



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

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Comments can be addressed via e-mail to Giuliana de Falco at the following address:
giuliana.defalco@bt.com

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Executive summary

BT shares Ofcom's view that the current regulation for 0500 number range needs to be reviewed as we move to the new non-geographic call regime that will be implemented in 2014.

BT still favours Ofcom's original preference, that is to keep 0500 open for existing numbers and aligned it with 080. With the current NGCS proposals, this means that it would become a free to call number range, including from mobiles.

We were surprised therefore by Ofcom's proposal to withdraw the 0500 number range, given:

- The view Ofcom expressed previously in the December 2010 and April 2012 consultations and which was largely supported by the industry.
- Ofcom hasn't demonstrated consumer harm or complaints arising from the continuing use of 0500 alongside 080 – unsurprising given that it's a Freephone range.
- Ofcom has not performed a Cost Benefit Analysis to show how the cost of customers being forced to change their numbers (often "golden numbers") stacks up against putative benefits.
- Ofcom hasn't shown how tariff awareness is particularly critical for 0500, given the calls would be free while lack of price awareness is common to nearly all non-geographic number ranges.
- The level of utilisation of the 0500 range is unlikely to be lower or significantly lower than some other open ranges, such as 033 despite being closed to new use since 2001.

Ofcom seems to be suggesting that the continuing existence of 0500 undermines 080 as the free brand. However, at the same time, Ofcom is saying that there is a lack of tariff awareness and little use of 0500. We don't think Ofcom can have it both ways.

It is worth noting that many service providers have either an 080 number or 0500 number simply as a result of a choice of provider they made over ten years ago (BT or Mercury/Cable and Wireless). It seems wrong that they should now be treated differently; those that had chosen a 0500 number having to change it with all the ensuing cost and inconvenience.

We note that Ofcom has not indicated what better use it has in mind for the 0500 range than that which it is currently fulfilling – unsurprising given the abundance of free space within the numbering plan – we note that 04 and 06 are unused, 05 remains largely free though still used (unless Ofcom is pre-judging the outcome of the 055/056 consultation that you expect to publish during Quarter 1 2013) and there is still a lot of spare numbering space in 03, 08 and 09.

In addition, BT has some reservations as to (i) the appropriateness of the legal basis that Ofcom has chosen to implement its proposal and (ii) whether the removal of the 0500 number range is consistent with Ofcom's obligation to act in a way that is proportionate (with a bias against intervention) and not unduly discriminatory.

Market context

Before answering the specific consultation questions we would like to comment on Ofcom's conclusions regarding the market context, summarized in par. 3.23 of the consultation document.

- i. *Utilization of the 0500 range is extremely small and the number of active 0500 lines has been declining year-on-year;*

Rather than a sign of lack of interest from SPs, we believe that the low utilization of the 0500 range is just a consequence of the range closure in 2001.

However the low level of utilization is not a peculiarity of 0500, being common to the 03 range as well, as Ofcom pointed out in the April 2012 Consultation ('usage and consumer awareness of the range has been up to now low' ... 'Usage levels for 03 numbers remain relatively low')¹.

- ii. *0500 call volume relative to 080 call volume is very small, and a very large proportion of 0500 call volume is generated by a very small number of SPs;*

Again volumes are smaller because the number range is closed. Although the utilization of the 0500 range is small compared to the 080 number range, the volumes of calls per customer are as high as for the 080 number range, and for smaller SPs those volumes can represent a high percentage of their traffic. The circumstance that a large proportion of call volume is generated by a small number of SPs is the same for any number range including 080. This is not a sign of market failure.

- iii. *Consumer understanding of 0500 numbers and call charges is very poor;*

Ofcom has not shown why low consumer awareness which is common to other ranges, such as geographic, mobile, 03, 0844, 0871 and any particular 09 range should be specifically critical to 0500. Ofcom's April 2012 Consultation identifies in fact lack of

¹ Part A par. 1.12: The 03 range is the logical choice for a non-geographic number range to be linked to the price of a normal landline call; it is already set up to serve this purpose and no regulatory change is required. Whilst usage and consumer awareness of the range has been up to now been low, we consider the package of changes we are proposing offer an opportunity to reinvigorate the range and encourage usage.
Part B par. 7.11: Usage levels for 03 numbers remain relatively low. The 2010 Flow of Funds study found there to be 223 million minutes on the 03 range in 2009 which accounts for less than 1% of total NGCs. Furthermore, evidence from our 2009 Consumer survey found that very few consumers were aware of the price of 03 calls. This lack of consumer awareness is also reinforced by views from respondents to the December 2010 Consultation (see Section 11 for more details).

awareness as one of the relevant market failures in the market for all non-geographic calls – please refer paragraphs 1.3-1.5 Part A of the main condoc².

