

## **WANADOO.COM PLC'S RESPONSE TO OFCOM'S CONSULTATION AND INTERIM GUIDANCE ON NEW VOICE SERVICES**

### **Introduction**

Wanadoo UK plc ("Wanadoo") welcomes the opportunity to respond to Ofcom's consultation and interim guidance ("the Consultation") on New Voice Services.<sup>1</sup>

Wanadoo is the UK's largest Internet Service Provider with approximately 2.5 million Internet access customers of which approximately 500,000 are broadband customers. Wanadoo is one of the largest ISPs in Europe and the Internet business unit of France Télécom.

### **Executive Summary**

Wanadoo strongly supports Ofcom's proposals which will encourage innovation and investment in New Voice Services, whilst ensuring that appropriate consumer protection is delivered. Wanadoo believes that Ofcom's approach recognises its obligation to ensure that regulation is technology neutral and is consistent with Ofcom's duties under UK<sup>2</sup> and European<sup>3</sup> law.

However, Wanadoo urges Ofcom to go further, and to:

- clarify the interconnection rules between New Voice Services and traditional voice services provided via the PSTN;
- adopt its interim position of forbearance as a permanent position to give providers of New Voice Services the certainty they require to invest;
- remove the current guidelines on essential requirements for network integrity in its entirety; and
- work with the industry to develop an appropriate framework for consumer information.

### **Conclusion**

Wanadoo sets out its detailed responses to the Consultation questions in the attached appendix. Wanadoo would welcome the opportunity to meet with Ofcom to discuss any issue raised in this response.

Please contact Simon Persoff (020 7553 4805 or [simon.persoff@uk.wanadoo.com](mailto:simon.persoff@uk.wanadoo.com)) to arrange a follow-up meeting.

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<sup>1</sup> Wanadoo is using the phrase "New Voice Services" to ensure this response is consistent with the terminology employed by Ofcom in the Consultation.

<sup>2</sup> Specifically s3(2) of the Communications Act 2003 establishes Ofcom's duty to secure, inter alia, "the wide availability throughout the UK of a wide range of electronic communications services" and its regard under s 3(4) to "encourage investment and innovation" and "promote competition".

<sup>3</sup> Specifically Ofcom's s4(6) Communications Act 2003 duty to not favour one form, or means of making available, a service, over another.

## Appendix - Wanadoo Responses to Consultation Questions

Wanadoo sets out below its responses to the questions raised by Ofcom in the Consultation.

***Question 1: What types of new voice services do you envisage becoming available in the future and what characteristics will they have that distinguish them from traditional voice services?***

Current technology allows communications providers to offer a wide range of new services to consumers. Whilst the success of New Voice Services will ultimately be determined by their ability to meet customer needs, Wanadoo anticipates that services available in the market will include services which:

- may be roaming (location independent) and/or linked with traditional mobile services;
- integrate services currently provided on a stand-alone basis such as voice and email;
- allow video, as well as voice, real-time communication and video streaming; and
- allow for service provider-controlled routing

***Question 2: What are the main policy challenges raised by the introduction of new voice services for consumer protection and regulation?***

### *Consumer Protection and Innovation*

For the reasons set out below, Wanadoo believes it is possible for Ofcom to achieve its objectives of fostering competition and innovation while providing adequate protection for citizen-consumers. Ensuring a win-win outcome for both consumers in the short run (through consumer protection) and consumers in the long run (through innovation and competition) is Ofcom's main policy challenge.

Wanadoo believes that as a regulator, Ofcom should not substitute its judgement for that of the market. Ofcom should seek to encourage innovation by not placing artificial regulatory barriers in the way of new services whilst ensuring that consumers are adequately protected. It needs to ensure that its regulation is technology neutral and does not favour established technologies which may be better suited to comply with detailed rules (often written with those established technologies in mind) when equivalent or better outcomes for consumers are possible with respect to alternative technologies which may however not be compliant with the detailed pre-existing rules in every respect.

Many of the current detailed rules concerning consumer protection were written to suit an environment where traditional circuit-switched technology was the only feasible method for providing voice services and the communications provider controlled both the communications network and the service delivered over it.

Both of these underlying assumptions – that of a single technology and that of an integrated network and service provider – no longer holds true. Ofcom needs to focus on the core reasons for consumer protection and reassess the correct way to achieve its consumer protection mandate under new assumptions and market conditions.

