

24 April 2015

DRAFT PAYMENT SERVICES DIRECTIVE ARTICLE 3L – NEGATIVE SCOPE

Dear Mr. xx

We¹ are writing to you concerning the continuing trilogue discussions on the Payment Services Directive (PSD), particularly as they relate to the measures on Negative Scope. We strongly believe that it would not be proportionate or beneficial to consumer choice for the financial limits to be taken any lower than is currently being proposed by the Council. Any such proposals will have a detrimental effect on the development of e-commerce in the EU.

For the past 30 years or so, communications providers in the UK have provided access to value added services supplied by third parties (known as Premium Rate Services [PRS] in the UK). In the early days, these services were voice based (for example, weather reports or traffic information). Over time the services have evolved to encompass new trends and technologies and are now used for services ranging from voting within television formats, competitions, games and videos at the low end to charitable donations, professional advice services, film purchases and console game purchases at the high value end. They also support Directory Enquiry services, a mandatory requirement for communications providers under the EU telecoms framework.

While there is some overlap between content and services that can be purchased via PRS and other on-line payment methods, they are not direct competitors. In summary, PRS are used for small payments, where the communications provider adds value to the transaction, and consumers enjoy the convenience and spontaneity of placing the charge for the service onto their monthly telecommunications bill or against their pre-paid credit. Even though around 60% of consumers have access to other digital payment methods, 40% do not and PRS have retained an important position for delivering consumer choice and competition in the micropayment market. At the lower end, PRS have had an important role in giving consumers access to e-commerce for the first time.

Total PRS revenues in the UK amount to c. £650m per annum. In the UK, the market is formally regulated by PhonepayPlus, under the auspices of Ofcom, the communications regulator. The communications value chain is very different to the banking value chain, making it disproportionately complex for a relatively small part of the market to be subject simultaneously to both banking and communications regulation. That is why the existing measures on negative scope in the PSD have been so crucial to maintaining PRS as a valuable payment option. Unnecessarily intrusive regulation threatens the viability of such services to continue.

For the first time, the revised PSD will introduce financial limits on content and services purchased through a communications provider. We understand that EU Council currently propose to set values for the per-transaction and per-month limits to €50 and €350 respectively. These limits allow consumers flexibility on

¹ AIME (Association for Interactive Media and Entertainment) is the UK trade association for interactive media industries and includes television and radio broadcasters, large scale charity organisations and communications providers. Members account for 80% of UK Premium Rate Service revenues. The Mobile Broadband Group represents the regulatory interests of the UK Mobile Network Operators in the UK

how to utilise their telecoms account to engage with these value added services, without the risks associated with other payment mechanisms which financial regulation is designed to protect against.

We further understand there are proposals to take these values even lower and we would like to explain why this will be limiting for consumer choice in EU markets.

While the majority of digital content and services in the UK operate up to c.€14 and voice services up to €20, a range of high value services (e.g. professional support lines over the telephone) and charitable donations are moving towards the €45 mark for digital and €60 for voice.

Additionally, the new negative scope wording that has opened the possibility for consumers to purchase tickets for travel and entertainment will be severely constrained if limits are further reduced and thus reduce consumer choice and convenience.

The premium rate services market in the UK and other Member States is a mature environment where statutory and/or self-regulation has produced consumer protection that is far more granular than the protection available on other forms of payment (i.e. regulation can specify how particular services should run). Moreover, the EU Consumer Contracts, which applies to digital and voice services, ensures consumers are fully aware of pricing before making commitments. These additional consumer protection layers do not seem to have been taken into consideration when proposing to revise down the limit values.

We are deeply concerned that the higher usage consumers will be unnecessarily inconvenienced by a lower monthly limit. A small percentage regularly spend over €200 per month on services that are not available via alternative payment mechanisms and a larger percentage reach this limit on an occasional basis. As is often the case, the higher end customers support the viability of the product offering and so lower limits will have an adverse impact across the board. In addition, the technical cost of implementing a monthly cap for a category of communications services is very high and needs to be justified by the continuation of existing business. Furthermore, imagine a consumer nearing the monthly limit, having made charitable donations, bought some digital content and music, now wishes to make a hands-free in-car call to directory enquiries. Would it be reasonable or desirable for such a person to be cut off during the call due to an unnecessarily low monthly spend limit?

We urge you to influence this proposal and suggest that there are two reasonable options, (with a preference for the latter):

- 1) Ensure that the exemption allows for limits of at least €50 per transaction and €350 per month with an capability for increasing limits during the shelf life of PSD2 or
- 2) Where the limits apply to expenditure within a single MS and there is no requirement for 'passporting' services across borders, allow each Member State to set its own limits based on its own regulatory environment for premium rate services.

AIME and the MBG would be happy to answer any supplementary questions or clarifications that you may have. I very much hope that we can count on your support.

Yours sincerely,

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