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Request for comments by TeliaSonera Finland Oyj

FICORA'S OPINION ON REGULATION OF SKYPE SERVICES IN FINLAND

## 1. REQUEST FOR COMMENTS

TeliaSonera Finland Oyj has requested the view of the Finnish Communications Regulatory Authority (FICORA) on the Voice over IP (VoIP) services provided by Skype Technologies S.A. (hereinafter Skype) and the interconnection agreement between TDC Song Oy<sup>1</sup> (hereinafter Song) and Skype.

TeliaSonera Finland requests FICORA's view on the following questions:

1. Does an interconnection agreement like the one between Song and Skype comply with the requirements set for interconnection by law and FICORA's regulations?
2. Are services like Skype In ja Skype Out interpreted a) as separate services or b) do they form at least together a telephone service? If alternative b) is chosen, is it regarded as a service in the fixed telephone network or another service?
3. Can geographic subscriber numbers be granted a) to a service that is not a fixed telephone network service, or b) to a telephone service that does not comply with the requirements set in law or regulations issued thereunder?

## 2. PROCEEDINGS IN FICORA

FICORA has asked Song, Skype's Finnish cooperation partner, for comments on the questions made by TeliaSonera Finland regarding Skype services. Song has submitted its comments on the matter on 31 May 2005.

On 2 September 2005 FICORA submitted its draft opinion to the notice of those concerned and other telecommunications operators and offered them an opportunity to present their comments on the matter. FICORA received comments from Skype, TeliaSonera Finland Oyj, Elisa Oyj, the

<sup>1</sup> Previously Song Networks Oy

Finnet Association, Saunalahti Group Oyj, Global Business Oy, Suupohjan Seutuverkko Oy and the FiCom Association.

Skype accepts FICORA's view that both Skype Out and Skype In services are communication services by nature. However, Skype wants to emphasise that it does not itself act as a communications service provider for Skype Out and Skype In services, but is only a reseller of communications services of its cooperation partners under its own brand. In Finland, the partner of Skype is Song. Song has implemented the Skype In service as far as the service is operated in a telephone network and Finnish subscriber numbers are used. The users obtain a number from the subscriber number range of Song and Song directs the calls made to these numbers further to the subscribers of the Skype In service. At present Song also implements a major part of the Skype Out calls directed to the Finnish telephone network. According to Skype it has no interconnection agreement with Song but a cooperation agreement. According to Skype, Song has not transferred to Skype any part of its own number space, but numbers are granted to Skype users on the basis of agreements concluded. As a reseller of communication services, Skype does not find itself responsible for making a telecommunication notification, if the obligation is not imposed on resellers.

In other comments attention was paid to the technology neutrality of the regulation on VoIP services, the definition of a subscriber connection, the marketing of services and FICORA's competence. Generally, the comments made were for alleviation of the regulation on services of the fixed telephone network, but there was some concern for the realisation of the principle of technology neutrality. The opinions highlighted that the obligations shall not depend on the technology by which mutually substitutable services are provided to customers. Furthermore, there was a fear that the regulation is applied more strictly to Finnish telecommunications operators than to foreign service providers.

In addition, the comments received by FICORA highlighted the importance of realisation of the users' rights in all telephone services. The image of the service created in marketing should serve as a criterion when it is estimated whether the service is a telephone service. In several opinions it was stated that geographic subscriber numbers of the fixed network should not be issued for other purposes than provision of subscriber connections. The opinions expressed concern that FICORA's opinion may incite telecommunications operators to create their services on purpose so that provisions on subscriber connections would not apply to them.

### 3. SKYPE SERVICES

Skype provides three types of services: The original Skype (here called Skype Classic) is a software to be downloaded from the Internet, by means of which the user can make free of charge VoIP phone calls to other Skype users. Skype Out and Skype In are supplementary services provided for remuneration, through which the user can originate or receive calls through E.164 numbers. Skype also provides a Skype Zones service, which enables the users' access to other Skype services through Skype-friendly WLAN hotspots. A more detailed description of each service is below.

A Finnish version of Skype software is also available and it can be downloaded in Finnish. Part of the instructions given on Skype's website have also been translated into Finnish.

### 3.1 Skype Classic

The original Skype is a software programme that can be downloaded on the computer from the Internet and by means of which the user may make VoIP phone calls to other Skype users that have downloaded the same programme and registered a user name. Both the programme downloaded and the calls made through it are free of charge.

The service is based on a peer-to-peer network application, and the voice communication or call signalling does not circulate through servers maintained by Skype itself. The Skype Classic also includes chat group, data transmission and conference call features.

A user account may cover the Skype In, Skype Out or both the services.

### 3.2 Skype Out

The users of the Skype Out service can make VoIP calls to subscribers to a public telephone network (PSTN/GSM) by means of E.164 numbering. The use of the Skype Out is tied-up to the use of the original Skype Classic which means that the user first has to download the Skype software and to register a Skype account for him/herself. The Skype Out service is seamlessly merged into the user interface of the Skype programme.