Viewed in this way, there is no conflict between Ofcom's consumer protection mandate and its mandate to encourage innovation, investment and competition. This approach is reflected in our responses to subsequent questions.

### *Certainty in Interconnection*

Ofcom needs to address the interconnection regime for New Voice Services to traditional voice services. At present, it is not entirely clear what rules (if any) govern this relationship. Lack of certainty will constrain the development of New Voice Services and may prevent it from acting as a competitive constraint on existing providers of voice services. Wanadoo encourages Ofcom to start this debate on a policy level, rather than by a dispute resolution reference.

While Ofcom, and its predecessor, have a long history of dealing with these issues dating back to the first BT/Mercury interconnection determination, many of the stakeholders going forward will not be those with whom Ofcom has traditionally engaged. It is therefore important that Ofcom consults as widely as possible on this issue.

### ***Question 3: Do you agree with the initial top level aims identified by Ofcom?***

Subject to our answer to question 4, Wanadoo agrees with Ofcom's top-level aims.

### ***Question 4: Are there other aims and criteria that Ofcom should consider?***

The telecoms markets exhibit economies of scope and scale, require high fixed sunk investment and are subject to network externalities. These structural factors are the reason that *ex ante* sector regulation is imposed and why Ofcom as a sectoral regulator has a duty imposed under EU law to promote competition,<sup>4</sup> as opposed to the weaker obligation on competition authorities to protect the process of competition.

Wanadoo therefore believes that Ofcom should have "promotion of competition" as one of its top-level objectives.

### ***Question 5: Are there other key policy questions that Ofcom should be considering?***

Wanadoo refers Ofcom to its responses to questions 2 and 4 above.

### ***Question 6: Do you agree with Ofcom's initial view that it is not necessary for all voice services to provide the same standard features as traditional telephone services, and that we should instead focus on enabling consumers to make informed decisions?***

Wanadoo agrees. Standard features and needs are a result of the capabilities of a particular generation of technology and will continue to change and develop in response to consumer needs. Also consumers' requirements and expectations will develop as new services are offered.

Such a requirement would impose limitations on the features of New Voice Service that in many cases will serve the same requirement in a different manner, or could in the near future even serve needs currently not covered by traditional services.

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<sup>4</sup> s4(3) Communications Act 2003.

**Question 7: Do you agree with Ofcom's initial view that it is not desirable to draw a distinction between the regulation of services that look like traditional services and those that do not?**

Wanadoo agrees with Ofcom that drawing such a distinction would not be in accordance with the regulatory framework, desirable or practical. Consumer expectations change over time and such an approach would be both undesirable and unworkable.

**Question 8: Do you agree with Ofcom's initial view that a distinction should not be drawn between the regulation of 'second line' services and 'primary' services?**

"Primary" and "Second-line" services are not defined in the European framework or the UK Communications Act. Wanadoo does not see how such a distinction could be introduced or enforced. In addition, the problems identified by Ofcom in the Consultation (such as the provider not knowing whether a service is being used as a primary or secondary line) mean that, as with question 7, the distinction is unworkable.

Although a superficially attractive distinction, the attractiveness stems from the technological bias of the Guidelines for Network Integrity. Wanadoo argues that this bias should be addressed by removing the outdated guidelines, not by twisting the regulatory superstructure to fit around the outdated guidelines.

**Question 9: Do you think that a threshold should be set at which new voice services should be required offer the same features as traditional voice services? If so, how should the threshold be set?**

No. See our response to question 6 - Ofcom should seek to encourage an innovative market which will deliver dynamic benefits to consumers.

**Question 10: Do you agree that most providers would want to offer at least a basic form of access to 999?**

Yes. Wanadoo will seek to offer the best 999 access it is technically and commercially feasible to offer. This is both an ethical responsibility and a market requirement. Wanadoo welcomes Ofcom's forbearance proposals as they remove a perverse regulatory incentive to not offer 999 access.

**Question 11: Do you agree with Ofcom's initial view that consumers sufficiently value having access to 999 in order for them to wish to retain at least one means of 'high quality' (very reliable) access to 999 at home?**

Wanadoo agrees that consumers want to have access to emergency organisations and be provided with an emergency response as soon as possible and will value this. However, a definition of "High quality (very reliable)" suffers from the defects of the distinctions discussed in questions 7 (traditional vs. new) and 8 (secondary vs. primary line), and in our view, is not required, provided that consumers are properly informed.

