



The Mobile Broadband Group
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Response of the Mobile Broadband Group to DG Internal Markets consultation paper on the “Application of the E-money Directive to mobile operators”

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The Mobile Broadband Group (The “MBG”, whose members are the UK operations of O2, Orange, T-Mobile, Vodafone and 3) welcomes the opportunity to respond to DG Internal Market’s consultation on the “Application of the E-money Directive to mobile operators”

MBG member operators are making their own detailed responses to the consultation. This response summarises the common themes in their submissions.

- **The E-money Directive was not designed for hybrid issuers.** The Commission is correct to say that the rules of the E-Money directive do not sit easily with the business model of a mobile operator. There is uncertainty about the application of the Directive in this sphere and this uncertainty over regulation has already badly damaged innovation in the mobile sector.
- **A requirement to comply with the E money Directive and, as a consequence, money-laundering regulations may lead to the closure of third party services.** If the supply of third party services via premium rate services on pre-paid accounts entails full compliance the E-money Directive and money laundering regulations, then it is likely that the cost of verifying the identity of 34 million UK customers and retaining all the associated data would render such a business model non-viable for mobile operators. This would be a very bad outcome for competition, innovation and for customers.
- **In the longer term there is a need for a new Directive.** This matter needs to be resolved through the issuance of a new Directive that addresses both green field E-money businesses and established businesses part of whose operations may be deemed to fit a legal description of E-money (“hybrids”). Mobile operators are of the opinion that the E-money Directive must be reviewed in such a way that the regulatory burden is proportionate to the risks involved with hybrid accounts.
- **In the short term clarity is needed.** The drafting of a new Directive is a lengthy process. In advance of a new Directive being put in place and in order to avoid adverse impacts on mobile and other hybrid issuers such as transport companies, we strongly urge the Commission to issue interim guidance within a few months to national financial regulators. It is not good for anyone (regulators content providers and most of all customers) that continuing uncertainty is holding back the development of new services. As with the long term solution, the short term guidance should provide for a regulatory burden that is proportionate to the risks involved with hybrid accounts.
- **The serious adverse policy consequences should be considered by all relevant parts of the Commission.** The economic impact of any decision by the Commission must take into account all relevant sectors in which hybrid issuers operate. In particular, the MBG urges that the guidance take account of the wider policy aims in the EU, in particular benefits that can be delivered by the mobile sector in terms of economic efficiency and social inclusiveness.
- **Premium Rate Services are an important and growing sector.** ICSTIS (the UK PRS regulator) estimates that the mobile PRS market, while being small in

relation to the £13 billion total mobile service revenues in 2003, is nevertheless worth £100m per annum and has been growing quickly.

The real importance of these service providers, though, is that they are a major source of entrepreneurial flare and competitive stimulus, bringing to market an enormous range of new applications and services. This could not be replicated by the five network operators, if third party service were forced to close.

In the UK Premium Rate Services are defined in the Communications Act 2003 (**Note 1**).

- **The mobile operators do not seek special treatment on e-money.** The MBG seeks a proportionate regime for mobile operators and other hybrid issuers in different market segments. Any regime should recognise the hybrid nature of our business. It is not only the mobile operators who will suffer as a result of a poor E-money outcome. If compliance is made too burdensome, the small third party content providers, seeking to enhance competition and promote innovation in this nascent market, will be forced out of business.
- **The industry needs clear guidance, proportionate rules and speedy resolution.** In conducting its review, the MBG urges the Commission to follow five principles:
 - ❖ The outcome of the review should give **clear guidance** as to the applicability of the E-money Directive to pre-paid airtime accounts.
 - ❖ To the extent that the E-money Directive is deemed to apply, any regulation that flows from this decision should be **proportionate** to the identified risks.
 - ❖ Any regime should reflect the fact that Premium Rate Services, accessed through pre-paid airtime accounts, are already subject to regulation by the national telecommunications regulator. Telecommunications services are our core business, not e-money. Even though 67% of the UK customers use a pre-paid account, the amount actually spent on PRS is a small proportion of the total spend.
 - ❖ The need for speed. Uncertainty is holding back the evolution of new mobile services. The MBG would urge the Commission to issue guidance before the end of 2004.
 - ❖ The rules should be capable of being applied to similar hybrid pre-paid accounts used in other industry sectors (e.g. pre paid transport card issued by transport companies).
- **Clear guidance on the definition.** The MBG argues that:
 - ❖ Products and services sold by the hybrid issuer (i.e. the mobile operator), such as airtime and any value added services should fall **outside** the definition of e-money.
 - ❖ Products and services where the hybrid issuer (i.e. the mobile operator) acts as a reseller should fall **outside** the definition of e-money.

- ❖ Products and services available through the portal of a hybrid issuer (i.e. the mobile operator) should fall **outside** the definition of e-money.
 - ❖ Products and services consumed on a mobile device should fall **outside** the definition of e-money. This is where the supply of telecommunications services by the mobile operator and the supply of services by the content provider can be seen as a single service. The mobile operator (issuer) always plays a larger role than that of mere payment conduit and adds intrinsic value to the process and the content provided, such as providing an ability to search for content and giving access to the content.
 - ❖ Any residual business models that are deemed to be e-money should be unambiguously defined by the Commission in its guidance.
- **Proportionate regulation:** The MBG argues that, for services that may fall within the definition of e-money, the optimum way to regulate is to set appropriate conditions that recognise the hybrid nature of the pre-paid airtime account and to establish a supervisory regime that matches the identified risks.

