**Microsoft response to the Australian Competition and Consumer Commission’s Communications Market Study Issues Paper**

Microsoft welcomes the ACCC’s Communications Market Study, as a timely review of the operation of the Australian communications sector. Given Microsoft’s position as a major provider of online services that leverage communications networks, we have largely focused our comments on the issues papers considerations of Over the Top (OTT) services.

As the issues paper acknowledges, OTT services are not like for like replacements for telephone services. The respective feature sets of OTT services and traditional telephone services do not provide overlapping capabilities and consumers use them in different ways. Accordingly, it would be an oversimplification to consider OTT services as a substitute for traditional telephone services.

The Issues Paper recognises that just as fixed, mobile, and broadband networks are not perfect substitutes for one another, neither are the services and applications that run over them. It observes that certain OTT feature constraints limit their ability to substitute for traditional voice and SMS services,[[1]](#footnote-2) specifically: (i) the absence of emergency calling on OTT services;[[2]](#footnote-3) (ii) the inability to guarantee quality and reliability of OTT services because they run over the public Internet; and (iii) the inability of users to communicate with persons not using the same application.[[3]](#footnote-4)

Conversely, consumers often use OTT apps like Skype because they offer features and new ways for people to communicate that are not available through traditional telephone services. Specifically, traditional telephone services do not provide the capability for people to share video chats or interact through augmented reality experiences.[[4]](#footnote-5) Traditional telephone services do not provide instantaneous language translation for people speaking different languages (as Skype does) or allow users to communicate simultaneously via instant messaging and voice during a multi-person call. Further, telephone services do not permit parties to share documents and files in ways that allow them to collaboratively view, discuss, and edit them in real-time.

The lack of substitutability also is evident in consumer usage patterns. Our data demonstrates that people are not cancelling their phone service with the intention of relying solely on Skype. Traditional telephone service is two-way, meaning that the customer subscribes to the ability to receive incoming telephone calls to their telephone number and to make outgoing telephone calls from the same telephone line as part of a single service offering. With respect to the Skype features that interact with the public switched telephone network (PSTN), Skype users may purchase either a feature allowing them to make outgoing calls to the PSTN (SkypeOut)[[5]](#footnote-6) or a feature that allows them to receive incoming calls from the PSTN (Skype In).[[6]](#footnote-7)  Users may purchase both features, but the two features are not combined in any Skype offering. In practice, only a very small percentage of active Skype users – significantly less than one percent – purchase both SkypeOut and Skype Number. This means that only a tiny fraction of Skype users take the features that, when combined, would allow them to approximate the inbound and outbound calling capabilities of a traditional phone service – and for those that do, it is almost certainly a smaller subset who have canceled their phone service upon doing so.

Skype offers many new and exciting communications features for consumers, but those features are not a substitute for a traditional wireline or mobile telephone line (as Skype reminds its customers in its Terms of Use)[[7]](#footnote-8) – and usage patterns indicate that consumers seem to understand that.

Consumers use both traditional telephone services and OTT voice applications based upon their respectively unique features. We don’t think OTT communications apps are going to eclipse traditional wireline or wireless telephone services anytime soon. Some Microsoft apps, like Skype and GroupMe, are engineered to interact with traditional telephone networks precisely because we think OTT services and traditional telephone services can complement one another and because we think consumers like the option of using both.

At Microsoft, we continue to develop new and exciting ways to use our OTT apps because we want to – and must – continue to delight people so that they’ll want to continue using our products. A hallmark of OTT services is that they have very low barriers to entry. In addition, consumers have many competitive OTT options. Consumers typically multi-home, meaning that they use a variety of OTT apps because switching is as easy and fast as clicking on an app icon. If a consumer wishes to speak with someone speaking a different language, they might choose Skype for that call because of the free Skype Translator feature, and could choose to use another app for their next call due to a unique feature offered by that OTT service. By contrast, consumers tend to employ a single option for a wireline network-based voice service and a single option for a wireless voice service. The typical consumer does not order wireline services from multiple local network-based carriers at once nor do most people carry multiple mobile phones from different carriers. Because switching between OTT apps on a call-by-call basis is so much easier and faster than switching between traditional network-based telephone companies, there’s no compelling need for interoperability among providers of OTT services as there is for interoperability among providers of traditional telephone services.

