

THE 0500 NUMBER RANGE

03/01/13

“[OFCOM’S] PREFERRED OPTION IS TO WITHDRAW THE 0500 RANGE. WE CONSIDER THAT, ON BALANCE, THIS OFFERS THE GREATEST NET BENEFIT TO CONSUMER - REDUCING CONSUMER CONFUSION, SECURES BEST USE OF TELEPHONE NUMBERS, AND ENHANCES THE CLARITY AND SIMPLICITY OF THE NEW FREEPHONE REGIME (080) FOR THE BENEFIT OF CONSUMERS AND BUSINESSES.”¹

Cable&Wireless Worldwide as the range-holder for 0500 numbers profoundly disagrees with Ofcom’s preference and conclusions to the *0500 Number Range* consultation. In our opinion the obvious conclusion to this consultation should be that 0500 continues to mirror 0800 and becomes free-to-caller under the auspices of Ofcom’s *NGCS Review*. This is an approach which Ofcom’s research found to be the preferred option of Service Providers and assuming the same conclusions as Ofcom’s research in the *NGCS Review* will find consumer favour too.

In anticipation that the *NGCS Review* Statement aligns with Ofcom’s consultation proposals that 0800 be made free-to-caller, we agree that neither the continuation of the status quo nor indeed the “maximum mobile price” are realistic options.

Unfortunately we find the regulatory and evidential basis of Ofcom’s preferred option to be selective and based upon a cost benefit analysis that has identified a series of costs but which fails to provide any quantified benefits for the preferred option; this cannot justify regulatory change. As a consequence we find that Ofcom’s conclusion to withdraw 0500 to be based on an uncertain legal basis, a flawed cost benefit analysis and a stated preference at odds with regulatory precedent. We contend that Ofcom should adopt option 2 and maintain 0500 as free-to-caller.

OFCOM’S DUTIES

The legal framework underpinning Ofcom’s duties and powers in relation to numbers is set out in the consultation at paragraph 4.2. Ofcom articulates that the relevant legal powers are sections 56 – 63 of the Communications Act (2003) and then, without identifying which particular legal power which it seeks to exercise expands upon a selection of these sections. These are:

¹ <http://stakeholders.ofcom.org.uk/binaries/consultations/1036586/summary/condoc.pdf> - para 1.8

- Section 56: the duty to publish the National Numbering Plan
- Section 58: the imposition of tariff principles and maximum prices for consumer protection purposes.
- Section 61: the right to withdraw number ranges
 - where the person allocated the numbers consents to the withdrawal
 - the withdrawal is made for the purposes of a numbering reorganisation
 - the allocated numbers comprise a series of numbers which have not to a significant extent been adopted or used during such period as may be so specified.
- Section 63: to secure the best use of numbers and to encourage efficiency and innovation for that purpose.

Ofcom does not appear to identify which particular section is being the basis for its decision in this case, instead referring to them all in conjunction with the themes of consumer protection and efficient number usage which are liberally drawn upon to underpin Ofcom's seven assessment criteria: consumer price awareness; efficient prices; service quality, variety and innovation; access to socially important services; regulatory burden; impact on preferred choice for 0800 range and efficiency & best use of numbers.

Cable&Wireless Worldwide is familiar with the first five policy objectives from Ofcom's *NGCS Review*, but we question the application of the latter two new criteria as apparent tie-breakers in the decision making process to determine whether to make 0500 free-to-caller or to withdraw the range.

We do not suggest that Ofcom is mistaken to include these assessments, but rather the application, in that before arriving at a preference to withdraw the 0500 range, Ofcom should have paid fuller consideration to the question of the validity of number withdrawal itself. We consider this further below.

Ofcom has the right to withdraw number ranges as identified in Section 61 of the Act, but as stated in 61 (1) this power exists "if, and only if, the case is one in which the withdrawal of an allocation is

authorised by this section". Ofcom has picked three of the ten provisions as examples and for brevity we will concentrate on this selection and where appropriate Ofcom's chosen précises:

- a) where the person allocated the numbers consents to the withdrawal

Cable&Wireless Worldwide has not been approached for its consent to the withdrawal of the 0500 range. We note that Ofcom has consulted with some End-Users of the range and that their preference (irrespective of further comments regarding withdrawal) was for continuation of a range which mirrored 0800.

