

Jeff Loan
Floor 6
Dept Consumer Policy
Riverside House
2A Southwark Bridge Road
London SE1 9AH

jeff.loan@ofcom.org.uk

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Ofcom Consultation

The PRS Scope Review

Submission

Association for Interactive Media and Entertainment

(AIME)

AIME (www.aimelink.org)

AIME is a UK based not for profit trade association that promotes excellence in the Interactive Media and Entertainment industry.

We uphold our Code of Ethics and create an environment of consumer trust and industry confidence within which our members' commerce can grow. We are committed to furthering the interests of Interactive Media and Entertainment through the regular exchange of information and communication throughout the value chain, effective engagement with regulators and legislators and the presentation of a successful industry image to media.

We are the only trade association with membership across all elements of the Interactive Media and Entertainment value chain. One of our key aims is to promote communication and better coordination within the chain and a recent example of this is the Broadcast Forum which was created after the 2007 PTV problems, the result of which has seen a growing increase in trust in the broadcast sector as a result of companies working more closely together and taking responsibility for consumer contact issues.

AIME promotes the philosophy that consumers who are accurately and openly informed of the nature, content and cost of participation in an interactive service experience are perfectly placed to exercise their freedom of choice and thereby enjoy the most effective form of consumer protection.

AIME also encourages its members to invest more in consumer care and to recognise that if there is to be sustainable growth in our industry then there must be more investment in consumer contact whether it be dealing with complaints or queries. From the latest research carried out by

PhonepayPlus, there is still a significant portion of the UK population that does not use premium rate services due to trust issues in the main. There is no reason why industry cannot work towards encouraging increased consumer uptake to enlarge the relatively small user base of consumers who do consume premium rate services on a regular basis.

We welcome the opportunity to respond constructively to this Ofcom Scope Review of Premium Rate Services (PRS) in the UK from the wider perspective of the UK Interactive Media and Entertainment Industry. Our terminology used in this response corresponds with our proposals for revisiting value chain descriptors as a precursor to a 12th Code review.

General

Ofcom states the objectives of PRS regulation to be to;

“ensure services are advertised accurately with clear pricing, that the content meets acceptable standards whilst protecting against fraudulent or unauthorised use, and trying to ensure effective control of certain services to prevent access by minors”.

AIME members are totally supportive of these objectives (with the exception of unauthorised use) and, as previously stated, are involved in ongoing initiatives to ensure consumers are fully and accurately informed on content and price while controlling inappropriate access. As we have addressed in previous Consultations we do not believe unauthorised access to telephone based services to be a regulatory issue since this would technically be regarded as theft and the responsibility of the consumer and normal law enforcement agencies.

The original Terms of Reference for the Scope Review were published by Ofcom in 2006 and were focussed on the following key elements:

- *The clarity of pricing in PRS and impact on consumer trust and confidence*
- *The mechanics of consumer redress in the PRS sector*
- *The ability of the current regulatory regime to adapt to new and emerging services*
- *The effective application of regulation across the PRS value chain*
- *The feasibility of a service provider registration scheme and its benefits for regulation; and*
- *Any overlap between ICSTIS' (now PhonepayPlus) role and that of other regulators and consumer protection bodies*

This Consultation appears to be of rather more limited scope and AIME members have raised the following issues;

- It does not consider revisiting or updating the definition of Premium Rate Services
- It does not adequately address the relationship between regulation of landline and mobile services
- It does not adequately address the effectiveness of current regulation with particular emphasis on “regulatory creep” and the need for value for money regulation to be targeted and proportionate
- It reads as more of a precursor to the 12th review of the PhonepayPlus Code of Practice

Overall AIME's membership is keen to see more emphasis placed on achieving a regulatory environment that is business enabling while protecting the interests of consumers by focussing more on applying standards closer to the **point of sale**. There also needs to be a system of gauging or measuring regulatory success as with any modern business and the factors listed below are examples of how this might be achieved:

- Consumer confidence and trust
- Growing industry revenues
- Reduced and properly accounted complaints
- Increased innovation with new services introduced
- No flash flood crises
- Accurate and transparent reporting
- Industry and regulatory co-operation (co regulation)
- Positive stakeholder relations
- Accountable Key Performance Indicators (KPIs)

Ofcom Summary Comments

The Premium Rate Services (PRS) market in the UK is and will continue to be a rapidly changing environment where consumers enjoy the flexibility of an alternative and convenient method of payment for goods and services. While it is true, as noted by Ofcom, that many transactions have been impulsive in nature in the past and of relatively low expenditure it would be a mistake to plan future regulation of PRS on the assumption that this will continue as consumers' use of this facility is fast evolving to become an optional billing utility for a much wider range of consumables.

Ofcom maintains that, because some of the characteristics that make PRS so convenient for consumers can also give rise to consumer harm, it has always been recognised (by Ofcom) that separate provision should be made for the regulation of PRS. The current rules in place to regulate PRS are based on the definitions in section 120 of the Communications Act 2003. The services are regulated on a day-to-day basis by PhonepayPlus, with Ofcom retaining overall responsibility for PhonepayPlus (PPP) and PRS.

