BT Response to Ofcom's PRS Scope Review

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General Observation

BT agrees with the principles set out in this consultation and the target areas outlined for action. We acknowledge that new technologies are changing the traditional nature of PRS service therefore protection of consumer interest needs to change accordingly to address potential areas of harm.   This latter point is important for industry as there is a balance between managing that potential harm against restriction of innovation by, and additional regulatory burden placed upon, legitimate industry players who offer a variety of services enjoyed by their many users.

It is right that Ofcom and PhonepayPlus are looking to move away from prescriptive regulation but that in itself provides PhonepayPlus with a more difficult task in drafting its new Code and ensuring industry sufficiently understand the nuances of the principle based code and how to apply it to their respective input to the supply chain. No doubt this will be discussed at length during the 12th code consultation due later this year.

 In addition principle based regulation poses questions for Ofcom over regulatory boundaries and ensuring "neighbouring" regulators are aware of situations where regulatory harmonisation may be required. That may already be the case with the ASA and the promotional requirements of the PRS Code, but certainly where alternative payment mechanisms are being considered by Ofcom there needs to be careful thought over any reason it has for considering existing consumer protection (or say, FSA rules) is insufficient to protect the consumer, before applying additional PRS regulation to that circumstance.

There are a number of specific practical areas to address within the Ofcom consultation and they will be covered in the following responses to the individual questions:

<u>Response to Questions</u>

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?

Yes, generally agree with the example models shown and may be helpful to consider non-call and non text models, such as Payforit and align the roles of the players in that transaction against the generally accepted terms for the PRS supply chain. The Consumer browses on a *Merchant's* website and clicks to purchase the chosen item. They are then re-directed to the *Accredited Payment Intermediary's* site (typically an aggregator). That payment intermediary obtains the consumer's phone number from the consumer's mobile operator and presents the standard Payforit journey.

The consumer confirms acceptance of the charge and the Payment Intermediary submits the charge to the mobile operator. The mobile operator either places the charge directly on the bill (or subtracts from pre-pay credit) or sends a silent premium SMS to the consumer's phone to implement the charge. The Payment Intermediary receives confirmation (or otherwise) of the successful payment, confirms this to the consumer and Merchant, and returns the consumer to the Merchant site.

For a fixed internet transaction the difference is that the consumer cannot be automatically authenticated by the payment intermediary as they are not attached to the mobile operator's gateway as far as the browsing session is concerned. Therefore in that case a code is sent via SMS to the consumer's phone and they have to enter this into the Payforit journey to ensure authentication.

In traditional PRS the merchant is taking a role similar to an Information Provider, the Payment Intermediary that of an Aggregator or SP, the Mobile Operator would be the Originator and the fixed provider a reseller.

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?

Yes, the generic areas are covered.

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

Broadly yes, PAYG remains a problematic area in relation to the ability of the consumer to follow-up of any dissatisfaction as there is a dearth of material about the transaction available to them.

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

Broadly yes, perhaps PhonepayPlus might consider including automatic refunds more frequently in its adjudications, for claimants and non-claimants depending on the nature and severity of the breach. It would also be worthwhile having the flexibility for PPP to extend the 30-day rule on occasion to allow for investigation.

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

Yes, but see 5.2 below.

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

There is value in having some matrix to assess potential harm against service type and the elements shown cover the key issues identified previously in the consultation. If this is taken forward formally there would need to be a review process to enable those criteria to reflect future new areas of potential harm should they arise.   Perhaps in its final statement Ofcom might recommend that this initiative is pursued by a PPPP/Industry working party.
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Question 5.3: Do you agree with our assessment of alternative means of protection for the new services in our analysis?

Yes, but there could be difficulties in exercising compliance where services with similar characteristics are regulated differently unless there were clear headlines such as technology employed, price threshold or live service which triggered the additional regulatory element.

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

There are certain areas of activities generally, not just within PRS, that lend themselves to self-regulation or some combination, however, we do not believe it is appropriate here.

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.

The key factor against voluntary initiatives is lack of enforcement mechanism. Initiatives such as "best practices" by their very nature tend to be adopted by those who are genuine players anyway.

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

Requiring OCPs to offer the same price for the same service could boost transparency as service providers could advertise a price for their service with confidence in its accuracy.