**Question 12: Do you agree with Ofcom's initial view that not all voice services should be required to offer access to 999 but that decisions about subscribing to and using such services must be properly informed?**

Yes and yes. As discussed above, Wanadoo wants to offer the 999 access it is technically and commercially feasible to offer. However, provided that consumers are adequately informed such that they are able to make informed choices, Ofcom should not impose an obligation.

Wanadoo agrees with Ofcom's view that wherever possible, providers of New Voice Services should try to increase the likelihood of calls to emergency services being connected by utilising existing analogue access to emergency services to supplement other methods of their customers accessing emergency services. However for this to be effective, providers of traditional voice services should allow the "pass-through" of such calls to emergency services irrespective of their relationship with the provider of New Voice Services.

**Question 13: Do you agree with Ofcom's initial view that given some new services may not [be] able to offer the same degree of reliability for emergency calls as traditional voice services, it is better that these services are able to provide less reliable access to 999 rather than preventing them from offering any access at all?**

Yes. The key issue here is that customers are adequately informed of characteristics of access to features provided by the service, including access to emergency services.

**Question 14: Do you agree with Ofcom's assessment of the costs and incentives for providers offering PATS?**

Yes. However Ofcom should also consider the situation of an operator which wishes to provide PATS, but is technically unable to comply with all aspects of current rules, such as network integrity. For those operators, PATS compliance is not a cost issue *per se*, but may actually serve as an artificial regulator-initiated barrier to entry.

**Question 15: Do you agree with Ofcom's understanding of the implications of the definition of PATS contained in the Directives?**

Yes. Wanadoo agrees with Ofcom's understanding.

**Question 16: Do you agree with Ofcom's understanding of the implications of this alternative approach?**

Yes. Wanadoo appreciates Ofcom's understanding of the implications of this alternative approach.

**Question 17: Are there policy initiatives in other areas related to new voice services that Ofcom should be considering?**

See response to question 5.

Ofcom should be aware of issues contained within Part II of the Regulation of Investigatory Powers Act 2000 and liaise with the Home Office to ensure that both parties are aware of potential overlaps in their respective policy projects.

Ofcom should also consider the impact that number portability may have on the development of New Voice Services. The existing “forward routing” model for ported numbers may need to be revised and adapted to ensure that its cost structure will not become a barrier for development of New Voice Services.

The current cost structure may not be a significant problem for voice services offered over traditional circuit-switched technology where providers target a defined geographic area for their services; however this remains a significant concern for New Voice Service providers which do not envisage geographic restrictions on their services.

***Question 18: Although Ofcom is not consulting on its interim position, it would welcome your views on its interim policy to forbear from enforcing PATS obligations against new voice services which offer access to 999.***

Wanadoo welcomes and supports Ofcom’s interim position. Further, Wanadoo would support the interim position being adopted as a permanent position. This will allow market entry, innovation and investment without the hindrance of artificial regulator-initiated barriers. The alternative would be to smother New Voice Services at birth and reduce consumer choice and competition.

In Wanadoo’s view, Ofcom’s approach is entirely consistent with the overall aims of the European regulatory framework and its duties as set out in the Communications Act 2003. It is a pragmatic interim position, and an entirely appropriate position for Ofcom to take whilst DG Information Society is in the process of consulting on how the European regulatory framework should apply to New Voice Services.

***Question 19: Is it reasonable to have different network integrity requirements for nomadic services compared to services at a fixed location, and how should consumers be made aware of this difference?***

Wanadoo supports the removal of the current network integrity guidelines and their replacement with a pragmatic approach to assessing compliance with General Condition 3.

As such, Wanadoo would consider it reasonable that providers would inform consumers about any service limitation, and that further it would be reasonable (for assessing compliance) to expect nomadic offerings to have different integrity characteristics as opposed to fixed offerings (since, for example, nomadic offerings may be reliant on third party networks and services such as wireless LAN connections and highly contended broadband links, both of which will be outside the control of the nomadic VoB service provider).

