



1. Mobile UK, whose members are the UK businesses of EE, Telefonica (O2), Three and Vodafone, welcomes the opportunity to respond to HM Treasury's consultation on the implementation of the Payment Services Directive II.
2. The focus of our response is on Article 3(L), which addresses the exclusion from scope of *"payment transactions by a provider of electronic communications networks (ECN) or services provided in addition to electronic communications services for a subscriber to the network or service."*
 - the electronic communication network exemption is very important to the communications industry, as it allows the industry to function within the telecoms framework of regulation.
 - The Directive should be transposed using Option 1, making use of available exemptions.
 - It will be disproportionate and impractical for all communications networks either to obtain a payments authorisation or monitor all third party expenditure in real time (i.e. both options are disproportionate). A way must be found to allow the regulatory requirements to be met in a proportionate way that maintains services to customers.
 - The exemption must be cascaded into the value chain. Intermediary companies should only have to demonstrate that they have kept within the exemption limits for transactions of individual subscriber using their platform. It will up to the customer facing customer to track the overall expenditure by that customer.
3. The exemption for electronic communications networks or services is very important to the communications industry. First, the exclusion recognises that the ECN is adding value along the way. In the case of a digital download, for example, the ECN is delivering the service too; it is not just effecting settlement. Secondly, it means that the sector continues to be regulated just by Ofcom and the Phonepaid Services Authority (PSA). Because of the interconnectedness of electronic communications networks, a requirement for all potential parties in the value chain (and there are many) to become an authorised payment institution would be very damaging for the sector. A further overlay of compliance requirements would be extremely disproportionate,

considering the value of payments for third party services charged to the phone bill involved, when compared to the wider payments industry.

4. The UK Premium Rate Services (PRS) market has revenues of **£678 million**¹ (of which 70% are for mobile services). This revenue is a very valued adjunct to the core business of operators (representing, for example, about 4% of total revenue for mobile operators). When the PSD regime first came into being, industry revenues were in excess of £1 billion. While the fall in revenue is not all attributable to the PSD regulation, the restrictions in the PSD (e.g. the prohibition on claiming the exemption if supplying physical goods) have prevented the industry from exploring new services to refresh the product offering.
5. PSD II does now offer new possibilities, such as e-ticketing. However, the new exclusion introduces a new complexity – the requirement to restrict individual transactions to €50 per transaction and the cumulative spend on ‘phone-paid’ value added services to €300 per month. In response to Q4 below, Mobile UK will set out this point in more detail.
6. In outline, Mobile UK is looking for the Payment Service Regulations to find a way of implementing this requirement in a PROPORTIONATE manner, and a way that does not conflict with other obligations.

Question 1: Do you agree with the government’s proposed approach to implementation of the PSDII? Bearing in mind the maximum harmonising nature of the PSDII, do you think the structure of the regulatory regime will allow the UK’s competent authorities to enforce the regulations in a fair and equal way towards all payment service providers?

7. As Mobile UK will set out in response to questions 2 and 4, a straight copy out of the Directive could result in a very disproportionate outcome that would not be helpful to consumers or industry. Common sense dictates that the enforcement authorities must be given scope to exercise some discretion over the way in which this Directive is implemented, particularly as it relates to third party voice services carried over telecommunications networks.

Question 2: A consultation stage impact assessment of the proposed changes will be published before the end of the consultation. Do you have any comments on the impact of the PSDII set out in the impact assessment?

8. The regulatory impact assessment does not attempt to assess the adverse impact on communications networks and services and seeks further evidence direct from the sector itself. We trust that the Government will find this evidence compelling and will respond with an implementation of the PSD II that can mitigate such effects.

