



House of Commons
Committee of Public Accounts

Helping consumers benefit from competition in telecommunications

**Eleventh Report of
Session 2003–04**

*Report, together with formal minutes,
oral and written evidence*

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The Committee of Public Accounts

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Committee staff

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Summary

Introduction

The telecommunications market, a vital element of the UK economy, consists of fixed-line and mobile telecommunications, with a range of services, such as Directory Enquiries, offered over telephone networks. 92% of households have a fixed-line telephone.

The fixed-line telecommunications market has been liberalised over the 20 years since the privatisation of British Telecommunications (BT) in 1984. BT then had a virtual monopoly and Parliament created the Office of Telecommunications (OfTel) to regulate the market. There are now competitive alternatives to BT in virtually all sectors of the market, but BT retains around 70% of the total market and 75% of the domestic market.¹ There is therefore a continuing need for regulation of the telecommunications sector. From 29 December 2003, the Office of Communications (Ofcom) took over OfTel's regulatory functions, as well as those of four other bodies.²

On the basis of a Report from the Comptroller and Auditor General,³ we took evidence from OfTel on its regulatory strategy, the choices for consumers, and combating anti-competitive behaviour.

1 OfTel Market Information, Fixed Update, November 2003

2 The Broadcasting Standards Commission, the Independent Television Commission, the Radio Authority and the Radiocommunications Agency

3 C&AG's Report, *The Office of Telecommunications: Helping consumers benefit from competition in the telecommunications market* (HC 768, Session 2002–03)

Conclusions and recommendations

- 1. The market is confusing for consumers.** Competition in the telecommunications market is well established, bringing a wide range of choices for consumers, including which company will provide their phone line and which tariff they should choose. Whether consumers can make informed choices depends on whether they can make meaningful comparisons between companies.
- 2. Consumers may not have the right information to identify the best deal.** Many telephone bills do not provide enough information to allow customers to determine the best tariff and discount options, and the differing ways in which companies quote phone tariffs means that comparisons can be difficult. Ofcom should disseminate guidance on how consumers should identify the best supplier, using a series of typical phone bills as case studies.
- 3. Consumers may be confused about what they are paying at present.** Consumers will find it harder to make an informed choice if their current phone bill is obscure. Ofcom should work with phone companies to develop more standardised and transparent charging structures that enable comparisons to be made.
- 4. Many consumers are not taking advantage of existing opportunities to save money.** Ofcom should conduct a study into the take-up of the BT Light User scheme, to quantify the existing level of take-up and establish the reasons why more eligible consumers do not take advantage of the scheme. Ofcom should also conduct an education campaign to ensure that consumers know that it costs more to rent than to buy handsets.
- 5. Oftel was remote from consumers and did not do enough to help them.** Its guidance did not give practical examples of how consumers might make choices, and its external publicity budget in 2002–03 of £45,000 was only 0.2% of its overall budget of £19.5 million. It nevertheless told us that if consumers continued not to switch to the most beneficial options, it would have to question human nature in the face of overwhelming information.
- 6. Ofcom should actively encourage consumers to switch supplier.** Oftel did not follow the practice of Ofgem and Energywatch in encouraging consumers to switch supplier to get a better deal. Switching supplier or tariff is, however, the best way to take advantage of competition and Ofcom should tell consumers about the opportunities and risks of switching, and draw public attention to the savings available from switching supplier.
- 7. Ofcom should undertake a research programme into the information needs of consumers.** Oftel claimed to place the consumer at the heart of its work, yet adopted a hands-off approach to consumer information, allocated a small proportion of its resources to improving consumers' knowledge, and assumed that consumers conformed to a model of "rational" behaviour. Where the market is complicated and changing rapidly, however, there is a greater, rather than a lesser need for the regulator to understand consumer needs.

1 Regulating the fixed-line telecommunications market

1. BT continues to dominate the fixed-line telecommunications market.⁴ In some parts of the country, such as rural areas, BT may be the only practical choice for most consumers. Oftel sought to introduce competition to BT in this market with:

- a) the development of cable networks as an alternative to BT's fixed-line services;
- b) indirect access, enabling consumers to route a call through an alternative supplier even though the call originated on BT's fixed-line network;
- c) carrier pre-selection, where customers can opt for certain defined classes of call to be carried by an operator selected in advance without having to dial a prefix;
- d) wholesale line rental, where other suppliers rent an exchange line from BT and offer an integrated service to consumers.⁵

2. These developments have brought important benefits to consumers. About 60% of households have access to cable and can switch from BT to cable and vice versa.⁶ Oftel informed us that liberalisation has led to a fall in prices and that rates of switching in telecommunications were comparable with energy markets; for example, 2.5 million consumers have switched to carrier pre-selection.⁷

3. Competition has brought greater choice and more information for the consumer to assimilate. This has presented the regulator with a strategic challenge over the extent to which it should be more pro-active — advising consumers about the choices available to them, encouraging them to switch supplier where this is in their interests, and requiring suppliers to provide clear and consistent information to help consumers make sound decisions.

4. Oftel saw the whole of its work as aimed at providing benefits to consumers⁸ and one of its four objectives was to have well-informed consumers. To meet this objective, it published four information leaflets advising consumers how they might choose the right telecommunications provider.⁹ It was, however, reluctant to provide direct assistance to consumers. It preferred to leave the provision of support to the private sector, for example by accrediting price comparison websites such as www.uswitch.com, which provides practical help to consumers keen to investigate switching supplier.¹⁰

4 Qq 3, 5

5 C&AG's Report, paras 1.3, 1.7

6 *ibid*, p7, footnote 2

7 Qq 6, 30

8 Q 12

9 Q 11

10 Q 33

5. Oftel assumed that consumers conformed to a model of 'rational' behaviour: if it provided information about products, which were explicitly priced and advertised effectively, people would choose the most appropriate. Its perception of how consumers behaved was based on limited research. It was only in 2002 that Oftel launched a significant research programme to look at consumer needs in a different way, an exercise it could have undertaken earlier.¹¹

6. Oftel's approach contrasted with that of other regulators. In the energy market Ofgem and Energywatch have actively encouraged consumers to switch suppliers, as in their view this has provided the best way to take advantage of competition. Oftel was reluctant to follow this example because it considered that, while Ofgem and Energywatch were giving out good and effective information, the telecommunications sector was not such a simple industry.¹²

11 Q 16

12 Q 29

2 Consumers' choices

7. Consumers in the telecommunications market can choose:

- a) which operator will provide the fixed-line into their home;
- b) which tariff to have from that operator;
- c) whether to use an indirect access supplier; and
- d) for which types of calls will they use an indirect access operator.

8. A fixed-line consumer can choose between BT Group plc (Kingston Communications in the Hull area) and one of two cable companies, NTL Group or Telewest Communications plc (whose networks cover separate areas and are available to about 60% of households).¹³ The challenge to the consumer is that each provider offers different tariffs, tariff structures and discounts, and if none of these tariffs are suitable there is a further choice of over 200 different indirect access operators.¹⁴

9. In a competitive market, with full information, the choice of service provider and tariff will be influenced by quality of service and price, together with the consumer's 'call profile' (the number, type, duration and timing of calls made). Some providers do not, as a matter of course, offer enough information on the face of the bill to identify call profile and inform consumer choice, so the consumer must make estimates. If these estimates are incorrect, the consumer cannot change their tariff choice retrospectively. And if the consumer could identify the profile, it is probable that the time taken to calculate the correct tariff from all the options available would outweigh any savings made.

