



**The Mobile Broadband Group**

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Competition Group  
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Dear Lester

**Review of the 070 personal number range**

The Mobile Broadband Group (MBG) welcomes Ofcom's further review of the 070 personal number range. The MBG's members have a particular interest in the elimination of the 'one ring' 070 scam, as it is almost exclusively mobile operator customers that fall victim to it.

The MBG is concerned that the problem that is driving complaints about 070 abuse has not been accurately assessed and, as a result, the measures proposed will not adequately target the problem and are likely to be ineffective. We do not necessarily disagree with the conclusion that a migration to the 06 range would be disproportionate. However, we feel that the impact assessment has failed to consider, adequately, all the relevant costs and benefits. Accordingly any assumptions, proposals or resolutions made on its basis may be unsafe and fail to tackle the "one ring" scam.

**Nature of the problem**

Ofcom concludes that lack of pricing transparency of 070 numbers is a greater problem than confusion over the 'one ring' scam. However it does so by distinguishing between complainants of 'scams' and complainants of the cost of the call, where to make such distinction may be unnecessary and even misleading. Ofcom correctly assesses that many consumers may not know that they have been 'scammed'. It follows that for these customers

the only basis for a complaint would be the cost as it appears on their phone bill, as only then will they see that something is amiss. In our experience, it is the 'one ring' scam, rather than the price of calls to 070 numbers that is the problem. The MBG strongly recommends that Ofcom seek further information on the complaints data in order to properly identify whether such complaints about call costs are about the transparency of the cost of calling a legitimate service on an 070 number, or whether they are about the cost of calling an illegitimate service on an 070 number i.e. where a customer has incurred an unexpected charge because he has been tricked into calling the number. Unless Ofcom has satisfactory evidence to demonstrate that there is a market failure where there has been *legitimate* use of 070, then the singular issue at hand is one of the illegitimate use of 070 numbers and the proposed solutions should be considered on that basis only. However, we are not convinced that Ofcom has considered this sufficiently as the proposed pricing transparency solution would seem to be targeting price transparency for legitimate services.

## Impact Assessment

We note that Ofcom's estimate of consumer detriment arising from lack of pricing transparency in the mobile sector is £1,000. With Ofcom and PhonepayPlus reporting respectively 100 and 200 complaints quarterly (Figure 3.2, P13), it is hard to imagine that the consumer detriment arising from 'one ring' is not the greater problem in the mobile sector. The scam is purely based on providers spoofing customers into believing that they have missed a call from a mobile phone and inducing them to return the call out of curiosity. It would not work nearly as well if the call return number was 09xx or 08xx, for example, as customers now have a good idea of what type of services lie behind such numbers. Ofcom's figure therefore seems deceptively low and masks the problem that Ofcom is seeking to resolve, which is the mis-use of 070 numbers and not pricing transparency per se. We are not convinced by the use of this figure to measure 070 consumer welfare loss.

The market research data relied on by Ofcom in calculating its estimate should be approached with some caution; Ofcom should appreciate that consumer recognition of 070 numbers when asked specifically if they know of its use or recognise it, will differ somewhat from their instinctive reaction to the same number when presented as a 'missed call' on their mobile or on an email. The following PhonepayPlus adjudications appear to support this view:

- PhonepayPlus adjudication on 20 November 2008<sup>1</sup> states:

*"The Tribunal considered the evidence and concluded that the missed calls made to consumers' handsets were likely to mislead recipients into returning the calls, especially those unfamiliar with 070 technology.."*

- PhonepayPlus adjudication on 29 October 2008<sup>2</sup> emphasises:

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<sup>1</sup> Case 763989, 7Tel Limited & Tony Iines t/a Net Lines:

<http://www.phonepayplus.org.uk/business/adjudications/search.asp?cmd=3&id=795>

<sup>2</sup> Premium Lines Limited & Elite Networks limited:

<http://www.phonepayplus.org.uk/business/adjudications/search.asp?cmd=3&id=789>

*“The Executive considered that consumers promoting their business on the website [yell.com](http://yell.com), who received one (or more) emails from a person with an apparently genuine enquiry, might have been misled into calling the 070 number contained in the email. The Executive noted that as the emails had been personalised with an individual’s name, personal telephone number and the specific reasons for their enquiry tailored to the company in question, the recipient might not have had reason to suspect it was not a genuine enquiry”*

- PhoneyPayPlus adjudication on 14 August 2008<sup>3</sup> states:

*“The Executive believed the service to be misleading because the overall nature of the recorded message suggested that the caller might know the consumer personally and that the caller was urgently trying to contact them, exacerbated by the fact that the call was terminated at the service end after approximately 5 seconds, which prompted a return call. The Executive also considered that the whole operation intentionally sought to mislead consumers by creating a fictitious scenario”*

These 070 services have been designed so as to disguise their true nature and to mislead at the point of use. It is the misleading nature of these services that is the problem and not pricing transparency. Ofcom will not address the former by focusing on the latter. The MBG believes that Ofcom should consider these points further in relation to 070, as we believe that stronger measures need to be taken to address the source of the “one ring” problem to protect consumers from such scams before they arise.