The Skype Out operates on pre-paid principle, i.e. the user can load money on the Skype Out account e.g. by a credit card. The call charge paid by the user does not depend on the country where the call is made. With Skype Out the user may call only numbers in the international form, for which reason calling to for instance emergency numbers is barred. Equally, the access to some extra charge service numbers and some non-geographic numbers is barred. Call-back to the calling number is not possible. The service is charged per minute.

### 3.3 Skype In

In the Skype In service the user may buy a personal E.164 number either for three or for twelve months. Through this number the subscribers to a public telephone network (PSTN/GSM) may make phone calls to Skype In users. At present the user may not transfer his/her own PSTN/GSM number to the service. Neither is he/she able to transfer his/her Skype In number when changing the service provider. A Skype In user may hold up to 10 Skype In numbers at a time. The numbers can be bought in different numbering areas or in different countries. A free voicemail is also included in the Skype In service.

The Skype In service is equally tied-up to the use of the original Skype Classic, wherefore the user first has to install the Skype software and to register a Skype account. The Skype In service is seamlessly merged with the user interface of the Skype programme.

### 3.4 Terminal equipment for the service

Skype Classic, Skype Out and Skype In services are operated by means of software to be installed on the user's PC. Skype has also opened the

interface used by it for the use of developers, which has enabled the use of other terminal equipment in the services concerned.

At present all Skype terminal equipment in the market also requires a switched on PC. The Skype terminal equipment available includes both fixed and wireless VoIP telephones and VoIP transformers, to which even a traditional analog telephone can be coupled.

### 3.5 Interconnection of Skype Out and In services with the PSTN network

Song has implemented the Skype In service as far as Finnish subscriber numbers are used in the service. The users obtain a fixed network subscriber number from Song's Finnish number space (areas 02, 03, 08 and 09). The phone calls over the traditional telephone network to these numbers are further directed to Song, who transforms them into IP calls by means of a gateway. Song directs the VoIP call signalling to Skype's server, which further transmits the signalling to Skype In users.

In the Skype Out service a PSTN gateway service is provided by Song to Skype. The Skype calls are transformed into circuit switched speech and further directed to the correct number of the traditional telephone network. Even though Song is for the time being Skype's major cooperation partner in Finland, the incoming Skype Out traffic to Finland can also be directed through other providers of PSTN gateway services.

## 4. LEGISLATION

### 4.1 Legislation on communications markets and its scope of application

This opinion is essentially based on the Communications Market Act (393/2003) and the Act on the Protection of Privacy in Electronic Communications (516/2004).

The purpose of the Communications Market Act is, according to its section 1, to promote the provision and use of services within communications networks and to ensure that communications networks and services are available under reasonable conditions to all telecommunications operators and users throughout the country. A further objective of the Act is to ensure that the opportunities available for telecommunications in Finland accord with the reasonable needs of users and that they are competitive, technologically advanced, of high quality, reliable and safe, and inexpensive.

The Communications Market Act applies to communications markets, if not otherwise provided in the law. Communications markets mean the provision of network and communications services and related services.

The objective of the Act on the Protection of Privacy in Electronic Communications is, according to its section 1, to ensure confidentiality and privacy protection in electronic communications and to promote information security in electronic communications and the balanced development of a wide range of electronic communications services.

The Act on the Protection of Privacy in Electronic Communications applies to network services, communications services, value added services and services where data describing the use of the service is handled, which

are provided in public communications networks. The Act also applies to direct marketing in public communications networks and to subscriber directory services and telephone directory services. Restrictions of the scope of application are laid down in section 3(2-7) of the Act.

#### 4.2 Definitions of the concepts used in the legislation

The following definitions are written into section 2 of the Communications Market Act (CMA). The concepts and definitions used in the Act on the Protection of Privacy in Electronic Communications mainly correspond to those of the CMA.

*Network operator* means, according to section 2(17) of the CMA, an operator that provides a communications network in its ownership or for other reasons in its possession for the purposes of transmitting, distributing or providing messages. *Network service* means, according to sub-section 18, a service provided by a network operator.

*Service operator* means, according to sub-section 19, an operator that transmits messages over a communications network in its possession or obtained for use from a network operator or distributes or provides messages in a mass communications network. *Communications service* means, according to sub-section 20, a service provided by a service operator.

*Mobile network* means, according to section 2(3), a communications network primarily used for targeted communications in which the terminal equipment is connected to the communications network by means of freely propagating radio waves.

*Fixed telephone network* means, according to sub-section 4, a communications network primarily used for targeted communications in which the terminal equipment is connected to the communications network by a cable or other leased line. According to the preamble of the government bill concerning the Communications Market Act (HE 112/2002) a fixed telephone network means in everyday language "wire telephone network".

*Telephone network* means in the CMA a *mobile network* or a *fixed telephone network*. Telephone network is a general concept which may refer to both types of networks.

#### 4.3 Communications service

In the definition of a communications service, the essential point is that it is the service provider that transmits messages over a communications network in its possession or obtained for use from a network operator. The EC framework directive also provides that the communications service is usually provided for remuneration.<sup>2</sup>

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<sup>2</sup> Directive of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (2002/21/EY). According to article 2(c) *electronic communications service* means a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but exclude services providing, or exercising editorial control over, content transmitted using electronic communications networks and services; it does not include information society services, as defined in Article 1 of Directive 98/34/EC, which do not consist wholly or mainly in the conveyance of signals on electronic communications networks.

