



# BT's response to Ofcom's consultation "The 0500 number range"

31 January 2014

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## **Executive summary**

Our response to your specific consultation questions is below. However, we believe that options outside of Ofcom's proposals have been disregarded too swiftly and we have therefore set them out again here to ensure they are reconsidered.

We additionally have comments on the legal framework within which Ofcom's proposals must be assessed.

## **Summary of BT's position**

We are disappointed by Ofcom's determination to continue to pursue the withdrawal of the 0500 number range notwithstanding the arguments presented by BT in its response to the October 2012 consultation, which sought to demonstrate how much better the option of making 0500 free-to-caller would be for consumers and businesses currently using these numbers.

Having considered the revised proposals, we continue to believe that the benefits of withdrawal identified by Ofcom would not outweigh the harm and costs associated with the withdrawal, especially in the context of a declining market.

Ofcom recognizes in paragraph 2.11 that most SPs favour the option of making the range free to all callers. This is the same option favoured by BT and by Vodafone.

More importantly, Ofcom has not identified any consumer harm in the current use of 0500 number range, except the fact that callers are normally charged from mobile networks, as they are for the 080 number range. However, this issue would remain unresolved up to some point in 2017 if the current proposal was confirmed, while if the 0500 number range were to be regulated in the same way as 080, as we proposed, it would be resolved in June 2015. We therefore believe that the proposed withdrawal not only will not be welcomed by the SPs, who will be forced to change their numbers, but this solution will not address effectively Ofcom's concerns about consumers' lack of awareness and potential harm.

For the above reasons, we continue to prefer the option of making 0500 range free-to-caller as for the 080 range, as this is the option that would best maximise the interests of UK consumers.

Furthermore, we believe that the withdrawal option would create some serious issues concerning undue discrimination (see post) if the withdrawal option is implemented.

The only way to partially limit its discriminatory effects would be by keeping the identified number sub-range closed to new businesses, not only during the 3-year of migration period but also

afterwards. This measure, though not helpful for increasing the level of utilization of the sub-range, is the only viable way to prevent the distortion in the market for free-phone services. Distortion will occur if Ofcom makes available all the numbers in the used blocks of the 080X sub-range to Vodafone, as Vodafone would then have access to a large quantity of attractive “golden” numbers not available to other suppliers.

### **Legal framework**

We note Ofcom’s revised view on the appropriate legal basis for a withdrawal of the 0500 range and its comments on the various legal tests which must be satisfied to exercise such a withdrawal.<sup>1</sup>

According to paragraph 3.9<sup>2</sup>, Ofcom considers that in the light of its revised proposals, section 61(2)(c) of the Act is the most appropriate legal basis on which to proceed i.e. that such revised proposals constitute a withdrawal made for the purposes of a numbering re-organisation applicable to a particular series of numbers.

Ofcom recognises<sup>3</sup> that if section 61(2)(c) is the most appropriate legal basis on which to proceed, then its revised proposals must also satisfy certain specific requirements – set out in section 62 of the Act – and also its general duty in relation to its numbering functions.

Section 62(2) of the Act sets out 3 specific requirements, the first of which reads as follows:

*The allocation is to be withdrawn only if the reorganisation, so far as it relates to numbers of any description, is not such as to discriminate unduly—*

*(a) against particular communications providers;*

*(b) against particular users of the allocated numbers; or*

*(c) against a particular description of such providers or users.*

We have a two-fold concern over the ability of Ofcom’s revised proposals to meet this particular requirement.

First, as stated previously, these very proposals, involving as they do a number range allocated originally to Mercury Communications, now Vodafone (C&WW) and still overwhelmingly affecting its SPs and customers, will affect Vodafone (C&WW)

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<sup>1</sup> See paragraphs 3.1-3.3.49, pages 23-33, December 2013 Consultation

<sup>2</sup> *ibid*

<sup>3</sup> Paragraph 3.11

disproportionately and therefore may be argued to discriminate unduly against them as a particular CP. We note that Vodafone (C&WW) has not given its consent to this re-organisation. We continue to have misgivings as to whether the benefits of these proposals outweigh the disadvantages.

Secondly, we believe that the implications of Ofcom's proposal relating to the time limited allocation of the 080X migration sub-range needs to be assessed against the same test under section 62(2) of the Act. This is just as much a feature of the allocation as the number range itself. Paragraph 2.55 of Ofcom's revised proposals states:

*2.55 In order to promote the best and most efficient use of numbers, we are therefore proposing to allocate the entire 080X migration sub-range to Vodafone, but make this allocation subject to a time limitation. That limitation will apply unless one or more 080X numbers from within a block of 10,000 numbers is used by an SP migrating from the 0500 range, in which case the allocation of that particular block to Vodafone (C&WW) will not be time-limited. Where Vodafone (C&WW) retains a 10,000 block of numbers at the end of the limitation period, it will be able to make unused numbers within that block available to new SPs which did not previously operate on the 0500 range.*

By contrast with our first concern, we would argue that this particular proposal would unduly discriminate against other CPs, particularly those who are not afforded the same generous treatment as accorded to Vodafone (C&WW). As argued hereafter, Ofcom should check the utilization of numbers before the allocation and only allocate to Vodafone (C&WW) the 10k blocks that are in active use at the outset. Moreover, in allocating the whole sub-range to Vodafone (with the exception of unused 10k blocks), Ofcom would need to make sure that the limitation to use numbers in the 080X sub-range only for the purpose of enabling its SPs to migrate its service from the 0500 number range applies to Vodafone as well as to other CPs. The sub-range is not open for new business.