AIME has previously highlighted the fact in earlier Consultation submissions that much of this dedicated PRS regulation duplicates the activities of other regulators e.g. Advertising Standards Authority (CAP and BCAP), Office of Fair Trading (OFT), Information Commissioners Office (ICO), The Gambling Commission and the Financial Services Authority (FSA) and this may be an opportune time to consider rationalising the regulatory approach to PRS. AIME can also see benefit in moving towards a co-regulatory (industry – regulator) approach for PRS which would better suit the pace, together with some of the inevitable challenges that arise, of our industry.

Ofcom perceives significant change to PRS over the past 10 years as follows:

- An increase in mobile phone usage, which has led to a strong increase in mobile PRS usage, and in mobile PRS related complaints
- An increase in the number of communication providers and number ranges on which PRS are being offered which has led to a more complex and fragmented market for consumers
- A lack of clarity in the market as to which services are captured by PRS regulation

While AIME acknowledges the increase in mobile related enquiries and complaints this should not be unexpected or a cause for undue alarm given the rapid growth of the mobile market and the growing volume of mobile PRS services, many of which are related to the emergence of popular competitions and voting programmes. We have a situation today where an increasing number of calls to this programme genre originate from mobiles rather than from traditional landlines and where the number of overall complaints received is a very small percentage of the total calls made. This is not a reason for complacency, and the industry is aware of, and is dealing with, other problems but it is important to maintain perspective in this.

In a similar manner it is normal that the emergence of competition in network services has resulted in a market with multiple number ranges and more complex service offerings. This is how markets operate and the challenge is to present competitive service offerings in a manner that permits consumers to exercise fully informed freedom of choice.

As previously mentioned we do however believe there is a lack of clarity in the PRS market caused by overlapping regulatory responsibilities.

Ofcom has reached the conclusion that, in the absence of effective regulation:

- Consumers may find themselves unable to make an informed decision prior to the purchase of a PRS
- Consumers may be dissuaded from seeking redress when things do go wrong, and may lack an effective means of doing so
- Consumers may be exposed to offensive or inappropriate content

Based on evidence from market research and independent studies in respect of the types of consumer harm identified, Ofcom are proposing actions in the three areas listed below. It is noteworthy that AIME, on behalf of Industry, encouraged Ofcom to consider transparency some time ago and has current initiatives which address each of these concerns.

1. Facilitating consumers to make informed decisions.

AIME has established a successful industry forum which is addressing pricing transparency in TV promotions and which has resulted in improved call charges information to consumers for broadcast events. Work continues on this forum with the intent to transfer the lessons learned to other promotional media. AIME has also engineered the introduction of a website www.callcosts.co.uk with details of call charges for all competitive networks designed to inform consumers of their actual call costs.

Ofcom has been kept fully informed of progress on these industry initiatives which represent practical steps to increase consumer awareness of pricing variances especially when calling 09 numbers from mobile. However, they cannot rectify the fundamental structural difficulty of publishing all pricing variances at the point of sale and the resultant lack of transparency.

2. Facilitating effective consumer redress

AIME has researched the accuracy of the PPP Number checker service and is making proposals, in liaison with ILP, for improvements to enable consumers to readily access accurate information on premium numbers which may appear on their bills. This is essential as there can be a lack of transparency on some consumer bills today. The ideal solution for this would, of course be to have details of services used and Merchant Promoter's details on all consumers' bills.

Additionally, AIME is also co-operating with other ILP members to examine complaints and consumer contact procedures – both for Industry and within PPP with the intent of

recommending improvements. It is important that PPP, as a regulatory body, only deal with genuine unresolved complaints where consumers have failed to achieve fair and reasonable redress within the service chain or where compliance has not been observed.

Again, Ofcom has been kept fully informed of these industry initiatives.

3. Empowering PRS suppliers to act responsibly

Ofcom is aware that AIME is well advanced in the planned introduction of a voluntary registration scheme (initially proposed in 2004) for those who promote services to consumers at the point of sale, termed “Merchant Promoters”, which can be passed to Ofcom or PPP at some suitable future date for adoption as a mandatory scheme if deemed necessary. PPP have been offered the opportunity to co-operate in this initiative as a participant of the AIME working group.

AIME has led an initiative to introduce a “Mobile Terminating Provider Compliance Best Practice” scheme which has industry support and which will enhance the registration process with the sharing of industry information and monitoring services. Both of these schemes are designed to seriously reduce the occurrence and opportunities for rogue operations, mainly in the area of content subscription services, which do have the potential to harm consumers.

In 2008 AIME issued a best practice guide for Broadcast competition and voting services designed to inform product managers of broadcast shows of how such facilities operate in mobile and landline networks with advice on programme design, management and customer service support.

