

3.15 UNITED KINGDOM

1. REGULATORY FRAMEWORK

1.1. National Regulatory Authority

The most important issues which Oftel is currently dealing with are the review of mobile termination charges by the Competition Commission, the setting-up of the new Office of Communications (Ofcom) and ensuring that the appropriate regulatory environment is in place to create a competitive market in broadband in the United Kingdom. It is also starting to identify how best to implement the new EU Regulatory Framework.

Oftel is considered to have a strong regulatory and technical expertise and has been active in seeking new forms of regulation such as incentive regulation. In the last 12 months it has continued to be closely involved in determining the appropriate conditions for broadband roll-out and also local loop unbundling. It now appears that the appropriate regulatory environment for unbundling is in place but demand from alternative operators, although higher than at the end of 2001, remains very modest due to difficult market conditions.

There has been some criticism of Oftel's speed of decision-making when determining interconnection disputes. It therefore introduced in February 2001 stricter internal rules designed to enable it to meet its EC obligation of making a final determination in an interconnection dispute within six months. In most cases, Oftel managed to respect the six-month deadline in 2001, and is currently considering how to streamline procedures further in order to be able to meet the four-month deadline under the new EC Directives. New entrants did point out that those cases in which determination has taken longer, were the most important cases to the market and they actually took much longer than the prescribed six months, even exceeding one year. Nevertheless, at the 4 October hearing new entrants acknowledged that action by Oftel was likely to improve the situation.

Oftel also has concurrent powers alongside the Office of Fair Trading (OFT) regarding competition issues, but there has been criticism by operators that Oftel has not been sufficiently transparent in indicating when it would use its different powers (competition or sectoral powers). It therefore published a Notice on 1 July 2002 in which it states that it will normally commence investigations, except for interconnection disputes, under the Competition Act first rather than under sectoral rules.

Oftel decisions under the Competition Act 1998 are subject to appeal on the merits of the case to the Competition Commission Appeal Tribunal – a specialist competition court – and these decisions can be appealed, on a point of law to the appeal courts. Other Oftel decisions are subject to judicial review on the grounds set out in English administrative law, i.e. on a point of law. However for matters covered by the Licensing Directive and the Interconnection Directive a wider form of judicial review has been introduced (under section 46B of the Telecommunications Act) also allowing an appeal by a third party and on the merits of the case. One operator has already made such an appeal (against Oftel's Determination relating to Interim Carrier Pre-selection).

Ofcom is likely to become operational towards the end of 2003 and will take over the work of Oftel, the Independent Television Commission (ITC), the Radiocommunications Agency (RA), the Radio Authority and the Broadcasting Standards Commission (BSC).

Ofcom will be responsible for sectoral and content regulation as well as enforcement of the competition rules concurrently with the OFT. The Government announced in September 2002 the appointment of Lord Currie as the first Chairman of the Board of Ofcom, and his non-executive directors were appointed in the following month. The Board is now putting in place the appropriate management and operational structures.

1.2. Management of numbers

Oftel has been responsible for managing and allocating numbers since 1994. In 1999 a ten-digit National Numbering Scheme with a capacity of 9 billion numbers was introduced. Any operator, including service providers operating under class licences, may apply to Oftel for numbers, and operators may also obtain numbers by way of sub-allocation from an operator holding an individual licence. The Specified Numbering Scheme is published and regularly updated on Oftel's website.

1.3. Frequency management

The Radiocommunications Agency (RA) is responsible for civil radio spectrum management issues. The RA has in the past years carried out auctions for, inter alia Wireless Local Loop (WLL) licences and for 3G licences. An Independent Review of the Radio Spectrum Management was carried out on behalf of the British Government by Professor Martin Cave, whose report was published in March 2002. The review focused on the use of measures such as auctions, pricing and trading to promote efficient and flexible spectrum across public and private sectors, to stimulate innovation and growth in the communications economy. Some of the 47 recommendations will be implemented by the Communications Bill. The national frequency plans have been published. It is intended that the new, converged regulator for the communications sector, Ofcom, will absorb the activities of the RA when it becomes fully operational.

2. INTERCONNECTION AND ACCESS REGIMES

2.1. RIO

The latest Reference Interconnection Offer (RIO) was published by BT in December 2001, and contains interconnection charges for leased lines, including those for interconnection leased lines.