The VoIP services that are based on peer-to-peer network technology and operate distinctly in the Internet do not fulfill the present definition of a communications service, because the service provider does not participate in the transmission of messages in a way referred to in the Communications Market Act. The service provided by a VoIP service provider comprises, in addition to software to be installed on a computer, of a directory service providing an IP address through which the calls are routed to the recipient. In such a case it is the user's Internet service provider who provides the communications service.

VoIP services based on peer-to-peer technology are outside the scope of application of the Communications Market Act and in FICORA's view the service concerned would rather be classified as information society services referred to in the Act on Provision of Information Society Services.<sup>3</sup> This view is supported also by the consultation document on the regulation of VoIP services issued by the European Commission on 14 June 2004 according to which a VoIP offering that comprises provision of a product (e.g. a software program to be run on a personal computer), with no ongoing provision of a service, is not within the scope of the EU regulatory framework if it does not entail provision of an Electronic Communications Service.<sup>4</sup>

If there is an access from the VoIP service to a telephone network, the service means transmission of messages in a communications network that is in the possession of the service provider or hired from a network operator. In such a case the VoIP service provided is a communications service. If such a service is publicly available, it is also a communications service referred to in the Act on Protection of Privacy in Electronic Communications. A telecommunications operator providing communications services shall in its activities comply with the Communications Market Act and the Act on the Protection of Privacy in Electronic Communications and the regulations on the provision of communications services and public telecommunications issued under them.

#### 4.4 Telecommunications operator in a telephone network

In Chapter 6, Numbering, and Chapter 7, Rights of the user, of the Telecommunications Market Act certain obligations are imposed on *telecommunications operators in a telephone network*.

A telecommunications operator acts in a telephone network in a way referred to in the Communications Market Act, if it provides network services or communications services in a telephone network. To be a telecommunications operator in a telephone network, the operator need not provide subscriber connections to end-users.

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<sup>3</sup> Act on Provision of Information Society Services (458/2002), section 2: "In this Act, information society services shall refer to services provided: 1) as distance services, i.e. without the parties being present at the same time; 2) electronically, i.e. by sending and receiving services via devices handling information electronically or via storage of information so that only cables, a radio connection, optical equipment or other electro-magnetic equipment are used for sending, transmitting and receiving services; 3) as data transfers requested personally by recipients of services; and 4) usually against payment"

<sup>4</sup> Commission staff working document on the Treatment of Voice over Internet Protocol (VoIP) under the EU Regulatory Framework, p. 6, [http://europa.eu.int/information\\_society/policy/ecom/doc/info\\_centre/commiss\\_serv\\_doc/406\\_14\\_voip\\_consult\\_paper\\_v2\\_1.pdf](http://europa.eu.int/information_society/policy/ecom/doc/info_centre/commiss_serv_doc/406_14_voip_consult_paper_v2_1.pdf).

In some of the obligations imposed on telecommunications operators in a telephone network the scope of application has been further restricted so that a telecommunications operator in a telephone network has *for its part* to ensure that the obligations imposed are fulfilled. This means that the nature and characteristics of the service provided determine which of the obligations are finally applied and how the operator shall participate in the fulfillment of the obligations.

A telecommunications operator providing VoIP services is also operating in a telephone network, if the service provides a connection to a telephone network. In a VoIP service this means at the first place that phone calls can be originated from the service to a telephone network *and/or* received from a telephone network.

A VoIP service provider operating in a telephone network shall ensure that the obligations imposed on telecommunications operators in a telephone network are fulfilled in regard to the service provided. For instance, if the service provided enables making international calls, the service provider shall ensure that the users may use the universal international access code 00 (CMA, section 54). If it is possible to make calls from the service, the user must have access to the universal emergency call number (CMA, section 55) and to a generally available directory inquiry service (CMA, section 56). Respectively, if the service only entails the reception of calls, the service provider need not offer these facilities.

#### 4.5 Subscriber connection to a telephone network

A telephone service or a subscriber connection is not separately defined in the Communications Market Act, even though in Chapter 7 concerning the rights of the user, obligations are imposed particularly on telecommunications operators providing telephone network subscriber connections.

In its decision<sup>5</sup> issued on 29 October 2003 to TeliaSonera Finland Oyj, FICORA has established that a subscriber connection to a telephone network means in the Communications Market Act the same as the publicly available telephone service in the EC Universal Service Directive. Consequently, a subscriber connection to a telephone network can be regarded as a service available to the public for originating and receiving national and international calls and access to emergency services through a number or numbers in a national or international telephone numbering plan.<sup>6</sup>

FICORA regards that to conform to the definition of a telephone service available to the public, and through this, the definition of a subscriber connection, the VoIP service must enable *both* originating *and* receiving of national and international calls through a number in a national or

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<sup>5</sup> FICORA's decision on the legality of Sonera Puhekaista (Phone Band) service, dnro 629/543/2003 (<http://www.ficora.fi/englanti/document/SoneraPuhekaista.pdf>)