AIME will comment on specific Scope Review content regarding these items later in the response but it is important to emphasise that AIME, following the principle of co-regulation, has driven a number of self-regulatory initiatives whilst keeping Ofcom and PPP fully informed.

Section 4, Ofcom Analysis

4.1 The PRS supply Chain

Ofcom states that PRS are provided through a complex supply chain with a very large number of suppliers being active at different points in the chain. Crucially, Ofcom claims, it is very rarely the case that the supplier of the PRS is the party that bills the consumer for the purchase of the service. In Ofcom’s view, this has two important implications. Firstly, because the retail price is set not by the PRS supplier but by the consumer’s chosen telecommunication supplier (This only applies to 090, and not to PSMS, PMMS, voice and video shortcodes where the Merchant Promoter or Content Provider sets the retail price, and the consumer has complete price transparency) consumers typically cannot easily obtain precise pricing information. Second, when the consumer has a complaint, it is not always easy for them to identify who is responsible for the problem and how to obtain redress.

AIME offers the following comments;

- PRS does not necessarily involve a “*complex supply chain with a very large number of suppliers being active at different points*”

For regulatory purposes the functional chain is in fact very simple and technology neutral for either mobile or landlines and AIME has produced and published a schematic diagram which clearly demonstrates this point (Attached as Appendix 1) and is intended to ensure focused regulation and shared responsibilities down the chain to where problems are causing harm

- Ofcom states “*it is very rarely the case that the supplier of the PRS is the party that bills the consumer for the purchase of the service*”

It is important to separate PRS as a payment mechanism from the goods or services procured from the transaction. PRS is merely a content neutral billing facility that is made available to consumers by their telephone service supplier (originating network) and is not a service in its own right

- Ofcom sees disadvantage when “*The retail price is set not by the PRS supplier but by the telecoms supplier*”

The published PRS price to the consumer is a standard PRS tariff hence the telecoms supplier is actually providing the PRS facility. The price of the goods or services being paid for using the PRS facility is determined by the Merchant Promoter or Content Provider.

The consumer will be charged within the constraints of approved PRS tariffs on landline calls but can be charged an additional markup on approved PRS tariffs for mobile calls using landline numbers (and some other alternative networks). Mobile services currently have available much higher PRS tariffs than landlines

- Ofcom sees problems over “*who is responsible for the problem and how to obtain redress*”?

AIME agrees this has been a problem in the past and it is expected it will be diminished by improvements in the PPP Number Checker as a result of co-operation between AIME, ILP and PPP. Additionally, this is also addressed as a benefit from the AIME initiative for a Merchant Promoter Registration scheme. Furthermore, AIME recognises that some Merchant Promoters need to improve transparency in their dealings with consumers and areas such as Helplines and visible terms & conditions will help

4.2 Demand Side Characteristics of PRS

AIME supports and promotes having fully informed consumers for PRS. In actuality, the only real pricing communication issue arises from the range of tariffs charged by competing fixed and mobile operators for long dial PRS numbers. Operators are already obligated to provide detailed pricing information and AIME is further addressing this issue with the introduction of the Callcosts service (www.callcosts.co.uk) and consideration and application of Voice Short Codes which would have universal tariffs across all networks.

The subject of access to offensive or inappropriate content has been addressed in some detail by the PRS industry over the years and a number of controls exist today namely,

- PIN (parental control)
- Credit card
- Subscription
- Mobile Age Verification
- 090 call blocking
- Watershed timing (broadcast)

AIME is not aware of any significant complaints regarding access to such material but is conscious of the sensitive nature of this subject.

4.3 Consumer Harm from Ineffective Regulation

Actual consumer harm from the PRS industry is very minimal when considered in a proportional manner against the numbers of calls or transactions completed in any given time frame. This record is of course capable of distortion from an occasional but rare crisis which

would certainly be the exception rather than the rule and not necessarily due to regulatory ineffectiveness.

The Merchant Promoter Registration scheme initiative from AIME is in part designed to render such crises even more improbable.

4.5 Potential and Current Consumer Harm

AIME firmly believes in the necessity for PRS regulation, either through a dedicated organisation, or organised across a range of regulatory disciplines (ASA, OFT etc.) and strongly supports the concept of co-regulation where industry and regulator co-operate in an effective manner.

The presentation within this Consultation of a complaints history for PRS over the past three years lacks credibility due to the concerns that:

- There is some doubt over whether the figures truly represent significant complaints and/or contain an element of enquiry traffic. We are not arguing that there are no complaints, rather we are aware that many of our members receive a substantial number of queries to their help lines which are not necessarily complaints
- There is no proportionality which relates the figures to the total calls or transactions made hence there is no “scale” to what is presented as a problem
- The inference that an increase in mobile complaints demands unusual regulatory attention is not sensibly related to the large increase in mobile population

AIME believes that all known and anticipated areas of potential consumer harm are being addressed by industry through AIME and we would welcome a closer and more transparent relationship between industry and regulator. This is in part being addressed by the PRS Industry Group and the Industry Liaison Panel which is operated by PPP.