10. We suggested to Oftel that it would help consumers if telephone bills showed the numbers called most frequently, in both time and cost. This would help consumers identify their call profile, and would help those with a BT line decide which numbers to include on their 'Friends and Family' discount.¹⁵ We also asked Oftel if it could have required BT to look at the type of calls made during the billing period and apply its best tariff to that customer retrospectively. Oftel did not think it had the power to do this as it was unlikely that the company would have been in breach of its licence conditions or engaging in anti-competitive behaviour.¹⁶

11. Even with the complexity in the market, some people can take simple steps to minimise their expenditure by:

Buying a telephone handset

12. Three million consumers who rent a handset from BT would probably be better off buying one. The C&AG's Report, published in July 2003, found that a basic unbranded

¹³ C&AG's Report, page 7, footnote 2

¹⁴ *ibid*, para 1.3

¹⁵ Qq 141, 143–145

¹⁶ Qq 146–147

telephone could be purchased on the high street for £7, compared with a rental charge of £18 per year for a telephone with similar features.¹⁷ In October 2003 Oftel directed BT to reduce its prices for handset rental by 25% over two years.¹⁸ Currently most consumers pay £16–£20 per year depending on the type of handset, which would reduce to £12–£15, and produce a total saving to consumers of about £11 million.¹⁹

Taking advantage of the Light User Scheme

13. BT offers a Light User Scheme which 1.45 million out of 4 million eligible customers used as at September 2002.²⁰ Oftel could not explain why the uptake on this scheme had not been higher. Some of the poorest customers who are eligible, and could save money, have not done so.²¹

Using indirect access operators for international calls

14. Customers on BT's *Standard* tariff who make international calls could save, on average, in the region of 50% by using an indirect access operator instead.²² More substantial savings are available to customers calling the more popular countries as shown in **Figure 1**. Setting up an indirect access account is relatively simple, but many consumers do not do so, perhaps because of a lack of awareness; the C&AG found that over three out of four people could not name a single indirect access operator.²³

17 C&AG's Report, para 1.53

18 Q 172

19 Oftel press release, *Oftel welcomes rental price cuts by BT*, ref 55/03, 7 October 2003

20 C&AG's Report, para 1.25

21 Qq 164–170

22 C&AG's Report, para 1.49

23 *ibid*, para 1.14

Figure 1: Cost per minute of calling a selection of countries at the weekend

Tariff	France	Germany	Ireland	New Zealand	USA
BT Standard	23p	23p	18p	39p	21p
BT Together	9p	9p	9p	17p	9p
BT Together International (£1 per month surcharge)	5p	5p	5p	5p	5p
Representative indirect access operator	4p	3p	4p	4p	3p
Savings over BT's Standard rate if a representative indirect access operator is used	83%	87%	78%	90%	86%

Source: Analysis of suppliers' published prices as at December 2003

Taking advantage of discounts

15. Customers can apply for free volume related discounts from BT for up to ten nominated numbers, enabling them to save money on the most expensive recurring calls. The numbers on which customers may wish to receive a discount may change from one billing period to the next and at present they must register their numbers before the billing period to receive the discounts.

Reviewing their circumstances to ensure the suitability of tariffs

16. Changes in circumstances can affect the number and type of calls a consumer makes and therefore the best tariff for them. The Director General of Oftel gave us an example of a change in his own family circumstances, which made the use of an indirect access supplier an attractive proposition.²⁴

3 Oftel's regulation of anti-competitive behaviour

17. Oftel had a statutory duty to investigate all complaints, including those involving anti-competitive behaviour. One of Oftel's four high level objectives was to prevent anti-competitive behaviour and Oftel budgeted to spend £1.8 million on this work in 2002–03.²⁵

18. The regulator has two main means of investigating potential anti-competitive behaviour: firstly, under the sector-specific Communications Act 2003, which includes powers to impose fines; and secondly, under the general Competition Act 1998, which provides stronger powers of investigation and enforcement as well as powers to fine. In July 2002, following two years' experience of the Competition Act, Oftel decided to use that Act in preference to the telecommunications legislation wherever possible.²⁶

19. In June 1998 the Director General told our predecessor Committee that the proportion of investigations initiated by Oftel, rather than on the basis of a complaint, had risen from 10% at the time of the C&AG's examination to 20%. Oftel accepted the Committee's conclusion that Oftel should not be too reactive in dealing with anti-competitive behaviour. Oftel continued to initiate its own investigations, but complaint based investigations still dominated. In the two years to June 2002, 'Oftel-initiated' cases accounted for 12% of investigations.²⁷

20. It is important that the regulator's investigations are completed in a timely fashion. **Figure 2**, which sets out the average duration of an investigation over several time periods, shows that Oftel's performance deteriorated after our predecessor Committee's Report covering the period January 1995 to January 1997. After June 2002, however, Oftel's performance improved in the run up to the implementation in July 2003 of a new EU Framework Directive requiring most types of investigation to be completed within four months.²⁸

25 C&AG's Report, para 2.9

26 *ibid*, paras 2.11–2.12

27 *ibid*, para 2.13

28 Qq 19–22

Figure 2: Changes in the duration of Oftel's investigation over time

Period	Number of cases	Average duration of cases	Source
January 1995 to December 1997	217	23 weeks	Note 1
July 2000 to June 2002	187	27 weeks	Note 2
July 2002 to September 2003	110	18 weeks	Note 3

Notes:

1. Countering anti-competitive behaviour in the telecommunications industry (Report by the C&AG, HC 667, Session 1997–98)
2. The Office of Telecommunications: Helping consumers benefit from competition in the telecommunications market (Report by the C&AG, HC 768, Session 2002–03)
3. Memorandum by the Director General of Telecommunications to the Committee of Public Accounts, October 2003 (Ev 24, para 5)

21. In a supplementary memorandum, Oftel gave us details of an allegation of anti-competitive behaviour made by Vanco against BT. In this case, BT was on the verge of losing a large contract to provide telecommunications services to IBM to a smaller competitor called Vanco, who were undercutting BT's published prices. BT offered to introduce IBM to a third party sales agent, called RHM. If BT retained IBM's business, RHM would rebate to IBM a sum of money every month which would, in effect, make up the difference between BT's published prices and the lower prices quoted by Vanco.

22. Oftel investigated this scheme as being anti-competitive and concluded that BT had breached Condition 54.9 of its licence by operating a discount scheme without publishing the details of the scheme. On 10 February 2003 Oftel issued a Provisional Order requiring BT to publish details of the discount within three days. BT then withdrew its offer to IBM, through RHM, and therefore did not have to publish details of the discount.²⁹

23. This case raised three issues. Firstly, when the Committee questioned Oftel about the case, it did not seem to have some key information, including the ultimate ownership of RHM and the amount of money involved.³⁰ Although Oftel subsequently provided a confidential letter which set out the sums of money involved, it did not clarify the issue of ownership of RHM, but merely confirmed that RHM was not a subsidiary of BT.³¹

24. Secondly, Oftel did not have a face-to-face meeting with any of the companies involved.³² It was not its normal practice to undertake such meetings during an investigation because its statutory powers extend only to documentary information; it cannot attach the same evidential weight to information gathered informally. In the Vanco v BT case, Oftel considered that the information obtained from RHM was so clear cut that there was no need to supplement this with a meeting.³³

25. Thirdly, the regulator did not impose a fine on BT for its behaviour in this case. Oftel said that this was because the relevant power to fine was only available after the

29 Ev 25 (para 12)

30 Qq 60–61, 79–82, 97

31 Part of the supplementary memorandum submitted by the Office of Telecommunications, Ev 26–27 — not printed

32 Ev 27 (Q 112)

33 Qq 101–104; Ev 27 (Q 112)

Communications Act came into force on 25 July 2003.³⁴ Although it could have levied a fine under the Competition Act 1998, the standard of proof required under that Act is high. Oftel used the Telecommunications Act in this case because it enabled Oftel to complete the investigation within five weeks.³⁵

26. In the absence of a fine, Oftel could have punished a company for indulging in anti-competitive behaviour by publishing the details of the wrongdoing. Although BT may have suffered some reputational damage as a result of the Vanco case,³⁶ Oftel could have given the case wider publicity.

34 Q 75

35 Qq 125, 74

36 Q 105

Formal minutes

Monday 1 March 2004

Members present:

Mr Edward Leigh, in the Chair

Mr Richard Allan
Mr Frank Field
Mr Brian Jenkins

Mr Gerry Steinberg
Jon Trickett

The Committee deliberated.

Draft Report (Helping consumers benefit from competition in telecommunications), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 26 read and agreed to.

Conclusions and recommendations read and agreed to.

Summary read and agreed to.

Resolved, That the Report be the Eleventh Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Ordered, That the provisions of Standing Order No. 134 (Select Committees (Reports)) be applied to the Report.

Adjourned until Monday 8 March at 4.30 pm

Witnesses

Monday 10 November 2003

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Mr David Edmonds CBE, Mr Chris Kenny, and Ms Caroline Wallace, Office of Telecommunications

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Oral evidence

Taken before the Committee of Public Accounts

on Monday 10 November 2003

Members present:

Mr Edward Leigh, in the Chair

Mr Richard Bacon
Mr Brian Jenkins
Mr David Rendel
Jim Sheridan

Mr Gerry Steinberg
Jon Trickett
Mr Alan Williams

Sir John Bourn KCB, Comptroller and Auditor General, further examined.

