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Ofcom Consultation
Approval of the PhonepayPlus
Code of Practice (12th Edition)
AIME Submission

AIME

AIME is the leading trade body representing the interactive media and entertainment industry in the UK. For more information on AIME see the final section of this response or visit our website at www.aimelink.org

We welcome the opportunity to respond constructively to this Consultation which seeks to approve the PhonepayPlus proposals for a new approach to regulation in the 12th Edition of their Code.

General

AIME has responded in detail to the PhonepayPlus (PPP) Consultation on the proposed 12th Code of Practice for Premium Rate Services in the UK and we are attaching a copy of our submission for your information.

In our response we applaud the main thrust of the new Code and specifically endorse the four major elements highlighted below that AIME has championed for some time:

- The establishment of a principles-based core Code supported by flexible Guidelines
- Distribution of responsibility for compliance along the value chain
- The commitment to make more use of the Track 1 (informal) procedure in dealing with possible breaches
- The establishment of an Industry Registration Scheme.

We consider this to be a pivotal development in the regulation of the PRS industry and below we have précised those concerns that we believe to be key to the future development and success of PRS and some of which go beyond the questions actually raised in the PPP Consultation. These concerns are explained in more depth in the PPP response document.

Coping with Change

AIME is concerned that a new approach to a written Code must be matched by a corresponding change to the way that the regulatory process operates and interacts with industry. This will require a willingness from both industry and regulatory to embrace and practice genuine engagement at all stages of the regulatory process. Areas requiring particular attention include:

- **Culture Change**

The new Code represents a major change of structure and emphasis and this step-change needs to be recognised and acknowledged. We can see the beginnings of progress and co-operation here but we would appreciate an understanding of how PPP plans to change the organisation's culture and processes to match the new environment.

AIME has also been considering how it can communicate to members and the industry at large the implications of the new Code and how it can best be absorbed and integrated. To this end we have had discussions on training with PPP and also a possible joint marketing effort.

- **11th to 12th Code Transition**

It will be important for our members to have clarity over the transition from 11th Code to 12th Code and avoid any confusion which might impact the return of confidence to the PRS industry. Issues of particular importance will include:

- the impact on any open cases
- the willingness for PPP to treat initial cases as trial cases under the new regime
- a sensible period for companies to register with PPP
- 11th Code "precedents" under the new rules

- **Regulatory Process**

It is essential in our view that the PRS industry must have confidence in the regulatory process that sets and applies the rules by which it operates and is occasionally judged. AIME has launched a Regulatory Best Practice Forum to which PPP has responded constructively and this process is continuing including discussions with PPP on how the regulatory process can be improved.

- **Regulatory Costs**

AIME believes it to be sensible that regulatory costs should be more proportionate to industry revenue and should move broadly in line with industry trends. The pattern of regulatory costs over the years fails to reflect the reality of declining PRS revenues.

- **Compliance Advice**

We are concerned with the proposal that Compliance Advice should not be regarded as binding on decisions by Tribunals as to whether a breach of the Code has occurred and we extend that concern to sanctions that require members to seek and follow PPP compliance advice which is, again, considered non binding. We have raised this with PPP.

- **Interpretation & Subjectivity**

A principles-based Code necessarily opens up areas of subjectivity and we are keen to see consistency of interpretation. To this end we are suggesting a standard test to be employed wherever interpretation is required and we are concerned at the absence of similar proposals in the 12th Code to maximise certainty, transparency and consistency. AIME has also forwarded proposals for a transparent Triage process to be applied to alleged Code infringements and is currently discussing this with PPP.

- **Proportionate Liability**

With possible sanctions for Code infringements of £250k per breach it is clear that the potential liability of our members (both corporate and personal) has greatly increased over recent years and, while fines of this magnitude clearly act as a deterrent, there is a fear that such a scale of regulatory risk is deterring investment. Again, we are in discussions with PPP on this issue.

- **Due Diligence**

AIME believes Due Diligence to be a variable and subjective exercise resulting in a commercial decision which will be individual to the circumstances pertaining at that time and for that reason it does not lend itself to prescriptive regulation. We have deferred any effort to consider a Guidance Note until the formal consultation on the subject but we are firm in our belief that that this requirement must be kept in proportion and not allowed to become an onerous and costly barrier to business.

Consultation Questions

Question 1

Do you consider Ofcom should approve the draft PhonepayPlus 12th Code of Practice in its current form?

Answer 1

AIME believes that the new approach to regulation being attempted by the 12th Code is an important step in achieving a co-regulatory environment for the PRS industry and restoring confidence to our members and their customers. However, we believe our concerns should be addressed, including possibly seeking further industry comment, before any approval of the 12th Code is considered.

Question 2

If not, what changes do you consider need to be made to the draft Code?

Answer 2

As with the answer to Question 1 AIME concerns are well documented in our attached response to PPP.

The importance of this 12th Code proposal emphasises the need to have clear understanding between industry and Ofcom/PPP regarding the content and meaning of responses. For this reason we believe there would be considerable benefit from Ofcom/PPP conferring a round table summary presentation and discussion for major Consultation respondents before any policy decisions are finalised.

Question 3

If the draft Code were to be approved by Ofcom, what period of time do you consider would be appropriate before the 12th Code of Practice became enforceable by PhonepayPlus?

Answer 3

If Ofcom were to approve the Code in its current form and considering the significance of the new approach AIME believes that it would be sensible to trial the 12th Code while retaining the 11th Code for one year during which time the new Code can be beta tested and the associated registration process can be completed.

If a new draft Code is produced that addresses industry concerns in a satisfactory manner then a period of 6 months would be acceptable.

Statement of Representation

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

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

AIME also co-operates with other industry trade bodies and, while it is submitting its own Consultation response, the Mobile Data Association (MDA) wishes to broadly endorse this consultation response of AIME, and the principles it raises around strategic concerns.

Close

The new approach to the 12th Code and the associated Registration Scheme represents an opportunity to rebalance the requirements of commercial enterprise against that of the regulatory process in a truly proportionate way. AIME wishes to continue to work with Ofcom and PPP to define and implement a strategy to improve the quality and refine the process of premium rate regulation in the UK in a genuine co-regulatory manner. This will ensure regulation is applied in a transparent and proportionate way in a co-regulatory environment to give the certainty necessary to support a return to commercial growth.

We 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.

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.

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 .

AIME Background 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 Core Values to 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 UK trade association with membership across all elements of the interactive media and entertainment value chain which is generally, though not exclusively, supported by Premium Rate Service (PRS) billing facilities. Our membership represents over 90% of annual UK industry revenues, which stood at £0.80bn in 2009 and which, we believe, have the potential to increase to £1.5bn - £2.0bn per annum over the next three years. This assumes we have a healthy balance of self- and formal regulation and that industry is successful in continuing to build consumer trust.

AIME encourages its members to focus on consumer care and to recognise that if there is to be sustainable growth there must be more investment in consumer contact and support as a part of building trust, whether it be dealing with enquiries or complaints. Recent research suggests that there is still a significant portion of the UK population that is reluctant to use premium rate services due to trust issues in the main. It is important that we work towards improving this situation and encourage more consumers to use premium rate services on a regular basis.

AIME promotes and abides by 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 is against this background that we frame our comments in this consultation response.

AIME