4.6 Areas Where There May be Consumer Harm

Ofcom lists three areas where it believes there may still be consumer harm:

- i. Insufficient price information*
- ii. Lack of effective means of address*
- iii. Exposure to offensive or inappropriate content*

AIME is certainly aware of some anecdotal history but questions whether firm evidence exists to justify the Ofcom view of these three items. While we agree that these are certainly areas for potential harm that warrant attention this has already been recognised and addressed by industry and we have doubts as to whether actual and proportional harm can be demonstrated to an extent that would justify additional regulatory effort.

4.7 Section 4, Conclusions

PRS is subject to industry scrutiny through the wide representation of the AIME membership on an unprecedented scale and AIME has a declared intent to promote and oversee significant growth in this exciting and popular service genre through the raising of standards and avoidance of damaging problems. The list of industry initiatives subscribing to this intent appears elsewhere in this response and details of these have been shared with Ofcom and PPP.

AIME regards it as a priority to work with the necessary regulatory framework in a co-regulatory manner to ensure appropriate standards are maintained in the best interests of industry and consumers alike. However, to achieve this ideal both industry and regulators will need to cooperate and adapt to achieve a common goal of industry success.

Section 5, Application of Analytical Framework

Ofcom wish to apply the “analytical framework” from section 4 to typical PRS services listed below to assess:

- Key elements of the supply chain
- The relevant demand characteristics
- Potential and type of harm, and
- Evidence of harm where available

Using this information Ofcom will assess whether such services qualify as PRS (para. 5.3).

AIME is unsure how to respond to this proposition since PRS are defined in the Comms Act 2003. Fundamentally, they are services accounted using a consumer’s telephone bill using the PRS payment mechanism. However, AIME members do see value in applying a framework to new services to assess risk and potential harm although the examples listed do not appear to be adequately representative. Mobile Operators currently dispute the regulatory environment surrounding Payforit and would not wish to see its inclusion on the list for that reason. Our current view is that the framework principle is more important than the examples used at this stage and AIME would be happy to work with Ofcom to develop this.

5.1 Key Elements of the Supply Chain

As stated earlier AIME believes the supply chain to be greatly simplified for regulatory purposes and this section attempts too much detail on the technology and mechanics regarding the progress of a consumer’s call through the network and supporting structure, all of which is totally transparent to the consumer. Of far greater importance is the requirement to improve connectivity between the consumer and the point of sale Merchant Promoter to ensure consumers are well placed to exercise fully informed freedom of choice.

5.2 Relevant Demand Characteristics

As stated in the opening comments to this section AIME supports the philosophy of a framework but would like to work more closely with Ofcom on the detail.

5.3 Potential for Consumer Harm

Again, as mentioned earlier, while AIME understands and supports the concept of an analytical framework we believe more work needs to be done to make it effective and AIME would welcome the opportunity to work with Ofcom on this.

5.4 Evidence of Consumer Harm

While AIME would prefer to see a more proportional and transparent presentation of consumer complaints and be assured that the figures presented do not contain consumer enquiries there is clearly benefit in assessing services for evidence of consumer harm.

5.5 Section 5 Conclusion

AIME is supportive of the analytical framework concept but considers the services highlighted in this Consultation to be too general and insufficiently representative of PRS and AIME would like to work with Ofcom to develop this approach in more detail.

Before considering or resorting to Alternative Dispute Resolution (ADR) AIME believes there should be more focus on improving the connection between the consumer and the point of sale Merchant Operator. AIME is currently cooperating with ILP on this subject which will also benefit from the proposed AIME Merchant Registration scheme.

AIME does not believe it to be realistic to expect the PRS industry to achieve total self regulation and would prefer a co-regulatory approach, with industry working alongside regulator/s with statutory backup from Ofcom when deemed necessary e.g. the application of

finer. AIME believes a co-regulatory system should be focused, in a similar manner to the ASA, on raising industry standards with punishment as a last resort.

Section 6, Proposals to Improve Current Framework

6.1 Effectiveness of Existing PRS Regulation

Ofcom believe that the current PRS regulatory regime is working well and cites the successful introduction of the 30 Days Rule as a major indicator of success.

AIME takes the view that successful regulation should be mirrored by a successful industry and that there is significant scope for improvement in the regulation of PRS and indeed in industry building consumer trust in premium rate services. AIME would like to see the adoption of more objective methods of measuring regulatory success along the lines of industry growth and Key Performance Indicators (KPIs) together with a joint industry/regulatory approach to funding and managing consumer education. A list of areas capable of objective measurement is included in our opening comments.

A change in culture from the current and historic business restricting, penal approach to PRS regulation to a system of business enabling encouragement to observe and improve standards in a genuine co-regulatory environment would, in AIME's view, be greatly beneficial.