Mr Brian Glicksman, Treasury Officer of Accounts, HM Treasury, further examined.

REPORT BY THE COMPTROLLER AND AUDITOR GENERAL:

The Office of Telecommunications:

Helping consumers benefit from competition in the telecommunications market [HC 768]

Witnesses: **Mr David Edmonds CBE**, Director General of Telecommunications, **Mr Chris Kenny**, Director of Compliance and **Ms Caroline Wallace**, Chief Engineering Adviser, Office of Telecommunications (OfTel) examined.

Q1 Chairman: Welcome to the Committee of Public Accounts where we are looking into an important subject of interest to everybody who has a telephone, which is, I suppose, most people in the country, namely, how to help consumers benefit from competition in the telecommunications market. We welcome David Edmonds, Director General of Telecommunications. Would you please introduce your colleagues?

Mr Edmonds: Thank you, Chairman. On my left is Caroline Wallace, who is my Chief Engineer at OfTel, and on my right is Chris Kenny, who is Director of Compliance in OfTel.

Q2 Chairman: I would like to ask three or four questions about how to encourage consumers to change suppliers when it is in their interest. If you turn straightaway to page 16 in the Comptroller and Auditor General's Report and look at paragraph 1.46, you will read there amongst other points that OfTel "has not encouraged consumers to engage in wholesale switching of suppliers". Why has not OfTel encouraged consumers to change if that is in their interest?

Mr Edmonds: I think OfTel has encouraged consumers to switch supply through the importation into the market place of competition, the bringing into the market place of a whole range of new suppliers through the development of infrastructure and competition and cable. 45% of citizens of the United Kingdom have access to cable, so those 45% have got the chance to switch from cable to BT and vice versa through direct access. A whole range of choice is in the market place. The approach of OfTel has been to create a market place where that competition between companies offers to consumers choice, where that choice is freely available in the market place and where that choice is underpinned

by action to keep prices low and to keep new competitors coming into the market place. I am strongly in favour of switching.

Q3 Chairman: May interrupt you, because the impression you are giving I think is bringing the Committee on to the wrong basis of our discussion, when the fact is that BT has 65% of market share, has it not, roughly?

Mr Edmonds: It has roughly 65% of the market.

Q4 Chairman: And we are talking about 19 years of so-called competition where BT is still in an overwhelmingly dominant position. Would it be fair to put to you that actually it is very difficult for people to change suppliers because the tariff and the general charging structure are so complex that there is simply a dearth of information about whether it is in your interest or not to change suppliers?

Mr Edmonds: No, I am afraid I do not think that is a fair conclusion to draw from the history of the telecommunications regulations of the United Kingdom.

Q5 Chairman: You are not denying that BT still has an overwhelming dominance of market share after 19 years of privatisation?

Mr Edmonds: No, of course I am not denying that. What I am saying is that for the United Kingdom consumer there is a choice in 40% of the country that—

Q6 Chairman: I am not denying that there is a choice. We want to get the discussion on the right lines straightaway. There is a choice, there is competition out there, but what I am saying to you is that BT still has the overwhelming market share and the fact is that it is very difficult for ordinary

Office of Telecommunications (OfTel)

consumers to change supplier because the charging and tariff structure is so complex that it is not clear whether it is in their interest so to do.

Mr Edmonds: I do not think it is. I do not want to get the Committee off on to the wrong foot at all; of course not. I think that for consumers there is a fair choice, and I think that the choice is easy to exercise. If you take the United Kingdom consumer, some 40% of those consumers in one way or another have exercised choice, which is a comparable figure with gas or electricity. Many of us choose a different supplier for our long distance calls or our international calls. Many of us choose a different supplier for our internet connection. There is a range of choices available which UK customers have taken. BT still has around two-thirds of connections but it does not have two-thirds of call volume in many parts of the market where that choice is there and that choice is easily exercisable and, as choice grows, two and a quarter million UK consumers have switched in the last two years into carrier pre-selection.

Q7 Chairman: What is your external publicity budget?

Mr Edmonds: I think about £65,000.

Q8 Chairman: Our information is that you allocate just £45,000 to external publicity. You have a total budget of £19.5 million?

Mr Edmonds: Yes.

Q9 Chairman: OfTel allocate £45,000 to external publicity. That is just 0.2% of the £19.5 million. It is not a lot, is it?

Mr Edmonds: It is not a lot.

Q10 Chairman: How is the consumer supposed to know what you are doing when you are only allocating 0.2% of your budget to telling the consumer about your goods?

Mr Edmonds: I think the consumer knows what we are doing because of the massive competition in the market place in which domestic telecommunications happens in the United Kingdom. I believe that competition and the publicity, the advertising, the marketing that companies do for their services provide the consumer in the United Kingdom with a huge choice and actually we create some very well informed consumers. I do not necessarily accept that there is a correlation between many prices in the market place and consumer confusion. I think that telephone companies are offering a specific product at a price to a particular group of consumers and many consumers are perfectly able to take that decision.

Q11 Chairman: Let us look at page 13, paragraph 1.30, where you will read that in particular your guidance “does not provide any practical examples of how consumers might go about making choices”. Would this not be the first thing you should do? May I refer you to a leaflet issued in July by the National

Audit Office which does offer practical guidance to consumers about how they might make choices. Have you done similar leaflets?

Mr Edmonds: We have done four sets of leaflets for consumers about how they may look to the right telecommunications provider for them in the circumstances in which they find themselves, but if I may say, sir, it is very complicated.

Q12 Chairman: It is very complicated; that is precisely the point I am making. Consumers have no idea how to change supplier unless you are in a unique position where you are making a very large number of international calls. If you are that sort of person probably you know how the system works. It will definitely be in your interests to go with an indirect supplier, but if you are an ordinary customer it is so complicated that you simply do not have the information and you are allocating a tiny percentage of your budget to informing consumers. What is the point of OfTel? Why does OfTel exist? How much work are you doing to help consumers make these choices?

Mr Edmonds: The whole of my organisation, the whole of my work, is directed, sir, at providing benefits to consumers. OfTel has created in the United Kingdom a competitive market place with some of the lowest prices in the world and with some of the widest choices in the world from which UK consumers are benefiting. OfTel has introduced into the market place new players on a massive scale. OfTel has introduced carrier pre-selection. OfTel has introduced flat rate access to the internet. OfTel has promoted the development of broadband. Three million consumers in the UK are taking up broadband. I think my organisation has a huge track record of which it should be proud.

Q13 Chairman: One of the problems is that you do not seem to know a lot about consumers’ needs. You do a great deal of research about why they should switch suppliers. May I refer you to paragraph 1.56 on page 19, where it says: “In April 2003”—note the date; that is a long time after privatisation, is it not?—“OfTel published proposals for assessing the extent to which consumers can make savings in the telecommunications market”. What were you doing between 1984 and 2003?

Mr Edmonds: What we were doing, sir, was introducing the lowest interconnection prices in the world.

Q14 Chairman: No; I am not interested in all that. I am interested in what you were doing to assess consumers’ needs and the savings that could be made. That is all I am asking. I am not asking about all your other work.

Mr Edmonds: If I may say so, the other work has been very important.

Q15 Chairman: But that was not the question I asked you. I asked you a question and if I ask you a question I expect to get an answer.

Office of Telecommunications (OfTel)

Mr Edmonds: I am going, if I may, to continue with my answer. What we have done is that we have launched a significant research programme in recent years to look at consumer needs in a different kind of way. I would also argue that in all of that work that we have done before we have looked at consumer needs. It is not ducking the question you are putting to me. In all the work that we have done we have looked at the needs of the consumer. Consumer need in the UK is low cost, high quality telecommunications and that is what OfTel has been about throughout its life. It is a fair answer to your question.

Q16 Chairman: Let us look at page 16, paragraph 1.44. You have had 19 years to help consumers, as I have said. It says there, three-quarters of the way down, "But OfTel's strategy also identifies the need to assess the impact of its information, something it is only beginning to do systematically", so why are consumers still in the dark? It is not surprising they are still in the dark about the options available to them when you are only just starting this work 19 years after privatisation.

Mr Edmonds: We are always developing the work that we do. I have been the Director General for six years. We have produced a firm initiative better to add to the information already available to us. Yes, we might have done it before. If I could I would make a virtue of the fact that we are doing it now. Yes, we could have done it before.

