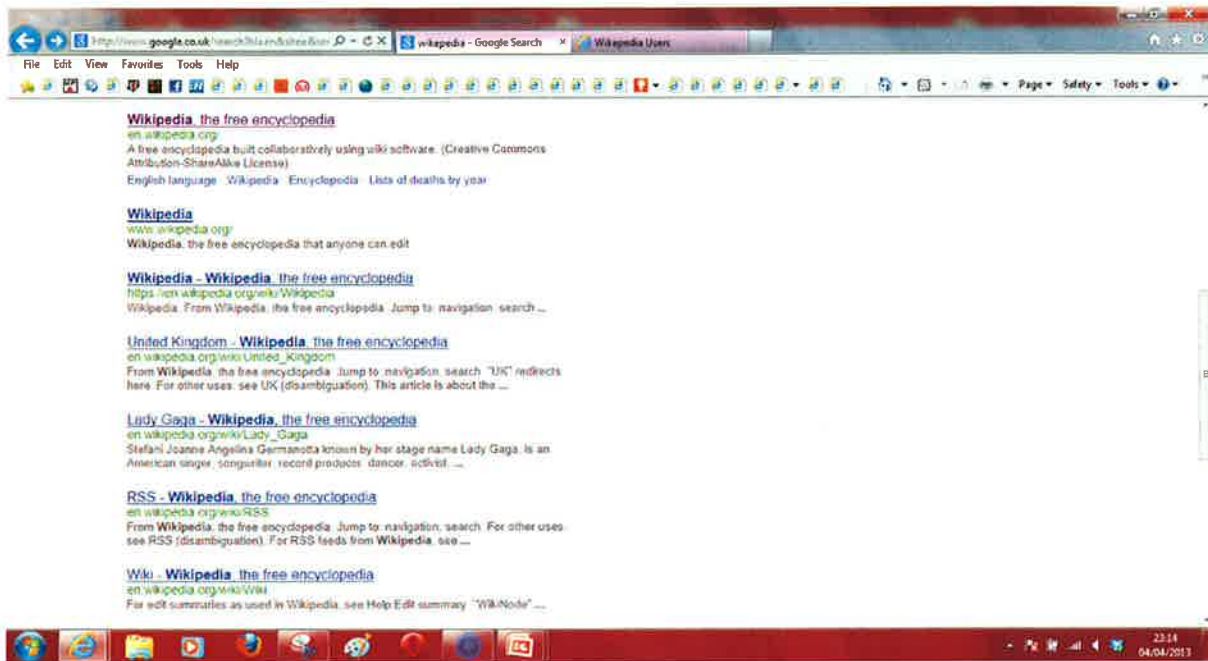
- a formal reprimand;
- a fine of £40,000 (including a £15,000 uplift which was imposed as a result of the Level 2 provider's relevant breach history); and
- a requirement that the Level 2 provider must refund all consumers who claim a refund, for the full amount spent by them on the Service, within 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.

The Tribunal noted that 784 consumers, identified by the Level 2 provider as being affected by the misleading consumer journey, and stated that it hoped the Level 2 provider would proactively provide refunds to each of the consumers concerned.