***Question 20: Do you think that it is better for Ofcom to:***  
***1. Retain the Essential Requirements Guidelines in their current form;***  
***2. Re-issue the Essential Requirements Guidelines, incorporating additional guidance in relation to Voice over Broadband and Next Generation Networks; or***  
***3. Withdraw the Essential Requirements Guidelines, and apply the ‘reasonably practical’ test set out in General Condition 3***

Wanadoo strongly supports option 3. Indeed, in Wanadoo’s view the guidelines are already inconsistent with the requirement for regulation to be technology neutral.



**Question 21: Do you think that there are reasonably practical measures that providers at a fixed location can take even if they do not directly control the underlying network?**

As outlined in our answer to question 2, not only is the assumption that one provider will be providing both the means of access (network) and the service provided over such network (New Voice Service) not valid, but Ofcom cannot presume that any provider of New Voice Services will have any direct contractual relationship with the provider of the underlying means of access.

For example, a customer may buy broadband access from BT, from a reseller of wholesale broadband or from an LLU operator. The customer may independently sign up with a New Voice Services provider for voice services. The only common party to these transactions is the customer. The New Voice Services provider has no contractual privity with either the copper provider (BT) or the broadband provider. In this scenario, it is difficult to see what “reasonably practicable measures” the New Voice Services provider could take.

To the extent that the provider of New Voice Services has a contractual nexus with the underlying service provider, it would seek to obtain service levels, although the provider’s ability to obtain such service levels would be subject to their bargaining position vis-à-vis the underlying service provider.

If Ofcom is suggesting that it proposes to oblige BT to provide meaningful SLAs to its customers for unbundled local loops, DataStream and IPStream products, then Wanadoo would strongly support this proposal.

**Question 22: What in practice should the roles of the network provider versus the service provider be for network integrity when the network provider has no control over the services offered over their network?**

Assessing compliance with General Condition 3 needs to be focused on the service being provided. To the extent that a provider provides:

- the network or access, compliance should be assessed by the availability or reliability of the network or access; and
- a service, their compliance should be assessed by the availability and reliability of that service, subject to the availability of the underlying network.

Ofcom may wish to consider defining standards such that each type of provider will have a reasonable expectation of what will be delivered by the other as this is likely to aid interoperability and cooperation in a multi-operator environment.

**Question 23: Do you agree that it is likely to be reasonably practical for analogue telephone and ISDN2 services to provide line powering but not other services?**

In our view, it is not technically feasible for New Voice Service providers to provide line powering. We do not have a view on analogue or ISDN2 services.

**Question 24: What are your views on the technical feasibility of providing location information for nomadic services, both now and in the future?**

Providing location data for nomadic services presents challenges for providers, users and the emergency services organisations. Wanadoo would be happy to explore the feasibility of providing location data with the emergency organisations and users and supports Ofcom's general approach. This is both in the case of nomadic and fixed voice telephony services.

**Question 25: What approach for emergency location would take account of current technical limitations, whilst ensuring that technical advances bring benefits to emergency organizations in the long run?**

Wanadoo supports Ofcom's initial view that as an interim measure, providers of nomadic New Voice Services should make sure consumers are adequately informed of the possible limitations of making emergency calls using their New Voice Service when they are away from their normal installation address and that where a New Voice Service is provided at a fixed location and would not normally be used in a nomadic way, the use of an alternative technology should not prevent the provision of adequate location information.

In the long term however the approach to resolve such limitations should be the result of work by the industry in conjunction with emergency organisations and with Ofcom's support.

**Question 26: Do you agree that consumer information is required where services look and feel like a traditional telephone service but not where services are clearly different (e.g. PC based services)?**

See our responses to questions 6 and 7.

**Question 27: Do you agree with a two stage approach to consumer information, first to ensure the purchaser is aware of the nature of the service at the point of purchase, and second to ensure all potential users are aware the service does not provide access to 999 at the point of use?**

Wanadoo supports Ofcom's two-stage approach, however suggests that this should be reviewed as consumers become more familiar with New Voice Services in perhaps four years.

**Question 28: If consumer information is required to ensure that consumer interests are protected, which of the above frameworks, if any, is appropriate to ensure it is successful?**

Wanadoo suggests that a self-regulatory approach where industry develops appropriate codes of conduct in consultation with consumer groups and other stakeholders is the preferred option. This has worked well in other areas with respect to consumer protection (e.g. the Internet Watch Foundation, mobile adult content access code, etc).

**Wanadoo UK plc**  
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