Q17 Chairman: Thank you very much for that. Let us look at anti-competitive behaviour. Look please at page 22, paragraph 2.13. You will see there that the proportion of anti-competitive behaviour investigations initiated by you has fallen from 20% to 12%. You have made a lot today of how you are strong on anti-competitive behaviour, so why has the number of anti-competitive behaviour investigations dropped?

Mr Edmonds: The number of investigations has not dropped. The number of investigations has increased. The number of own-initiative investigations has dropped because coming into the organisation have been some massive cases put to us by the industry. I have a very highly qualified and very skilled staff. In some areas, on local loop unbundling, for example, we have taken initiatives ourselves. In other areas where the competitors of BT have come to us we have picked up the cases they have brought to us and we have investigated them. There is a massive amount of work that has gone into producing conclusions that are good for the consumer.

Q18 Chairman: Let me stop you there. If you look further on on that page to paragraph 2.12, it says there that you have got powers under the Competition Act to intervene and fine companies following a completed investigation. "It has not yet found any behaviour that it judges sufficiently serious to justify taking such action", so you have done nothing.

Mr Edmonds: No, it does not say that, sir. It does not say we have done nothing. It says that we have not found cases that we judge are sufficiently serious to take the action of levying a fine. I act in a quasi-judicial position in carrying out analysis which is evidence based, which is objective, and in those cases that are referred to there I did not find evidence of anti-competitive behaviour that would have justified levying a fine. It is not that we have not taken action. We have taken huge action.

Q19 Chairman: Okay. We can come back to that later. Would you now look at page 26, paragraph 2.29? You will see that that it took the EU Framework Directive implementation to force you to insist that disputes were resolved in time. It was six months before they were resolved and now it is four months. Is that correct?

Mr Edmonds: Yes.

Q20 Chairman: So you had to wait for the EU to intervene before you managed to reduce the time. Why was that?

Mr Edmonds: I did not wait for the EU to intervene.

Q21 Chairman: Oh, I see. It was pretty coincidental, was it not?

Mr Edmonds: I was determined to bring down the time which it took us to deal with these cases.

Q22 Chairman: Why did you wait for the EU directive?

Mr Edmonds: I put this action in place before the EU directive and, as the report we put in to your Committee shows, we have now met those new deadlines.

Mr Kenny: It is fair to add, sir, that in the course of the negotiations on the EU framework OfTel was one of the national regulatory authorities pressing for that deadline to become law. We were already acting to move quickly in response to the feedback we were getting from the industry and we wanted the legal underpinning in order to be able to achieve that.

Q23 Mr Steinberg: Would you say this is a good or a bad Report? If you were to read it, if you were to get it like we got it, through the post, and read it on a Sunday afternoon, would you say it was a good one or a bad one?

Mr Edmonds: In terms of its comment on the way OfTel works or—?

Q24 Mr Steinberg: No. In the way that you are presumably protecting the consumer's rights.

Mr Edmonds: I think it is a Report that, interestingly, focuses on two areas. I think it is a good Report in that it draws to our attention the need for very effective anti-competitive action on the part of OfTel. It is an interesting Report because it gets into an area of consumer information which the Chairman focused on.

Q25 Mr Steinberg: Is that a yes or a no?

Mr Edmonds: Yes, it is a good Report that has made us think.

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Q26 Mr Steinberg: It says right at the very beginning of the Report that part of your brief is to see that the customer gets the best deal within the telecommunications industry. When I read the Report I have got to say that I got the same impression as the Chairman, that you have failed the customer.

Mr Edmonds: You are, of course, perfectly entitled to reach that conclusion but I think that is the wrong conclusion to reach. If you look at—

Q27 Mr Steinberg: The Chairman seems to have come to that reasoning. I have come to it. It will be interesting to see what the other members think. Whether you think that or not, frankly, is not really important because what is important is that this Report indicates to us that the consumer is not getting a good deal and it is up to you to do something about it. The telecommunications industry is a nightmare and people like myself, just an ordinary sort of bloke, have not got a clue what is a good deal and what is a bad deal. I am reading this Report and I suspect that the vast majority of people in this country do not know whether they have got a good deal or a bad deal. You may know if you have got a good deal, but if you do not know you have got a good deal then God help us because if you do not know you have got a good deal there is not much hope for the rest of us. If we look at the Report there are so many options. Look at page 18, figure 7. If you go with BT you can have BT Standard, or you can have BT Standard with Domestic & International Friends & Family. If you are not happy about that you can have BT Together with unlimited local calls. There again, if you are not interested in that one you can have BT Standard with Domestic Friends & Family. There again, you do not need to have that because you can have BT Working Together. On the other hand, if you do not want BT Working Together you can have BT Together. On the other hand, if you do not want BT Together you can have BT Together with Friends & Family. Which is the best one? How do people know? Do you tell them which is the best one?

Mr Edmonds: I do not think that is the job of the regulator.

Q28 Mr Steinberg: Of course it is the job of you to give people the information to know which way to go.

Mr Edmonds: The job of the regulator, I would argue,—

Q29 Mr Steinberg: Ofgem and your opposite numbers in the power industry give information out where people can make valid judgements. You do not give any information out where you can make a valid judgement.

Mr Edmonds: They are giving information out, and very good and very effective information it is too, which enables people to take a simple switch from one supplier to another. As you have just illustrated in your question, the telecommunications sector is not a simple industry. The companies out there are trying to tailor packages for you and for other

people around this table which are directed at your needs. They are trying to give you something that provides you with good value for money.

Q30 Mr Steinberg: That is the whole point. It is so confusing. Turn to page 11, figure 2. There it tells us about BT Standard and Together tariffs and NTL's 3-2-1 tariff. What the hell is happening? I have not got a clue what that means. All I know is that it gives us three graphs telling us national peak calls, national weekend calls and local off peak calls. If you can tell me how I as an ordinary member of the public can make a valid judgement on which one to take which is going to give me the best deal, then that is the job that you should be doing. There is no indication at all about how I go about picking what is the best deal for me.

Mr Edmonds: If you happen to live in an area where NTL operates, this table will help you. If you do not happen to live in an area where NTL operates, which is about 85% of this country, it does not help you. The telecommunications consumer in the UK is getting a very good deal indeed and I think the telecommunications consumer in the UK is getting a very good deal because of tough regulatory intervention by me and my colleagues in the past. Can I give you three simple statistics? In the fields of gas and electricity prices since liberalisation have dropped 32% in gas, 25% in electricity. In telecommunications there has been a 58% reduction in prices. Prices have gone down by almost twice as much in the telecommunications area as in some of the areas that you have just quoted and using examples of good practice. That is what the consumer wants.

Q31 Mr Steinberg: Of course he does. That has nothing to do with you. I would say that that is because of the competition in the industry and the fact that they have to do it because they want to compete. Why, for example, do you not tell everybody or give an example to everybody of what BT would charge them and give them a couple of comparisons with two others?

Mr Edmonds: Because it changes so dramatically, it changes so quickly.

Q32 Mr Steinberg: But that is the point. Surely you should be doing something about it.

Mr Edmonds: Do you want me to stop private sector companies from providing competitive products to consumers in the United Kingdom when they are constantly, as you have said yourself a moment ago, in competition which I think has been brought into the market place by regulation and which is driving down price and is bringing in choice and is bringing in higher quality? I can only keep coming back in defence of OfTel, which I roundly defend, to the fact that in the UK consumers have some of the lowest telecommunications prices in the world and a lot of that has been achieved through regulation to develop competition and that is something that UK consumers do recognise.

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Q33 Mr Steinberg: It may well be all right if that is the case, but the vast majority of people do not know that. They have not got a clue. I do not know what the best deal is for me. I have got BSB Sky. They sent me a leaflet saying do I want to reduce my telephone calls. I looked at it and it said, "All you have to do is put 140 in front when you dial and we can reduce your calls by 50%", or whatever it was. I do not know whether that was true or not, I have not got a clue, but I did it. I have not got a clue whether that saves any money or not. I hope I have saved money but I do not know whether I have. It is your job to tell me whether I have saved money by doing that, and if I do not go with BSB Sky I can go with somebody else, and it is your job to tell me. I looked up two sites on the internet because in the Report it tells us that there are two sites. I got on one of the sites. This was www.uswitch.com, and frankly that was quite good. I looked at it and although I did not know really what I was on to begin with I just guessed what I was on. I am not sure whether I put the right information in but within two or three steps I found that I could save myself £75. I had never heard of that before. I had not got a clue that was there. I am quite certain that the National Audit Office's Report is not in the Top Ten best-seller non-fiction list in W H Smith, not yet anyway, although it might be after today, but only because I read that I knew how to get on to that website. Then I got on to your website that you recommend people to get on about comparisons. I could not understand it. It might as well be in Chinese because it is so complicated. This is the one you tell people to get on. I got on it and it is just a waste of time. It is just a load of figures that mean nothing, whereas this one, which is the private one, is quite good. Why do you not produce something like that for everybody in the country? You could put it in their telephone bills and tell them what to do.