In the United Kingdom the principle of non-discrimination as set out in the EC Directives has been transposed and interpreted in UK law as "no undue discrimination". However, concerns have been expressed by new entrants that this is a higher burden of proof than required under EC law. In order to provide guidance on this point, Oftel published in September 2002 a Statement on access obligations, where it set out how it would interpret this principle under the new EC regulatory framework. The Statement states that Oftel considers that non-discrimination does not necessarily mean that there should be no difference in treatment between undertakings, but rather that any differences should be objectively justifiable, for example due to differences in underlying costs. This clarification has been welcomed by industry representatives.

Mobile call termination charges set by Vodafone and MMO2 are regulated. In July 2000 Oftel began a review of the competition in the market for mobile call termination and concluded in September 2001 that current mobile call termination charges were

substantially above cost and that there were not sufficient competitive constraints on mobile call termination charges set by the four mobile operators (MMO2, Vodafone, T-Mobile UK- and Orange). Oftel therefore proposed a charge control of RPI minus 12% each year for the next four years until March 2006 (calls using third-generation mobile infrastructure are excluded) and submitted proposals to amend the licences of all four mobile operators accordingly. However, all four mobile operators objected to the licence amendment, so Oftel referred the case to the Competition Commission on 7 January 2002. The Competition Commission has, since then, been carrying out an in-depth review of mobile call termination and its findings are due to be published by the beginning of 2003 at the latest. The new charge control, provided that the Competition Commission agrees to it, would take effect from 1 April 2003 but the market would be reviewed again in 2003 in keeping with the new EC regulatory framework.

The interconnection charges for fixed to fixed networks are very low in the United Kingdom and well below the EU average in comparison to the other Member States. For calls at local and single transit level the tariffs (€0.49 and €0.73 respectively) are even the lowest in the EU. For mobile to fixed networks, the interconnection charges are exactly the same as for fixed to fixed calls.

2.2. Internet

Internet penetration is significant in the United Kingdom with 43% of households (or eleven million households) connected to the internet (May 2002), where the EU average is 40%. Four million households of those eleven million use an unmetered (flat-rate) retail package. The increased availability of unmetered (flat-rate) retail packages has helped to increase the average time spent on-line - the average household currently spends nine hours per week on-line, up from eight hours per week on-line in the same period last year; those with unmetered access spend an average of thirteen hours on-line.

2.3. FRIACO

The incumbent is required to offer a wholesale unmetered internet access service, FRIACO (Flat Rate Internet Access Call Origination), from its local exchanges, to enable other operators to offer their own retail unmetered internet access products and compete effectively with the incumbent's unmetered retail services. It is also required to provide FRIACO at the trunk exchange level. In order to avoid overloading the incumbent's trunk network in the short term a staged process was developed to limit the amount of unmetered traffic at the single tandem exchanges in the short term, moving to unlimited access by early 2003. In May 2002 Oftel amended some of the requirements for the provision of FRIACO by the incumbent. Previously an operator had to pay the incumbent in advance for unmetered capacity, whereas metered capacity was paid for in arrears. Following Oftel's intervention the incumbent amended its payment terms for FRIACO in arrears, which effectively reduces FRIACO charges by between six and eight per cent. In July 2002 Oftel required the incumbent to cut the cost of its wholesale unmetered internet access charges by eight and a half per cent. The incumbent's FRIACO charges are now also part of its general network charge control and are thereby required to fall by at least RPI - 7.5% every year.

2.4. LLU

The process of local loop unbundling (LLU) has been difficult and Oftel has issued close to twenty Directions and Determinations, following complaints and on its own initiative.

In 2001 and 2002 it has intervened in relation to the terms and conditions for collocation; the revised charges (including the charges for shared access); required the incumbent to offer both co-mingling and unescorted access at cost-oriented prices; set the service level the incumbent must offer and established compensation agreements if the incumbent fails to meet the service levels. Oftel has also completed a number of investigations, including an investigation into alleged undue discrimination between LLU and the incumbent's ADSL rollout (not finding evidence of any material distortion of competition).

Despite the regulatory framework being in place, and the fact that the Reference Unbundling Offer (RUO) includes all requested elements, the uptake of local loop unbundling has been poor. Although around 200 exchanges are equipped for LLU, and by the end of August 2002 the number of completed collocation facilities had risen to 136, only 12 operators are providing services using LLU. There has been very little take up of fully unbundled lines (1 600 by mid-October 2002), no request for shared lines (other than some test lines) or requested sub-loops. As the market for LLU services has not developed as expected, the price controls set in the Oftel Determination of 2000 will continue, and a review of regulatory provisions will take place in the first half of 2003.