¹ <http://www.phonepayplus.org.uk/news-and-events/news/2016/july/annual-market-review-2015-2016>

9. Mobile UK's assessment is that the compliance costs entailed in this requirement will greatly exceed any likely benefit in terms of consumer protection.
10. PSD II has for the first time introduced financial limits into Article 3L (Negative scope) - €50 per transaction and €300 cumulative spend per subscriber per month. The latter presents the communications industry with particular difficulties and we strongly urge the Government to find some way of implementing this in a way that will be in the interests of both consumers and providers.
11. Mobile UK recognises that it is justified for there to be limits, so that this form of settlement does not become a general payment instrument operating outside the reach of financial regulation. With less than .5% (half of one percent) of mobile customers spending in excess of €300 per month on third party services that are charged to the phone bill, there is very limited prospect of this happening.
12. It is thus not the limit *per se* but calculating the cumulative spend for third party services charged to the telecommunications bill in any one month involves aggregating a subscriber's moment by moment spend across many revenue lines for which a payment to a third party will be made. These include voice services, text messages and digital content and services, which often sit across different billing platforms and form subsets of a subscriber's normal communications. Building a monitoring platform to track and enforce a €300 spending cap in real-time will cost millions of pounds for each communications network operator – a sum that would be well out of proportion to the level of business that exists today and may foreclose some of the opportunities that PSD II presents (such as ticketing for road and transport), in a market which is already comprehensively regulated by the PSA (formerly PhonepayPlus) with measures in place to protect vulnerable consumers.
13. The general view is that, while systems can be adapted to track expenditure on premium rate products on SMS (premium texting) and 'charge to bill', it will be extremely expensive and impractical to build a system for contract customers (tracking for total spend on voice services is already in place for prepaid customers, though). Discontinuing voice services in real term, once the €300 limit on third party services is reached will be very challenging, if doable at all. The call detail records (CDRs) on which charging is based are often not collected from the network in time, particularly when the customer is overseas. The current (and declining) premium voice revenues are £120m per annum². It will be far too costly in relation to the margin generated for the whole voice carrying network in the UK to get licensed by the FCA (because even if an operator is not initiating a call, any interconnecting operator is likely to carry such a call and thus come into funds through the settlement process). It is really not practical or desirable for the greater part of the UK telecommunications industry to become an API just to satisfy this requirement. There is a strong likelihood that many or most would just discontinue such services rather go through the cost of complying.
14. The provision of Directory Enquiries (DQ) is a further problem (annual revenues £82.7m and falling). In the UK, DQs are provided by third parties, mostly independent of the ECNs. It is a regulatory obligation (under the Universal Service Obligation) to provide access in a manner that

² PSA – 2016 Annual Market Review, Page 8

is not unduly discriminatory. Even if the subscriber has reached the €300 cap, DQ must be offered.

15. Mobile UK strongly urges the Government to find some way of introducing a proportionality test, so that the sector can continue to offer value added voice based services without fear of enforcement procedures arising from small technical breaches of the regulations.

Question 3: Do you agree that the government should continue to exempt the institutions listed above from the PSDII?

No comments

Question 4: If you intend to make use of the electronic communications networks and services exemption, how do you intend to track the €50 and €300 spending limit?

16. Mobile operators take several steps to monitor and control expenditure on phone paid services – partly for commercial reasons and partly to comply with PSA regulations. This means that the regulatory objectives of the PSD II (to ensure that phone paid services do not develop in to general payment instrument and to protect consumers are met by alternative means:

- a) **It can be comprehensively demonstrated that the payment mechanisms for third party services charged to the telecommunications bill, also known as premium rate services (PRS) is incapable of developing into a general payment intermediation service through other restrictions placed into Article 3I.**

While a valuable diversification from the core business of operators, PRS is very far from being or becoming a general payment service in the UK:

- PSD2 exemptions for telecom based charges are restricted to ‘digital goods and services, voice based services, tickets and donations’.
- The range of goods and services so procured do not include physical goods and tend to fall within a very narrow scope of a consumer’s overall expenditure (e.g. directory enquiries, charitable donations, gaming).
- PRS is not a cross EU payment mechanism. It is possible for services to be accessed and charged while roaming away from the subscribers home network, but it is not possible to utilise the payment facilities of non home networks without evidence of being domiciled in that country.
- The number of merchants registered with the PSA to supply services through PRS is approximately 3,000 – a very small number on the overall consumer market.