The MBG supports PhoneyPayPlus’s efforts to pursue offending providers, but more needs to be done to prevent the issue from occurring in the first place. Including 070 in the Consumer Protection Test (CPT - as announced by Ofcom on 30<sup>th</sup> September 2008) is a first welcome step<sup>4</sup>. That being said, we note that the CPT, which takes effect from 1<sup>st</sup> January 2009, is not even referenced in the current consultation, which tends to support our view that Ofcom is seeking to tackle the problem of 070 scams at the periphery (i.e. through price transparency) rather than at source (i.e. through eliminating those services that are operating in contradiction of the Numbering Plan). Ofcom should consider requiring those providers sub-allocating 070 numbers to apply the Consumer Protection Test as part of their due diligence duties.

### **Additional comments regarding the Cost Benefit Analysis**

It appears that Ofcom has not considered the direct cost to consumers of the known illegitimate use of 070 ranges. Whilst Ofcom has used an AIT figure as a substitute for ‘scam revenue’ (a figure which it acknowledges is conservative as a result of differing OCP policies

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<sup>3</sup> Jack Barnard Telecom Services Limited & Roger Simmons t/a Russell Marketing:  
<http://www.phoneypayplus.org.uk/business/adjudications/search.asp?cmd=3&id=776>

<sup>4</sup> We note that one of the main reasons given for including the 070 number range in the Consumer Protection Test was that “many consumers confuse these with mobile numbers, making them an easy target for scams (3.109).

on AIT) it has failed to consider the other sources of information which could reasonably be considered.

The fact that consumers do indeed experience confusion between 070 prefixed numbers and mobile numbers is firmly evidenced by PhonepayPlus adjudications. A failure to consider the benefit to these consumers of moving PNS to another number range only serves to make the analysis unreliable. A more reliable figure may be calculated by considering the revenue generated by services investigated by PhonepayPlus. There have been five services sanctioned since July 2008 and, whilst revenue information is not publicly available, it is open to Ofcom to obtain those data from PhonepayPlus or, where it is not available to consider, the fine level attributed to the service. This cumulative total would provide a more accurate proxy figure for consumer detriment. The benefit to consumers of moving PNS to another number range would be significantly more than 'minimal' as currently envisaged.

### **Greater prominence of pricing information**

As we have mentioned above, the MBG has a concern that the 'greater prominence' measures are really missing the point and may even be counter productive. The MBG concurs with Ofcom that customers need to be able to find out the cost of making calls to 070 and that originating operators need to ensure that such information is transparent to customers. However, we are concerned about the notion of 'greater prominence' which can be a zero sum game, whereby the more prominence that is given to one piece of information the less prominence is being given to another. General Condition 14 already imposes a similar requirement for 08 numbers (and this may soon be increased further when the outcome of the 0870 consultation is known). The call volumes on 070 numbers are very low (as set out in the consultation document). This would indicate that of all the costs that need to be made prominent under General Condition 14.2 (as opposed to simply transparent), 070 should have a lower priority, as other non-geographic numbers, such as 08xx, are of greater interest to customers. We ask that Ofcom makes it clear that the proposed change in condition will give originating operators sufficient flexibility to display prices appropriately. We also believe that Ofcom needs to take stock of the effectiveness of the existing GC 14.2 in increasing price transparency before extending its scope.

In any event, the MBG consider that any benefit arising from this proposed option applies only to legitimate users of 070 numbers, but that the basis of this consultation should be based on resolving the issue of illegitimate use of 070. In the latter case, the proposed option is wholly inadequate.

This is quite clear from the Tribunal decisions of PhonepayPlus in its investigations into 070. Although the PhonepayPlus Code of Practice provides for a high standard of pricing prominence, in that the onus is on the *service providers* to supply clear and straightforward pricing information in the promotional material for the service, such information is unlikely to be provided by the service provider in the case of an "illegitimate" service where the idea is to make pricing as unclear as possible (for instance by taking advantage of the fact 070 is easily mistaken for a mobile number). Legitimate 070 services are not subject to the PRS Code (as they are not PRS) and so the PP+ pricing prominence rules would not apply. In fact, the only breach that is required for pursuing illegitimate services is 3.3.1 -using the

wrong number range- as opposed to the Code in its entirety. The harm that arises is at the point at which the customer returns the “missed call”; and the customer may not recall the pricing information that they saw in their *communications provider’s* advertising and promotional material at this stage. It therefore seems that Ofcom’s approach is unlikely to have any effect.