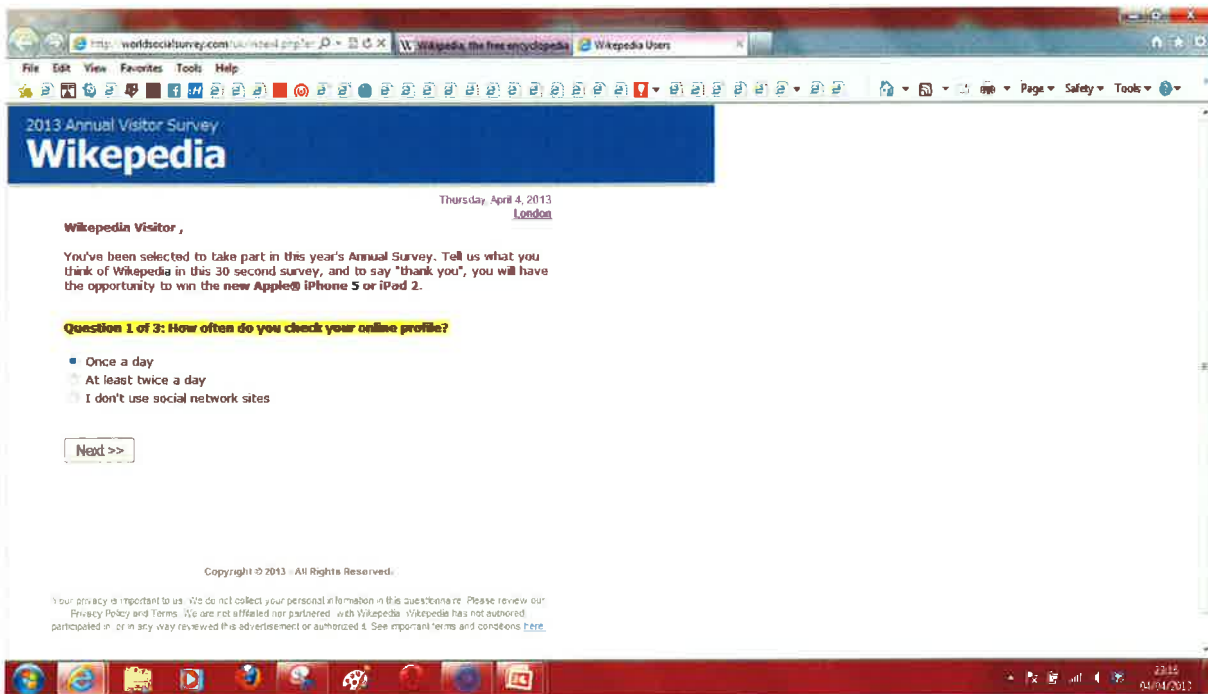


Appendices

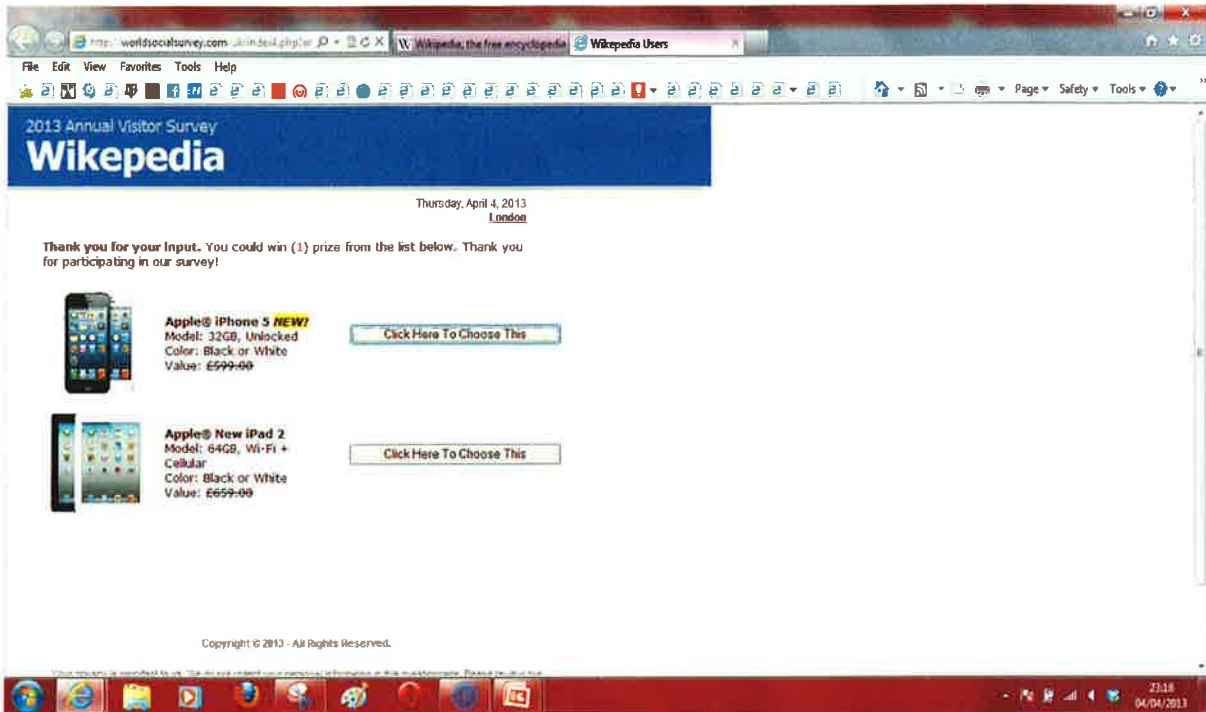
Appendix A: A screenshot of the Google search results showing a link to the official Wikipedia website:



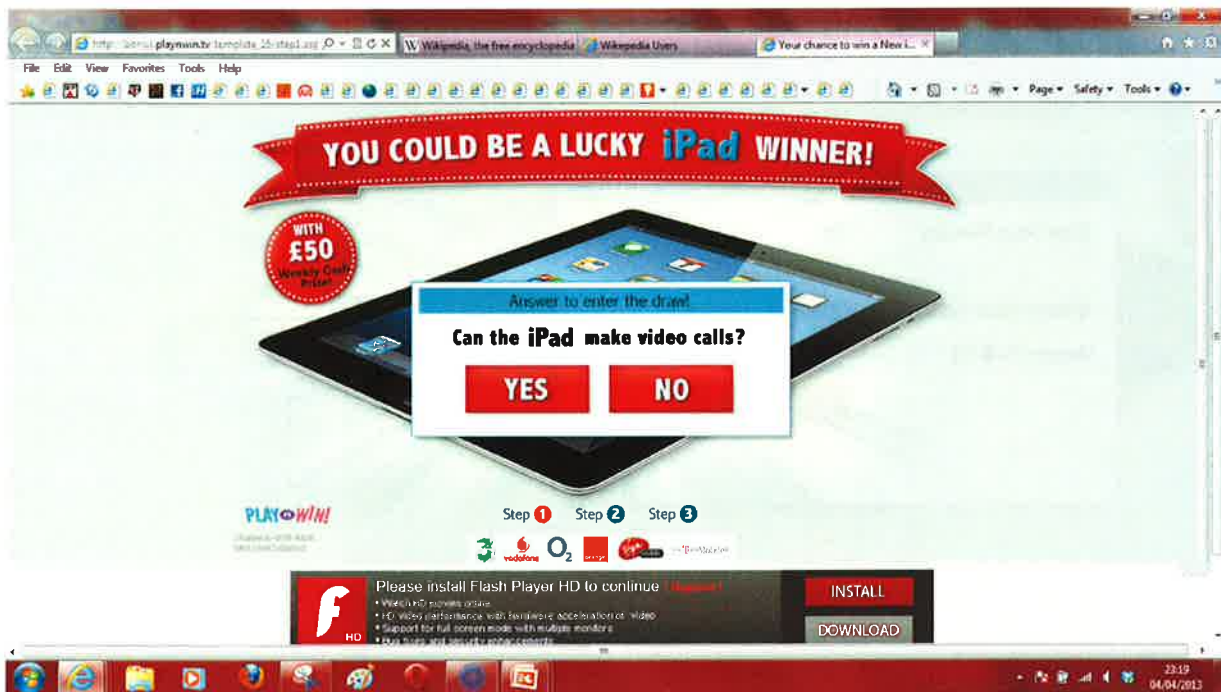
Appendix B: A screenshot of the overlaid affiliate marketing survey webpage:



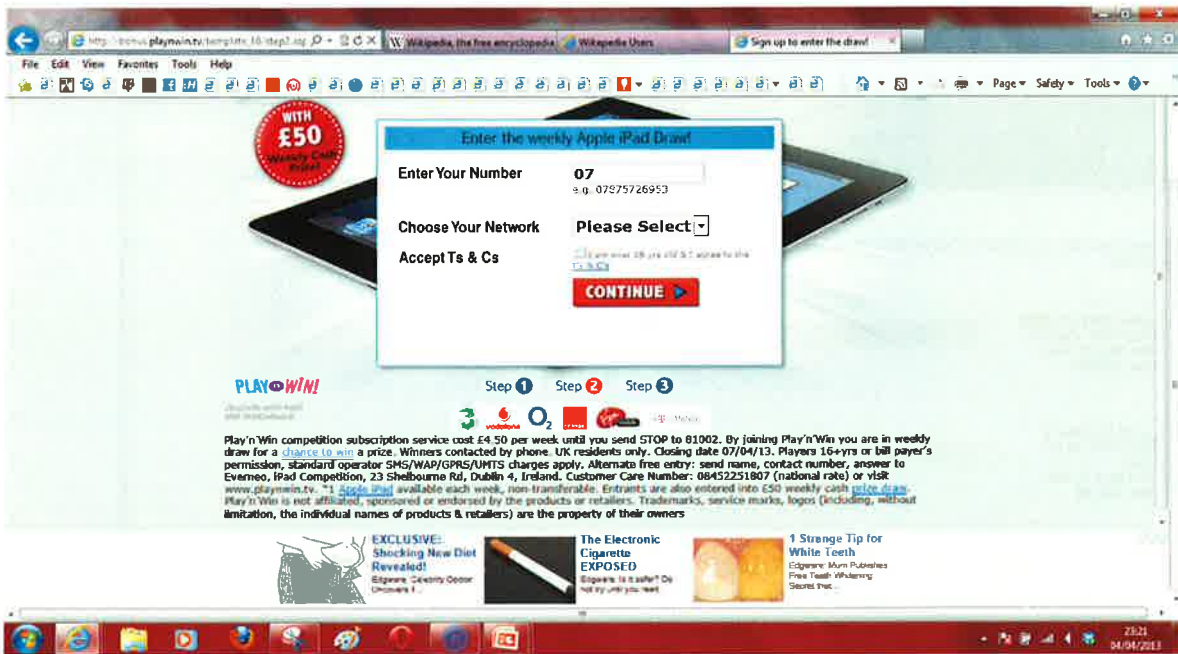
Appendix C: A screenshot of an affiliate marketing webpage promotion for the Service:



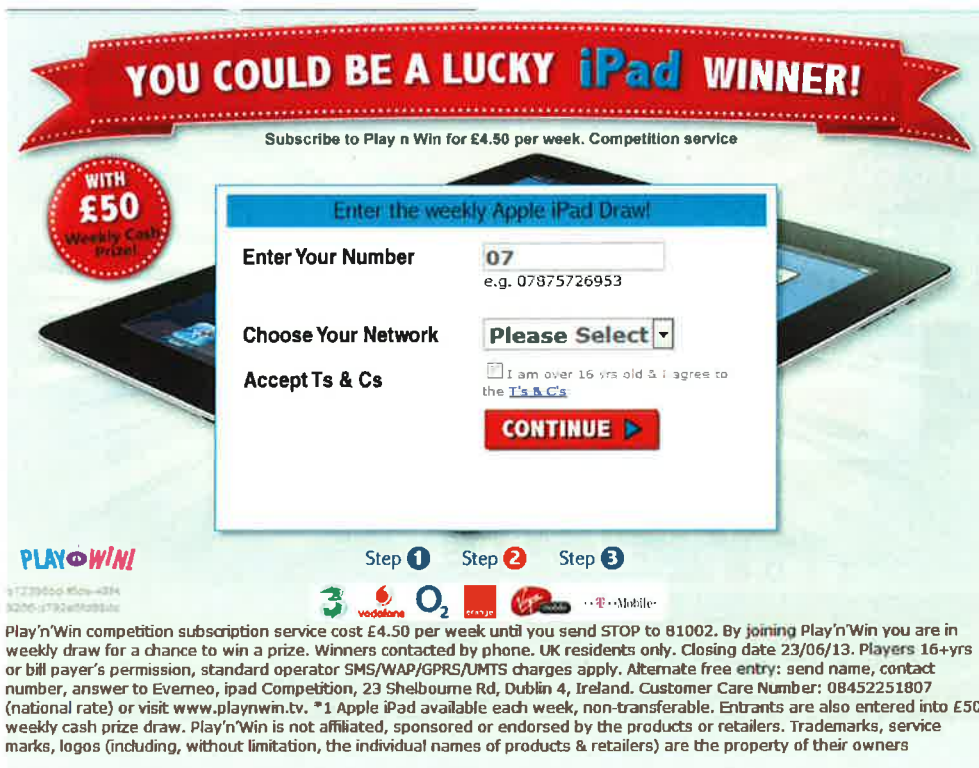
Appendix D: A screenshot of the Level 2 provider's landing page:



Appendix E: A screenshot of a Service webpage:



Appendix F: A screenshot provided by the Level 2 provider of the “MSISDN entry” webpage:





Appendix G: A screenshot provided by the Level 2 provider of the “Pin entry” webpage:

