



Comments on Ofcom's Consultation on New Voice Services

15 November 2004

Microsoft appreciates this opportunity to comment on Ofcom's very enlightened approach to new voice services.

Regulators around the world are struggling with how to balance society's interest in continued innovation in this area against our collective interest in assuring that important consumer protections developed in the last century are not undermined. Of the different regulatory proposals we have seen, Ofcom's is among the most forward-looking. It recognises that we are enjoying a period of technological and business ferment, with the potential to deliver consumers very exciting, new and inexpensive capabilities over the course of time. It recognises that precipitous transposition of last-century regulation onto these new offerings will frustrate their growth and reduce social welfare. It recognises that in some instances imposition of last-century regulation on new offerings may be inapt. Accordingly, Ofcom proposes a light-handed framework that allows innovation to continue apace, whilst consumers receive notice of the capabilities (or lack of capabilities) available to them. In many respects, Ofcom's model is one for other regulators to take note of and deeply consider as they pursue their own enquiries.

In the following comments, we focus on the need for one foundational clarification, which we hope Ofcom will provide as it pursues this consultation. By providing this clarification, Ofcom not only will improve the regulatory environment in the UK, but it also will improve upon the model it is establishing for the rest of the world. We then provide a handful of observations on individual questions raised in the Consultation Document¹ (or "Document"). There are many questions laid out in the Document which we do not address, but in the main we do not address them because we consider Ofcom's regulatory predispositions to be well-founded.²

¹ New voice services - a consultation and interim guidance. Issued 6 September 2004.

² Microsoft strongly supports Ofcom's overall light-handed approach. It is consistent with guiding regulatory principles Microsoft has advocated before the European Commission and the U.S. Federal Communications Commission; namely, that:

- **Innovation Thrives under Light Regulation.** New voice services should be regulated only to the extent that they are a substantial replacement for traditionally regulated services and innovators have failed to resolve important social or economic problems.
- **Regulation Should Account for the Differences Between Networks.** Even where a new voice service is substitutable for a traditionally regulated service, traditional regulation should not be applied without careful consideration of whether regulation is necessary. IP networks are different and communications regulations must recognise differences in network structure and capability and the resulting differences in the way offerings are composed and delivered over those networks.
- **Solutions Should Focus on Objectives, not Means.** Where regulatory intervention is needed, it should set performance objectives, not mandate means. Mandating means will limit technological innovation.
- **Consumer Choice Should Be Preserved.** Consumer choice drives innovation. Where regulatory intervention is needed, it should never limit the consumer's ability to choose among innovative applications and services.

Question 7: Scope, Definitions and Consumer Expectations

To the foundational point: it would be beneficial for Ofcom to clarify that its use of the term “voice services” does not extend to all offerings that might contain some voice capability. Rather, we ask Ofcom to recognise that there is a category of offerings – which as we describe below might be considered “voice supplemented” offerings – that should fall outside the scope of the consultation. The essence of these offerings is such that there is no reason to ensnare them in the proposed application of regulation, light-handed as it is. The overarching rationale for taking a generally light-handed approach – to encourage innovation while safeguarding consumer expectations – actually justifies excluding these offerings from regulation altogether.

Throughout the Document, Ofcom focuses on voice services as consumers recognise them today as well as rough parallels to those services that are arising in the IP (or Internet protocol) world. At Paragraph 4.6, Ofcom notes that it may face challenges if “services that ‘look and feel’ like traditional services may not offer the same features to the same standard as consumers might expect.” Simultaneously, Ofcom is concerned about emerging new services “and their ability to compete with traditional services.”³ Ofcom proposes a light-handed approach so that these new services can emerge and compete, and it takes comfort in the likelihood that, to be competitive, most providers will attempt to meet consumer expectations, such as by providing access to 999.⁴ At Paragraph 7.8, Ofcom homes in on consumers’ need for information when they are “likely to expect [a service] to behave in the same way as a traditional telephone service.”⁵ Indeed, in previously providing guidance to new providers Ofcom focused specifically on those services that are “offered either as substitutes to traditional voice services or could be regarded by the user as such.”⁶

This focus on substitutability is the appropriate one. Elsewhere in the Document the focus tends to drift. At paragraph 2.6, the Document defines voice services as encompassing traditional telephone service, as well as other services that “could provide a similar capability but might less obviously be recognised as a telephone, for example a PC-based service.” The term also includes “interactive text communication used by deaf people.”⁷ It is not clear what the outer bounds of this definition are. We become particularly concerned when, on the one hand, Ofcom notes that a wide range of Internet applications and services may begin to incorporate voice capability and that innovators are likely to create “radically different customer experiences,” yet on the other hand those radically different experiences are not clearly excluded from the definition of a voice service.

