



Notification Number: 2010/647/UK

## PhonepayPlus Code of Practice (12th Edition)

Date received : 01/10/2010

End of Standstill : 03/01/2011

### Message

Message 001

Communication from the Commission - SG(2010) D/52404

Directive 98/34/EC

Notificación - Oznámení - Notifikation - Notifizierung - Teavitamine - Γνωστοποίηση - Notification - Notification - Notifica - Pieteikums - Pranešimas - Bejelentés - Notifika - Kennisgeving - Zawiadomienie - Notificação - Hlásenie-Obvestilo - Ilmoitus - Anmälan - Нотификация : 2010/0647/UK - Notificare.

No abre el plazo - Nezahtuje odklady - Fristerne indledes ikke - Kein Fristbeginn - Viivituste perioodi ei avata - Καμμία 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 késések - 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: 201002404.EN)

#### 1. Structured Information Line

MSG 001 IND 2010 0647 UK EN 01-10-2010 UK NOTIF

#### 2. Member State

UK

#### 3. Department Responsible

Department for Business, Innovation and Skills  
Innovation & Enterprise Group  
1 Victoria Street, London, SW1H 0ET.

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#### 3. Originating Department

The Office of Communications (Ofcom)  
Strategy & Market Developments  
2a Southwark Bridge Road, London, SE1 9HA



#### 4. Notification Number

2010/0647/UK - SERV

#### 5. Title

PhonepayPlus Code of Practice (12th Edition)

#### 6. Products Concerned

The PhonepayPlus Code of Practice (12th Edition), which Ofcom is minded to approve under Section 121 of the Communications Act 2003, contains provisions for regulating the provision and contents of premium rate services, and the facilities made available in the provision of such services.

Premium rate services typically offer some form of content, product or service that is charged to users' phone bills. PhonepayPlus regulates premium rate services in the UK that cost more than 5 pence per minute.

#### 7. Notification Under Another Act

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#### 8. Main Content

The PhonepayPlus Code of Practice (12th Edition) (the 'Code') strengthens the regulatory framework for premium rate services ('PRS') by targetting those in the value chain that cause consumer harm and by establishing high-level outcomes that PRS providers will need to achieve.

The main changes from the previous version of the Code include:

- i) the party that controls the operation/content/promotion of a PRS will now be responsible for ensuring the PRS complies with the Code, while those who provide network access, the PRS platform or any other technical service facilitating the provision of a PRS will have responsibility for undertaking due diligence and monitoring the risks posed by their clients;
- ii) all PRS providers will be required to register with PhonepayPlus;
- iii) new sanctions (automatic refunds and compliance audits) will be available as well as additional flexibility built into PhonepayPlus investigations of alleged breaches of its Code;
- iv) new complaints handling obligations will be introduced; and
- v) new obligations will require PRS providers to minimise instances of unexpectedly high bills.

The Code will be supplemented with guidance on interpretation, which will shortly be subject to formal industry consultation.

#### 9. Brief Statement of Grounds

PhonepayPlus regulates PRS via its approved Code of Practice. The existing Code needs to be updated because of (i) market developments, (ii) changes in technology and (iii) a recognition that consumer harm could be better prevented by targetting those in the value chain that are primarily responsible for causing consumer harm, while also requiring other parties in the value chain to conduct due diligence on their clients. Under the



new Code, all parties in the PRS value chain will now be held responsible for those actions within their control (including those who provide the contents of PRS).

The specific obligations in the Code are designed to support six consumer-focused outcomes: legality, transparency, fairness, privacy, avoidance of harm, and complaints handling. By focusing on outcomes and being technology-neutral, the Code will give PhonepayPlus greater flexibility when investigating allegations of consumer harm, and will also provide the industry with greater scope for service differentiation and innovation in how they can meet those outcomes.

This shift in regulatory focus and the introduction of the industry registration scheme have been subject to four consultations - by Ofcom in May 2009, by PhonepayPlus in June 2009 and by both PhonepayPlus and Ofcom in April 2010. We consider these rules are proportionate, are objectively justifiable, and will help build consumer confidence in the premium rate market.

It is pertinent to note that previous PhonepayPlus Codes have been subject to EC notification, which resulted in two specific rules being introduced. These requirements have been retained in the latest 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).

The exact implementation date has yet to be determined, but is expected to be in summer of 2011.

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

References of the Basic Texts: The PhonepayPlus consultation is attached (with relevant guidance available at <http://www.phonepayplus.org.uk/output/Previous-consultations.aspx>).

The Ofcom consultation is also attached.

#### **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 attached consultations). Ofcom will publish a final impact assessment following the close of the standstill period.



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

### TBT aspect

No - The draft has no significant impact on international trade

### SPS aspect

No - The draft is not a sanitary or phytosanitary measure

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