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Response of Skype Technologies S.A. (Luxembourg) to Ofcom's consultation document "Regulation of VoIP Services – Statement and further consultation".

Skype Technologies S.A. (hereafter 'Skype' www.skype.com) is an EU-based provider of peer-to-peer software applications which enable Skype users to communicate with other Skype users, and enabling, optionally and where possible, certain forms of communication with the subscribers of electronic communications networks and services.

Please find hereby Skype's brief response to Ofcom's consultation.

1. Ofcom's objectives (Response to Q1)

At face value, the overall policy objectives put forward by Ofcom (i.e. "*enabling innovation in a technological neutral way*", "*ensuring that consumers are well informed*", and "*ensuring maximum availability of 999 services*") are objectives that no-one could reasonably disagree with.

However, the manner in which Ofcom proposes to elaborate and apply policy and regulation in these areas is far-reaching. Skype has reservations about the overall philosophy as well as about the precise details of Ofcom's proposals.

Indeed, Ofcom's proposed approach is one in which it appears to assume that the purchaser – as well as any user – of VoIP solutions can not be trusted to understand nor take responsibility for his or her own choices and actions. Also, the proposed approach appears to suggest that Ofcom lacks confidence in the sector-specific regulatory frameworks for electronic communications and for information society services and in general consumer protection legislation and regulation.

The proposals amount to creating a specific form of "super consumer protection" which is applicable to no other product or service in the market. It is worth noting that mobile phone services have had, and continue to have, many issues with regard to location information for emergency services, but have never been subjected to special rules on consumer information, e.g. an obligation to highlight "deficiencies", as Ofcom formulates it.



The overall thrust of the proposals, especially the focus on highlighting “deficiencies” of VoIP and the restriction of number portability, which is openly presented as a way to favour a certain category of providers (and works to the detriment of a potentially large group of consumers), suggests bias in favour of the status-quo (which is favourable to fixed and mobile incumbent operators), ignores the current speed and levels of product innovation, and unduly undermines the innovation potential offered by VoIP.

Skype’s opinion is that real questions arise as to whether Ofcom’s proposals are proportionate in the light of the objective challenges that exist, in relation to already applicable laws and regulations, and as to whether they are proportionate to address the policy goals that Ofcom has tentatively identified.

Skype invites Ofcom to:

1. Re-assess the overall philosophy of the document.
2. Review and remove negative bias (e.g. by also listing and promoting “efficiencies” rather than “deficiencies”).

Note: If Ofcom nevertheless decides to implement the proposals contained in the consultation document, Skype submits that obligations to list any “deficiencies” cannot be made applicable only to providers of Voice ECS, but in order to be non-discriminatory, should then be made applicable to all providers of electronic communications services, notably including fixed and mobile PATS.

3. Conduct an additional impact assessment, specifically of existing sector-specific regulation and existing consumer protection legislation and regulation, for VoIP, for other telecommunications products and services, and for other products and services available in a market economy, with a view to establishing whether it is defensible to create a separate class of consumer protection regulation for VoIP.
4. Introduce additional policy objectives, focused on delivering a more positive and user-friendly approach to VoIP. Quality increases, presence awareness, chat, video, file transfer, high privacy protection and overall commodity should feature as worthy elements, including in the context of access to emergency services.
5. Take measures to support the development and adoption of VoIP, such as supporting (rather than withholding) naked DSL, ensuring network neutrality, facilitating the ability for consumers to switch to different Internet Service Providers, and e-mail portability.

2. Evolution of regulation of nomadic services (Response to Q3)

Whilst Skype is not affected by the network integrity requirements of Article 23 of the Universal Service and Users’ Rights Directive 2002/22/EC, we believe it is not timely for Ofcom to anticipate whether or not “Next Generation Networks” will provide nomadic



PATS (or not) or differently classified nomadic VoIP; the same holds true for the application, or not, of GC 3, today and in the longer term. Speculation about hypothetical future developments is an unsound basis for policy formulation.

3. The EU 2006 Review of the Regulatory Framework (Response to Q5)

Skype has responded to the European Commission's Call for Input on the 2006 Review of the regulatory framework for electronic communications. Our response is public¹ and focuses on competitive networks and services, network neutrality, and numbering policy.

4. Number portability (Response to Q6 and Q14) and numbering policy

Skype disagrees with Ofcom's proposed approach to number portability.

Ofcom's proposals, and in particular the impact assessment provided in the consultation document, are based on a new notion of 'competitive neutrality', which appears to be designed to discriminate in favour of providers of PATS (but not customers) in the context of number portability.