Where advances in new voice capabilities will take us is not easy to predict. However, one thing is certain: the range of Internet offerings incorporating a voice element will extend well beyond services that are similar to or compete with traditional PSTN services. At paragraph 3.6 of the Document, Ofcom correctly cites interactive online games as one example. And

-
- **Regulation Should Be Narrowly Targeted.** IP networks and the services that use them collectively comprise an ecosystem, supported by innumerable parties over many infrastructures. Any regulation should be narrowly focused on the most efficient means of achieving its goal in order to minimise unintended consequences.

³ Paragraph 4.13.

⁴ See Paragraph 4.48.

⁵ Paragraph 7.8.

⁶ Paragraph 5.1.

⁷ Paragraph 2.6. By this, we assume Ofcom does not mean instant messaging or chat.

certainly the success of Microsoft's XBOX Live! service demonstrates how consumers can be attracted to Internet gaming experiences that include a voice component. Looking down the road, we envision an array of services that integrate voice, but only as a component of a much broader offering. These offerings will not look like nor will they substitute for traditional voice services. We envision a future enriched by innovative tele-health, tele-education and e-government services, as well as well as online customer assistance programs, that support voice capability. We envision a world in which "click here to talk to a customer service representative" is a common feature on Web sites of all sorts. These developments will be in addition to those that will allow many providers to offer stand-alone voice services via VoIP technology.

Such voice-supplemented services should not be subject to Ofcom's regulatory framework for new "voice services" for three main reasons:

- **No extant consumer expectations.** Throughout the Document, Ofcom justifiably cites consumer expectations as a fundamental reason for re-examining the regulatory framework. As paragraph 4.45 notes, "because consumers have strong expectations that services offer access to 999, they would take availability of access into account when choosing a service." This point makes sense in the context of services that substitute for traditional voice services or could be regarded as substitutes. It does not for services that have a different fundamental purpose or user experience. Web surfers who click on a button that says "speak to a customer service representative" do not expect that experience to substitute for traditional voice services, let alone provide 999 access.
- **Lack of regulatory fit.** Where consumers do not expect a telephony-centric experience, providers should not expect to be ensnared in phone-like regulations, and the imposition of such rules (or even a desire for self-regulation) would be inapt. To take a Microsoft-specific example, it is not clear that consumers would benefit from being informed that an XBOX will not work during a power failure or about the technical differences between a traditional telephone (see Figure 1 of the Document) and XBOX Live!, such as the inability to make directory enquiries for telephone numbers. Such information in fact could confuse consumers who do not expect to be purchasing a telephone when they acquire an XBOX and an XBOX Live! head-set. At a minimum, incorporating these service providers into the regulatory framework - even as providers of an ECS - would violate the principle of avoiding unnecessary regulation.
- **Avoiding regulatory creep.** The brilliance of Ofcom's overall proposal is that it recognises the dampening effect that regulation of new services can have on future innovation (thus, Ofcom's important suggestion that entities be allowed to opt-in to the PATS framework, and its equally important observation that clear customer information about service capabilities and limitations strikes the right balance with consumer protection interests). The regulatory environment surrounding VoIP, however, is likely to remain in flux for some time, and additional regulatory obligations beyond those discussed in the Document could befall services that compete with traditional voice services. The risk of more burdensome phone-centric regulations extending to non-phone-centric offerings would be sure to adversely

impact innovation in those other areas.⁸ There is no public policy rationale for subjecting them to that risk.

In sum, there are an increasing number of services based on IP technologies that include real-time voice communication as a component but that should fall outside the new communications regulatory framework. Different types of products and services give rise to different consumer expectations and social concerns, and therefore not all such offerings should fall within the scope of regulation. Innovative services should be encouraged, not subjected to potential regulatory overhang. This is particularly the case where regulation cannot be justified for consumer protection or other reasons. The use of a potentially sweeping definition of “voice services” could have unintended regulatory consequences. Therefore, Ofcom should narrow the scope of the term “voice services” to its prior focus on “substitutes to traditional voice services or [services that] could be regarded by the user as such.”

Assuming this better-circumscribed definition of voice services, we make the following observations about the remainder of Ofcom’s questions.