Ofcom found that non-geographic calls are confusing and consumers do not understand the differences between different number ranges and do not know how much calls to different number types cost.

Ofcom 2011 Consumer Survey shows low levels of price awareness generally both from fixed and from mobile telephones. See below:

“3.2 Cost of calls from fixed line telephones

The majority of respondents said that they did not know the cost per minute of making calls from their fixed line to any type of telephone number (Figure 1). The proportion of respondents who claimed to know the cost per minute of calling was relatively low for 07 numbers (at 12%), 0845 (14%) and 0870 numbers (7%).

3.3 Cost of calls from mobile telephones

The responses to questions about the cost of calls from mobile phones were similar to those about fixed line calls (Figure 2). Again, for each number range, only a minority of respondents claimed to know the cost per minute. The proportion who claimed to know the cost per minute of calling from a mobile phone was relatively low for the number ranges beginning with 08, at 13% for 080 numbers, 10% for 0845 and 7% for 0870.”

And in similar circumstances of low usage and consumer awareness (i.e. in the case of 03) Ofcom believes that the new regime for NGCS will offer an opportunity to reinvigorate the 03 range and encourage usage. We therefore think that the case for singling out the 0500 range for withdrawal is very weak.

We appreciate the lack of awareness is greater for 0500 than for 080 but it is difficult to conclude that there is material harm or detriment arising, given that calls are free from

² 1.3 We highlighted our concerns about how the market appeared to be failing consumers. The responses to that consultation and our subsequent research, provided further evidence of our view that there is clearly identified substantial consumer detriment arising from the retail market failures and this supports a case for reform of that market.

1.4 Today, non-geographic calls are confusing; consumers often do not know how much those calls cost. This confusion arises, in part, because each phone company chooses its own structure of prices (per call, per minute, in or out of bundle, and so on) and information about prices (that is complex to begin with) may be confusing, or hard to obtain. This complexity also means that it is very difficult for the organisation being called to let consumers know how much they will be charged for contacting them.

1.5 Our review sets out the evidence that this lack of awareness combined with other factors, such as incomplete understanding of revenue sharing, leads callers to overestimate the costs of calling non-geographic numbers, making them generally suspicious of these numbers and reluctant to use them.

fixed lines, and would be free from all lines if Ofcom maintained its original proposal which we support.

The awareness and understanding of the 0500 range could be improved through the communication campaign that Ofcom and all the CPs will undertake before the new regulatory regime for non-geographic numbers will come into effect. To make that happen the 0500 range should simply be listed along with 080 when the new free-to-call regime is announced, if only as a footnote indicating that it is not open to new service, rather like interest rates are shown by banks for closed products.

The same outcomes that Ofcom expects from the new regime for other number ranges (i.e. increased demand and greater consumer price awareness) will equally result from aligning 0500 to any new 080 regime.

- iv. *SPs sampled prefer keeping 0500 aligned to 080 Freephone in future rather than giving it a new designation, i.e. MMP, which is an option under consideration. They strongly desire simplicity and clarity, on numbering and pricing, for consumers;*

This is a very important point which Ofcom's proposal to withdraw the range seems to ignore. SPs sampled not only said they desire simplicity and clarity, they also said they '*would welcome intervention to make Freephone ... truly free ...*' (par. 3.17.7).

Withdrawing the 0500 number range is not their preferred option and will not be simple either, as it will impose extra costs that are unlikely to be welcomed especially in the current financial climate.

We believe that CPs will not like the withdrawal option either. And we noted that Ofcom has indicated in par. 2.17 of the condoc³ that following the April 2012 consultation, among the few respondents who expressed their views on the 0500 range, five said the free- to-caller proposal for 080 should be extended to 0500.

- v. *SPs sampled are not strongly opposed to the range being withdrawn, provided this is done in a manner that minimises disruption and harm, and improves consumer confidence in Freephone numbers and pricing;*

We do not believe that customers who currently use a 0500 number would be more willing to change it than customers who have a 0800 number.

