



**The Mobile Broadband Group**

PO Box 34586, London SE15 5YA

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Mr Clive Hillier  
Competition Group  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA

Dear Clive

**Consultation on extending Premium Rate Services regulation to 087 numbers**

The Mobile Broadband Group (MBG) welcomes the opportunity to respond to Ofcom's consultation on extending Premium Rate Services regulation to 087 numbers.

This response focuses on an issue that is of utmost importance to the mobile operators: by dropping the threshold from 10p to 5p, the new Controlled PRS condition, as set out in paragraph 5.6 of the consultation document, inadvertently captures more services than those accessed via a 087 number, most notably those services provided on mobile shortcodes. However, this has been omitted from the impact assessment.

Mobile operators provide a range of information services for their customers – such as news, weather and traffic – that are accessed by network provided short codes. These services are not usually charged at a premium to standard rate voice/text services but, depending on the underlying structure, may nevertheless be deemed to fall within the definition of premium rate under S.120 of the Communications Act 2003. Where they are charged at a rate that falls below the CPRS threshold, they are not currently subject to the levy or the requirements of the PhonepayPlus 11<sup>th</sup> code – nor is there any reason for them to be so.

The inclusion of these services within the CPRS condition would result in significant levy and compliance costs for the mobile operators without any commensurate benefit to customers. Worryingly, however, Ofcom concludes "...that including these other ranges will have a minimal impact on existing services since most are charged

at rates of 10p per minute or above and are therefore already subject to PRS regulation” (5.8) without considering what these ranges might be and the types of service offered.

Ofcom’s consultation is fixed centric in its approach. For instance, the section of the Impact Assessment which looks at the “impact on services on other ranges”, only considers those services that currently operate on 09 numbers, with no mention at all of mobile shortcodes. As an aside, we note that Ofcom works on the basis that it is clear to stakeholders that the current 10p threshold relates to BT price points rather than those of individual networks. We do not believe that this is at all clear in the Premium Rate Condition and can only be deduced through a cross reference to the Numbering Plan. This reference is not immediately pertinent to mobile shortcodes.

The MBG welcomes Ofcom’s reassertion that PRS regulation is only “*applied to a subset of PRS services that Ofcom considers warrant the additional consumer protection afforded by the Code*”<sup>1</sup>. Given that the consultation does not discuss those shortcode services that would be captured by the revised definition and thus the consultation does not present evidence as to why these services should now be regulated, it would appear that their inclusion is accidental. Ofcom should revise the wording of the proposed condition to exclude these services.

MBG thus recommends that, rather than seeking to expand 2.e.(i) of the Premium Rate Condition to cover all services charged at 5p or more before a full impact assessment has been conducted, a more proportionate approach would be for a new subsection to be included in 2e(iv) to deal specifically with 087 numbers. This would ensure that services that have not been deemed to require formal regulation are not inadvertently caught by the amendment.

Furthermore, in the absence of a specific reference to the 087 range in the Premium Rate Condition (other than to say that 0870 is excluded), Ofcom is pre-empting any upcoming consultation on e.g. 0844 and 0845 and creating confusion for consumers and industry alike as to PhonepayPlus’s remit.

We would strongly urge Ofcom not to extend the scope of CPRS unintentionally in this way before the publication of the long anticipated PRS scope review. The MBG remains concerned that this fundamental review has still not been published despite the terms of reference having been published over 18 months ago. The lack of appreciation of the mobile impacts in this consultation only serves to heighten the urgency.

We also note that Ofcom only proposes to give stakeholders three months to implement the proposals. If carried forward, this is a wholly unreasonable timeframe given that mobile operators have only, in effect, been given 6 weeks to consider the significant impact of the proposals.

### PhonepayPlus’s Statement of Application

In terms of PhonepayPlus’s statement of application itself, MBG would make the following comments. We have been supportive of PhonepayPlus having a role in the regulation of 087 where this is proportionate to consumer harm. We agree that the PhonepayPlus Code should not apply in full to 087 by default, as the Code was not designed with 087 regulation in mind and as there is a lesser scope for consumer

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<sup>1</sup> 1.10 of the consultation document

harm. MBG has long advocated that PhonepayPlus regulation should be proportionate to consumer protection requirements. We support PhonepayPlus's disapplication of the code where its provisions are ill-suited to the service in question.

That said, clarity of interpretation is key and we remain concerned about the interpretation of the undue delay provisions in the Code. PhonepayPlus is in effect extending its remit to cover the end-to-end provision of customer services, including to sectors that lie completely outside the premium rate industry (e.g. banks). The PhonepayPlus Code of Practice regulates the promotion, operation and content of premium rate services, not the provision of customer services in general. Whilst we note PhonepayPlus's concession that they will revert complaints about undue delay to the service provider in the first instance for resolution, the intention to regulate customer services is still apparent. Ofcom notes in 6.55 that *"PRS regulation would also provide a new mechanism to address consumer complaints about poor customer service including complaints about excessively long call waiting times"*. We do not believe this is appropriate – PhonepayPlus's (and indeed Ofcom's) expertise lies in the regulation of PRS, not the provision of customer service. The market is able – and should be permitted to – regulate call wait times; consumers and businesses can easily vote with their feet if they are dissatisfied with the customer service provided by a particular company. This is the basis of a competitive market in services.

We look forward to meeting with you to discuss the issues raised in this letter.

Yours sincerely,

*Hamish MacLeod*

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