The regulation should also reflect the fact that mobile operators are already subject to telecommunications regulation in respect of the sale of premium rate services on pre-paid accounts (**Note 2**).

- **Conditions for pre-paid airtime accounts (and any similar hybrid accounts)**
 - ❖ The pre-paid accounts should not be redeemable for cash, only network airtime. Cash redemption would only expose the operators to the risk of money laundering by customers. With 34 million users in the UK there is already a very high level of confidence in these accounts. Such confidence would not be enhanced by making accounts redeemable for cash.
 - ❖ They should not be used for person to person payment.
 - ❖ There should be an individual transaction limit of around €100. This recognises that hybrid accounts should only be allowed for small payments and would harmonise European regimes on an equivalent basis to that operating in Germany.
 - ❖ Issuers of pre-paid accounts with the above conditions attached could also utilise factoring such as the model adopted in Germany.
- **An appropriate supervisory regime for services that are defined as e-money**
 - ❖ A NRA must carry out a prudential risk assessment of the risks actually faced by customers and merchants in the event of issuer insolvency or lack of liquidity to satisfy redemption requests.
 - ❖ The term 'technological neutrality' means that regulation should not be dependent on the physical delivery platform, whether fixed telephone, mobile telephone, TV, fixed PC or Wi-Fi. This should not be confused with the notion that there should be identical regulation for different payment methods.

Cheques, cash, credit cards, e-money and Premium Rate are (and should be) subject to different regulation, according to what is appropriate and proportionate.

- ❖ In order to be comprehensive and to allow a NRA to carry out a comparative exercise on the relative supervisory requirements, the risk assessment should cover all types of e-money issuers. As mentioned above, technological neutrality does not require identical regulation but equity demands that the relative risks of liquidity problems and money laundering are reflected in the relative regulation.
- ❖ Based on the results of such an assessment, the NRA should set rules for supervision.
- ❖ NRAs should have the flexibility to approve float calculation and holding arrangements, which are consistent with the objectives of the float to maintain liquidity in the e-money chain.
- ❖ The amount of the e-money float should be assessed monthly, *ex-post*, in line with monthly outpayments to merchants.
- ❖ Up to the point where a customer decides to make a purchase, there is no justification for deeming that unused balances on pre-paid accounts will be used to buy e-money services. There should therefore be no question of that person being in possession of actual e-money. The unused balances on operators' pre-paid accounts are unconsumed airtime.
- ❖ Full money laundering regulations should not apply. This would be completely disproportionate to the identified risks. The cost of verifying the identity of 34 million pre-paid customers and retaining transaction data for five years would be prohibitive. Mobile operators may be left with no alternative but to terminate all wholesale services to third party content providers.
- ❖ Hybrid issuers should only be required to carry out identity checks on their contracting party (i.e. who are they passing the money to).

Any questions relating to this submission should be directed to Hamish MacLeod, Mobile Broadband Group (mobilebq@btopenworld.com)

Note 1 - Value of Premium Rate Market in the UK and the definition of PRS

The value of PRS out payments made by mobile operators to merchants in 2003 in the UK is set at £100m (Source: UK premium rate regulator ICSTIS). While in absolute terms, quite a large figure, in relation to total mobile operator service revenues in 2003 of £13 billion, it is small. Only part of the £100m is pre-paid. The split between pre-paid and post paid is not measured. Further, some proportion relates to sales on the portals of the mobile operators themselves and hence is not deemed to be E-money by the Commission.

On page 12 of the consultation document, the Commission commented that there had been difficulties in classifying premium rate services. In the UK, PRS are defined in Section 120 of the Communications Act 2003.

In summary, a premium rate service has to meet three criteria: a) the content charge and the communications charge are bundled together (or in this context deducted from the pre-paid card), b) there is an element of content or service, c) there is a revenue share between the content provider and the network provider.

Note 2 - UK Regulation of telecommunications and PRS

In addition to general consumer protection legislation in the UK, there is considerable sectoral regulation in the telecommunications sector: The Office of Communications (Ofcom) and The Independent Committee for the Supervision of Telephone Information Services (ICSTIS). Consumers are also given access to free dispute settlement procedures, such as those offered by the Office of the Telecommunications Ombudsman (Otelco). Disputes between a customer and a mobile operator about premium rate services would be covered.

Ofcom set 'general conditions of entitlement', in accordance with the EU telecommunications regulatory framework. The general conditions specify several consumer protection measures, including requirements to offer contracts, to have metering and billing systems certified for accuracy and to offer independent dispute resolution.

ICSTIS regulate premium rate services through a Code of Practice. The emphasis on the Code is to ensure that premium rate products and services are promoted accurately and there is transparency over the pricing.

This regulation is in place and mobile operators have systems for compliance – something which should be taken into account when assessing the risks posed by hybrid issuers. E-money issuers only have e-money regulation to cope with.