<sup>6</sup> Directive of the European Parliament and of the Council on universal service and users' rights relating to electronic communications networks and services (2002/22/EC). According to Article 2(c) of the Directive *publicly available telephone service* means a service available to the public for originating and receiving national and international calls and access to emergency services through a number or numbers in a national or international telephone numbering plan, and in addition may, where relevant, include one or more of the following services: the provision of operator assistance, directory enquiry services, directories, provision of public pay phones, provision of services under special terms, provision of special facilities for customers with disabilities or with special social needs and/or the provision of non-geographic services. This definition in the Universal Service Directive has also served as a basis for defining telephone services in FICORA's regulations.

international telephone numbering plan. This has also been established in FICORA's decision on Saunalahti Lanka service issued on 24 February 2005.<sup>7</sup> Consequently, a VoIP service enabling only one-way set-up of calls does not correspond to the characteristics of a publicly available telephone service or subscriber connection to a telephone network. In terms of the Communications Market Act, the service concerned is not a telephone network subscriber connection, but a communications service.

Whether the VoIP service, as defined above, entails two-way set-up of calls is deemed separately for each individual case. In general, it is characteristic for a two-way call set-up that calls can be made to the subscriber connection by dialling the number that in case of the call originating from the connection concerned is transmitted in the network as the number of the calling connection. On the other hand, in order that the services enabling making and receiving phone calls could be regarded as two separate services, it should also be possible to buy them and use them as separate services.

The service must also be in compliance with what has been agreed upon. If the service is marketed as a subscriber connection to a telephone network, it must meet the prerequisites of a subscriber connection and the requirements set for such a connection. Correspondingly, if the service is marketed as a communication service, not in compliance with the requirements set for a subscriber connection to a telephone network, the user must be clearly informed of this in the description of the service and terms of agreement.

In international discussion much attention has been paid to the access to emergency services as a part of the definition of a publicly available telephone service. From the viewpoint of the Finnish Communications Market Act, the question is not relevant, because in the Act the obligation of providing emergency services has been imposed on *all telecommunications operators in the telephone network for their part* and not only on those providing subscriber connections. Consequently, a telecommunications operator cannot, in order to evade the definition, abstain from providing access to emergency services, if the service otherwise meets the requirements of a subscriber connection to a telephone network.

## 5 FICORA'S COMPETENCE WITH REGARD TO SERVICES CROSSING THE BORDER

VoIP services are by nature geographically more independent than traditional telephone services. As the VoIP service is not necessarily tied-up with for instance the customer's Internet connection, both the service provider and the customer can be located in different parts of the world.

The global character of VoIP services also affects the national regulatory authorities' competence of regulating VoIP services and companies providing them. According to section 119(2) of CMA, FICORA supervises compliance with the Act and provisions issued under it. Respectively, in accordance with section 31 of the Act on the Protection of Privacy in Electronic Communications, the duty of FICORA is to supervise compliance with the Act and any provisions issued under it, unless otherwise provided in section 32. The Communications Market Act and the on the Protection of Privacy in Electronic Communications do not

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<sup>7</sup> FICORA's decision on number portability in Saunalahti Lanka (Wire) service, dnro 1310/532/2004.

contain provisions on competence in regard to services crossing the border and neither are such provisions included in the EC Directives on electronic communications.

In Finland, public telecommunications is a trade subject to declaration, and operators of public telecommunications shall submit FICORA a notification of their operations. However, a telecommunications notification itself does not create any independent rights or obligations, but it is intended for helping FICORA in the supervision of telecommunications operators in the market. Also, the notification obligation does not apply to public telecommunications that are temporary in nature, aimed at a small audience or otherwise of minor significance. Consequently, FICORA may be a competent authority to supervise the activities of a telecommunications operator regardless of the notification, if the company is regarded to carry on public telecommunications in Finland or if the service has otherwise sufficient connection to Finland.

It is evident, that the Finnish Communications Market Act and the Act on the Protection of Privacy in Electronic Communications shall apply, if a telecommunications operator is established in Finland and offers services to Finnish users or users living in Finland. The Finnish communications legislation also applies to telecommunications equipment located in Finland regardless of the location of the company or where the services are provided.

In addition FICORA is a competent authority to supervise the use of numbers and identifiers granted by it. By its decision FICORA grants numbers and identifiers in accordance with the Communications Market Act and the Regulation on numbering including a numbering plan. In its Regulation on numbering, FICORA may also prescribe the purpose of use of a number and place other conditions for the use of a number as provided in the Act. The Finnish Communications Market Act and the Act on the Protection of Privacy in Electronic Communications apply to the numbers and identifiers granted to telecommunications operators by FICORA and to telecommunications operated by means of these numbers and identifiers regardless of the country where the service provider is established or the country in which the users of the service are located. FICORA is also a competent authority to supervise the use of numbers and identifiers granted by it and communications services provided by means of them in case that a (Finnish) telecommunications operator in possession of the numbers has further relinquished subscriber numbers to a telecommunications operator established in some other state. FICORA's control or competence regarding a number granted by it is independent of the fact, who finally has relinquished the number to the user.