Skype submits that no article, recital or other suggestion can be found in EU directives, which would justify the exclusion of customers of products or services other than PATS from the right to port their numbers (out or in). The EU directives merely create an explicit right for customers of PATS, not a prohibition or restriction for customers of other products or services to benefit from number portability. Skype also notes that customers of non-PATS services, for instance services using classic non-geographic numbers, have been entitled to number portability for many years. Therefore, what is being proposed by Ofcom now is a departure from previous policy; this departure has not been adequately justified, is discriminatory and works directly against the overall consumer interest.

The impact assessment is biased in supporting a particular policy direction which is harmful to the UK consumers, explicitly favours incumbent providers, and stifles the development of certain types of VoIP.

More generally, Skype would like to make the following remarks concerning numbering policy.

The UK's numbering rules for VoIP are among the more liberal in the European Union, but we wish to put it on record that Article 10.2 of the Framework Directive 2002/21/EC, read in conjunction with Section 7.1 of the European Commission's Information and Consultation Document of 14 June 2004 on the treatment of Voice over Internet Protocol (VoIP) under the EU Regulatory Framework, yields a more liberal numbering approach than the one that has been adopted in the UK.

¹[http://europa.eu.int/information_society/policy/ecomm/info_centre/documentation/public_consult/revi
ew/index_en.htm](http://europa.eu.int/information_society/policy/ecomm/info_centre/documentation/public_consult/revi
ew/index_en.htm)



In Skype's opinion, the EU-level regulatory framework requires Member States to allow a possibility for non-ECS entities, including entities self-providing VoIP solutions, to have access to numbering resources to support their activities. The European Commission stated very clearly that:

“Any undertaking providing or using electronic communication networks or services has the right to use numbers”. [...]

On the basis of what is stated above, Skype invites Ofcom to review its position on the assignment and allocation of numbering resources, with a view to making it more open and more liberal, rather than maintaining the status-quo.

5. Consumer protection – draft code (Response to Q7, Q8, Q9, Q10, Q11, Q15)

Skype has always provided clear information to its users, e.g. regarding dependency on broadband access, making clear that Skype is not a replacement for telephone services, the absence of access to emergency services, etc. and believes that it is the interest of any provider of VoIP products or services, irrespective of their classification, to be clear and straightforward towards its users.

Therefore, Skype has serious reservations about Ofcom's proposals relating to labelling of hardware and software, 'network announcements', on screen displays, point of signature acknowledgement, etc. Skype is not opposed to providing information or forms of labelling as such, but believes that decisions on provision of labelling should be left to the discretion of the provider of the VoIP product or service to ensure consistency with, and avoid duplication of, information already given.

Additionally, the suggested content of communications to consumers is overly broad. Wide notification requirements such as the information duty for effects of failure of unrelated third party services (power or broadband connection) would result in the more important notices (no emergency calling) not being sufficiently appreciated by consumers, therefore bringing no real benefits to any stakeholder.

Ofcom has calculated that labelling would cost £1 per user. Skype has not performed its own calculations, but can only respond that an obligation which would entail the effective expenditure of this amount is misguided and likely to exclude many Internet-based VoIP (and other products – e.g. video communication, online gaming) providers from the market. This comment relates to Ofcom's suggestion of a mandatory obligation of VoIP-ECS as well as to a voluntary undertaking (under encouragement) for non-ECS VoIP products.

In Skype's opinion, labelling of hardware and software (by Skype) would not change anything for the benefit of the purchaser or of the individual user. Every Skype user is already made aware in the beginning of customer relationship that Skype is not a replacement for a telephone service and that it does not support emergency calling. Every Skype user has her or his own SkypeID and has therefore read and accepted the terms and conditions upon registration and prior to purchase of additional products that enable the calling to and from fixed or mobile phones. Further information is provided on various parts of the Skype website. Labelling would simply represent an additional expenditure



for ECS-VoIP providers, and for those non-ECS VoIP products that choose to follow the code, with little or no benefit to users or to society. In summary, Skype considers that Ofcom's proposals represent an extreme form of intervention, which is disproportionate and discriminatory

As regards "other information to consumers" (Q15) Skype can only confirm that none of its users perceive Skype as "*something they have come to expect from a telephone service*". It appears that Ofcom is taking traditional/incumbent telephone services as a reference, and defining/classifying/proposing to regulate VoIP with a backward-looking perspective, considering consumers and users as being unable to take personal responsibility and/or to have sufficient levels of understanding of the characteristics of products that clearly differ from each other, We invite Ofcom to re-visit and re-assess its philosophy and proposals, particularly as the UK already has well proven horizontal consumer protection laws.

6. Legal framework for implementation of the code (Response to Q16)

Skype is surprised that Ofcom finds it necessary to put forward criteria such as "*departures from the norms associated with particular services*", as Ofcom formulates it in paragraph 7.36. The history of the telecommunications sector is characterised by numerous such "departures" (for example, the introduction of mobile telephony), which have in the past not resulted in the type of regulatory intervention that is now being mooted by Ofcom.