- b) the withdrawal is made for the purposes of a numbering reorganisation

Cable&Wireless Worldwide has several concerns about the transposition of this point from the Communications Act and the accompanying footnote. Firstly the full content of Section 61(2)(c) continues "...applicable to a particular series of telephone numbers". The current consultation relates to 0500 numbers in isolation and so has been divorced from the consideration of 055 and 056 numbers. Withdrawal of part of the 05 range under the guise of "number reorganisation" should be done in conjunction with the consideration of other potentially affected ranges or risk predetermining their fate, particularly where an emphasis, which we dispute, is being placed on making efficient use of numbering resource.

Cable&Wireless Worldwide questions how it can possibly be an efficient use of numbering resource to withdraw a range that is valued by its users, with no application specified for its subsequent use, and any usage all-but-impossible without withdrawal of further number ranges.

Ofcom appends a footnote to this provision: "A withdrawal under this provision is also subject to the requirements of section 62 of the Act".² In fact section 61(2) states that all of the provisions for withdrawal of a number range are subject to section 62, not just this one. Cable&Wireless Worldwide is concerned that Ofcom then neglects to include any further mention of its duties under section 62, despite the provisions having material relevance.

² <http://stakeholders.ofcom.org.uk/binaries/consultations/1036586/summary/condoc.pdf> - p.g. 16

It appears that Ofcom's consideration of its legal powers (6.18 onwards) has been to explore the mechanisms necessary to amend the General Conditions and Numbering Plan to enact a withdrawal. By doing so it appears to have entirely neglected to consider, or at least consult upon, the checks that exist in relation to the authorisation of those powers.

Section 62(3) states that "The allocation must not be withdrawn if the reorganisation fails to provide for withdrawn allocations to be replaced by allocations of telephone numbers so nearly resembling the numbers to which the withdrawal relates as the purpose of the reorganisation allows". We acknowledge that today the 0800 range already exists in parallel to 0500 and may be seen by Ofcom to offer a suitable alternative, but that is to ignore the behaviour Ofcom acknowledges in 3.17. Organisations are today running 0500 in parallel to 0800, but the reason there hasn't been a migration away from 0500 which appears to have been missed in discussions with Service Providers is the value of those 0500 numbers which are in use. A high proportion of the numbers in use are 'golden' numbers which are easily memorable and therefore of value hence why they continue to find use.

In contrast to when Ofcom made regulatory changes to the 0870 number range, no guaranteed migration path has been provided to a comparable matching number i.e. an equivalent transition was provided from 0870 to 0370. There is no equivalent stock of 0800 golden numbers readily available within existing supplies, nor has Ofcom given any explicit consideration of this requirement before reaching its preferred decision. Indeed, any safeguards on the allocation of 0800 numbers, scoped to provide a migration path for at least some of the 0500 numbers, were removed following the then parliamentary Trade & Industry Select Committee's instruction to Oftel to reconsider its conclusions when this matter was last discussed.

Furthermore Section 62 of the Act guards against undue discrimination against particular Communications Providers. As Cable&Wireless Worldwide is the sole rangeholder of 0500

numbers as a result of previous regulatory decisions, rather than through choice³, the implications of any changes to the 0500 range fall disproportionately upon Cable&Wireless Worldwide and its customers.

As evidence for the less obvious discriminatory effects, we refer to Ofcom's assertion that the impact would be mitigated via changed number announcements. In order to implement the messaging and to avoid consumer harm the terminating Communication Provider (i.e. Cable&Wireless Worldwide for a non-ported number, the recipient Communication Provider for a ported number) would have to send "answer, no charge" in the call signalling. We must do this, otherwise calls to the announcement from those originating Communication Providers that charge for calls to 0500 will be charged at their relevant retail rate. However, the effect of this will be to zero-rate both retail and interconnect charges for the call. As Cable&Wireless Worldwide is the rangeholder, for the significant proportion of 0500 numbers that are ported, this will result in our being unable to recover transit costs for these calls via the APCC. No other Communications Provider will face such costs, so Cable&Wireless Worldwide will be discriminated against.

In this regard we believe Ofcom has erred in its consideration of the legal grounds for a number withdrawal.