If the competence cannot be determined on the basis of the facts mentioned above, it can also be assessed considering the state to which the telecommunications operator has the closest connection. In the assessment it is possible to take account for instance the company's country of establishment, technical implementation of the services provided, the location of technical equipment and borders-crossing marketing of the services. It is to be noted that this list of criteria is not exhaustive, but rather serves as an example.

## 6. FICORA'S OPINION ON THE VOIP SERVICES PROVIDED BY SKYPE

### 6.1 Skype Classic

The original Skype is a software programme to be downloaded from the Internet to a computer, by means of which the user may make and receive phone calls between other Skype users. The Skype Classic Service is free of charge to the user, it has no connection to a public telephone network and E.164 numbers are not provided.

In FICORA's opinion the Skype Classic service is not a communications service, because Skype as a service provider does not transmit messages in a communications network in its possession or obtained for use from a network operator in a way referred to in the Communications Market Act.

Skype Classic is by nature rather an information society service referred to in the Act on Provision of Information Society Services. By virtue of sections 5-6 of the Act, the country of origin principle is applied in regard to service providers established in a state of the European Economic Area. This means that the service provider may offer its services within the whole territory of the community in accordance with the national provisions of the State of establishment. As Skype is established in Luxembourg, primarily the Luxembourgian legislation is applied in regard to Skype Classic. Consequently, FICORA is not a competent authority to assess Skype's activities to this effect.

### 6.2 Skype Out and Skype In

#### Character of the service

The Skype Out and Skype In services differ from Skype Classic in that they provide an access to the public telephone network. VoIP calls can be made from the Skype Out service through E.164 numbers also to other than Skype users. However, a Skype Out user cannot obtain an E.164 number and phone calls cannot be received through Skype Out. In the Skype In service the user obtains an E.164 number, by means of which he/she can receive call from the public telephone network.

Both Skype Out and Skype In are communications services by nature, because Skype provides the users a connection to the public telephone network and thus messages are transmitted in a communications network in the service provider's possession or obtained for use from a network operator. As services are provided for remuneration, FICORA regards that the service also conforms to the definition of an electronic communications service in the EC framework directive.

Even though the Skype Out and Skype In services can be combined to one and the same subscriber account, from the contractual point of view they are two separate services and are also sold separately. Without the Skype Out service the user is not able to make phone calls to the public telephone network and correspondingly without the Skype In service the user is not able to receive phone calls from the public telephone network. In addition, one Skype account can have only one Skype Out service, but up to ten separate Skype In services. Even though the user would make an agreement on the use of both Skype Out and Skype In service, the subscriber number connected to Skype In is not used as calling number in dialling Skype Out calls. FICORA regards that Skype Out and Skype In do not even together form a subscriber connection to a telephone

network, but they are by nature communications services provided in the telephone network.

#### Skype's position as a service provider

According to the clarification issued by Skype, the company does not itself act as a provider of communications services with regard to Skype Out and Skype In, but is a reseller of services provided by its cooperation partners under its own brand. In the Skype Out and Skype In services only invoicing and customer authentication are accomplished by Skype itself and are not regarded as provision of communications services.

The present Communications Market Act or the Act on the Protection of Privacy in Electronic Communications do not contain any definition for a reseller or reselling. Neither are the provisions on communications services or telecommunications operators applied to resellers of communications services, but the regulation is focused on telecommunications operators providing communications services. However, Skype's operations cannot, at least on the basis of the present implementation of Skype Out and Skype In services, be regarded as reselling, as Skype has, by its own technical measures, the right and is factually able to inhibit the user from using the service. As to the Skype Out service, Skype also independently decides through which service provider the calls are directed to a telephone network. The user cannot choose and usually is not even aware through which operator's network the calls are directed. The volume of numbers relinquished by Song to Skype at a time is not of importance in the estimation of Skype's position as a provider of communications services.

FICORA regards that for the reasons presented above, according to the Finnish legislation on communications markets, Skype acts as a service provider and not as a reseller in the provision of Skype Out and Skype In services. FICORA's opinion is supported by the definition of reselling in the previous Communications Market Act (396/1997), section 4(17), and its detailed preamble.<sup>8</sup>

#### FICORA's competence regarding Skype Out and Skype In services

As far as network and communication services implemented by a Finnish telecommunications operator are used in the Skype Out and Skype In services, the operations are considered as public telecommunications operated in Finland, to which the Finnish communications market legislation applies. Correspondingly, the Finnish communications market legislation does not apply to the Skype Out and Skype In services as far as the service is provided by some other than a telecommunications operator operating public telecommunications in Finland.

In Finland, Skype's cooperation partner is Song. The users can obtain a number from Song's Finnish subscriber number space and Song directs the calls made to the number to Skype's server, which further directs them to Skype In subscribers. A major part of incoming Skype Out calls to Finland are also directed to Finland over the network of Song. In the

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<sup>8</sup> According to Communications Market Act (396/1997), section 4(17) *reselling* means the sale of telecommunications network services and telecommunications services further acquired from a telecommunications operator as such or as part of another service. According to the detailed preamble for this section, reselling would not cover such activities where the provider may by its own technical measures inhibit the user from using the telecommunications services. Such activities would be regarded as telecommunications operations.

implementation of its services Song is obliged to comply with the provisions of the Finnish Communications Market Act and the Act on the Protection of Privacy in Electronic Communications.