A cost benefit analysis should examine a range of options and BT would be pleased to discuss this in more detail if it would be helpful, although it remains difficult to see how Ofcom could easily apply and enforce such a pricing remedy across the industry.

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

Perhaps greater transparency might be achieved through a free to caller retail tariff announcement, certainly for customers who do not use any particular service frequently. However, where Network Operators provide services to numerous originating service providers who change their prices independently and who may have complex pricing packages, it is difficult to see how such announcements could technically be set up and accurately maintained.

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

 BT believes that the balance of benefits for consumers regarding either of the options above would be positive.

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

Yes, if there is no way of formally applying a maximum price or standard price as covered above PCA would be the most effective method of achieving price transparency. That said the PCA should only be used where any Originator charges a rate higher than the price shown in the promotion for the service. However, setting cost aside, at the network level there are serious concerns around the feasibility of actually being able to do this, for the reasons stated at 6.2 above.

It is likely that the overall recommendation falling from this consultation will be for Ofcom to undertake an assessment into the feasibility of PCA and BT would be willing to take part in any constructive debate or assessment of its use in respect of PRS numbers.

As Ofcom will appreciate from its previous activity into PCA there are a host of issues to carefully address before implementing any requirements. Potentially the most crucial is the creation of robust rules and clarity over what is and isn't a permissible use of a given number range, potentially the numbering plan currently doesn't provide that level of detail or enforcement provision. Additional regulation around PRS is not the answer to numbering abuse, it simply treats the symptom not cause. Equally Ofcom would need to make it abundantly clear that non-compliance would not be tolerated. Aside from the desire to offer a good customer experience, it is not reasonable for compliant players to incur development costs if they are not confident that the non-compliant will be brought to account.

In terms of the practicalities, the solution for 070 was a standard message, however applying bespoke messages to individual chargebands multiplies the complexity greatly. Perhaps this is one reason why presently mobile providers do not give rates on their 0800 PCA. There are almost 70 different PRS chargebands available for calls originating on the BT network which vary from low to high ppm rates, single drop charging or a combination of both; some even varying by time of day. This is not only highly complex but may not be achievable across industry within a budget that would justified by the benefit.

Another key factor would be the costs of implementing and running a PCA solution. This might require a review of the NTS formula, or at least be considered in any NTS review, as presently the terminating operator receives by far the largest share of the revenue, yet would not incur any of the costs unless that were factored into the overall industry solution.

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

If a study is undertaken, it should concentrate on the technical issues involved in implementation and potential cost implications, in particular where networks provide services to a wide range of originators with varied retail pricing arrangements.

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?

This should not be necessary and probably wouldn't be of great value to consumers. .That aside it wouldn't be possible for the SP to track the possible rates charged by all originators and shelf-life of the promotions would also be a factor.   A side-effect of stating maximum price could well be that Originators well within that price point could be encouraged to increase their prices (as callers may perceive from the advertisement that they would be paying that rate anyway) which of course would be detrimental to their customers.

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

No, it does not add value for the consumer, and could change frequently. However the point of tracking prices mentioned at 6.6 above applies here too, such that this is not a practical option.

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

Depending on medium for promotion this could make for a confusing advertisement. No doubt the detail would be a footnote to the main body of the promotion and thus probably not absorbed by the customer to any degree, if at all. Also the likelihood of price, or even the nature of the service changing or even suppliers changing at short notice or during the "life" of a promotion reduced the effectiveness.

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?

No definitive list of CPs exists but even if there were its not practical for anyone to continuously trawl price lists. Indeed cost would be secondary to the task of identifying CPs and then searching price lists for the relevant

material. This is not a practical option.

In Ofcom's 2006 Numbering Review, it considered consulting on improving the tariff structure of the 09 range, this may have some merit. As it stands, since the Review, Ofcom has reduced tariff granularity from 100k blocks to 10k blocks, which makes price lists up to ten times longer.