Mr Edmonds: Because that private site is a site that we have encouraged the development of and which we accredit. It is a site that we said we would like to see the private sector develop. I think it is much better done in the private sector, unless, of course, they want to put in an organisation like OfTel (or in the future Ofcom) the resources that would be needed constantly to get that data on, to monitor that data and to run that system. I personally take a different view. I do not think that is the job of a regulatory agency. It is not a job that OfTel has done in the past and it has not prevented the growth of the biggest competitive market place with the lowest prices for telecommunications consumers that exists in much of the developed world. I will use strong argument to justify the way in which we have done it.

Q34 Mr Steinberg: The last time that this Committee looked at telecoms and prices was four or five years ago, and yet I am still saying the same things that your organisation was criticised for then. Nothing seems to have changed a great deal because the vast majority of people are still confused on what is their best deal. Your aim is still, and I will read it

again, to protect the consumer and to get the best deal suitable to their needs. I do not think that you have done anything over the last four years.

Mr Edmonds: I think that is simply not fair. I do not think it is a reflection on what has been achieved, and I will not go back over a number of facts I think we knew before, but if I could refer you to page 36 of the Report, the NAO's own work says that people say that making changes to telephone services has been easy in the last two years, 93% could identify the companies offering the services, getting information from customers is easy or very easy. 85%, it says here—and it is not my Report; it is the NAO Report—understand the information. 78% find it easy or very easy to make comparisons about prices. 70% can make comparisons about the quality of the service. 93% find it easy or very easy to complete the paperwork. These are not my statistics. They are statistics in the NAO Report, which suggests to me that the UK consumer is a fairly shrewd person, and I think they are.

Q35 Mr Williams: Do you see yourself as the champion of the consumer?

Mr Edmonds: It is at the heart of my work, the heart of my career.

Q36 Mr Williams: You refer to the fact that tariffs change so quickly. We got the impression that you found it hard to keep pace with the rate of change sometimes. Is that fair?

Mr Edmonds: Yes, indeed I do. As a citizen I find it hard. As Director General of OfTel, the variety of price changes is absolutely enormous because all the time companies are responding to competitive pressures.

Q37 Mr Williams: If you may be finding it hard, can you not understand that my constituents, many of whom are elderly, many of whom are not particularly from a well-informed background, find it absolutely bewildering?

Mr Edmonds: I think that many citizens of the kind that you describe do find it difficult. My major answer to that is that most of the work that I do with this huge consumer focus is designed at driving in competition, driving down prices, enhancing quality of service. Your constituents benefit not through having to switch but through the work of the regulator in a whole range of different directions.

Q38 Mr Williams: That all sounds very good but the impression one gets from your answer is that in that one instance where, for example, 85% were satisfied, it sounds as if you in your private capacity were in the 15%.

Mr Edmonds: No. I said that I find it difficult. I did not say I could not do it. As it happens, I have switched my telephone from one network to another network because I worked out that it was beneficial for me to do it. It did not take me very long. Now I am on the absolutely optimal package given the fact that I have a son in New Zealand and I have friends in America. Trying to produce a bespoke, computerised, totally specific piece of information,

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Mr Williams, that you and your constituents would benefit from is a very complicated piece of work. USwitch is trying to do it and I think is trying to do it very well. It is doing it against a set of standards that we have put in.

Q39 Mr Williams: But you are aware, as someone whose market is with the consumer, of the fact that there are not very many areas of the consumer market where quick changes and confusing tariffs are used deliberately in order to create brand loyalty. People are afraid to change and when things change quickly it is not just that people may not be able to keep pace with them. If they are changing quickly they are trying to think, "In that case even if we change it might be different next week", and that is a deterrent, is it not?

Mr Edmonds: It may well be a deterrent, and I think again that this Report indicates that a large number of the people who stick with BT or who stick with the two main cable companies do that for the reasons that you have just delineated. It does not mean that as consumers they are not getting the benefits from regulation and lower prices; they are.

Q40 Mr Williams: So are you at OfTel still with BT?
Mr Edmonds: No.

Q41 Mr Williams: We had this confession of great honesty from a bank manager recently. I live in hope. Are you or are you not?

Mr Edmonds: OfTel's main line service is done by Cable and Wireless.

Q42 Mr Williams: Has that always been the case or have you changed recently?

Mr Edmonds: We have not changed recently.

Q43 Mr Williams: Have you changed at all?

Mr Edmonds: We must have changed at one stage because Cable and Wireless did not operate in the UK market at the outset of OfTel. It is another example, if I may say so, of the success of regulation in the UK that in London there are a lot of major suppliers. People can choose.

Q44 Mr Williams: With all these rapid changes going on why are you not changing rapidly because you have a very big telephone bill, do you not? If anyone should know when to change and if anyone should benefit you should because you have got such a big bill in the first place.

Mr Edmonds: Because change, unlike initially in gas and electricity, does not always lead to benefit. The point I am trying to make is that through the competition that is there, through the price controls that are there, the restrictions that we put on BT putting their prices up, you benefit as a consumer whether you switch or not. For example, Cable and Wireless, interconnected with BT or Colt, interconnected with BT, or any foreign telecommunications company, interconnected with BT, gets the lowest interconnection prices in the world because of OfTel's intervention, and that feeds through the process to the consumer.

Q45 Mr Williams: So in your private capacity where you do not understand the system as well as you do in your public capacity, are you still with BT?

Mr Edmonds: No. I must make this clear. I did not say that I did not understand. What I meant to say was that I find making the comparisons occasionally difficult because my life circumstances change too. If I do not have a son in New Zealand I do not necessarily want that indirect access supplier. What I do want is a reliable, cheap telephone service and that is why I have switched.

Q46 Mr Williams: Now will you answer my question?

Mr Edmonds: Yes, I am going to answer your question.

Q47 Mr Williams: Are you still with BT?

Mr Edmonds: No. I am with Telewest.

Q48 Mr Williams: How long have you been with them?

Mr Edmonds: I have been with Telewest, I would guess, for about four years.

Q49 Mr Williams: Mr Kenny, do you mind? If you do not want to answer I have no objection.

Mr Kenny: I am really happy to answer, Mr Williams. I think it illustrates the Director General's point. I have three different contracts. I have my underlying BT line rental. My wife works from home and therefore needs to be able to identify the costs of her telephony separately, so we have a contract with one indirect access supplier for her work but, because I make a lot of national calls, it is actually cheaper for me to use another indirect access supplier at weekends talking to family and friends outside London. What I think is difficult so far in the main is to suggest that anybody sitting in an office in London can identify with and say that the British public comes in the following 200 varieties of telecoms needs and identify the right individual answer for each of them. Unlike gas or electricity, where their product is by definition the same wherever you buy it from, in telephony what you need will depend enormously on your family circumstances, whether you are making substantial calls and so on.

Q50 Mr Williams: And do you think many consumers out there are as well informed as you are to be able to make a sensible choices that you make? I am not criticising your choices. I am just pointing out that you are in a privileged position. Do you think that the average consumer out there is as *au fait* with the system as you have been in making your choices among three different suppliers?

Mr Kenny: I believe the average consumer is probably far better informed than they were 20 years ago, even than they were five years ago, because of the amount of choice that there is in the market.

Q51 Mr Williams: Can I ask you, Mr Edmonds, since you were in confessional mode, which of the directory enquiries services you use?

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Mr Edmonds: I have tried a variety because I thought it was correct for me so to do. I have tried 118 500.

Q52 Mr Williams: Which do you use?

Mr Edmonds: I am currently using 11 88 88 because I have used it three times and I have found it gave me the number quickly and cheaply. You cannot draw the conclusion from that that for everybody else in the room that will be the optimal supplier. That is a personal anecdote which I have given you.

Q53 Mr Williams: At OfTel quite often your staff are having to find a number in a hurry. Is there a standing number that you would advise they must use for directory enquiries?

