



Notification Number: 2015/146/UK

## PhonepayPlus Code of Practice (13th Edition)

Date received : 27/03/2015

End of Standstill : 29/06/2015

### Message

#### Message 001

Communication from the Commission - TRIS/(2015) 00845

Directive 98/34/EC

Notificación - Oznámení - Notifikation - Notifizierung - Teavitamine - Γνωστοποίηση - Notification - Notificatio - Notifica -  
Pieteikums - Pranešimas - Bejelentés - Notifika - Kennisgeving - Zawiadomienie - Notificacão - Hlásenie-Obvestilo - Ilmoitus -  
Anmälan - Нотификация : 2015/0146/UK - Notificare.

No abre el plazo - Nezhajuje odklady - Fristerne indledes ikke - Kein Fristbeginn - Viivituste perioodi ei avata - Καμία έναρξη  
προθεσμίας - Does not open the delays - N'ouvre pas de délais - Non fa decorrere la mora - Neietekmē atlikšanu - Atidėjimai  
nepradedami - Nem nyitja meg a késéket - Ma' jiftaħ il-perijodi ta' dawmien - Geen termijnbegin - Nie otwiera opóźnień -  
Nao inicia o prazo - Neotvorí oneskorenia - Ne uvaja zamud - Määräaika ei ala tästä - Inleder ingen frist - Не се предвижда  
период на прекъсване - Nu deschide perioadele de stagnare - Nu deschide perioadele de stagnare.

(MSG: 201500845.EN)

#### 1. Structured Information Line

MSG 001 IND 2015 0146 UK EN 27-03-2015 UK NOTIF

#### 2. Member State

UK

#### 3. Department Responsible

Department for Business, Innovation and Skills  
European Reform Directorate  
1 Victoria Street, London, SW1H 0ET.

Email: 9834@bis.gsi.gov.uk.

#### 3. Originating Department

The Office of Communications (Ofcom)  
Content, Consumer and External Affairs Group,  
2a Southwark Bridge Road,  
London,  
SE1 9HA

#### 4. Notification Number

2015/0146/UK - B00

#### 5. Title

PhonepayPlus Code of Practice (13th Edition)



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## 6. Products Concerned

The PhonepayPlus Code of Practice (13th Edition), which Ofcom is minded to approve under Section 121 of the Communications Act 2003, regulates the provision and contents of premium rate services (PRS) in the UK, and the facilities made available in the provision of such services.

PRS typically offer some form of content, product or service that is charged to users' phone bills. PhonepayPlus is the day-to-day regulator of PRS in the UK.

## 7. Notification Under Another Act

- PhonepayPlus and Ofcom are currently engaged in a further review of relevant evidence. This may in due course (possibly in April or May 2015) result in a further consultation proposing the inclusion of an additional rule in the draft 13th Code hereby notified to the Commission.

The intention would be that any proposed additional rule would be notified to the Commission at the time of any such consultation. Subject to the Commission's comments, if a decision is made to include the additional rule in the Code, the aim would be that it would come into force as close as possible to the date on which the 13th Code comes into force.

The details of the possible additional rule are as follows.

In July 2014 PhonepayPlus and Ofcom publicly consulted on the draft 13th Code. It included, in rule 3.12.3, a draft rule, which was substantively the same as a rule that applied in the 12th Code. It read, "PhonepayPlus may specify the advertised cost of a service that is promoted on television or in any other audio/visual format, above which pricing information must be clearly visually presented and spoken." Having considered responses to that consultation, PhonepayPlus has removed this rule from the draft version of the 13th Code which is hereby notified. It is the re-introduction of this rule into the 13th Code that PhonepayPlus and Ofcom are considering and may in due course consult upon and further notify to the Commission.

## 8. Main Content

The most significant changes from the twelfth Code of Practice (12th Edition) ('the 12th Code') and the 13th Code are:

- i) implementation of Ofcom's review of Non-Geographic Call Services ('NGCS Review');
- ii) changing the rules on spending cap limits, such that the 13th Code provides for caps, but the specific monetary value of spending cap limits is removed from the 13th Code and set separately by PhonepayPlus following consultation (and it proposes new limits for live services);
- iii) introducing in-call spend reminders and a positive opt-in for live services;
- iv) introducing a cumulative monthly spend for children's' services of £20;
- v) amending the provision concerning vulnerability;
- vi) replacing the current Prior Permissions regime with a new Special Conditions regime which will be annexed to the 13th Code.