As reported last year regarding prices, Oftel has determined various key charges. In October 2001 Oftel carried out an investigation into the pricing of the incumbent's collocation prices and found that prices were generally cost-oriented, but some prices, for example those for external tie cable rental and escorted access, were found to be too high. In January 2002 Oftel therefore directed the incumbent to reduce the prices that were too high and this was followed by a Direction in March 2002 setting out the charges for MPFs and internal tie cables.

2.5. Interconnection leased lines

Oftel has been heavily involved in determining the appropriate terms on which the incumbent should provide wholesale partial private circuits (PPCs). Some of the issues which were still not solved in negotiations at the time the incumbent launched PPCs on 1 August 2001 were referred to Oftel for Determination under the interconnection dispute resolution procedure under the Interconnection Directive by several operators. On 14 June 2002 Oftel made this so-called "PPC Phase 1 Direction", that solved certain matters, such as forecasting obligations, minimum term, and some aspects of the Service Level agreement, but left some complex matters, such as cost-oriented charges and infrastructure sharing for the Phase 2 Direction. The Phase 1 Direction concluded that the two retail markets for leased lines and most of the leased lines wholesale markets were not yet effectively competitive, although the wholesale market for the trunk segments was considered prospectively competitive. In September 2002 Oftel published its draft Phase 2 Direction and the work is expected to be concluded in November 2002. This draft Phase 2 Direction specifies significant price cuts from current levels (reductions in the 30-50% price range); sets out requirements for a comprehensive SLA; and specifies various types of enhanced functionality which the incumbent would be required to offer.

On 9 October 2001 the incumbent submitted a request to Oftel to determine that it does not have SMP for high bandwidth leased lines for the purposes of the Leased Lines Directive. Oftel considered that the issues contained in the incumbent's submission were closely linked to the PPC dispute, and will deal with the incumbent's request for lifting of its SMP status in the context of the market review due to be carried out by 25 July 2003, as was confirmed at the hearing of 4 October 2002.

2.6. Bitstream (DSL) access

The incumbent has proceeded with its ADSL roll-out and by the end of August 2002 1116 ADSL exchanges were enabled, which represents 66% of exchanges, and 62% of UK households. In total there were 357 000 ADSL end users and this number was growing by around 10 000 per week. By October 2002 the incumbent had 309 wholesale customers, with just over 400 000 wholesale DSL lines provided by the incumbent via those retail service providers. Of the 400 000 lines just over half were provided to the incumbent's retail arms and the rest to alternative operators.

The incumbent's ADSL roll-out has not been without controversy and there have been many complaints or own-initiative investigations by Oftel into allegations of anti-competitive behaviour by the incumbent including:

- an alleged margin squeeze between retail and wholesale DSL;
- terms and conditions for wholesale DSL, in particular the absence of a service level agreement;
- marketing of its ADSL services after finding no evidence of anti-competitive behaviour
- terms for providing ATM DSL interconnection to other operators.

New entrants lodged a complaint in December 2000 concerning unreasonable terms and conditions for wholesale DSL, including the absence of a service level agreement. After an investigation Oftel concluded that, in principle, the incumbent's contract terms and conditions were capable of being considered to be so unreasonable as to amount to an abuse of dominant position by the incumbent. However, Oftel was not able to conclude that there was a material effect on competition arising only from inadequate terms and conditions since other factors, such as pricing and costs, could have affected the pace of roll-out of DSL services at the retail level. The incumbent introduced Service Level agreements in August 2001 and Service Level Guarantees in December 2001

Shortly after re-opening of the investigation for an alleged margin squeeze by the incumbent through subsidising the supply of retail ADSL services by its service provider business, BT Openworld, its wholesale price was reduced. The various reductions of the wholesale and retail prices since launch and start of the investigation were taken into account by Oftel in its final conclusion in March 2002 that there was no unfair cross subsidy or margin squeeze between the new wholesale and retail prices.

Operators also complained to Oftel that the incumbent's retail arm had been given advance notice of recent wholesale reductions. Oftel found no evidence that this was the case. In May 2002 Oftel published a Statement setting out that the incumbent cannot use detailed information contained in residential customers' bills in order to target particular customers.

Following a request for determination of an interconnection dispute, Oftel issued a final Determination in June 2002 requiring the incumbent to provide ATM interconnection to other operators to enable them to provide ADSL service at retail minus charges. The incumbent was also required to offer service level agreements, including compensation payments and trial SDSL if requested by an operator. Five operators have already signed up for ATM interconnection, and three of those are already offering services.

The two "own initiative" investigations by Oftel related to "rate-adaption" (a technological advance that enables the reach of DSL to be extended from approximately

3.5 km to approximately 5.5 km from an enabled exchange), and the incumbent's indicative launch prices of the DSL wholesale products launched in November 2001, and which were significantly lower than the trial prices, have now been resolved. The incumbent has introduced rate adaptation across all its products and with regard to the second investigation, no evidence of predatory pricing has been found.

In the United Kingdom there is competition at the infrastructure level between cable modem providers and DSL (provided by the incumbent and new entrants) and various service providers who are providing retail DSL services in competition with the incumbent. By October 2002 the total number of broadband connections had passed 1 million. There is continued growth in the uptake of DSL (342 000 by the end of August 2002, and about 400 000 by October 2002) and cable modems (598 000 by October 2002, which represents over half of all broadband connections), with over 20 000 new connections each week. The other delivery routes for broadband are via wireless local loop, satellite and local loop unbundling, although they only have a marginal impact on the number of connections, together representing approximately 6 000 of the total connections by October 2002.

Estimates show that Wireless Local Loop (WLL) will account for between 7% and 18% of the broadband market within the next five years. It is hoped that this technology will be economically viable outside the areas where it is currently economic to deploy DSL.

Regarding satellite, two-way broadband satellite has the potential of reaching those parts of the United Kingdom outside of the reach of an ADSL or cable modem. A number of service providers are offering broadband satellite services in the United Kingdom, and the subscriber figures, although still low, are increasing. In April 2002 BT wholesale announced plans to start trials of a new satellite internet service that would enable high-speed always-on downloads to the end user, using the PSTN as the return path.

There are currently more than 700 internet service providers (ISPs). Unlike most other Member States, the ISPs related to the incumbent do not have a particularly strong market position, only around 20% of the overall retail dial-up market. Over 80% of on-line households and 76% of SMEs with internet access use dial-up PSTN connection to the internet.

Early in 2002 Oftel published the final conclusions of its review of the level of effective competition in dial-up narrowband internet access. Oftel concluded that the retail dial-up internet access market was competitive with a wide range of unmetered and metered services. Oftel also reviewed the state of competition in three wholesale markets: call origination, internet call termination and connectivity (access). Oftel's conclusions were that the wholesale call origination was not effectively competitive, with the incumbent having market power and an estimated 80% of the market. Network charge controls (price caps) and requirements on the incumbent to provide wholesale products (such as FRIACO) were considered necessary by Oftel. The FRIACO charges were included in the incumbent's network charge control in 2002. The wholesale internet call-termination market was also not considered effectively competitive, with the incumbent considered as having market power, and existing controls will therefore remain in place. Wholesale internet connectivity was, however, considered an effectively competitive market, with a considerable number of suppliers and no operator having market power.

2.7. Leased Lines

For national leased lines, the tariffs are well above the EU average for all lines, except for the short 2Mbit/s leased lines which is below the EU average. Oftel's strategy with regard to the development of competition in the leased lines market has been to address the lack of competition at retail level by taking action at the wholesale level. Oftel has mandated the provision of Private Partial Circuits (PPCs) by the incumbent and is completing its work regarding prices and Service Level agreements for PPCs in the draft Phase 2 Direction which was issued in September 2002 (also referred to in the 'interconnection leased lines' section above). This is intended to increase the take-up by other operators of PPCs and lead to greater competition at the retail level. Work to assess the state of competition in the leased lines market at retail and wholesale levels will continue as part of the forthcoming broadband market review.

In continuation of last year's trend, very high repair times are reported for voice bandwidth leased lines in the United Kingdom (Kingston), although no complaints have been made to Oftel.

2.8. Numbering

The exact number of ported fixed numbers is not known exactly, but estimated to be around four million since the implementation of geographic number portability in 1996, and the roll-out of portability for non-geographic numbers from 1997. Mobile number portability has been offered since January 1999. Since then 1.6 million mobile numbers have been ported, and the trend is increasing. Subscriber-driven fixed-line number portability has been offered since January 2000. Oftel has made determinations regarding the incumbent's costs and charges for geographic and non-geographic number portability. In October 2001 Oftel issued a Consultation Document on new charges for the incumbent's fixed portability services (both geographic and non-geographic numbers), based on LRIC.