Mr Edmonds: Certainly not.

Q54 Mr Williams: Why not?

Mr Edmonds: Because I would expect them not to dial directory enquiries. I would expect them to get on the internet and get it for free.

Q55 Mr Williams: That is a sensible answer. The Consumers' Association did their own survey of the new directory enquiries and they found that the worst service was your old friend Cable and Wireless. They have done well by you but they do not seem to do well by the public. It only got one correct number out of five. That is not very encouraging, is it?

Mr Edmonds: If that was a proper statistically done survey, if that was the result, no, it is not satisfactory. No-one could defend that as being satisfactory.

Q56 Mr Williams: Helen Barker, the editor of *Which*, said that this often poor service did not come cheap. It is not referring to any individual one here. It says that call costs range from 20p to £1.10. Are you satisfied that this new service which most of us find is creating absolute confusion has been let into the market correctly and that consumers have all the information they need to make sensible choices?

Mr Edmonds: My answer to that is that it is early days and I think it is a correct decision. I am sorry if there is confusion because confusion is not something that anyone wishes for. I believe that there is a great deal of understanding on the part of consumers. I think we are into a situation that is beginning to bed in. I think we are into a situation where real competition will lead to real benefits for consumers in the long run.

Q57 Mr Williams: The same survey found out that two out of three people had no idea how much the new services cost. That is two-thirds of them. That is ideal for a rip-off performance, is it not?

Mr Edmonds: If you are working in a situation where knowledge is not gained it is wrong; of course it is. What I would argue is that we are in a world where there is competition, where there is a vast amount of advertising and where competition, both in terms of price and quality, will lead to accurate consumer data and accurate consumer choice.

Q58 Chairman: Directly following on from that, we know that the introduction of 118 has increased confusion but have prices not increased for those people dialling directory enquiries after 24 August?

Mr Edmonds: No. Ten out of the 18 services on the OfTel website, which are major services, are cheaper than the old BT 192.

Q59 Jon Trickett: I feel that the original report you were worried about. You felt it revealed an extent of timidity on the part of your organisation. You then submitted to the Committee a memorandum which is intended, I think, to demonstrate that you are not quite so timid and you do sometimes bite. I want to ask questions about one of your examples which you use in paragraph 12, which is Vanco versus BT. Vanco made a tender to IBM which was substantially less than BT's. BT were in danger of losing the work and they persuaded a third party, RHM, to offer IBM a bond which amounted to millions of pounds in order to stay with BT. IBM were to do nothing in return for that money, simply because they paid millions of pounds. Is that an accurate statement, first of all?

Mr Edmonds: I would not have used the language that you use but the case as set out here and as described and the press notices I put out at the time did involve the basics that you have just described, yes.

Q60 Jon Trickett: Can you tell us how much the amount of money which RHM was offering to give to IBM was?

Mr Edmonds: I cannot. I have the order but there is a series of X's on the order in front of me.

Q61 Jon Trickett: You do not know?

Mr Edmonds: We would have known at the time but I do not think we published that. Mr Kenny, who was in charge of the case, may know.

Mr Kenny: I am afraid, Mr Trickett, I do not have the figures in my head. We do know them but the version which was published was regarded as a matter of commercial confidentiality.

Q62 Jon Trickett: Was it millions of pounds as *The Guardian* reported?

Mr Kenny: I believe it was in single figure millions. I do not recall the exact figure.

Q63 Jon Trickett: It was more than £1 million and less than £10 million. In the provisional order which you issued it seems to indicate that this amount of money, between £1 million and £10 million, happened coincidentally to be very close to the difference in price between what Vanco had offered and the cost which BT were wanting to charge. Is that also correct?

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Mr Edmonds: Yes, that is correct.¹

Q64 Jon Trickett: So Vanco could have undercut BT to the tune of possibly several million pounds, and then somehow or other BT discovered how much the difference was in price between their bid and Vanco's bid and then procured a third party to offer doosh to IBM global? Is that correct?

Mr Kenny: Yes.

Q65 Jon Trickett: You then discovered that this had happened, issued an order and then this practice did not then proceed?

Mr Edmonds: BT, on receipt of my order, withdrew the offer.

Q66 Jon Trickett: What is the relationship between BT and RHM? It was RHM, not BT, that offered the money, so how did BT withdraw since it was a third party, an independent company, from my understanding, which had offered this money?

Mr Kenny: What had happened was that BT in a few markets operates through what it calls third party sales channels. In other words, it gives commission to other firms to go out there and drum up business for it. RHM are one of those firms. What happened in this case was that RHM said they would, on IBM's behalf, get the service from BT for less than the standard BT list price.

Q67 Jon Trickett: That is not what happened, is it, because BT stuck to their price and RHM then offered a large amount of cash in place of a discount from BT? BT retained its price, did it not? The price was retained at the same level but RHM was then persuaded to offer an amount of money in cash to IBM which was the difference between the competitor and BT's price, was it not? That is what happened?

Mr Kenny: That is what happened, but the thing we had to judge was whether this was RHM who were engaging in some kind of loss leader activity.

Q68 Jon Trickett: But IBM was not giving RHM business at all, was it? IBM was not proposing to give them a penny's worth of business, was it? This was just a gratuity which is as near to corruption as it is possible to be since IBM were not doing anything at all with RHM. It was simply a large amount of cash being handed over as an enticement, and some might call it a bribe, to IBM who, by the look of it, had the honourable character to come forward and say, "This does not seem quite right". That is what happened.

Mr Kenny: Let me emphasise first of all that we got the information. We did not rely on IBM because we used all the statutory power we had to gather the information we needed. We had to ask ourselves the question why had BT introduced RHM into this relationship, and we could see no reason why that had happened other than that BT had somehow

wanted to use a third party as a means of keeping that contract by allowing the prices to go off book. It was for that reason that we issued the first order that we had done for some considerable time.

Q69 Jon Trickett: I know. Did you consider whether or not there was potentially an action of a criminal nature involved in the offer of money in exchange for no services between RHM and IBM? Was that something which you considered?

Mr Kenny: We did look at that.

Q70 Jon Trickett: Did you take legal advice?

Mr Kenny: In every case which involves any kind of enforcement action we take legal advice, quite often externally. I do not myself believe that there was criminal intent here. There was clearly, however, an intent to evade the regulatory obligation placed on BT.

Q71 Jon Trickett: How can a payment paid in cash between two parties, one of whom receives nothing back in terms of services, be regarded as anything other than a financial inducement or a bribe?

Mr Kenny: I think you have to ask what the intent was behind the transaction.

Q72 Jon Trickett: To buy IBM's loyalty to BT, was it not? Presumably there was a second contractual relationship, which was that between BT and RHM. Presumably BT offered RHM an equivalent amount of money in goods or services or money. Did you uncover such a relationship?

Mr Kenny: We certainly uncovered a contractual relationship between BT and RHM generally. We did not uncover a precise cash flow in the way that you have described.

Q73 Jon Trickett: Nevertheless, I do not think RHM would have offered such a large amount of money for the good of their health and presumably somehow or other it secured BT's good offices for some kind of promise even though you did not find any evidence of that.

Mr Kenny: That was exactly why we imposed the order.

Q74 Jon Trickett: I do find it extremely disturbing that that can happen. You hear about allegations that these kinds of events take place in the so-called third world. It is extraordinary, is it not, to find it in blue chip companies like ours?

Mr Kenny: I think it is and that explains two things. It explains why we reacted so quickly in this case, in that the investigation, if I recall, took only a matter of four or five weeks. We also followed it up by talking extensively to a wide range of BT's competitors to see if they had concerns that it was a usual tactic. We also made BT put in place a whole new compliance regime to look at the way that it managed all its third party transactions.

Q75 Jon Trickett: Why did you not inflict some penalty on BT?

¹ *Note by witness:* The sum of between £1 million and £10 million was the value of the rebate over the lifetime of the proposed contract, rather than the sum RHM passed initially to the customer.

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Mr Kenny: I think, with respect, that if we had had the statutory power to issue a fine at that stage we would have done so. We did not have the power to do that until the Communications Act became law in 2003. Speaking personally, had I had those powers this is exactly the kind of case where using it would have been wholly justified.

Q76 Jon Trickett: In the press statements which were issued at the time by Vanco and by yourselves it was suggested that you would continue to look into this practice as part of a wider investigation. I am worried that this may be the only one which has surfaced and maybe there have been other such payments either before or after, and yet when we searched your website, and we have searched your website extensively and press statements and everything else, there is no reference to any further investigation having taken place into the problems which arise from this discussion we are having. What has happened to this investigation?