The 13th Code includes other, more minor changes, and it should be noted that Ofcom's approval is in relation to the whole 13th Code not just elements which have been changed.

Having regard inter alia to the provisions of the 13th Code, Ofcom is minded to decide that it is appropriate for Ofcom to approve the 13th Code.

## 9. Brief Statement of Grounds

PhonepayPlus regulates PRS via its Code of Practice approved by Ofcom under section 121 of the Communications Act 2003. Ofcom may only approve the Code where certain statutory requirements are met, including that the Code's provisions are transparent, objectively justifiable, proportionate, and not unduly discriminatory.

PhonepayPlus reviews and updates its Code, and Ofcom considers its approval, from time to time, to ensure it is appropriate in light of factors such as: (i) regulatory developments, (ii) changes in the markets for PRS services and in technology; and (iii) the need to ensure consumers receive the right level of protection from the risk of harm. Doing so helps build consumer confidence in the markets for premium rate services.

The provisions of the 13th Code, and the changes in it from the 12th Code in particular, have been the subject of over 18 months of stakeholder engagement by PhonepayPlus. This included a Call for Inputs, consumer and industry workshop, a Code Update Paper and separate consultations by Ofcom and PhonepayPlus. The responses have been the subject of careful consideration and Ofcom considers that the provisions of the 13th Code are, amongst other requirements, transparent,



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objectively justifiable, proportionate, and not unduly discriminatory. Ofcom considers it appropriate for it to approve the 13th Code.

In particular, the 13th Code would ensure that changes impacting upon the premium rate industry, resulting from Ofcom's Review of Non-Geographic Call Services, which itself followed extensive consultation and analysis by Ofcom, will be introduced in time to allow the premium rate industry to benefit from the implementation of that Review. These benefits include increased pricing transparency for PRS, the introduction of rules to allow the premium rate industry to benefit from increased price points on PRS numbers and the introduction of rules that provide added protection to consumers of PRS.

Ofcom recognises the need for the PRS industry to be able to compete with alternative payment mechanisms. The changes in the 13th Code would enable PhonepayPlus to react quickly to market developments and consumer harm when setting relevant price points for Premium Rate Services. This would increase the ability of the premium rate industry to innovate and compete with alternative payment mechanisms. The rules would also, however, allow PhonepayPlus to put in place safeguards where there is evidence of consumer harm occurring.

It is pertinent to note that previous PhonepayPlus Codes have been subject to EC notification, which resulted in two specific rules being introduced into earlier editions of the Code. These have been retained in the 13th Code as follows:

- the Code will apply to premium rate services which are also 'information society services', but only where the conditions set out in Article 3.4 (read, as appropriate, in accordance with Article 3.5) of Directive 2000/31/EC on Electronic Commerce are satisfied (see rule 5.2.1 of the Code); and
- the Code will prevent PhonepayPlus from requiring a party to provide information where to do so would be contrary to Directive 2000/31/EC, including Article 15 thereof (see rule 5.2.2 of the Code).

It is currently proposed that the 13th Code would come into force on 1 July 2015.

#### **10. Reference Documents - Basic Texts**

References of the Basic Texts: The Ofcom consultation is available at:

<http://stakeholders.ofcom.org.uk/binaries/consultations/ppp-code/summary/ppp-code.pdf>

The PhonepayPlus consultation is available at:

<http://www.phonepayplus.org.uk/News-And-Events/News/2014/7/Consultation-on-new-Code-of-Practice-for-PhonepayPlus.aspx>

#### **11. Invocation of the Emergency Procedure**

No

#### **12. Grounds for the Emergency**

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#### **13. Confidentiality**

No

#### **14. Fiscal measures**

No

#### **15. Impact assessment**

Both Ofcom and PhonepayPlus have undertaken impact assessments as part of their consultations on whether the Code should be adopted (see links to the consultations above).

#### **16. TBT and SPS aspects**

TBT aspect

No - The draft has no significant impact on international trade



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SPS aspect

No - The draft is not a sanitary or phytosanitary measure

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European Commission

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