Skype considers aspects of the proposed code to be unnecessarily far-reaching and is of the view that the existing legal and regulatory frameworks (for electronic communications, information society services, and general consumer protection) are sufficiently robust to address any potential issues.

In this context, we invite Ofcom, before taking radical action such as imposing a mandatory code of practice, to:

1. Consider explicitly why, in Ofcom's view, the existing legislation and regulation (for electronic communications, for information society services, and generically on consumer protection) must be complemented by very detailed regulatory intervention, for one type of technology, product or service, and not for others.
2. Demonstrate that consumers have been duped by VoIP products and services, in such manner and to such extent that it justifies the measures proposed.

Note: In the world of traditional telephone services, there have, unfortunately, been less than scrupulous providers for many years, and consumers have occasionally been harmed, but this fact has not resulted in the adoption of sweeping regulations, neither before nor after the fact.

Skype is opposed to making the code of practice mandatory for Voice PECS and is opposed to the strong encouragement on providers of VoIP products and services that are not PECS to adopt the code (Ofcom proposal in paragraph 6.34).



Skype is also of the view that the qualifying element “*if it is likely that consumer expectations are that their service will behave like a normal telephone service*”, which is only contained in paragraph 6.34, should be verified, and, if Ofcom would nevertheless proceed with issuing the code and making it mandatory, our view is that the code should then be applicable to all regulatory classifications of VoIP products and services, to ensure consistency of approach.

We also reject the notions, contained in paragraph 7.36, about the costs of regulation not being asymmetric, and 7.61, where Ofcom argues that its proposals are not unduly discriminatory, especially in a context where no such regulations were ever imposed on mobile phone services. We also wish to express our concerns about paragraph 8.29, which foreshadows even more restrictive and unrealistic future regulation.

7. Enforcement, monitoring and review (Response to Q17, Q18, Q19, Q20)

Ofcom proposes to embark on a costly proactive programme of enforcement and research.

In Skype’s opinion, Ofcom’s allocate resources on pro-active efforts, such as ensuring greater media literacy and providing general consumer education. Protecting consumers through empowering them to take their own reasoned decisions is far preferable to an unnecessary additional tier of regulation.

8. Naked DSL and sections 8.26/8.27 of the consultation (Response to Q21 and Q22)

Skype is dismayed to see Ofcom suggesting in paragraph 8.26 that the availability of wholesale naked DSL could be restricted so as to be available only to providers of PATS.

Skype believes that mandating wholesale and retail naked DSL would be one of the most effective regulatory interventions that could be made to promote competition in the UK.

More generally, Skype considers the entirety of sections 8.26 and 8.27 of the consultation document inappropriate, and urges Ofcom to remove these suggestions from any follow-up document.

One element that could be considered as a replacement for sections 8.26 and 8.27 would be to take measures to facilitate consumers switching from one Internet Service Provider (ISP) to another. Today, this is possible, but impractical to the extreme, often resulting in downtime, loss of e-mail addresses, etc. Ofcom should consider policies to promote ISP switching and e-mail address portability.

9. Routing/termination (Response to Q23)

Ofcom recognises that there are issues with routing of calls to 056 numbers.



Other regulators in the EU, specifically ComReg² in Ireland and the Secretary of State³ in Spain, have taken specific measures (including the imposition of deadlines) to ensure that new non-geographic number ranges become accessible. Skype suggests that Ofcom adopts similar policies and measures.

10. Privacy and encryption (Response to Q28)

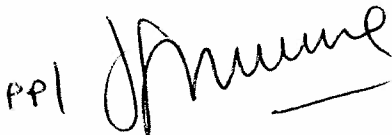
Ofcom asks (in the context of ensuring privacy) whether it is reasonable to ask VoIP service providers to participate in schemes designed for e-commerce.

Skype believes that this is unnecessary, at least in its own case. Skype is far more secure than the PSTN, and maintains a section on its website⁴ that explicitly addresses security issues (another illustration of Skype's own-initiative open communication with purchasers and users). With the same openness, the section also includes the full report of a security audit conducted by an independent external expert.

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Should you require any additional information with regard to the contents of this response, please do not hesitate to contact us.

Yours faithfully,



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² ComReg 05/12: Draft Directions to Enable Opening of Access to VoIP Services based on 076 Number Ranges. www.comreg.ie/_fileupload/publications/ComReg0512.pdf

³ Section 9 (noven) of the Resolución de 30 de junio de 2005, de la Secretaría de Estado de Telecomunicaciones y para la Sociedad de la Información por la que se atribuyen recursos públicos de numeración al servicio telefónico fijo disponible al público y a los servicios vocales nómadas, y se adjudican determinados indicativos provinciales. www.cmt.es/cmt/centro_info/numeracion/pdf/atribucion_SVN.pdf

⁴ <http://share.skype.com/sites/security/>