- c) the allocated numbers comprise a series of numbers which have not been to a significant extent adopted or used during such a period as may so be specified

Ofcom refers to utilization of the 0500 ranges as being "extremely" small (3.23) and traffic volumes as being "very small, and a very large proportion of 0500 call volume is generated by a very small number of SPs".⁴ Cable&Wireless Worldwide considers the consistent use of such language throughout the consultation as unfortunate and not truly reflective of the traffic information which it supplied to Ofcom. The redacted table in 3.1 contains traffic

³ Cable&Wireless Worldwide's predecessor Mercury Communications was assigned the 0500 range as they were denied any access to the far better known 0800 range at the launch of competitive services in the UK.

⁴ <http://stakeholders.ofcom.org.uk/binaries/consultations/1036586/summary/condoc.pdf> - para. 5.86

information from the Cable&Wireless Worldwide network which showed traffic to 0500 numbers to be commensurate, for example, to that terminated to 118 Directory Enquiry services. A number range which is similarly characterised by a “very large proportion of the total... call volume... generated by a very small number of SPs”. There is no corresponding suggestion that this declining service should be withdrawn.

Cable&Wireless Worldwide is unaware of any attempt having been made to compare 0500 traffic volumes with those of other number ranges such as 055 or 056 or 076, against which we suspect the comparison is likely to be far more favourable.

The 0500 number range has been closed to new allocations for over a decade, yet despite this, there remains tens of millions of minutes terminated to the range annually. This is not the characteristic of a number range with no significant usage but rather of a series of extremely ‘sticky’ consumer-valued services which continue to attract calls.

EFFICIENT USE OF NUMBERS

Ofcom appears to predicate a significant part of its decision to favour the withdrawal of 0500 upon the view that the continuation of 0500 represents an inefficient use of numbers. The Act requires Ofcom to secure the best use of numbers and to encourage efficiency and innovation for that purpose. However it is difficult to give this consideration much weight in the current case and accordingly we believe it should have been afforded lesser consideration during the assessment of the options.

Numbering is a finite resource and one which has in geographic and certain 08 ranges been under considerable pressure. Ofcom has addressed these pressures as they have arisen and has an effective number management process in place to deal with any future issues as they arise. In stark contrast the 05x range is flanked by two entirely unused ranges, 04x and 06x, and as a whole has plenty of scope for utilisation. Ofcom has put forward no proposals for the usage of 04x, 05x or 06x. It is therefore unclear to Cable&Wireless Worldwide that anything other than a theoretical inefficiency exists. It is questionable how Ofcom can justify the cost of enforced migration when it is

substantially predicated upon a theoretical precept without the accompanying improvements to service availability or innovation one would expect to be gained from closing a number range.

PRECEDENT AND COMPARISON TO OTHER NUMBER RANGES

Cable&Wireless Worldwide notes that there have been other regulatory precedents in relation to the withdrawal of number ranges. We have already brought to Ofcom's attention the difficulties faced by its predecessor Oftel in relation to 0500. More recently however there have been other Ofcom decisions which should act as precedents if Ofcom's stated principles of regulatory certainty and consistency are to be realised.

Firstly following a review Ofcom decided not to close or withdraw the 070 range⁵. 070 is a range with low consumer awareness and in contrast to 0500 a track-record of serious consumer harm; to the extent that PhonepayPlus was required to levy fines totalling £625k at the time of Ofcom's statement due to a series of 'call back' scams. Despite this Ofcom found that any benefit from migration or closure was outweighed by the associated migration costs.

A lack of evidence for consumer confusion between 070's "Personal Numbers" and 07 "Mobile Numbers" was also cited and whilst there is a similar lack of evidence of confusion between 0800 and 0500, by way of contrast the only recorded suggestion of consumer harm in relation to 0500 is tangential and relates primarily to retail pricing of 0800 calls, an aspect which Ofcom will address through its *NGCS Review* and which can be easily applied to 0500 without the cost of enforced migration. Further, as set out in the next section Cable&Wireless Worldwide cannot understand how lack of customer awareness of the pricing of 0500 presents any detriment to the holders of and callers to 0800 numbers. If there is any detriment caused by lack of pricing awareness on 0500, it would be to 0500 number holders as callers would be reluctant to place calls to the range.