6.2 Applying Ofcom's Regulatory Principles to PRS

It is a point of detail but the general levy is not a "general tax paid by SPs to PPP for regulating PRS" but an industry levy administered and collected by SPs (for landline networks, MNOs for mobile) on behalf of PPP. This is an important distinction since the financial burden placed upon SPs (PPP terminology) is becoming significant and there is pressure to find an alternative method of funding for PPP. PPP has responded to industry concerns and a formal review of the levy process is currently being conducted by KPMG and we look forward to seeing the report in due course.

6.3 Revising the Existing Regulatory Approach

AIME agrees with Ofcom requirements for consumers that should be expected in a well functioning market and these are best summarised by the AIME philosophy statement in our introduction:

"AIME promotes the philosophy that consumers who are accurately and openly informed of the nature, content and cost of participation in an interactive service experience are perfectly placed to exercise their freedom of choice and thereby enjoy the most effective form of consumer protection."

It appears however that over 20 years of the present regulatory model has failed to deliver this with the result that consumer trust is low and industry growth has been limited. AIME has stressed that the way forward is a co-regulatory approach with benefit to both the consumer and the serving industry.

6.4 The need for Pricing Transparency

The need to ensure consumers of PRS are fully informed is contained in the PPP Code of Practice and, other than consistently enforcing this requirement, no further regulatory action should be necessary by PPP.

AIME has taken the lead with industry initiatives on tariffs transparency and these are detailed elsewhere.

6.5 The Problem

AIME believes that market research actually justifies the view that there is no major problem in the PRS market that is causing significant consumer harm at this time. Industry is well aware that there is scope for improvement in the areas of transparency and redress and this

is being addressed with the objective of achieving greater trust in premium rate services. The changes made in broadcast over recent months are testament to the collaborative way all parts of the value chain have worked together, including PPP.

6.6 Actions Taken so Far

This Consultation kindly acknowledges the work being undertaken by AIME to improve tariff transparency. This work is continuing and the most recent development is the introduction of the Callcosts website designed to make Premium Tariffs information more readily available to consumers.

We do see problems associated with the suggestion that maximum OCP tariffs should be published for particular number ranges and we are unsure as to what benefits this would actually convey to consumers and Ofcom appear to acknowledge this in their qualifying statement that this should only apply to codes other than 09.

Maximum tariff statements were the original focus for the AIME forum but were abandoned in favour of more useful alternatives e.g. universal tariff Voice Short Codes. Pre Call Announcements have also been the subject of discussion and are supported in principle by AIME subject to our concerns that detailed discussions will be required with stakeholders down the value chain.

6.7 Options

Given that the AIME tariff transparency forum exists with representation across the PRS service chain and also that Ofcom are regularly invited to attend it would seem sensible to continue to use this forum as an example of co-regulatory co-operation to consider all options to fully inform consumers. The AIME proposal for a Merchant Promoter registration scheme also contains elements that will help consumers to enjoy more visible contact with Point of Sale Operatives.

6.8 Facilitating Consumer Redress

Industry is well aware that there is scope for improvement in this area and industry initiatives exist to address this. The AIME Customer Care Charter is one example together with the AIME Mobile Terminating Provider Best Practice Guide. As with the previous item this is a good example of where Ofcom and Industry should be co-operating more closely in a co-regulatory manner.

6.9 Identifying the Provider of the PRS

This is another area that will benefit from the proposed AIME Merchant Promoter registration scheme since registered Promoters will be required to list their unique number in all promotion activity and the OCP will be able to link that number to contact details of the Promoter. AIME believes the option of first point of contact for a consumer enquiry being the OCP to be correct but other services along the lines of Callcosts and Number Checker can also inform consumers and reduce the need for OCP enquiries.

Recent AIME surveys of PPP Number Checker accuracy and number coverage have indicated scope for improvement and AIME has made proposals along with offers to assist PPP in this task.

6.10 A Formal Service Provider Complaints Procedure

AIME notes that this section groups “SPs” with “IPs” (using current Code terminology) and this confusion is the major reason why AIME has suggested revisiting PRS Service Chain descriptors as the first step in the 12th Code review.

SPs or Aggregators or Mobile Terminating Providers have no consumer contact and can have no sensible reason for having a formal consumer complaints process enforced upon them. AIME believes, that in practice, the first line of complaint contact will be the consumer’s OCP supported by Merchant Promoter or Terminating Provider contact information. The Merchant Promoter will have customer support facilities in place, either self provided or contracted and it is the Merchant Promoter’s ultimate responsibility to ensure that complaints are dealt with.

There is a need to ensure that consumer enquiry and complaint traffic is handled in a correct manner within the PRS service chain so that only cases where consumers cannot obtain satisfactory redress are handled by the PPP call centre. AIME continues to work with PPP alongside ILP in addressing these issues.

6.11 Empowering Suppliers to Act Responsibly

This subject is a core theme of the AIME proposal for a Merchant Promoter registration scheme and both Ofcom and PPP have been kept fully informed of developments.

