

Vonage Limited (“Vonage”) Response to Ofcom’s Consumer Policy Consultation 8th February 2006 (“Consultation”)

The consumer interest is best served by promoting effective competition. Vonage believes that consumer interest and choice will benefit from the uptake of new services such as VoIP and the roll out of NGNs. A balance needs to be struck between the degree of regulatory intervention required to ensure the availability of competitive new services and the need for the consumer to be protected against unfair supplier practices.

With regard to consumer protection Vonage welcomes Ofcom’s approach of monitoring regulatory compliance and initiating enforcement action where suppliers’ activities cause consumer harm. However, the degree and intrusiveness of regulation should be commensurate with the level of harm and detriment that might feasibly befall consumers.

Regulatory intervention should be evidence based without imposing an undue burden on legitimate non-offending suppliers. Given current regulatory requirements with which communications providers must comply, new regulatory initiatives should be directed against those specific activities that cause consumer harm. The current regulatory regime and legislation already provide a range of measures, which in the majority of circumstances are sufficient to protect consumer interests. Such measures include the requirement for communication providers to publish an Ofcom approved complaint handling code of practice under General Condition 14 and the requirement of a sales and marketing code of practice in relation to the supply of fixed line telecommunications services. A pre-condition for approval of the General Condition 14 code is that the communications provider is also a member of an alternative dispute resolution scheme approved by Ofcom (i.e., OtelO or CISAS) and that the supplier complies with the requirements of the dispute resolution scheme. Ofcom is also consulting on proposals to deal with consumer protection issues associated with the growth of VoIP services (covering among other things access to emergency services). It should also be noted that in addition to these Ofcom mandated codes, ITSPA has in place a code of practice governing the activities of all ITSPA members.

Consumer protection measures and legislation already in place serve to protect consumer interests in circumstances where responsible suppliers (which account for the vast majority of communications providers) are providing services. The burden of untargeted regulatory intervention can stifle legitimate suppliers’ activities and impede the growth of competitive services. New regulation should be targeted against unscrupulous suppliers and their scams (for example in relation to certain premium rate activities). Untargeted regulation can impose unnecessary and burdensome additional costs on compliant suppliers. New regulation should be directed at offenders with no incentive to reform and should not penalise legitimate providers.

For legitimate suppliers there is every incentive to comply with current regulatory requirements. In areas, such as mis-selling, silent calls and scams involving premium rate services (rogue internet dialers, scam SMS promotions and competitions etc.) Vonage is in favor of increased regulatory intervention targeted specifically at service providers responsible for scams on the ground that there is often insufficient incentive for those providers to self-regulate their activities.

Vonage would strongly encourage Ofcom to work with the VoIP industry to develop a self-regulatory approach to VoIP services and consumer protection. Where self-regulation has been unsuccessful this has been due to dishonest and unscrupulous providers having insufficient incentive to comply with a self-regulatory regime. Members of ITSPA are legitimate suppliers and there is every incentive for members to comply with the ITSPA code of practice. Given the growing size of ITSPA membership there is significant market disadvantage to any legitimate VoIP provider not being an ITSPA member. As ITSPA continues to grow, consumers will increasingly associate ITSPA members with standards of fair-trading and honesty.

Vonage supports a review of consumer related General Conditions to help ensure the Conditions are targeted more effectively at offenders whilst at the same time decreasing the burden on compliant and legitimate suppliers. Whilst the proposal to introduce flexibility into the General Conditions to cater for new problems as they emerge is laudable, given the speed at which technology is changing and the inventiveness of rogue providers it will not always be possible to “future proof” regulation. However, in cases where there is a new and urgent need to protect consumers from new scams, bodies such as Ofcom and ICSTIS have powers to introduce emergency measures quickly as is evidenced in the recent case of approving revisions to the ICSTIS code to delay outpayments to service providers by 30 days. In the same vein, Vonage also welcomes proposals to streamline enforcement of consumer regulations.

Consumer empowerment is a key tenet to Ofcom’s consumer policy. However, without access to information consumers cannot be expected to make informed choices about products and services available to them. This is very apparent in the area of migrations and switching. The complexity associated with migrations and switching across different platforms and products, coupled with the lack of information about these processes means that it can be very difficult for consumers to switch between providers and products in the full knowledge of the consequences of their decisions. This lack of information can lead to loss of connections and an increase in the potential for mis-selling.