At this stage, we do not believe it is necessary to comment on the other 2 specific requirements under section 62(2) of the Act nor on the discharge of Ofcom's general duty in carrying out its numbering functions.

## **Responses to consultation questions**

*Q2.1: Should new replacement 080 numbers – offered to SPs with 0500 numbers in use at present as a migration path away from the 0500 range, prior to the withdrawal of the 0500 range – begin with an 080 85- prefix or with an 080 50- prefix? Please explain your preference.*

We would prefer the 080 85 sub-range as the 0808 is already in use and therefore well known by consumers as a free-phone service. The use of this sub-range would then help consumers' awareness.

*Q2.2: Do you agree with our assessment of the technical difficulties, and potentially significant costs and disruption, that would result from making the proposed 080X migration sub-range available for allocation to all CPs currently hosting active 0500 telephone numbers and that, accordingly, it is appropriate to restrict the allocation of the sub-range to Vodafone (C&WW) during the migration period? If not, please explain your reasons.*

We agree with the technical difficulties identified by Ofcom that would result from making the proposed 080X migration sub-range available for allocation to all CPs currently hosting active 0500 telephone numbers.

However we believe that Ofcom should check the utilization of numbers before the allocation, and therefore allocate to Vodafone only the 10k blocks that include numbers used by SPs.

Moreover in allocating the whole sub-range to Vodafone (with the exception of unused 10k blocks), Ofcom would need to make sure that the limitation to use numbers in the 080X sub-range only for the purpose of enabling its SPs to migrate its service from the 0500 number range applies to Vodafone as well as to other CPs.

*Q2.3: Do you agree with the measures proposed to ensure that all 0500 SPs are able to migrate regardless of the CP they use to host their 0500 number(s) currently? If not, please explain your reasons.*

We agree, although we believe that further measures have to be taken to ensure that all CPs are treated equally not only during the 3-year of limitation period but also afterwards. In order to prevent competitive advantages to Vodafone, the sub-range has to remain

closed. If Vodafone could make unused numbers available to new SPs, getting access to a potential wide range of golden numbers available on the new sub-range, that would distort the market for free-phone services where golden numbers are very important to customers and very rare at the same time. The competitive advantages to Vodafone would be evident and Ofcom's revised proposal would not satisfy the requirement of ensuring that there is no undue discrimination "against particular communications providers". Ofcom's purpose to incentivise an efficient use of telephone numbers would not justify in our view such discrimination.

Moreover, Ofcom says it will consider how to manage the unused blocks that will be reverted to it at the end of the limitation period. We believe it would be unacceptable to allocate them to Vodafone as that would only worsen the distortion in the market place as described above.

At the same time, should Ofcom open up the unused blocks in the 080X sub-range to the other CPs, we assume that any spare ranges returned to Ofcom would be at the 10k level as per the current allocation for non-geographic ranges. Allocation below the 10k block may have an impact on BT's network.

We prefer however that the entire 080X sub-range remains a closed sub-range.

*Q2.4: Do you agree with our proposal to impose a time limitation of 3 years and 3 months on the allocation of each block of 10,000 numbers within the 080X migration sub-range to Vodafone (C&WW), save to the extent that at least one number within the block is taken up by a migrating 0500 SP (in which case the allocation of that block will not be so time-limited)? If not, please explain your reasons.*

As stated in our answer to Q2.3, we agree with the proposed time limitation to the extent that both the unused blocks, that will be reverted to Ofcom, and the used blocks allocated to Vodafone will remain closed.

*Q2.5: Do you agree with our proposal of a 3-year timeframe for the withdrawal of 0500 numbers and for the migration of active services on these numbers to a new 080X sub-range (if so desired by any individual SP operating an 0500 number)? If not, please explain your reasons.*

We agree that a 3-year migration period is appropriate so long as the final statement contains all the details to potentially start the migration immediately.

*Q3.1: Do you have any comments on the draft modifications to the Numbering Plan, as set out in Annex 8, that we are proposing? Where you disagree with any of the proposed modifications, please explain why.*

We do not have further amendments to the numbering plan.

*Q3.2: Do you have any comments on the draft modifications to the numbering application form, Form S8, as set out in Annex 9, that we are proposing? Where you disagree with any of the proposed modifications, please explain why.*

We do not have further amendments to the numbering application form.

However, with Ofcom looking to move from a paper based 16 bespoke application forms process to a single application via an online portal, as per the recent 'Consultation on Telephone Number Application Forms', Ofcom may wish to consider reviewing the draft online form 08 section to make reference to the 0500 migration range changes to 080xx to assist CPs during the number selection process.