- Payment and settlement between consumer and merchant takes place within the communications industry's wholesale billing and settlement processes, not through the wider banking settlement arrangements.
- Across the 89 million mobile connections in the UK, the average expenditure per user per month on PRS is 45p and a very small number of subscribers (less than 0.5%) spend over €300 in a month.
- PRS in the UK is emphatically not now or in prospect a general payment service.

b) Consumers using 'PRS services receive a high level of protection

Subscribers who are using PRS services are afforded a high level of protection in the UK market:

Protection through a dedicated, independent regulator

- The PRS industry in the UK is regulated by the PSA, a dedicated regulator charged to ensure that subscribers have an easily accessible, independent, properly funded regulator.
- In the event that a subscriber does feel the need to complain about a service, he/she has access to a free, accessible and responsive regulator, who will pursue and fine merchants that have failed to provide a service that fulfils consumer protection standards detailed within the PSA Code and other relevant regulations.
- When a subscriber complains to the PSA, the average value of billing giving rise to a complaint is £32, sometimes aggregated over several months. The PSA is able to deal with the complaint and adjudicate on any appropriate remedy for the customer.

Protection through continuous service monitoring

- All the mobile operators employ third party audit houses to monitor continuously the PRS being made available to mobile subscribers, to check that such services are being offered in a manner that complies with contractual requirements and the PSA Code of Practice.

Protection via budgetary control

- For consumers on prepay services (38.2%), the average overall telecoms spend per user is £4.98 per month³. This consumer base chooses prepay services in order to self limit expenditure. In any event, prepay customers do not spend €300 per month on third party services and are thus not of a concern to HMT.

³ Table 4.46, Ofcom Communications Market Report 2015

Question 5: Is the approach on cascading useful to intermediaries given the limits on the exemption and the potential need for authorisation or registration for other services provided? What types of business models would benefit?

17. The ability to cascade will be essential to the effective operation of the market for phone-paid value added services. While some intermediaries may obtain Authorisations, the market will work much more efficiently and effectively if intermediaries can also benefit from the digital exclusion. For example, it is not always practical to meet the 'know your customer' for low volume, low value transactions, particularly when the end user customer is using a prepaid account which is not verified (as many are not).
18. Mobile UK's understanding is that intermediaries will also be able to benefit from the exclusion, providing that they can provide an audit report confirming that payment transactions for goods and services covered by the exclusion have been processed, and that no individual transaction has exceeded €50 and no one customer has exceeded €300 in any one month.
19. There are some further points of clarification that will be very helpful for providers and enforcing regulators:
 - a) First, the audit report for an intermediary should only cover payment transactions passing through that intermediary. Thus, if a customer of ECN provider A spends €200 with intermediary X and €200 with intermediary Y, both intermediaries should be able to submit a satisfactory audit report. The ECN provider A is only entity that, in practice, can take responsibility for the customer's total expenditure in the month.

There are a number of practical reasons for this approach:

- i) It is the primary responsibility of ECN A to monitor the expenditure of their customer.
 - ii) Intermediaries can only be expected to monitor control transactions passing through their own system.
 - iii) It will avoid the need for the auditors of the intermediaries having to make extensive enquiries with the auditors of the ECNs (a huge amount of paperwork and cost, if every intermediary has to make enquiries of every network.)
 - iv) In the event of a breach by ECN A, the enforcing authority will have the conversation with ECN A and presumably will not be holding the respective intermediaries to account also (providing no breaches have occurred within an intermediary.)
- b) Secondly, it is important to clarify that expenditure allowance originating from accounts with multiple end users can be shared across the account. Thus a corporate with 10 end users may have a cumulative monthly allowance of €3,000. This is the only practical way of addressing this point.
 - c) Thirdly, it also be very helpful to make it absolutely clear that intermediaries acquiring payment transactions that are subject to the exclusion are NOT acquiring payment transactions (i.e. are not acting as payment acquirers), as set out Part 1, 1(d) and thus do not have to seek authorisation by virtue of this activity.