6.12 A Centralised Registration Scheme or Information Database

Again this is covered by the AIME proposal for a Merchant Promoter registration scheme and both Ofcom and PPP have been kept fully informed of developments. It is essential that AIME and Ofcom/PPP co-operate on this and avoid unnecessary and potentially costly duplication of effort.

6.13 Options Assessed

It is disappointing that this section considers options for a registration scheme without reference to the AIME initiative which was first presented to ICSTIS (now PPP) and Ofcom in 2004. As pointed out in the previous item it is essential that we collectively avoid duplication of effort and we should take the opportunity to address this in a genuine spirit of transparent co-regulation to ensure the best possible outcome.

6.14 Call Barring Functionalities

AIME agrees that call barring is a useful consumer tool but with such a wide range of services to be considered it would be sensible to carefully review all aspects of this option.

Questions

Question 4.1: Do you agree with our analysis of the characteristics of the PRS supply side and the possible concerns related to these characteristics?

Answer 4.1

AIME questions the stated complexity of the supply chain and the concerns regarding technological differences between fixed and mobile services. AIME has published a single technology neutral supply chain diagram for both fixed and mobile services which is attached as Appendix 1. AIME also takes the clear view that regulation should be service based and technology neutral.

AIME agrees that problems can arise due to low barriers to entry at the point of sale and has lobbied for a suitable registration scheme to improve control in this area since 2004. However it is important to appreciate the innovative nature of PRS and we would not wish to discourage new entrants to the market. Ofcom is aware that AIME is currently well advanced with plans for a voluntary registration scheme at the point of sale, targeted to be introduced for testing in November 2009. We note the requirement in this Consultation for PPP to introduce a registration scheme and we will clearly need to liaise closely to avoid unnecessary and costly duplication of effort.

Question 4.2: Do you agree with our analysis of the demand characteristics of PRS? Do you think there are additional characteristics which are not included in our analysis?

Answer 4.2

AIME believes there is a fundamental flaw in defining PRS as “a type of service with a common set of characteristics” since PRS is, as mentioned previously, not a service but simply a content neutral payment mechanism.

Most of the concerns raised in this section relate to the need for consumers to be made aware of the nature of the content purchased and the charge being incurred and these are items covered by

current industry initiatives. We would not regard access to inappropriate or offensive material to be a typical demand characteristic since there exists appropriate access controls to prevent this.

Question 4.3: Do you agree with our assessment of the potential consumer harm in a situation where PRS regulation is ineffective?

Answer 4.3

Mostly yes, but it is important to maintain a perspective with regard to the overwhelming majority of successful PRS transactions and the very low number of cases which can demonstrate actual consumer harm.

Question 4.4: Do you agree with our assessment of the potential and actual consumer harm in respect of PRS?

Answer 4.4

While there will be areas capable of improvement we would question the use of the term “consumer harm” since it is more likely to constitute an inconvenience than actual harm.

Regarding redress we believe that many if not most consumers do have access to satisfactory redress although AIME accepts that there is scope for improvement. One example is broadcast services where any complaints and refunds are dealt with by the Broadcasters in a timely manner. The most useful focus for this issue is to achieve better connection between consumers and Merchant Promoters.

Inappropriate or offensive content is dealt with by a variety of access controls and AIME does not agree that this represents an area where there may be consumer harm.

AIME would like to see objective evidence of complaints in these areas before any exceptional regulatory intervention was considered.

Question 5.1: Do you agree with the application of the characteristics to the services?

Answer 5.1

While AIME generally agree with the examples quoted they are of limited use since there are other service genres that warrant equal consideration and AIME would be happy to work with Ofcom to further develop an effective framework.

The presence of Payforit within the suggested framework might also need to be reviewed since Mobile Operators consider transactions using this payment mechanism to be adequately managed and outside the scope of PRS.

Question 5.2: Do you agree with our assessment of potential harm for each of the services?

Answer 5.2

Until the framework is adjusted to a wider representation of services it is not useful to address this question.

Question 5.3: Do you agree with our assessment of alternative means of protection for the new services in our analysis?

Answer 5.3

While AIME agrees that some consumers may currently have problems in connecting effectively with the Merchant Promoter it would be more useful to focus on improving this connection before resorting to Alternate Dispute Resolution. The subject of customer care is currently being addressed through ILP and AIME has issued a Customer Care Charter.

Question 5.4: Do you agree with our analysis of the appropriateness of self-regulatory initiatives in the context of PRS?

Answer 5.4

AIME has progressed to the view that total self regulation would not be appropriate for the PRS industry and that a co-regulatory approach is most desirable where industry and regulator work together to improve and apply standards in a co-operative manner. AIME can demonstrate a range of industry improvement initiatives where regulators have been invited to contribute and we would like to see this continue.