A similar situation already exists in relation to the 0300 number range. Calls to these numbers are charged at the same price as to a geographic number and are reserved for charities and not-for-profit organisations, although in our experience consumer awareness of the range remains poor.

⁵ <http://stakeholders.ofcom.org.uk/consultations/070options/statement/>

There are undeniable visual similarities between the new 0300 range, the 0800 and 0500 numbers and when the range was introduced Cable&Wireless Worldwide was aware of initial uncertainty as to the nature and pricing of the range. But the key element is that this uncertainty only affected the 0300 range. There has never been any suggestion that there was an adverse impact upon the 0800 range.

It is clear that the remaining 0500 number holders have a preference to retain their numbers, which clearly demonstrates that they do not see any detriment impacting the likelihood of callers contacting their numbers. We do not believe that withdrawal of the 0500 range represents the least intrusive regulatory tool at Ofcom's disposal and thereby fails to meet its stated bias against intervention.

Secondly the changes to 0870 achieved their regulatory goals without requiring the withdrawal of the range and enforced migration and went a step further by providing a clear, guaranteed migration path to a matching number for those that did want to move. The current consultation in comparison discriminates unfairly against 0500 Service Providers by enforcing a migration and failing to provide a migration path beyond a general number range.

COST BENEFIT ANALYSIS

Cable&Wireless Worldwide notes the reasons given by Ofcom for not conducting a full quantitative cost benefit analysis. However whether quantitative or qualitative we consider that any assessment must demonstrate a positive cost benefit analysis for the chosen option in order for Ofcom to impose regulatory change. We agree that the status quo and the proposal to turn 0500 into a 'Maximum mobile price' range are not suitable in the context of the *NGCS Review*. However, keeping in mind the *NGCS Review* as background, when considering a 'Free to Caller' range versus the cost of withdrawal we do not believe Ofcom's analysis can justify the latter's intrusive intervention.

If 0500 has so much of a lower recognition than 0800 amongst consumers, (and we acknowledge that such recognition appears universally poor), we question how it can have any sort of meaningful detrimental impact upon its more well-known counterpart. Ofcom is concerned that two different Freephone numbers may cause undue confusion amongst consumers, but provides little evidence

to support any assertion that lack of knowledge of 0500 pricing could have any impact on understanding that 0800 is free-to-caller. Furthermore the 0300 range provides similar opportunity for consumer confusion as we have seen, but there is no suggestion that it serves to undermine the 0800 range any more than there is evidence that this will happen with 0500. We do not believe there is any tangible evidence, and Ofcom has not offered any, that consumers cannot and will not understand messaging that 0800 and 0500 are both Free to Caller.

Irrespective of whether or not a consumer does recognise the cost of calling 0500 post the *NGCS Review* implementation where is the evidence of consumer harm if the caller doesn't understand the cost of the call but receives it for free anyway and the Service Provider remains happy to pay for receiving the call?

Ofcom's analysis has identified some costs involved in withdrawing the 0500 range and we note the efforts since the publication of the consultation to contact Service Providers of services of social value which are likely to have been underestimated in the initial consultation. Work since suggests that the percentage of services of social value may exceed the 8% on 0800, although it is likely to be an appropriate indicative figure. However the crux of the matter is that Ofcom has not provided any tangible or quantifiable benefit resulting from the closure of 0500. Whatever the social or financial cost of closure may be there is no evidence of benefit offered to offset the forced migration of services other than a theoretical benefit to consumer confusion in relation to 0800, which is itself theoretical and offered up with no supporting evidence.

In summary, we consider that:

- no consumer harm exists from continuing to operate the 0500 range on the same basis as the 0800 range and there is no real benefit identified from closing the 0500 range; Ofcom has not presented any compelling evidence of either;
- the regulatory precedent is of ranges being preserved rather than migration enforced, even in cases where the consumer harm and/or benefit from closure has been much clearer than in this case (e.g. 0870 and 070); and

- no convincing legal basis for withdrawal of the 0500 range has been put forward by Ofcom in this consultation;

Therefore in our view it is clear that the correct course of action should be for 0500 to continue to mirror 0800 under the auspices of the NGCS regime.