Ofcom might consider the use and potential harm of short numbers used by mobile providers. Firstly, their use confers advantage on mobile providers over fixed providers. Mobile PRS can be provided behind five or six digit numbers. On fixed, the numbers are always 11 digits long. So long as fixed providers have an obligation to provide local dialling to geographic numbers with the same code, they cannot supply PRS on short numbers, as they would clash with local numbers. This departs from Ofcom's principle of technological neutrality, and potentially skews the market. Also, there seems to be even less tariff transparency and less potential for tariff transparency, within these numbers, and perhaps contributes to the higher level of customer dissatisfaction with mobile PRS than from fixed numbers.

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

Yes, the number checker is overdue for an overhaul but this would need to be assessed alongside the provision of an SP database as there would be material common for both. Ideally one would feed the other.   All numbers, services and keywords associated with shortcodes should be listed and the SP or aggregator should be identified against SMS shortcodes.

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)?

See 6.10 all services types subject to PRS regulation should be listed.

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

At the very least the title and nature of the service, the number, the Network Operator and contact information (for the complaints procedure) for the SP and/or IP and/or Aggregator. The checker should also carry links to the registration database where the consumer can find more information about that PRS service supply.

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?

Yes. As effective redress is a desired result of this consultation a minimum requirement for handling complaints is required. The procedure itself can be derived from the current PhonepayPlus/ILP work.

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?

Provided the legal definitions of responsibility are clear, this would encouraging good behaviour on the part of the whole value chain. Regardless of the UK based parties there is an issue of how effectively PPP might regulate the activities of non-UK based information providers. However well intentioned, it may well mean that the key burden of compliance still rests with the UK based entity.

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

All suitable options have been considered, however we question the meaning behind "reputational". The database needs to provide factual information about the parties concerned, e.g. primarily identity and contact information. The detail can be explored by the working group assigned to look at this but provided the full SP details are in place and adjudications can be viewed its unclear what comment or implication might be made in the database with regard to "reputation". Perhaps a field could be included that shows any adjudications in the past 24 months but nothing further than that.

A particular value of the database would be that the opportunity to run PRS services on inappropriate ranges would be reduced e.g. 070 personal numbers. In conjunction with this perhaps more could be done to promote consumers access to information around Ofcom's consumer protection test for number allocation and PPPs own barred providers list.

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

In principle, we believe that the more information that is available in the public domain, the better consumers and businesses are able to make decisions. It is important that :
- information is accurate, timely and relevant,
- the distribution of this information is legal

- the information is easy and swift to change or remove if it is correctly challenged,
- inappropriate "guilt by association" is avoided and
- the information is simple, too much overly-complex information could be almost as bad as too little information.

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

Yes, PhonepayPlus is the most appropriate organisation to create and maintain such a registration scheme/database. As with 6.15 above, the term "reputational" is probably best avoided as it lends itself to the perception that those on the database are in some way "approved" which is not the case unless that is a specific intent of Ofcom, which presently is not BT's understanding of this initiative. If that is the case, aside from comments made at 6.16 above it needs to be based on factual data alone where users draw conclusions about the content rather those conclusions being suggested to them. To do otherwise could lead PhonepayPlus into disputes with certain parties.

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

Yes, all OCPs should offer call barring facilities of some sort, as appropriate, those barring options should include SMS Shortcodes and SMS Reverse billed messages; and that call barring should be able to be applied with the maximum practical granularity. Again, depending on the granularity of barring there are some serious technical issues to address and potentially a change to the UK numbering plan.

BT Retail offers PRS Call Barring on PSTN lines free of charge to both Consumer and Business customers. The underlying Openreach barring product is based on the call type allocated to a call in data management rather than anything to do with the actual digits dialled. Hence the current PRS barring is either on or off, there is no facility for any granularity by 09XX range or price threshold.

There is very limited scope to differentiate between types of PRS calls and bar accordingly because there a limit to the number of call types that the switch can recognise. Should Ofcom commission an assessment of barring facilities in the UK we would of course investigate what was feasible in the short and longer term and what cost barriers might exist. Not least that barring is a WLR facility and due process would need to be followed by BT Openreach for any developments in that respect.

From a Customer perspective there is some risk of creating confusion over barring and making it overly complex. Ofcom are aware of how difficult it is to communicate service types and cost to consumers (and thus risk) through

number ranges themselves, to do likewise with barring might not be the optimum solution. At present it's very easy to ring BT and have all PRS barred; perhaps there needs to be further consideration on whether a complex barring solution is needed here or better price transparency?

END.