Question 5.5: Do you consider self-regulatory initiatives could be implemented for (certain) PRS? If so, please set out for which services, and what such an initiative would look like.

Answer 5.5

As with answer 5.4

Question 6.1: Do you consider there is a consumer benefit requiring all OCPs to offer the same retail price to a PRS number?

Answer 6.1

In a competitive environment this is impractical.

Question 6.2: If you do believe there is a consumer benefit, do you have suggestions as to how this option could be implemented?

Answer 6.2

While AIME can appreciate that one retail price for PRS would be an effective solution there are obstacles in the form of competition law and the fact that different networks operate differing business models with differing costs. The solution is to concentrate on transparency of charges using tools like Callcosts website and free pre-call announcements although the latter would require close co-operation and detailed discussions with networks and others on technical capabilities and costs.

Question 6.3: Do you consider this option could have any negative side-effects? If so, which ones?

Answer 6.3

Ofcom would need to liaise closely with OCPs on this. If it could be achieved there are no foreseen negative side effects for consumers but there could well be financial implications for networks.

Question 6.4: Do you consider PCAs would improve price transparency in the PRS market?

Answer 6.4

Refer to answer 6.2.

Question 6.5: Do you consider Ofcom should carry out such a study? If so, which aspects should such a study cover?

Answer 6.5

AIME believes Ofcom should study the potential for PCAs in more depth to include the following aspects

- Technical capabilities of networks
- Costs and possible impact on tariffs
- Possible regular user “opt-out”
- Only apply to services charging more than the advertised rate

Question 6.6: Do you consider including BT's tariff and a maximum tariff for the PRS in PRS advertisements would improve price transparency in the PRS market?

Answer 6.6

Although considered marginally better than the current statement this is not regarded as practical.

Question 6.7: Do you consider the name of the OCP with the highest tariff should be included?

Answer 6.7

AIME would not recommend this and there could be unforeseen commercial implications as suggested by Ofcom.

Question 6.8: Do you consider there are any additional implications linked to this option, apart from the ones we have set out above?

Answer 6.8

See 6.7.

Question 6.9: Could you provide us with an estimate of cost information regarding the collection and updating of tariff information (for SPs and OCPs)? Do you believe there are there any other costs involved under this option?

Answer 6.9

AIME has no figures available but believes such an exercise could be time intensive and costly. The AIME Callcosts project suggested that it is more cost effective for individual networks to maintain and present their tariffs information individually and focus on ease of access for users.

Question 6.10: Do you agree with our proposal to expand the PhonepayPlus number checker?

Answer 6.10

Number Checker needs to improve its accuracy and coverage before it can fulfil its potential and networks would need the tools to engineer automatic updating. AIME has provided an analysis of the current system along with recommendations for improvement and is liaising with ILP on this.

The Number Checker is predominately useful to the consumer when examining the bill.

Question 6.11: Which criteria should be used regarding numbers to be included in the number checker (e.g. revenues, complaints over the last X weeks etc)?

Answer 6.11

All active PRS numbers should be included in Number Checker.

Question 6.12: What information should be included per number in the number checker?

Answer 6.12

AIME suggests the following items for inclusion:

- Merchant Promoter name
- customer care contact number
- service/product description and price
- Merchant Promoter registration number

Question 6.13: Do you agree PhonepayPlus should carry out an analysis into the benefits of requiring SP/IPs to adopt a formal complaints procedure?

Answer 6.13

It is important to first address and agree terminology to be used to identify the functional demarcation down the service or value chain. Only then can any requirements for formal complaints procedures be addressed. AIME is already working with ILP on this subject and has also published a Customer Care Charter.

Question 6.14: Do you consider that in light of developments in the PRS market, IPs should be targeted as a point of regulation, in addition to SPs or on their own? If so, what kind of rules should be applied to IPs and/or SPs?

Answer 6.14

AIME has argued for some years that the focus of regulation should be at the point of sale where the service meets the consumer and the proposed AIME Merchant Promoter Registration Scheme is based upon this premise alongside improvements to availability of due diligence information. Responsibilities still need to be allocated across the value chain in an appropriate fashion.

Question 6.15: Do you consider there are other options for a registration scheme / reputational database which have not been included in these studies?

Answer 6.15

AIME would like to see the basic registration scheme in place and proven, following which other enhancements can be considered e.g. linking to Number Checker.

Question 6.16: Which is your preferred option, and what are the reasons for this?

Answer 6.16

Option F2 is preferred as the closest match to the proposed AIME registration scheme. Based upon AIME research thus far we would strongly question the stated estimate of £1m cost to run this database. AIME estimates set up costs of £50k and annual running costs of £100k.

Question 6.17: Do you agree with our analysis that PhonepayPlus should run a registration scheme / reputational database?

Answer 6.17

AIME is proposing to introduce its scheme on a voluntary basis and, when tested and established, it can be passed to PPP and upgraded into a mandatory scheme if required. As mentioned previously it is important that AIME, Ofcom and PPP liaise closely on this to avoid costly and unnecessary duplication of effort.

