

TELEFÓNICA O2 UK LIMITED RESPONSE TO:

**“CHANGES TO GENERAL CONDITIONS AND UNIVERSAL SERVICE
CONDITIONS”**

PUBLISHED BY OFCOM

12 APRIL 2011

TELEFÓNICA O2 UK LIMITED RESPONSE – OFCOM CONSULTATION: CHANGES TO GENERAL CONDITIONS AND UNIVERSAL SERVICE CONDITIONS

EXECUTIVE SUMMARY

Introduction

1. Telefónica O2 UK Limited (O2)¹ welcomes the opportunity to respond to the Ofcom Consultation: Changes to General Conditions and Universal Service Conditions (the Consultation).
2. As a general principle, O2 supports the faithful implementation of European law, with no additional obligations (“goldplating”), unless they can be shown to be beneficial. In the case of amendments to the General Conditions of Entitlement, this means that any additional requirements should satisfy the tests set out in section 47 of the Communications Act 2003.
3. We note the changes to the General Conditions proposed by Ofcom. We set out our comments and observations in response to some of those proposals. Where we have not answered specific questions, and subject to our general observations on goldplating, Ofcom can assume that we have simply noted what is proposed.
4. Finally, we support the comments made in response to this consultation by the Mobile Broadband Group, of which, O2 is a member.

¹ Telefónica O2 UK Limited is a leading communications company for consumers and businesses in the UK, with 22.2 million mobile customers and over 700,000 fixed broadband customers at the end of 2010.

CHANGE TO GENERAL CONDITION 15

Ensuring equivalent access to the emergency services for disabled end-users

Q6: Do you agree with our proposals to ensure equivalent access to the emergency services for disabled users and to mandated the provision of Emergency SMS?

5. We note that Ofcom has concluded that mandating access to emergency SMS is necessary to maintain equivalent access to 112/999 and to ensure that the Article 26(4) of the USD is met.
6. Ofcom recognises that mobile operators have already committed to making the Emergency SMS scheme permanent. However, because this is a “voluntary” commitment, Ofcom maintains that a mandatory requirement should be introduced to provide certainty for disabled end users (ie. to ensure that a provider cannot subsequently withdraw its commitment.). Of course, in practice, were a provider to withdraw, this does not mean that subscribers would not have the option of switching to a provider that did continue to support the service. We note that Ofcom does not appear to consider this.
7. Generally, whilst we understand the basis of Ofcom’s analysis, that mandating the requirement does not add additional burden since providers have already agreed to provide the service permanently, the rationale for intervention, that the change is the minimum necessary is not strictly correct. If Ofcom’s position is that the Emergency SMS service must be available from all providers, then an option is simply to mandate the service in the event that a provider withdraws.

Q7: Do you agree that given the existing measures that are in place to help disabled users to access 116XXX services, it is not necessary to make further change4d to GC15 in this respect?

8. We agree that no further additions to GC 15 are necessary..

CHANGES TO GENERAL CONDITION 17

Allocation, Adoption and Use of Telephone Numbers

Q8: Do you agree with our proposals for transferring the rights of use of telephone number and also for granting their use for a limited period of time?

9. We note that Ofcom anticipates that the changes will have no material effect since they reflect current working practices.

GENERAL CONDITION 18

Facilitating a change of provider (number portability)

Q9: Do you agree with our proposals on the one working day requirement in relation to bulk mobile ports and in relation to fixed porting? If not, please explain why?

10. We would recommend some additional clarification.
11. In particular, while we agree with Ofcom's policy on not extending the obligation to provide a PAC within two hours to subscribers wishing to port more than twenty four mobile numbers, we are concerned that the policy could be circumvented, given the proposed wording of General Condition 18. As far as we can see, there is nothing to prevent those wishing to port more than twenty four numbers from splitting their request into several requests for batches of up to twenty four numbers and, in so doing, require mobile communication providers to supply PACs in respect of each subdivision. Ofcom does not appear to have considered how the proposed wording of General Condition 18 may be open to abuse.
12. We believe that Ofcom should clarify amend General Condition 18 to prevent this from happening. Specifically, Ofcom needs to confirm that PAC delivery within 2 hours by SMS is a requirement for residential and small SME customers only. PAC requests from larger SME and corporate businesses should continue to follow timeframes supported by the industry Porting Manual. General Condition 18 needs to be amended to ensure that the process designed for residential and small business customers is not used by other customers.

Q10: Do you agree with our proposed approach to the porting compensation scheme?

13. We note that Ofcom explains that the "*information requirements are made pursuant to Article 20 of the USD*" [10.60]. Can Ofcom please explain which part of Article 20 it considers requires transparency of the porting compensation

scheme in terms and conditions (and website). The BIS consultation made no such reference. There is no reason for Ofcom to implement this provision immediately, particularly without full consideration of the impact and costs involved required to amend terms and conditions and other material by 25 May 2011. We recommend a reasonable implementation period should apply

14. The Directive makes clear that *“loss of service during the process of porting shall not exceed one working day”*. Ofcom’s proposed wording for GC 18.9 must reflect this. It is only in these circumstances where the question of compensation arises (and, as the MBG response highlights, there are a number of detailed aspects in such a scheme that need to be considered.).
15. Furthermore, as the MBG response highlights, Ofcom does not make clear who is responsible for paying compensation. A possible way of rectifying this is for Ofcom to amend the draft General Condition 18.9 such that it is made clear that it is where *“the “Communications Provider “causes” delay (that results in loss of service) then “the Communications Provider shall provide reasonable compensation.”*
16. Generally, we agree with Ofcom’s view that providers’ standard complaint handling processes, along with existing ADR schemes, are reasonable routes to deliver a compliant scheme here.

GENERAL CONDITION 20

Retitled; “Access to Numbers and Services”

Q11: Do you agree with our proposed approach on requirements relating to ensuring access to all numbers within the Community, the charging of ETNS numbers and calling the hotline for missing children on 116000?

Access to numbers

17. We note that the new requirement is for communications providers to ensure that end users can “access ***and use*** services using non-geographic numbers within the Community”, but that in Ofcom’s view [11.17] this is unlikely to have an impact beyond the existing requirement to provide access to non-geographic numbers. It is not clear what difference in practice this amendment means.

Blocking access to numbers/ services

18. We note that Ofcom intends to issue guidance on the proposed arrangements for Ofcom to require blocking of access to numbers or services where this is justified by reasons of fraud and misuse.

19. We will await Ofcom consultation on this aspect.

CONCLUDING COMMENTS

20. We would be pleased to discuss our comments in greater detail if that would be of assistance.

Telefónica O2 UK Limited

April 2011