In its June 2002 consultation Oftel launched a number of proposals to change the framework for number portability. One of the proposals is for numbers to be held in a central master database, which would be updated every time a customer transferred their number to a new supplier. Operators would use the central database to regularly update their own networks so that calls to "ported numbers" are routed directly to the new network. Under the current system known as "onward routing", if a customer keeps their number when changing supplier, calls to the number continue to be routed over the network of the old supplier, before being transferred to the new supplier. If the original supplier's network is shut down, for example due to bankruptcy, calls will no longer be connected.

In the case of mobile number portability, Oftel requested in 2001 that mobile operators review their porting procedures and administrative practices in order to produce a cheaper, faster and more reliable process. The newly introduced simplified porting procedures have reduced the time needed to port a number to a few days, and mobile number portability has increased.

The incumbent does not charge the customers anything for porting fixed numbers when changing operator, and there is also no charge for porting a non-geographic number when

changing operator. There is no charge for porting a mobile number, when changing operator, subject to very limited exceptions..

In August 2002, 27% of end-users were using another supplier other than the incumbent, with 11% using an indirect access provider. Since December 2000 permanent (switch-based) CPS has been available for national and international calls. Since December 2001 permanent CPS has been available for all calls, and approximately 15 operators are now using permanent CPS to offer voice telephony. Monthly CPS orders topped 130 000 in September 2002, and there are now 400 000 customer lines with CPS (end of September 2002). A new, simplified customer order process for CPS was launched in July 2002.

2.9. Cost accounting/accounting separation

BT has implemented accounting separation (between interconnection and other activities), and all its accounts are subject to an independent auditor's report and are published in accordance with accounting policies and procedures agreed with Oftel. Both SMP operators in the United Kingdom (BT and Kingston) have in place cost-accounting systems for interconnection and local loop unbundling based on forward-looking/current cost (with Long Run Incremental Costs (LRIC) as cost base and Fully Distributed Costs (FDC) as cost standards. For Kingston the cost accounting system for local loop unbundling is to be fully implemented within the next eighteen months.

BT's regulatory accounts are independently audited and published annually. The regulatory accounts include detailed cost information agreed between the Director-General and BT. Those accounts are supported by publicly available documents on policy, procedure and methodology.

Verification of compliance with the cost accounting system by an independent body is made regularly for both BT and Kingston (for both voice telephony and interconnection). The last accounts verified (the accounting year) was the year ending on 31 March 2002 for Kingston, and 31 March 2001 for BT. The last statement of compliance was published on 31 July 2002 for Kingston and 12 December 2001 for BT. For both BT and Kingston the audit report is contained within the regulatory accounts. As regards BT's accounts, Oftel identified a number of deficiencies with BT's regulatory accounts, in particular the levels of transparency and granularity. Oftel is therefore currently addressing these issues with BT and final decisions are expected shortly.

3. AUTHORISATIONS

3.1. Licensing procedure

The UK licensing scheme is relatively light with many general authorisations (class licences) and licence conditions in compliance with EC law. A simplified licence modification procedure has recently been introduced. There are no fees for general authorisations.

WLL Licences have been awarded in most frequency bands and further licence awards are being planned for the 10 GHz, 28 GHz, and 40 GHz frequency bands. The Radiocommunications Agency (RA) carried out an auction for 28 GHz broadband wireless local loop licences in November 2000. Forty-two licences were offered - three in each of fourteen regions - and sixteen were awarded in seven regions: three in each of

four regions - Greater London, Greater Manchester, West Midlands and Northern Ireland - and a further four licences were awarded in northern England and Scotland. Licences are at various stages in deploying networks. Two operators hold national wireless local loop licences, although only one actually provides services using WLL technology.

A second award process closed on 14 October 2002 without any more licences having been awarded. The RA published a consultation document on 15 October 2002 proposing a new award process for the unsold licences on offer, which would no longer include restrictions on purpose of use or coverage obligations. This would be in line with the Independent Review of spectrum management conducted by Professor Martin Cave (see also above). Licences already awarded would also be amended to fall in line with these recommendations. The RA has also been consulting with interested companies on the scope for developing the 40.5-43.5 GHz band for multimedia wireless systems. Companies generally supported opening the band but believed that there would not be a market for very high bandwidth services for another two to three years. The RA is working with the industry in developing a licence award process to meet industry requirements when market demand emerges for delivering such services. However, a complaint has been made to the Commission about delays in granting rights of use on certain frequencies in the 28 GHz and 40 GHz band but the RA has not yet had an opportunity to comment on the case.