Regarding the services offered to end-users, telecommunications operated in Finland are concerned only in the Skype In service, and even there only for those parts where subscriber numbers in accordance with the Finnish numbering plan are used. The Finnish Communications Market Act and the Act on the Protection of Privacy in Electronic Communications apply to numbers granted to telecommunications operators and to communications services provided through them regardless of the country where the service provider is established or where the users of the service are located. FICORA is a competent Authority to supervise the use of the numbers and identifiers granted by it also in case that the Finnish telecommunications operator who has obtained the numbers has further relinquished subscriber numbers to a telecommunications operator established in some other state.

Regarding the Skype Out service, Skype has no such connection to Finland that it could be considered to operate telecommunications in Finland: Skype is not an operator established in Finland and a user of Skype Out services does not hold an E.164 number in accordance with the Finnish numbering plan. Neither is the service particularly aimed at Finnish users. Neither does the country where the user is located affect the use of the service, as calls can be made to internationally composed numbers only, and dialling in a national form is not possible. Calls made from the Skype Out service to Finland can mainly be compared to incoming international traffic to Finland. For the reasons presented above, FICORA regards that the Finnish Communications Market Act and the Act on the Protection of Privacy in electronic Communications do not apply to the Skype Out service provided to end-users and FICORA is not a competent Authority to supervise the operations of Skype to this effect. The fact that the Skype software is also available in Finnish is not alone sufficient to establish competence to FICORA.

### 6.3 Application of communications legislation to Skype Out and Skype In services

As far as public telecommunications in Finland are concerned in the provision of Skype out and Skype In services, the telecommunications operator providing these services shall comply with the obligations set for communications services and operators of a communications networks in the Communications Market Act and the Act on the Protection of Privacy in Electronic Communications.

As there is a connection to a telephone network from the Skype Out and Skype In services, the service provider shall also see to it that the requirements set for telecommunications operators in a telephone network are met in the services provided. The provisions on subscriber connections to a telephone network do not apply to these services, as they do not fulfill the prerequisites for a subscriber connection to a telephone network.

#### Telecommunications notification

According to section 13 of the CMA a written notification of the intention to operate public telecommunications shall be submitted to FICORA

before the operations begin (*telecommunications notification*). FICORA shall also be notified of any change in the information entered in the telecommunications notification or of the termination of the operations.

The notification duty does not apply to public telecommunications that is temporary in nature, aimed at a small audience or otherwise of minor significance. According to the Government decree on telecommunications of minor significance (675/2003) public telecommunications shall be considered to be of minor significance, if the operations consist of network services or communications services in communications networks with less than 500 subscriber connections or if the annual turnover is below EUR 300,000.

Consequently, Skype shall submit FICORA a telecommunications notification for the Skype In service, unless the telecommunications within the scope of application of the Finnish Communications Market Act are of minor significance as described above.

A telecommunications notification does not create any independent rights or duties, but it is intended for helping the Authority in the supervision of telecommunications operators in the market. The rights and duties laid down in the Communications Market Act apply to all operators of public telecommunications regardless of the telecommunications notification.

On the request of the telecommunications operator, FICORA provides confirmation of the receipt of a telecommunications notification. The confirmation notice indicates the rights and obligations of telecommunications operators in Finland under the Communications Market Act. Some of the most important obligations concerning provision of telecommunications services are listed below.

### Numbering

Provisions on numbering are laid down in section 48 of the CMA. In addition, FICORA has issued a regulation on numbering in a public telephone network prescribing what numbers or identifiers may be used and for which purpose in telecommunications.<sup>9</sup>

The scope of application of the numbering regulation covers the numbering of public telephone networks and communications services implemented over them. A telephone network means a fixed telephone network, a mobile communications network and a data network meant for targeted communications. A public telephone network means a network which is offered to a group of users that is not restricted in advance. In addition, the regulation applies to other than public telephone networks e.g. for those parts where their numbering affects the public telephone network.

In the numbering regulation the use of subscriber numbers is not restricted to *subscriber connections to a telephone network*, because the regulation applies to telephone networks meant for targeted communications and services provided over them. Targeted communications require a bidirectional capability of the connection which

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<sup>9</sup> Regulation on numbering in a public telephone network (FICORA 32 H/2005 M), <http://www.ficora.fi/englanti/document/FICORA32H2005M.pdf> .

makes it different from services provided in mass communication networks. However, this does not mean, that a service offered over a telephone network should meet the requirements set for a subscriber connection to a telephone network or to enable two-way call setup. Consequently, geographic subscriber numbers can also be used for the provision of other communications services than subscriber connections to a telephone network.

In the Skype In service the user obtains a geographic subscriber number for reception of phone calls. The caller making a phone call from a fixed subscriber connection need not select an area code or international access code when calling a user of the Skype In service holding a subscriber number of the same telecommunications area. The Communications Market Act or the regulations of FICORA do not include any provisions prescribing that a terminal device receiving phone calls through a subscriber number of a telecommunications area should be physically located in the telecommunications area concerned or a terminal device holding a mobile subscriber number in Finland. However, the subscriber number shall, in regard to the telephone network and the caller to the number, act in the same way as other subscriber numbers of the telecommunications area. The caller shall for instance be able to make phone calls to other numbers of the same telecommunications area at a rate for local calls. The purpose of numbering is, besides steering the service in telephone networks, to prove their purpose of use. The numbering of services affects for instance the implementation of call-barring services.