They would still have the cost and inconvenience, and they would almost certainly end up with a far less attractive number than they have.

³ 2.17 Following our April 2012 consultation, a few respondents expressed their views on the 0500 range¹⁹ – although, as noted above, we did not ask any question specifically about this range. BT, C&WW, the Internet Telephony Services Providers' Association (ITSPA), the UK Competitive Telecommunications Association (UKCTA) and one confidential respondent said the free-to-caller proposal for 080 should be extended to 0500.

We have spoken to some of our big customers and they have told us that they do not see why their 0500 numbers should be withdrawn. They haven't experienced caller confusion as a result of their 0500 numbers. The migration would take money and effort to change their numbers and associated web sites, paperwork, etc.

In any event, they will see the decision as an unjustified enforced number change.

Ofcom has not even suggested any kind of migration path to mitigate in any way the problems arising from the change, for example where the SP could retain the last six digits of their number.

- vi. *SPs on the 0500 range recognise that 080 numbers are much better-recognised by consumers, and that this is an advantage for 080 numbers as Freephone numbers. This may explain why a majority of 0500 SPs we interviewed concurrently operate 080 numbers.*

Again, one of the reasons why SPs operate more on 080 than on 0500 is because since 2001, they cannot get new 0500 numbers!

For the same reason, all the 0500 customers have been using their 0500 numbers for a very long time, therefore their customers are very used to them; consequently moving away would not appear to be as easy as Ofcom suggests it to be.

The reason why SPs are still using their 0500 numbers is because they are established, and in many cases "nice" numbers where the equivalent 0800 number will not be available for them to move to even if they wanted to (noting also that six digit 0800 numbers are also closed for new use). We believe that SPs in the main don't want to change their main contact numbers and incur unnecessary costs.

If we accept that customers with 0500 numbers recognise that 080 numbers are better recognised, it begs the question why they are still using them. It strongly suggests that the factor is largely trivial, and they would prefer to maintain the status quo, which causes neither them nor others detriment.

Legal Framework

BT has some reservations as to the appropriateness of the legal basis that Ofcom has chosen to implement its proposal. In addition, BT is concerned that the implementation of Ofcom's proposal to remove the 0500 number range may not be consistent with Ofcom's obligation to act in a way that is proportionate (with a bias against intervention) and not unduly discriminatory.

BT's view on these points is summarised below.

1. Legal basis

We note that Section 4 sets out the legal framework within which Ofcom believes it is operating in this consultation. Withdrawal of a number range is explicitly authorised in six different circumstances in the Communications Act Section 61(2). However, Ofcom suggests in its latest consultation document that only the following three circumstances might be relevant to the present consultation, namely:

- where the person allocated the numbers consents to the withdrawal;
- the withdrawal is made for the purposes of a numbering reorganisation; or
- 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.

Ofcom appears to rely primarily on the third of these grounds as the legal basis for its proposal. BT agrees that the first two grounds would not be an appropriate basis for the proposed withdrawal of the 0500 number range but is concerned that even the third ground may not provide an adequate legal basis for Ofcom's consultation, as set out below:

- In relation to the first ground, it is clear that the requisite consent has not (and is unlikely to be) obtained from the relevant Communication Providers or Service Providers.
- On the second ground, if this proposal did form part of a re-organisation, then section 62 would apply, which 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."* Absent, any indication of replacement numbers being allocated, BT considers that Ofcom's proposal does not amount to a re-organisation within the meaning of the Communications Act.
- By choosing the third ground, Ofcom will need to change General Condition 17 (see para 6.26) but can avoid having to find replacement numbers. However, BT is not persuaded by Ofcom's suggestion that there has been insignificant use of the allocated numbers (see par. 3.6 of the condoc which states *"Our provisional view is*

that, given the very low utilisation of the 0500 numbers, both by SPs and consumers, the status quo does not represent the best and efficient use of the range”). Indeed, any reduction in usage is a direct result of Ofcom’s intervention and the closing of this number range. BT’s view is that if the 0500 number range were to be reopened as a free-to-caller number range, there would likely be an upsurge in demand for numbers with the 0500 prefix.

2. Undue discrimination

Section 47 of the Communications Act provides that conditions cannot be set or modified by Ofcom if they are unduly discriminatory. Undue discrimination is generally a two-stage test, requiring there to be (i) an element of discrimination against an individual or a group of individuals (in this case CPs) and (ii) a material (competitive) disadvantage to that individual or group flowing from the discrimination.