Question 6.18: Do you agree with the options identified regarding call barring facilities?

Answer 6.18

Call Barring is a useful tool for consumers since it enhances their freedom of choice. As with PCAs we would prefer to see detailed discussions on the practicalities of consistency and availability and costs rather than comment at this time.

Conclusions

As a Scope Review AIME sees this as an opportunity to look beyond the detail employed by this Consultation and take a view on where PRS regulation needs to focus and what form it should adopt for the future. In this respect AIME believes the PRS industry would be well

served by a structure positioned to support the principle that industry standards must be raised by co-operation rather than by punishment and where statutory penal sanctions are only required as a last resort. To achieve this AIME would like to see the regulatory environment for PRS adopt a co-regulatory approach with industry and regulators working in close co-operation.

With respect to the current regulatory scene AIME believes it is essential to measure the performance of PPP in terms of industry success and we have suggested some criteria that should be considered in our opening comments. Prime among these are consumer confidence and industry growth since their absence or ascendancy must be considered as a litmus test of industry health and industry and regulatory success.

This Scope Review and the associated PPP Code of Practice must recognise that responsibility for compliance lies throughout the value chain and that regulatory action must be applied fairly and proportionately across the components of the chain. AIME believes that only a genuine co-regulatory engagement can offer the environment needed for this to succeed.

A key feature of many of the suggested changes is the introduction of a registration scheme for Merchant Promoters (IPs in current PPP Code) and, as Ofcom is aware, AIME is well advanced in its plans to introduce such a scheme. The initial scheme is designed to be voluntary and industry run until such time as it may be passed to PPP and transformed into a mandatory requirement. It is essential that Ofcom, who have been informed on progress since the scheme's inception, ensure that their recommendation for a similar system in this Consultation is co-ordinated to recognise and utilise the considerable industry effort that has been expended on this.

Statement of Representation

AIME confirms that this response has been compiled following a process of internal discussion and distribution of the relevant Consultation documentation to all AIME members. A list of members can be found at www.aimelink.org/currentmembers.aspx

The views expressed in this response are a fair representation of the majority views held by the responding AIME membership. Individual members are actively encouraged to submit their own independent views as they deem fit and at their sole discretion.

Due to the potential breadth of the Scope Review some broadcaster members believe the TV broadcasting environment presents the need for a slightly different approach in some areas and, for that reason, they will be submitting their own responses which will reflect their particular views in more detail.

Close

We look forward to your response and assure you that, as ever, our comments are made constructively and with the intent of achieving an effective, fair and proportional regulatory regime for Premium Interactive Media and Entertainment services in the UK. As with other past responses AIME strongly recommends that Ofcom convene a round table of major respondents to discuss their findings and recommendations before taking any policy decisions.

If any clarification to our response is required or if we can be of any further assistance please contact Zoe Patterson at 08445 828 828 or zoe@aimelink.org

Sincerely

Toby Padgham
General Secretary AIME

Appendix 1:

PRS Value Chain Structures & Terminology

July 2009

Single value chain descriptors.

There is functionally very little difference between the 090 TNO and SMS billing TSP – they both contract and connect with ONOs, and provide billing services via premium numbers. One small difference is that SMS TSPs rent premium shortcodes from mobile operators, whereas TNOs are issued their own PRS numbers by Ofcom.

It is possible to have a single terminology and value chain descriptors for all forms of PRS if the following convention and terminology is used:

‘Network Operator’ (previous PPP name ONO) This is the network who provides the telecommunications service to the consumer and this also applies to Virtual Network Operators.

‘Terminating Provider’ (Previous PPP names TNO *fixed line*, Service Provider *mobile*) The TP is the contracted party to the Network Operator, terminating PRS traffic, be it premium calls or premium SMS, MMS, shortcode voice and video. In the case of P-SMS and MMS, the TP will also be the point of injection of premium MT messages into the Network Operator. In Payforit the Payment Intermediary would be a Terminating Provider.

‘Application Provider’ (Previous PPP names Service Provider *fixed*, and not identified in mobile) The AP operates the PRS application platform on which the PRS service runs. An AP may have partners, resellers and agents, but the AP can be identified as the company contracting with the Terminating Provider.

‘Merchant Promoter’ (Previous PPP name Information Provider) This is the party that promotes to and contracts with the end consumer. The term ‘merchant promoter’ is used, rather than ‘service promoter’ as it better reflects the responsibilities of a merchant in consumer law, and describes next-generation services such as application stores. Unique to PRS in broadcast, it is suggested that ‘Merchant Promoter’ is replaced by ‘Broadcaster’. The Merchant Promoter can have an ecosystem of its own, comprising content providers, content aggregators, games developers, media partners, and affiliate advertisers. These are outside of the scope of PRS regulation, and therefore this paper.

Below are the value chain descriptors, and examples of companies that only operate in the one point in the value chain.