Mr Kenny: We spent quite a considerable amount of time and effort in undertaking the investigation. Members of my team went out and spoke to a large number of third party sales agents. We had a couple of sessions at the OfTel Forum with operators who have every incentive to come forward if they feel that they are losing business.

Q77 Jon Trickett: Is it your conclusion that this has never happened before or since?

Mr Kenny: I think it would be a brave man who said that it would never have happened before or since. What I think has happened is the fact that we responded so quickly in this case and made BT not only withdraw its offer but also revise its general rules about using third parties.

Q78 Jon Trickett: This was a clear attempt, semi-legal, I think, to maintain the quasi-monopoly which BT exercises by eliminating competition using techniques which are unacceptable, and there may be other cases out there in the market place where this is happening. Since it is your job to prevent such practices taking place, why is it not possible to find any information about this on your website? Surely other companies who may be experiencing some of these kinds of activities ought to be aware of this? The Report itself says that the availability of information is the only way of securing a competitive market. Why does your website not reflect any of this investigation that you allege to have done?

Mr Kenny: First, to answer the general point around communication of investigations, in the past we published a competition bulletin which appeared twice a year. We now have an interactive part of the website in which this is regularly updated. That bulletin contains details of individual cases or individual abuses which we are investigating. After we had got the Vanco case sorted we spent, as I said, a great deal of effort looking to see if there were further cases out there and it was because we drew a blank that there is nothing on the record. However, I can assure you that we acted very decisively to force BT to put in place a whole new compliance framework

internally as well as acting quickly on this case. There is now a whole set of internal safeguards within BT which should make a recurrence most unlikely, and BT know very well the likely consequences, the stiffer consequences now that the fining powers are there, which they would face if there was a repeat.

Jon Trickett: It is not through lack of interest that I stop there but my time has run out.

Q79 Mr Bacon: Perhaps I can assist Mr Trickett because I would like to continue this theme. Mr Kenny, who owns RHM?

Mr Kenny: I am not aware, sir.²

Q80 Mr Bacon: You do not know?

Mr Kenny: I do not know.³

Q81 Mr Bacon: So you did not do a particularly thorough investigation?

Mr Kenny: The whole point of the investigation was to determine whether BT had broken any of its regulatory rules.

Q82 Mr Bacon: I was asking you whether an investigation which did not include finding out who owns RHM could be considered to be a thorough investigation.

Mr Kenny: Given that the point of the investigation was to discover whether BT were acting illegally, I do not think the matter of ownership of the third party comes into it. I should say that we knew that it was not in any way a wholly owned subsidiary of BT, which is perhaps the purpose of your question.

Q83 Mr Bacon: As I understand it, RHM was walking along one day and it decided, "Hey! We will give some money to IBM". Is that right?

Mr Kenny: RHM were introduced to IBM by BT. RHM did not simply come in off the street.

Q84 Mr Bacon: They were introduced by BT. Let us not forget about how it happened. RHM were introduced to IBM by BT. RHM then said, "We will give IBM some money". Am I correct so far?

Mr Kenny: They said to IBM—

Q85 Mr Bacon: Am I correct so far? Let us do it in little bits so we do not go wrong. Did RHM then say, "Having been introduced to IBM by BT, I know. Let's give IBM some money"? Is that correct?

Mr Kenny: No. They said to IBM—

Q86 Mr Bacon: It is incorrect? They did not give IBM some money?

Mr Kenny: They did, but what they said to them was, "We can get you the BT service that you want at a lower cost. Of course, you will still have to pay BT what you have always paid them but we will give you some money back".

Q87 Mr Bacon: "We will give you some money back"?

² Ev 26.

³ Ev 26.

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Mr Kenny: Yes.

Q88 Mr Bacon: RHM were not providing anything to IBM other than going along to IBM and saying, “We will give you some money”?

Mr Kenny: No. They would argue that what they were providing to IBM was the introduction to BT to maintain the service.

Q89 Mr Bacon: But was not BT already talking to IBM?

Mr Kenny: Indeed they were.

Q90 Mr Bacon: How could they be providing an introduction to them? You have already said it was BT that introduced RHM to IBM, not the other way round.

Mr Kenny: Which is precisely why there was concern because there seemed to be no reason—

Q91 Mr Bacon: Let us just go back. RHM gave this money to IBM in return for no apparent service. RHM just decided, having been introduced to IBM by BT, that it was going to give IBM some money, which was an extraordinary thing to do, and you cannot tell me who owns RHM. You cannot even tell me how much money is involved. This supplementary memo from the Director General which came out after the Report has this paragraph 12 on enforcement orders. You have put this into the Committee and it has got a paragraph in here which says that this firm passed a sum of money to the customer. When you yourself put this memo into this Committee did it not occur to you that when you came before this Committee someone might want to ask about this sum of money and what it was and how much it was? Have you come to this Committee not knowing what this sum of money was?

Mr Kenny: Clearly we can let the Committee have all the details and I apologise, Mr Bacon, that that figure is not in my head at the moment.⁴

Q92 Mr Bacon: I am just very curious that you yourselves put this in as extra information. It is obviously controversial.

Mr Edmonds: I was trying to put into this very brief memo three examples because the original memo said that we had not made any orders and we tried to put it in here. I am sorry if we did not give you enough detail.

Q93 Mr Bacon: Can I ask what was the effect on BT of their actions?

Mr Kenny: The effect on BT of their actions in the short term was that they retained a contract which they otherwise would have lost. The effect on BT of OfTel’s action was that they promptly lost that contract again and the firm that had competed fairly for it, Vanco, gained the difference.

Q94 Mr Bacon: But there were no sanctions imposed on BT of any kind for having acted in this way?

Mr Kenny: As I explained to Mr Trickett, had we had the powers to enforce action we almost certainly would have done so in that case. Were such a case to happen now with the powers we have had since July we would do so.

Q95 Mr Bacon: You had no powers to impose any sanction at any time?

Mr Kenny: We did not, but that was one reason why we encouraged the Government through the passage of the Communications Act to give us the power to fine. We have that in relation to our competition jurisdiction. We did not have it in relation to our telecoms jurisdiction. That was a major weakness in the latter.⁵

Q96 Mr Bacon: In your investigation did you talk to the RHM?

Mr Kenny: Yes, we did.

Q97 Mr Bacon: Did you not ask them who they were or who owned them?

Mr Kenny: We used our statutory powers to gather information round the particular transaction. We were not, I should emphasise, putting RHM on trial. We have no locus to investigate RHM, it was not an operator.

Q98 Mr Bacon: It was a provider of money to one of BT’s customers!

Mr Kenny: We were investigating BT’s behaviour, RHM’s behaviour was certainly odd.

Q99 Mr Bacon: That is one mild way of putting it, most people do not walk down the street and suddenly give millions of pounds to a big company like IBM, that is very odd.

Mr Kenny: What we are talking about is the relationship between RHM and BT rather RHM in its own right.

Mr Edmonds: RHM is a number of agent and service providers which form part of something called BT Retails Indirect Channel which was set up by—

Q100 Mr Bacon: By whom?

Mr Edmonds: The channel was set up by BT. I do not know who the owner was, I did not enquire at the time. BT have a series of agents, of whom this is one, who BT have used to get into this market of small, medium and large businesses.

Mr Kenny: These channels are for the most part fairly small firms. They will quite often give you a maintenance contract for your IT systems as well as provide your telephony. They deal with, as David said, firms generally of £10 to £15 million turnover, whom BT do not provide that kind of general package service for.

Q101 Mr Bacon: When you met up did you meet some of the directors from RHM when you had conducted this investigation?

⁴ Commercially confidential—not printed.

⁵ Ev 27.

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Mr Kenny: This investigation happened eight or nine months ago, now while I was involved in the decision I was not involved in all the information gathering. We used our powers to gather a great deal of the documentary evidence, I would need to come back to the Committee to be able to confirm whether an actual face to face meeting took place.

Q102 Mr Bacon: Do you think it is possible that it did not?

Mr Kenny: I would need to confirm it, I do not have the details in my head.

Q103 Mr Bacon: When you describe it as very odd behaviour that would be the obvious thing to insist on straightaway, would it not?

Mr Kenny: We can only use our statutory powers to gather documentary information. We do not have the equivalent power of interviewing under caution.