3.2. Rights of Way

All operators are encouraged to collocate or share installations wherever possible and appropriate. This is particularly true of mobile operators who often use masts to install their network equipment. As part of its response to a government consultation on planning, the mobile industry agreed to improve the process for the sharing of masts between themselves and others, such as broadcasters, who also use masts for the installation of infrastructure.

Rollout of 3G services is proceeding according to schedule. It has been claimed that health and environmental concerns make rollout difficult in certain areas (due to the planning process) and that there are particular problems in Scotland (and also some parts of London) due to the strict regime. However these problems are unlikely to jeopardise the attainment of the licence condition that 80% of the population be covered by 31 December 2007 (since this represents only 10% of geographic coverage in the United Kingdom it appears unlikely that the need to obtain planning permission will prevent the operators from meeting their rollout obligations). Hutchison will start to provide limited 3G services in late autumn 2002.

4. UNIVERSAL SERVICE, CONSUMERS, USERS

4.1. Tariffs/price controls

Oftel has imposed retail price controls since 1984, since there has been insufficient competition in the retail market to exert downward pressure on prices. In this time the incumbent's residential call prices have fallen by over 50% in real terms.

Oftel issued a Statement in June 2002, setting out the conclusions of its review of competition in the provision of fixed telephony services. Oftel found that competition had steadily increased but was not yet effective. Oftel therefore required the incumbent to provide a new wholesale line rental product, which would enable new entrants (notably service providers) to provide a single bill that covers both line rental and telephone calls. The wholesale line rental has to be offered on cost-based and non-discriminatory terms. Oftel sets prices for the wholesale line rental, for the transfer of a service from the incumbent to a service provider and for the connection of a new line for a service provider. Additionally Oftel will continue to ensure that consumers are protected through a price control of RPI-RPI focused on the expenditure pattern of the bottom 80% of residential customers and by extending the scope of the current Low User Scheme to cover the lowest spending three deciles of residential customers. Once a commercially viable wholesale line rental product has been fully implemented by the incumbent in line with a determined product specification and is being actively taken up by service providers, the price control will be modified to RPI +/- 0%.

On the network side Oftel believes that operators are still reliant on the incumbent to provide connection to, and conveyance over, its network, and announced in February 2001 that network charge controls would continue. These charges were set at tariffs ranging from RPI minus 13% to RPI minus 7.5% for a further four years from October 2001.

4.2. Universal service

BT and Kingston currently have a universal service obligation (USO) under the terms of their licences. Oftel's position has always been that the costs and benefits of providing universal service are closely matched. In its August 2001 Statement on Universal Policy Oftel concluded that since the net costs were estimated at between £53 and £73 million and the net benefits at around £61 million, the net cost was not considered to be an undue burden and thus did not warrant a funding mechanism

4.3. Directory enquiries

In the United Kingdom, subscribers have access to a directory enquiry service including all subscribers. There have, however, been some difficulties in ensuring that all mobile data are available. A free directory enquiry service is available for users unable to use a paper directory. Following a public consultation exercise, a market research study into consumer attitudes to directory services and a cost-benefit analysis, Oftel has initiated an action programme aimed at liberalising the directory enquiry market. There will be a change from the current 192 code to a variety of codes based on 118xxx starting in December 2002

4.4. Itemised billing

The incumbent offers itemised billing free of charge showing namely: partial/full number called; start time and duration of each call, date of the call, the price of each call. NTL and Vodafone offer itemised billing at extra cost.

4.5. Quality of Service

Oftel does not set Quality of Service performance targets for SMP operators, or other operators. SMP operators measure quality of service using the recommended ETSI standards (ETSI EG 201, and partially also ETSI ETR 138). Measurements since 1995 have been published via the Telecommunications Industry forum (the latest publication is

for the period January 2002 to June 2002). Of tel has also launched a number of consumer initiatives, inter alia Comparable Performance Indicators (CPIs), which provides comparable quality-of-service information on a wide range of telecommunications operators in the United Kingdom. Of tel has also initiated quality-of-service surveys for the four mobile networks in the United Kingdom, which provide information on a national and regional basis on successful call set-ups, dropped calls and successfully connected and held calls.