Questions 6, 7, 8 and 9: Regulation of voice services

Microsoft agrees with Ofcom’s initial view that it is not necessary for all voice services to provide the same standard features as traditional telephone services (for the reasons outlined in paragraphs 4.24 - 4.25 of the Document), provided that consumers are adequately informed about the features and limitations of these services. This is an appropriate way to set consumer expectations about new voice services while still encouraging the launch of innovative communications capabilities. Microsoft agrees that if Ofcom were to mandate that certain features must be included, providers could be deterred from developing innovative offerings and consumers would have fewer choices.

Microsoft also does not believe that the distinction between the regulation of “second line” and “primary” services is appropriate in this regard, for the reasons outlined in paragraphs 4.35 and 4.37. Nor does Microsoft believe that there should be a threshold at which voice services should be required to offer the same features as traditional voice services. Such thresholds could be arbitrary and may create incentives for certain providers to exit the market once reaching the relevant threshold.

Microsoft agrees with Ofcom that an approach which requires new voice services to offer the same features as traditional voice services is likely to restrict market entry, reduce competition and limit consumer choice, as Ofcom observes in paragraph 4.24. Moreover, Microsoft agrees that the consumer protection aims identified by Ofcom are best achieved by empowering consumers to make informed decisions about the products that they are buying and how to use them.

Questions 11 and 12: Access to 999

Microsoft concurs 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, and that not all voice services should be required to offer access to 999. We support Ofcom’s policy that consumers should be properly informed about a service before deciding whether to subscribe to it or use it.

⁸ See, e.g., Paragraph 5.6, “Providers should be aware that Ofcom is at this stage making no commitment to continue this policy [with respect to 999] beyond this interim period.”

Questions 15 and 16: Definition of PATS and implications of the alternative approach

Microsoft agrees with Ofcom's understanding of the implications of the definition of PATS contained in the Directives. Further, we wholeheartedly encourage Ofcom to give providers of new voice services a choice about whether to offer PATS and make themselves subject to traditional PSTN obligations.

We would also encourage Ofcom to broaden the debate around application of the Directives - from one that focuses primarily on the regulation of new voice service providers who offer the four "core" elements of PATS to one that also considers the impact of ECS regulation. Again, as light-handed as the flexible approach outlined in paragraph 4.73 is, it still leaves many new voice-supplemented services potentially subject to regulation as ECS and as such subject to domestic legal requirements regarding general authorisations, consumer protection, quality of service and universal service funding. Ofcom should use a substitution test to determine which new voice services might be classified as ECS. All other services that include a voice component should be considered information society services or content services and outside the communications regulatory framework.

Question 18: Ofcom's interim position

Microsoft welcomes Ofcom's interim policy of forbearance from enforcing PATS obligations against new services entering the market, even if they offer access to 999, pending further guidance from the European Commission.

Question 22: Roles of the network provider versus those of service providers in regard to network integrity when network providers have no control over the services offered on their networks

Microsoft agrees with Ofcom's current thinking that it does not seem reasonable in practice for network providers to independently take steps to ensure network integrity. Network providers should not be inadvertently subject to traditional PSTN regulation simply because a service provider is offering PATS over their network. Ofcom correctly places the burden on PATS providers to take the initiative on network integrity, which should lead service providers to find those network providers that are willing to offer wholesale IP transport services in compliance with PTN requirements.

Questions 26 and 28: Provision of information to consumers

In the Consultation Document, Ofcom identifies three potential regulatory approaches for achieving consumer awareness: formal regulation, co-regulation or self-regulation. Microsoft considers the latter approach to be in the best interests of consumers and of the industry as a whole, and consistent with the concept of forbearance on which Ofcom's interim policy for PATS providers rests. Self-regulation enables the rapid and efficient delivery of consumer protection, the implementation of flexible and realistic processes that are readily adaptable to the needs to the market and can provide adaptable and responsive opportunities for direct and productive interaction between industry and consumers. Consumers benefit to the extent that the resulting guidelines reflect the consumer representation and specific issues brought to the table during their development. Industry benefits to the extent that the resulting guidelines reflect industry experience. Moreover, whilst Ofcom is right to note that the diversity of providers raises coordination issues, it seems logical that there may be multiple groups involved in the formation of self-regulatory guidelines, such that providers of

services that fall within the communications regulatory framework might proceed differently from those that do not.

* * *

Microsoft appreciates this opportunity to comment on the Consultation Document and welcomes the opportunity to discuss these views in greater detail. For further queries regarding these comments, please contact either Jim Beveridge, Director of Broadband Policy, at + 44 (207) 434 6554 and jimbev@microsoft.com, or Pierre de Vries, Chief of Incubation, at +1 (425) 706 5639 and pierredv@microsoft.com.