As the foregoing illustrates, the operation of the marketplace is often the most effective and dynamic method of advancing the interests of consumers. There is symbiosis among OTT providers and internet service providers. Consumers want, and pay for, broadband service because of what they can do with it. The availability of over-the-top services enhances the value that consumers attribute to broadband services – they increase consumers’ return on investment, so to speak. Greater consumer demand for broadband services facilitates greater investments in and improvements to broadband networks (including, in some cases, investments by OTT providers themselves) which enable yet more innovative applications for use on the networks.[[8]](#footnote-9)

It remains important to ensure that network operators do not engage in unreasonable practices that would skew the competitive OTT marketplace or dampen the growth in consumer demand for broadband services through interference with operation of what the U.S. Federal Communications Commission has described as “the virtuous cycle.”[[9]](#footnote-10)

We would be happy to discuss our views further. To do so, please contact: David Masters, Corporate Affairs Manager, Microsoft Australia: damaster@microsoft.com

1. *Issues Paper* at ¶ 5.9. The three features identified as lacking in OTT services are (1) lack of emergency calling on OTT services; (2) lack of guaranteed quality and reliability of OTT services; and (3) inability to communicate across different applications.  [↑](#footnote-ref-2)
2. Skype does support limited emergency calling in Australia. *See* <https://www.skype.com/en/legal/emergency-calling/>. [↑](#footnote-ref-3)
3. Strictly speaking, this last point is not entirely true. Some OTT applications, such as Skype Out, Skype Number, and GroupMe, permit interaction via the public switched telephone network with people who are not using the application. [↑](#footnote-ref-4)
4. See a demonstration of Hololens use in conjunction with Skype at <https://www.microsoft.com/microsoft-hololens/en-us/apps/skype>. [↑](#footnote-ref-5)
5. This feature is identified on the website as “Calls to mobiles and landlines.” [↑](#footnote-ref-6)
6. This feature is identified on the website as “Skype Number.” A third calling option, the Skype-to-Skype feature, allows both incoming and outgoing voice calls among Skype users but does not interact with the public switched telephone network. [↑](#footnote-ref-7)
7. *See* Microsoft Services Agreement at ¶ 13.e (“You acknowledge and agree that: (i) it is your responsibility to purchase traditional wireless (mobile) or fixed line telephone services that offer access to Emergency Services and (ii) Skype is not a replacement for your primary telephone service.”), *available at* [*https://www.microsoft.com/en-au/servicesagreement/*](https://www.microsoft.com/en-au/servicesagreement/)*.*  [↑](#footnote-ref-8)
8. *See, e.g., See* WIK-Consult, “Applications and Networks: The Chicken or the Egg, the Role of Digital Applications in Supporting investment and the European Economy,” at 3 (March 2, 2015), *available at* <http://www.wik.org/index.php?id=studiedetails&L=1&tx_ttnews%5BbackPid%5D=85&tx_ttnews%5Btt_news%5D=1702&cHash=6a5a758243c9018024f69050a5c75299>. [↑](#footnote-ref-9)
9. The U.S. Federal Communications Commission concluded that an open Internet enables “a virtuous [cycle] of innovation in which new uses of the network – including new content, applications, services, and devices – lead to increased end-user demand for broadband, which drives network improvements, which in turn lead to further innovative network uses.” *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, ¶77 (2015), *available at*: <https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-24A1.pdf>. It also concluded that internet service providers have a variety of strong economic incentives and technical ability to engage in practices that would limit internet openness and it developed rules to prevent that outcome. *Id.* at ¶¶ 78 - 85 (2015). [↑](#footnote-ref-10)