BT considers that Cable & Wireless would be discriminated against as a result of the proposed withdrawal of the 0500 number range on the basis that predominantly Cable & Wireless customers use the 0500 range. As Ofcom acknowledged in para. 1.4 of its consultation document *“Cable and Wireless Worldwide [...] is the only range-holder for 0500 numbers and operates most active 0500 numbers, although some 0500 numbers have been ported and are now managed by other terminating communications providers [...]”*.

Further, in BT’s view, the withdrawal of the 0500 number range would cause discrimination that is undue, as Cable & Wireless would likely suffer disproportionate economic loss as a result of switching away from its numbers and at the same time its service (it unnecessarily creates a new decision-point for customers) in the event that the Ofcom proposal was implemented.

3. Proportionality

Ofcom is also required by section 47 to ensure that any conditions that it sets or modifies are proportionate. This is echoed by Ofcom’s regulatory principle set out in the Act that it will act with a bias against intervention.

For a measure to be proportionate, there must be no less restrictive means of achieving the desired objective. While Ofcom’s aim is to simplify and make non-geographic numbering and pricing more intuitive for consumers, Ofcom has failed to show that it has elected the least restrictive means for achieving its objective. The absence of any cost benefit analysis makes this failure all the more apparent.

Of the four alternatives that Ofcom sets out in its consultation document (see par. 1.12⁴), BT considers that the least restrictive and intrusive option suitable to achieve Ofcom's objective and in line with Ofcom's proportionality obligation would be Option 2 (Make 0500 a free-to-caller range in line with 080) as we will further argue in responding to the consultation questions hereinafter.

⁴ Option 1: Maintain the status quo for 0500;
• Option 2: Make 0500 a free-to-caller range;
• Option 3: Reopen 0500 as an MMP range; and
• Option 4: Withdraw the 0500 range.

Ofcom consultation questions

Q5.1: Do you agree with the assessment criteria we have used for our analysis, in particular the two additional criteria we have identified as relevant?

We agree that the five criteria used in the April consultation (i.e. consumer price awareness, efficient prices; service quality, variety and innovation; access to socially important services; and regulatory burden) are relevant. We also agree with the additional criterion ‘impact of the option for 0500 on our preferred choice for the 080 range’ but as far as the second additional criterion concerns (i.e. the efficiency and the best use of telephone numbers) we don’t believe it’s appropriate because:

1. There is no specific circumstance that justifies the use of this criterion uniquely for the 0500 number range.
2. We have no way of seeing the utilisation of 0500 and cannot therefore comment on it but we know that the 0500 will not be the only number range with a low level of use, as we have pointed out above (see par. Market Context i.).

Q5.2: Do you agree with our assessment of the options for the 0500 range? In particular, do you agree with our preferred option of withdrawing the 0500 range? If not, please explain why.

We do not agree with Ofcom’s assessment of the 0500 range for the reasons explained below for each option. In particular we believe that the option of withdrawing the 0500 range has not been underpinned by compelling arguments by Ofcom.

Ofcom has neither demonstrated consumer harm arising from the continued use of 0500 nor that it has a better use for the 0500 range than that which it is currently fulfilling.

The option of withdrawing the 05000 range seems to be inconsistent with the changes proposed for other number ranges.

Q5.3: Do you have any comments on the analysis presented on the costs and benefits of our preferred option? Please provide evidence to support your comments.

We believe Ofcom has not performed a proper Cost Benefit Analysis to show how the cost of customers being forced to change their numbers stacks up against other putative benefits. Also the estimated cost of £1,000-£2,500 (even if accurate) per SP may represent a significant and in our view unnecessary cost imposition upon cash-strapped smaller SPs.

Option 1 – maintain status quo

Yes we agree with Ofcom’s assessment of Option 1, as it would not address all the issues identified and would unjustifiably break the link with 080 assuming the future 080 regime changes.

Option 2 – make 0500 free-to-caller

BT supports this option.

Ofcom seems to be suggesting that the continuing existence of 0500 undermines 080 as the free brand. However, at the same time, Ofcom is saying that there is a lack of tariff awareness and little use of 0500. We don't think Ofcom can have it both ways.