FICORA has not restricted the number ranges used in VoIP services. Thus subscriber numbers can be granted for the VoIP service as well from the telecommunications area specific number ranges as from nationwide number ranges. Consequently, FICORA has no objections to the use of geographic subscriber numbers in the Skype In service.

#### Number portability

Provisions on obligations of number portability are laid down in section 51 of the CMA and in FICORA's Regulation on telephone number portability.<sup>10</sup> According to the provisions *a telecommunications operator in a telephone network shall ensure without delay that a user who has entered into a subscriber connection agreement with it may, if he or she wishes, retain his or her telephone number when changing his or her fixed-connection telecommunications operator in the same telecommunications area or his or her mobile-connection telecommunications operator.*

The scope of application of number portability has been restricted so that only users who have entered into a subscriber connection agreement have the right to number portability. Consequently a telecommunications operator has no obligation to port a number from such communications services or to such services that do not comply with the definition of a telephone network subscriber connection. Neither does the obligation of number portability apply to pre-paid connections without a subscriber connection agreement. However, the provision on number portability does not prevent porting numbers in these cases either.

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<sup>10</sup> Regulation on telephone number portability (FICORA 46 C/2005 M), <http://www.ficora.fi/englanti/document/FICORA46C2005M.pdf> .

As the Skype In service does not meet the requirements set for a subscriber connection to a telephone network, Skype has no statutory *obligation* of implementing number portability. For the same reason any other telecommunications operator has no *obligation* to port numbers to the Skype in service. However, if numbers are ported to Skype In or from Skype In to some other service provider, other obligations related to portability (such as direct steering and information service) shall also apply.

#### Interconnection

According to section 39 of the CMA, a telecommunications operator has an obligation to negotiate on interconnection with another telecommunications operator. The provisions of section 43 on charges collected for the use of a telephone network and section 44 on prohibition on bulk discounts also apply to all telecommunications operators.

Any further obligations on interconnection have been defined in FICORA's decisions on significant market power regarding call origination on the fixed telephone network, call termination on individual fixed telephone networks or mobile networks, and transit services in the fixed public telephone network.<sup>11</sup>

All telecommunications operators declared to be operators with a significant market power on the above mentioned markets have an obligation to interconnect a communications network or communications service with the communications network or communications service of another telecommunications operator. Interconnection shall be established at the point specified by the telecommunications operator requesting interconnection, unless it is technically inappropriate or unreasonable from the perspective of the telecommunications operator with the obligation of interconnection. At present, technical appropriateness means interconnection in a circuit-switched telephone network. Consequently, a telecommunications operator providing VoIP services must transform its speech service coming from an IP network service into circuit-switched to enable interconnection. After this the VoIP service can be technically interconnected with the speech service provided in the telephone network in accordance with the defined SMP obligations. In regard to this interconnection obligation, it is not crucial whether the VoIP service provided is considered a subscriber connection to the telephone network or other communications service.

Operators with SMP shall in all respects comply with the provisions of sections 40-42 of the CMA, unless otherwise agreed by the interconnecting parties.

FICORA has also issued a regulation on interconnectivity, interoperability and signalling in communications networks.<sup>12</sup> The regulation is primarily

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<sup>11</sup> The decisions on SMP are available at FICORA's website <http://www.ficora.fi/suomi/tele/HMV.htm> . The obligations imposed on each SMP operator appear from the relevant decision for the operator concerned.

<sup>12</sup> Regulation on interconnectivity, interoperability and signalling in communications networks (FICORA 28 F/2005 M), <http://www.ficora.fi/englanti/document/FICORA28F2005M.pdf> .

applied to interconnection of both network services and communications services. In some sections the scope of application has been restricted to cover telephone services only.

### Emergency services

In section 55 of the CMA, an obligation to provide access to the universal emergency service number is imposed on *telecommunications operators in a telephone network*. They shall, for their part, ensure that the users of the service may dial free of charge the universal emergency number 112 and the police emergency number 10022 indicated by FICORA. FICORA has also issued a regulation on routing and ensuring emergency traffic.<sup>13</sup> The regulation contains, among other things, provisions on the routing of emergency calls to the correct emergency response centre, the ensuring of emergency calls and the priority routes to be dedicated.

Even though Skype In is a service provided in the telephone network, an access to emergency services need not be provided, as any other calls to the public telephone network cannot be made either.

As stated above, FICORA has no competence to supervise the Skype Out service provided to the end-user. However, FICORA finds it a serious deficiency that the Skype Out users are not able to use emergency services. In emergency situations the users safety may be endangered.

