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## **Response to Ofcom's free-to-caller wholesale regulation review Consultation**

Free-to-caller Access Conditions (hereafter: the Conditions) require Terminating Providers to pay Originating Providers a fair price for receiving 080 and 116 calls.<sup>1</sup> The Conditions are effectively the wholesale rules that underpin provision of free-to-caller services. It is timely for Ofcom to publish its Consultation as it has a statutory obligation to review the results of imposing these Conditions by 21 December 2025, and, to decide whether to modify or remove these rules as part of its review.

Our response covers the two key elements of the Consultation: the proposal to maintain existing Conditions albeit subject to some modification. We agree that the Conditions must be maintained and that certain modifications are needed.

### ***VMO2 supports the proposal to maintain the Access Conditions***

To introduce its assessment of the potential need for the Conditions, Ofcom described market developments since the Conditions were introduced in 2013 in Section 3 of its Consultation. Key observations are:

- Declining volumes of free-to-caller traffic with a material shift from fixed to mobile origination.
- Whilst lower, free-to-caller volumes remain material which is consistent with services provides over these numbers being valuable (including to public sector or charitable organisations).

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<sup>1</sup> Ofcom's 2014 dispute determination provided direction on the origination prices that comply with the Conditions.

- 03 calls are a substitute for some but not other uses of free-to-caller numbers.
- No evidence that underlying dynamics of wholesale 080 and 116 markets have changed in a manner that has removed the imbalances in negotiating power between Originating and Terminating Providers that Ofcom identified in its 2013 assessment.

The latter observation is particularly important as it was the presence of imbalances that led Ofcom to introduce the Conditions. The continued presence of imbalances provides an initial indication that removing the Conditions would give rise to material and undesired risks.

We agree with the approach that Ofcom adopted to analyse the need to maintain the Conditions. This approach comprises of assessments of the results of imposing the Conditions (factual) and the likely results of removing the Conditions (counterfactual) and then comparing the results across both scenarios.

The assessment of the factual scenario is based on a review of how the Conditions contributed to Ofcom's objectives when it introduced the rules, including: ensuring fair and reasonable origination payments; securing end-to-end connectivity for consumers and service providers, and; maintaining stability and pricing certainty for service providers. We agree that the Conditions have delivered against these objectives and supported the market to deliver good and intended outcomes.

The assessment of the counterfactual is based on a forward-looking review of what would happen if Conditions were to be removed. Fundamentally, Ofcom finds that imbalances between Originating and Terminating providers, and thus risks of market failures arising, remain present as they were in 2013. This means that commercial negotiation of wholesale origination payments for calls to free-to-caller numbers would unlikely deliver against Ofcom's objectives as there would be risks of interconnection disruption and too low or too high prices.<sup>2</sup> These impacts (and surrounding uncertainty) would be harmful to service providers and consumers that want to call these numbers.

As existing regulation and Ofcom's *ex post* competition and dispute resolution powers would not sufficiently address the risks that arise when removing Access Conditions, we agree that the Conditions remain an effective and proportionate means to support free-to-caller markets to deliver favourable outcomes.

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<sup>2</sup> Also, when disagreements would not be resolved commercially, this could lead to disputes and prolonged uncertainty.

***VMO2 accepts that minor modifications to the Conditions must be made***

Ofcom proposes to modify the Conditions by updating the list of Terminating Providers, and by making changes to the effective date from which requirements apply and several, minor changes to definition.

The Conditions apply to the Terminating Providers listed in the annex of an Ofcom decision on access conditions. It is thus clear that a decision to extend and to modify the Conditions requires updating the list of Terminating Providers. We agree with how Ofcom identified the Terminating Providers listed in Annex 8 of its Consultation. Identification is guided by numbers assigned to Terminating Providers independent of them providing termination to these numbers themselves or termination happening under a hosting arrangement with another provider. In either case, Terminating Providers have control over and thus can be held accountable for what they propose and agree with the Originating Providers of 080 and 116 calls.

Additionally, Ofcom proposes changes to the effective date from which Terminating Providers must comply with the Conditions and minor changes to how Conditions are described. As it would involve continuation of existing rules, it is appropriate to expect new market entrants to comply with the Conditions within six months following publication of an Ofcom decision. The expectation must be for Terminating Providers of 080 and 116 calls (whether previously listed or having since entered) to fully comply with the Conditions as they have been in place for many years with stable wholesale pricing.

We are comfortable with the proposal to not extend Conditions to transit providers. Absent evidence of differentiated origination charges, there are no indications that the current scope of access conditions (not extending to transit providers) justifies changes. But it is important for this Consultation to pick up diverging views that other market participants may have on this matter.

It is clear that Condition 3 has become obsolete. There is no need for Terminating Providers to notify interconnection partners of their pricing for origination of free-to-caller traffic as the Conditions have been in place for over a decade with transparent pricing over that period. Conditions 2 and 3 remain and are fundamental to what is required from Terminating Providers in relation to purchasing purchase wholesale origination services for zero-rated calls.