It is relevant to consider that in all of the PhonepayPlus adjudications, the primary mischief identified was the duping of consumers into calling an 070 number. General pricing transparency at network level fails to address this issue in any significant way.

Additionally PhonepayPlus adjudications and Ofcom data indicates that the main cost to consumers from this type of abuse arises as a result of the cumulative cost of multiple calls to the same 070 number. On this basis it is hard for Ofcom to reason that prominent information on single call cost pricing on OCP promotional material will provide any protection or clarity to consumers or in preventing further abuse of the 070 range. Were a customer to realise the true nature of a ‘one ring’ call, he or she would not respond whatever the cost and so having easy access to the pricing information is not relevant.

### **Existing Enforcement Powers**

The proposals set out in the consultation document fail to provide much detail on the type of role that Ofcom will take, other than to indicate that it will not extend to the formal use of its own enforcement powers (s.94 – s.96 Communications Act 2003) to complement PhonepayPlus investigations. It seems to us that this is wholly inadequate.

It is certainly too early to be convinced or to assume that PhonepayPlus sanctions will definitely lead to a significant reduction in 070 abuse but it is certainly pertinent to ensure that all relevant enforcement powers will be used effectively and efficiently to ensure that potential for abuse is extinguished right along the value chain.

PhonepayPlus sanctions are levied only against their Code defined ‘service providers’ in the 070 value chain. However, the latest emergency procedure announcement (10 December 2008) highlights complicity and repeat behaviour at network level (Cheers International and Switch Call). Ofcom and PhonepayPlus are assigned complementary powers in order to ensure that joined up regulation can be used to protect consumers effectively. Ofcom and PhonepayPlus adopted this very approach in dealing with concerns arising from the broadcasting sector (GMTV) and it would seem appropriate, proportionate and necessary that Ofcom adopts the same approach here and use its enforcement powers in respect of breaches of the Numbering Plan, particularly so when it is considering options available to it to prevent further abuse of the 070 number range. Where a network has abused the Numbering Plan by revenue sharing on 070 numbers, Ofcom should be taking action. This can and should be reinforced by PhonepayPlus taking enforcement action under 3.3.1 against the 070 service provider, but only under 3.3.1. It would not be proportionate to take action against a network provider, when they have no way of knowing that the 070 provider is misusing the number range. 3.3.1 of the code requires that Premium Rate Services operate on the numbers designated by Ofcom, therefore the operation of a PRS on a non designated code would be a breach of the PP+ code of practice.

## **Due Diligence – Option 4**

It's not immediately clear to us how this will be applied in practice. Ofcom needs to be much clearer in its expectations. Are all 070 networks required to perform due diligence, even if "premium-rate like" services are not offered on their ranges? How would they know "premium-rate like" services were being offered unless they performed the check in the first place? But isn't it disproportionate to apply premium rate regulation when a service isn't even premium rate?

The Consumer Protection Test is voluntary for networks who sub allocate numbers and we believe that details of the steps that ought to be taken must be included in any 070 due diligence helpline. We certainly believe that such a helpline is necessary.

The MBG strongly recommends that Ofcom consider due diligence, but at the point in the value chain where it is not currently required and is likely to be most effective. The practicalities of this suggestion will also need to be considered carefully by Ofcom, but it provides an opportunity to have a greater impact on the wrong-doers than duplication of existing measures would do.

## **Funding**

Consideration also needs to be made of how 070 premium rate service providers contribute to the funding of PRS regulation. The monitoring and investigation of such services requires significant PhonepayPlus resource and effort, which is currently being subsidised by compliant service providers operating on other number ranges, including shortcodes. This is clearly not in line with the polluter pays principle.

## **Conclusion**

The MBG is anxious that Ofcom takes this opportunity to re-focus its attack on 070 scams. We disagree that the lack of pricing transparency is the major problem and a resolution to the 'one ring' issue needs far greater attention. Ofcom risks pushing the problem further underground by not tackling it head on. We urge that you:

- reconsider your impact assessment for migrating services using a sensible estimate of detriment caused by one ring scams (and resulting benefits to users from migrating);
- use effectively the enforcement regime under the Communications Act in respect of one ring scams;
- clarify the due diligence requirements
- Consider a requirement for terminating providers to "withhold" funds from non-compliant service providers
- consider the funding of 070 PRS regulation

If there are any matters within this response on which you would like further explanation or clarification, please do not hesitate to ask.

Yours sincerely

*Hamish MacLeod*

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