The growth of new technologies and products means that consumers are facing ever-complex choices when looking at the best deals available to them. Consumers must consider a wide range of alternatives when choosing their providers, products and services. Choices include bundling voice and broadband products and splitting services between different providers.

Examples of the wide range of products and delivery systems available to consumers are:

- Broadband (Data Stream/IP Stream)
- Local Loop Unbundling (LLU) with shared and full metallic path facility (SMPF/MPF)
- Wholesale Line Rental (WLR)
- Carrier Pre-Selection (CPS)
- Voice over IP (VoIP)
- Number Portability

All these products and services are transferable yet the migration policies across these products and the consequences of switching (loss of connection in some cases) are

generally not known to consumers. Without clear information concerning the availability of products and the consequences of migration and switching consumers will be unable to benefit from the competitive communications process. Indeed, given the lack of information made available by providers there is a very real threat of consumer harm.

Loss of DSL connection on porting is another area that consumers are unlikely to be aware of at the time they put in a request for number portability. The DSL connection supplied by BT will be lost when the number has been ported across to the recipient provider and this will inevitably lead to consumer frustration and harm. This is a problem associated with BT's number portability processes. Naked DSL would solve the problem, as there would be no loss of the DSL connection. There are distinct consumer advantages associated with Naked DSL: (i) it is to the benefit of consumers in that continuity of service is ensured through no loss of the DSL connection; and (ii) consumers would not be required to continue to pay retail line rental charges for a service they no longer wish to subscribe to.

We believe the consumer interest is best served by promoting effective competition. The availability of a naked dsl product to all retail customers will accelerate the growth of a fully competitive communications environment by ensuring that consumers are not locked into arrangements for access services. The presence of a naked dsl product (e.g. unbundling of retail products for end consumers) at the retail level would promote competition and innovation in technological neutral way by ensuring customer choice and effective movement between services.

Availability and access to communications services is listed as a priority in Ofcom's 2006/7 Annual Plan. However, the availability of services to consumers is hampered by underlying network operator process restraints. Consumers are being deprived of choice because they are locked into arrangements with their providers. Consumers are unable to pick and choose the services they require from different providers because of legacy network arrangements and processes. Until we see true retail unbundling of products and services consumers will not benefit from a fully functional competitive market. Availability, take up and consumption of communications services in the retail voice market is being artificially restricted because the retail market for those services is not sufficiently unbundled. Consumers are being hampered from switching between providers and/or products because of self serving underlying network constraints imposed by the networks themselves – consumers cannot readily “pick and mix” services and products from different providers without the risk of disconnection or other hardship.

In conclusion:

1. Vonage believes that new regulation should be directed at offending providers with no incentive to reform and that new regulation should not be implemented so as to penalise legitimate providers. Regulation must be targeted and should not impose burdens which are unnecessary or maintain burdens which become unnecessary.
2. Ofcom has a duty to further the interests of consumers by promoting competition and by ensuring that a wide range of communications services are available for consumer consumption. Current network practices and processes are self-serving and deny

consumers the choice of switching seamlessly between providers and/or products. Until we see full retail unbundling mandated by Ofcom consumers will continue to be denied access to the full range of communications services and will continue to find themselves locked into network arrangements without the ability to switch. The promotion of access to services must take place at the retail level without unnecessary network operator constraints. We see retail unbundling as the only way of bringing about true consumer empowerment and achieving Ofcom's principal duty of furthering the interests of citizens and consumers.

3. There is enormous consumer confusion due to the number of products, services and technologies in the market place. This confusion is exacerbated by the lack of information being made available to consumers making it very difficult for them to make informed decisions when switching between providers and products. In Ofcom's Consultation "Regulation of VoIP Services" Ofcom has proposed a consumer code of practice to be adopted by providers informing consumers about the features of VoIP services. However, targeting the requirement of a code of practice to VoIP providers only is disproportionate (for example, mobile operators at their inception were not required to warn users about service restrictions and non-availability of 999 emergency service access in out of coverage areas). We would recommend strongly that all communications providers be required to follow a single code of practice prescribing the features of their services and setting out clearly the consequences of migrations and switching. Publication of information and adherence to a code of practice by all providers will help ensure that consumers are better informed and will help protect consumers from dishonest sales and marketing practices.

Vonage Limited
19th April 2006