According to section 4 of FICORA's regulation on emergency traffic, a telecommunications operator shall inform its customers of possible restrictions related to the telephone services concerning the requirements set for emergency calls in the regulation. FICORA finds it important that customers are clearly notified that it is not possible to dial emergency numbers from the Skype In or Skype Out service. At its website Skype informs that its services do not replace traditional telephone services and emergency calls cannot be made.<sup>14</sup>

### Other user's rights

Provisions on the user's rights are laid down in Chapter 7 of the CMA and for some parts also in Chapter 6 of the Act on the Protection of Privacy in Electronic Communications.

Some of the provisions on the rights of the user apply to *all communications services*. Such are for instance section 67 applied to an agreement to receive a communications service, section 71(3-5) concerning amending an agreement, and FICORA' right to impose an obligation on a telecommunications operator to publish information on the quality and the services it offers (section 82). Neither shall a telecommunications operator prevent a user from connecting to a public communications network any terminal equipment that conforms to the requirements for a communications service (section 69). These provisions shall also be observed in the Skype In service for those parts of the service to which the Finnish Communications Market Act applies.

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<sup>13</sup> Regulation on routing and ensuring emergency traffic (FICORA 33 B/2005 M), <http://www.ficora.fi/englanti/document/Regulation33B2005M.pdf>.

<sup>14</sup> [www.skype.com](http://www.skype.com): "Skype is not a telephony replacement service and cannot be used for emergency dialing".

Respectively, some provisions on the rights of the user apply to *telecommunications operators in a telephone network*. Part of these provisions apply to all telecommunications operators in a telephone network and some of them to each telecommunications operator in a telephone network for *its part*.

Provisions that apply to all telecommunications operators in a telephone network are the user's right to tone dialing and calling line identification (section 64), the telecommunications operator's obligation to transmit calls in the European telephone numbering space (section 65) and provide information on changes in numbering (section 81). In the Skype In service the user shall be provided a service enabling him or her to see the calling number before answering the phone call. The telecommunications operators providing Skype Out services in Finland shall, for the part of the service provided, ensure that the user's right to tone dialing is realised. A Skype In user shall be informed of a change in the telephone number at least six months in advance.

In addition to number portability and emergency calls, with the current way the Skype In service is implemented Skype does not need to comply with section 53 concerning telecommunications in the European Economic Area, section 54 concerning universal international access code or section 56 concerning publicly available directory inquiry service.

Obligations applying only to subscriber connections to a telephone network need not be fulfilled in the Skype Out and Skype In services. However, the fact that these communications services are not necessarily operated in the same way than a traditional subscriber connection, must be clearly brought to the notice of the users in the terms of agreement and marketing of the service.

#### Lawful interception and telecommunications monitoring

An obligation to assist the authorities in the interception and telecommunications monitoring referred to in the Coercive Criminal Investigation Means Act (450/1987) and the Police Act (493/1995) is imposed in section 95 of the CMA on all *telecommunications operators providing network and communications services*. Further provisions on technical requirements of telecommunications interception and monitoring, the obligation of disclosing information and the compensation of costs incurred in assisting public authorities are incorporated in sections 96-98 of the CMA and in section 36 of the Act on the Protection of Privacy in Electronic Communications.

Both Skype and the telecommunications operator implementing the telecommunications services provided by Skype in Finland are, for the part of the service they provide, responsible that the obligations regarding interception and monitoring are fulfilled.

#### Handling of identification data and geographic information in communications and information security

Chapters 3-5 of the Act on the Protection of Privacy in Electronic Communications contain provisions on a telecommunications operator's rights and obligations regarding the handling of messages and identification data, geographic information and the information security.

Primarily, the provisions apply to all communications and value added services provided by a telecommunications operator.

#### FICORA's technical regulations

Provisions on quality requirements for communications networks and communications services are laid down in section 128 of the CMA. In addition, by virtue of section 129 of the CMA, FICORA has issued technical regulations on the quality requirements and interoperability of communications networks and communications services.

The Skype In service shall be planned, constructed and maintained in accordance with the regulations on communications services and communications services provided in a telephone network.

## 7. CONCLUSION

In conclusion, it can be stated that by virtue of the present legislation both Skype Out and Skype In services are by nature communications services provided in a telephone network. The Finnish communications market legislation applies to both Skype out and Skype In services firstly for those parts where the service is implemented by Song or some other telecommunications operator in Finland. In addition, the communications market legislation applies to the Skype In service provided to end-users for those parts where numbers in accordance with the Finnish numbering plan are used in the service.

As far as the Finnish communications market legislation applies to Skype services, the services shall be implemented in compliance with the Communications Market Act and the Act on the Protection of Privacy in Electronic Communications and regulations on communications services issued under them. In addition, Skype and Song or any other company providing Skype services in Finland shall in its activities comply with regulations concerning all telecommunications operators and for its part regulations concerning telecommunications operators in a telephone network.

The Finnish Communications Market Act or the Act on the Protection of Privacy in Electronic Communications do not apply to Skype software enabling calls between Skype users or to the Skype Out service provided to end-users, and FICORA does not consider itself a competent authority to assess the operations of Skype to this effect.

Further information concerning this matter can be inquired from Legal Counsel Sanna Hughes, tel. +358 9 6966 870 or [sanna.hughes@ficora.fi](mailto:sanna.hughes@ficora.fi).

Director-General                      Rauni Hagman

Legal Counsel                          Sanna Hughes

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