We believe that Ofcom understates the benefits and overstates the costs and do not agree with Ofcom's assessment of this option against the criteria, in particular we have comments on the following ones:

Consumer price awareness

The low level of price awareness reported in the Ofcom research, although lower than that for 080 is not inconsistent with data for other ranges: please refer to the % of price awareness reported above under paragraph Market Context iii. Any lack of awareness of 0500 in any event wouldn't cause consumer harm given that it is freephone – and we anticipate free to caller.

Moreover adopting Option 2 alongside the changes to the 080 regime would create an opportunity to increase price awareness.

If the rationale for closing 0500 is that customers are not sufficiently aware that calls are free, and that 080 is the free brand, Ofcom should see this in the context of the wide availability now of 'all you can eat' packages; that is, not only are 080 and 0500 calls free, but calls to many other number types are increasingly becoming free.

BT believes Option 2 is the best option for CPs, SPs and customers.

Impact on preferred choice for 080

BT does not agree with Ofcom's assessment. Should Ofcom choose this option the message to customers would be very simple and would be communicated at the same time as the message for 080. That change will therefore offer the opportunity for consumers to get a better understanding of 0500.

Efficiency and best use of telephone numbers

BT does not agree with Ofcom's assessment, as the low utilization of the number range is due to the fact that 0500 is a closed number range. Ofcom does not suggest how it would otherwise use 0500. Given that 055 and 056 remain open (unless Ofcom is pre-judging the outcome of that consultation), that 04 and 06 are entirely unused, and there are large unused spaces in other number ranges, we don't believe there is a case for clearing 0500. On the other hand, forcing customers to change numbers causes immediate tangible detriment.

From time to time, BT and Ofcom receive requests for short numbers. Whilst in general we are not supportive of these, Ofcom could consider leaving the 0500 range open for numbers currently in use and allocating 0500 + 4 digit numbers from these ranges to fulfil this demand, so long as only say no more than two or three truncated numbers a year were allocated (the more that are allocated the less distinctive they become). Our preference would be that Ofcom should decline such requests, however this might be an alternative approach. Significant levels of truncated numbers should also not be entertained given their likely impact on decode resource within the network.

However we suggest that any alternative use of the 0500 range has to be free anyway, as it would otherwise confuse the customers who are currently used to call the 0500 numbers for free at least from fixed lines.

In conclusion we believe Option 2 remains the best option as it will not have any costs to service providers or industry and will not have any disadvantages for the consumers who will rather get the benefit to continue to call the same 0500 numbers but completely free of charge. We note the widening set of numbers that are becoming free to call within packages. We therefore conclude that any risk of consumers concluding that say 0500 rather than 080 is the free to caller range, or that potential callers do not call 0500 because they do not realise the call would be free (if SPs thought this was the case, they would have voluntarily changed their numbers within the last eleven years), is further diminished.

Option 3 – Reopen 0500 as an MMP range

BT does not believe that this option would work well at all. Given that 0500 and 080 have always been subject to the same regulation and commercial model, any option that differentiates the 0500 number range from the 080 will confer benefits on one or the other SP, merely based on whether before 2002 they took service with BT or Mercury/Cable and Wireless. Additionally, it would not help Ofcom's simplification goal.

Option 4 – Withdraw the 0500 range

BT does not agree with the assessment of this option for the reasons set out throughout this response.

Implementation

Q6.1: Do you support a longer implementation period of 24 months for the withdrawal of 0500 numbers? Or, do you consider that 18 months would be a preferable timescale for this withdrawal? Please explain your reasoning as well as providing any evidence to support your view.

Should Ofcom confirm to choose Option 4, a longer implementation period would be better.

Q6.2: Do you have any other comments on our proposed approach to the withdrawal of the 0500 range and withdrawal of 0500 number allocations? Do you have any suggestions on making consumers and service providers aware of this change?

We believe a proper migration path is absent in Ofcom's proposal. If Ofcom is going to pursue this proposal, we think Ofcom should consider opening 0808 5xxxxxx where the last six digits remain the same for customers with that 0500 number. This would at least reduce to some extent the detriment to customers. But, for the avoidance of doubt, we believe that this would be a very poor second-best, and we believe existing 0500 numbers should remain operational.

Q6.3: Are there any other implementation issues which need to be taken into account?

If Ofcom reaches a decision on 080 whilst 0500 remains open but scheduled for closure (if Ofcom pursues such a policy), Ofcom should consider what caller pricing will apply to 0500 in the overlap period. We would suggest that in that particular circumstance, in order to prevent further customer confusion, 0500 should remain unchanged for the remaining period of its life.