5. DATA PROTECTION

The Information Commissioner (previously known as the Data Protection Commissioner) has responsibility for enforcement of both general data protection enactments and those specific to the telecommunications sector. Of tel also has certain responsibilities in relation to data protection in the telecommunications sector.

In the United Kingdom, as regards security, the UK legislation provides that a telecommunications service provider shall take measures, if necessary in conjunction with the provider of the relevant telecommunications network, to secure the security of the service he provides. Measures shall only be taken if, taking into account the state of technological development and the cost of implementing the measures, they are proportionate against the risks against which they would afford safeguards. In the “guidelines on the essential requirements for network security and integrity” and the “criteria for restriction of access to the network” of October 2002 Of tel sets out guidance as to what measures to protect network security and integrity operators are expected to put in place to meet the requirements of condition 20 of their licences, which reflects the provisions of Article 13 of Directive 98/10/EC.

5.1. Traffic data retention

As regards processing of data, the UK legislation provides that personal data in respect of traffic handled by the telecommunications network provider/service provider, which is processed to secure the connection of a call, should be erased upon termination of the call. For the purposes of subscriber billing and interconnection payments, data may be processed until the expiry of the period during which legal proceedings may be brought in respect of payments due (six years).

5.2. Unsolicited calls and e-mails

As regards unsolicited phone calls and unsolicited e-mails, an opt-out approach has been implemented. Where e-mail addresses constitute personal data because they contain an individual’s name, any processing must be carried out in accordance with the requirements of the Data Protection Act of 1998. This means that any company that continues to process an e-mail address that contains personal data, in order to send unsolicited marketing communications, after being instructed by the individual to stop, will be in breach of the Act’s fair processing requirements.

6. MOBILE ISSUES

The United Kingdom has allocated five third-generation mobile licences under the Wireless Telegraphy Act by means of an auction, which ended on 27 April 2000, with licences being granted to the four “incumbents” (BT Cellnet (now MMO2), Vodafone, Orange, One2One (now T-Mobile) and a new entrant (Hutchison 3G). The auctioned licences cover the 1900-1980 MHz and 2110-2170 MHz bands.

The third-generation licences contain an obligation to roll out a third-generation network covering at least 80% of the UK population by 31 December 2007. Should an operator fail to roll out a network, the rollout obligation provides a backstop legal mechanism for revoking the licence. Two existing second-generation mobile operators, Vodafone and BT Cellnet (now MMO2), agreed to a modification to their Telecommunications Act licences to incorporate a roaming condition which was triggered when they won a third-generation licence. The condition provides for the Director-General of Telecommunications to determine a roaming agreement if the parties cannot reach agreement through commercial negotiation. Before the roaming condition is triggered, a new entrant must build out its network to cover 20% of the UK population, and any mandated roaming agreement will last only until 2009. There is, at present, no mandatory national roaming between second-generation mobile operators.

7. PREPARATION FOR TRANSPOSITION OF THE NEW REGULATORY FRAMEWORK

The plans for the establishment of the Office of Communications (Ofcom), which will administer a single regulatory framework encompassing telecommunications, broadcasting and radiocommunications, are advancing. Ofcom will exercise regulatory responsibilities across telecommunications, broadcasting and spectrum management and will undertake sector regulation (both economic and consumer protection) and content regulation. Ofcom, which will become operational towards the end of 2003, will take over the work of Oftel, the Independent Television Commission (ITC), the Radiocommunications Agency (RA), the Radio Authority and the Broadcasting Standards Commission (BSC), and will administer sector regulation (both economic and consumer protection) and content regulation as well as enforce the UK competition rules. Ofcom will deliver a coherent regulatory framework for the increasingly convergent communications industries.

The transposition and implementation of the new EC communications regulatory package is complex in the United Kingdom since the transposition/implementation is going on at the same time as the new regulatory body, Ofcom, is being set up. The draft Communications Bill is establishing Ofcom and at the same time transposes a great part of the new EC regulatory package. It is expected that the Bill will be adopted in time to transpose the EC regulatory package by 25 July 2003 but a series of Statutory Instruments are foreseen in the event that the target date is not met. Ofcom will only be fully active towards the end of 2003 and Oftel will carry out the market reviews and designate SMP operators until then.