Q104 Mr Bacon: Did you phone up and say, “we would like to meet with you” and they said, “no, there is no chance, you have no statutory power, take a running jump”?

Mr Kenny: I think if that is the case there would have been a good chance that is the way they would have responded. What we cannot do, and we wanted to act legally rapidly when we saw what was happening in this case, is use information gathered informally face to face with the same evidential weight that we could use information gathered using our statutory powers on paper.

Q105 Mr Bacon: There were no sanctions of any kind, fines or other kinds of sanctions, that were available to you, are you certain about that?

Mr Edmonds: Certain. If I may add a supplementary to Chris’s reply about the impact on BT, I think the impact on BT was significant in terms of reputational damage, this was behaviour in which they should not be participating. The implications within BT and the structural reorganisations they made in terms of their own clients’ functions and the rules they then put in place following this were also significant, I think all of these actions followed directly from the decisive intervention by my compliance team.

Q106 Mr Bacon: Paragraph 2.32 on page 26 talks about the management changes you are making to the way you conduct investigations, you consulted your stakeholders on this but you do not propose to meet companies as part of the investigations. Routinely “companies” in that paragraph refers to suppliers.

Mr Edmonds: Yes.

Q107 Mr Bacon: When it says that you do not propose to meet companies routinely that means suppliers of telecom services to customers, does it?

Mr Kenny: Yes, it does.

Q108 Mr Bacon: Does it mean companies who are themselves large customers?

Mr Kenny: It all depends on the circumstances.

Q109 Mr Bacon: It could mean both.

Mr Kenny: It could mean both.

Q110 Mr Bacon: If the heart of your work is promoting customers why would you not meet companies routinely?

Mr Kenny: What we do not want to do, given that we are working very hard to speed up the process of our investigations, is to have decision-making delayed by setting up a structure of regular six-weekly meetings, that is the point that we are trying to get at.

Q111 Mr Bacon: In the second part of your reply you said that companies refer to customers, you meet companies as customers regularly, do you?

Mr Kenny: We do, we have a variety of mechanisms. We have a large business user panel, we have a small business task force as well as formal statutory advisory policy committees to the Director General and we use them to gather information on a wide range of policy issues. On an individual complaint about anti-competitive behaviour it is quite rare for the investigation to turn on an individual contract of an individual customer, when it does so we do quite often approach the customer concerned.

Q112 Mr Bacon: I have run out of time, if you could send us a note about the companies in particular where there were face to face meetings and how much money was involved and confirmation in writing if there were no sanctions available?

Mr Kenny: I would be very happy to do so.⁶

Q113 Jim Sheridan: You made previous reference to regulatory powers, are there any regulatory powers that you currently have that could act as either an impediment or as a means of improving your service?

Mr Edmonds: I think the regulatory powers that have now been taken from the Telecommunications Act and the Competition Act and incorporated into the Communications Act mean that Ofcom, the new regulatory agency, has a raft of powers that give it much more weight, authority and ability to levy sanctions than in the past. I do not see any immediate gaps in the powers available to Ofcom, no.

Q114 Jim Sheridan: Therefore you think that the framework is there to carry on being a champion of the consumer?

Mr Edmonds: I think the framework is a very solid framework. I think the Communications Act gives Ofcom a base that is very solid.

Q115 Jim Sheridan: Moving on, given there is an increasing number of television participant programmes nowadays where viewers are encouraged to phone in with their votes or opinion

⁶ Ev 27.

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or whatever it may be and I accept some of the charges are somewhat excessive, can you explain the reason for that and do you have an opinion?

Ms Wallace: The premium rate services to which you refer are actually regulated by ICSTIS, the premium rate watchdog, and OfTel's regulatory powers back up ICSTIS. The reason that some of those phone-in numbers are expensive is they are premium rate services and as such there are certain obligations that apply to those services. When you see them being used on TV for phone-ins you will see that the price is given, and that is a requirement of the ICSTIS code of practice, which is a document that all service providers have to adhere to and which is legally enforceable and for which sanctions are available and are often exercised in terms of fining the service providers who fail to follow that code of practice. There are quite a few safeguards for consumers in place. The reason that the service costs so much is because they are premium rate services and there is an element of revenue shared between the telephone company and the service provider providing the service. OfTel and ICSTIS recognise the risks associated with that kind of regime that is why such a thing as ICSTIS exists and the code of practice is very important.

Q116 Jim Sheridan: Given the fact that a number of these telephone calls are targeted at young people, perhaps when the parents are not in the house, is there any safeguard's to protect parents from receiving these large bills from children telephoning these?

Ms Wallace: The ICSTIS code of practice has provision relating to young people and certain obligations on service providers if they think services are being misused by young people. Of course the telephone companies themselves frequently have things like premium rate call barring on calls, either on a call-by-call basis or a network-wide basis when customers who are concerned that people in their household, usually children, but not always, and other people in the household might be misusing premium rate numbers.

Mr Edmonds: The key defence for a parent who goes out and leaves children watching one of those programmes is to put in place call barring as a basic programme in their own telephone.

Q117 Jim Sheridan: Can I move on to the question of call centres, given the fact that there are a number of call centres moving out of the country to far away places. Is that a good thing or a bad thing in terms of service to the consumer?

Mr Edmonds: It depends on the quality of the service that is given. As far as OfTel is concerned we do not regulate, it is for the private sector companies, who we do regulate, to take that set of decisions. Some of the service from United Kingdom call centres may be good, some may be bad, some from abroad may be good, some may be bad, it is not a subject which OfTel has a locus in determining.

Q118 Jim Sheridan: Should you have a locus in determining it?

Mr Edmonds: I think not. Recently, in answer to a Parliamentary question, Tony Blair said this was a decision which had to be taken by the owners of the companies and the managers of the companies who were best able to judge for themselves how to provide a service for their consumer. I accept that call centres that give a lousy service are bad *per se*.

Q119 Jim Sheridan: There is not much choice for the consumer?

Mr Edmonds: There is no choice at all. If I call my bank, if I call directory enquiries, if I call BA or if I call a cab company I have no idea whether or not that service is being given to me in Newcastle-Upon-Tyne or Manila. The price I pay is of course clear and explicit and is often available at a local charge.

Q120 Jim Sheridan: My experience of call centres is you want a quick, efficient answer, and what I am finding increasingly is the person you are speaking to does not understand what it is that you are asking for and therefore you have to end up repeating the question or sometimes you have to spell it out, and that is therefore time consuming and how does that benefit the consumer?

Mr Edmonds: The answer is the one I gave to you before, it presumably benefits the consumer because the company concerned is providing the service at a lower price. As an example, my understanding is that Computer Cab in London has its call centre in Glasgow and I sometimes have difficulty making somebody in Glasgow understand when I want to go from A to B where B is.

Q121 Jim Sheridan: Can you repeat that?

Mr Edmonds: That point is that job has been exported from London to Glasgow, is that a good or a bad thing? If that job is exported to Manila is that a good thing? As the Director General of Telecommunications I do not think it is for me to say.

Q122 Jim Sheridan: On the question of directory enquiries, what was wrong with 192?

Mr Edmonds: 192 was a service that was at best average, which produced successful numbers in about two thirds of cases. It had been a service that had been in place for many years offering the United Kingdom consumer no choice at all, BT had no competition, it offered you the number. It did not offer you the chance of the number being connected, it did not offer the kind of choice that you now have of being able to get a classified service, it did not offer you a range of functionality that the new world is bringing in. There was no competition. It depends on whether or not you think competition *per se* is a good or a bad thing. From my experience working in the telecommunications sector competition has normally produced a good result for the United Kingdom consumer and that was the underlying philosophy of the building block as you have so described.

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Q123 Jim Sheridan: I think it is fair to say that the jury is still out on that as far as I am concerned. On the question of 192, was that driven purely by competition or was it driven by consumer pressure for change?

Mr Edmonds: No, it was driven by a specific analysis inside OfTel that was based on experience elsewhere that the consumer had benefited from the introduction of competition. The Chairman asked me about the consumer, the heart of my work is thinking about the consumer and researching into what the consumer wants. We did a huge amount of research into the cost benefit analysis and all of that proved to be positive. It was basically trying to put in place something that we believed then and I believe now will be of benefit to the United Kingdom consumer.

Q124 Jim Sheridan: I think the jury is still out on that, that is the impression that I am getting and they are finding it extremely confusing, life is still early. Finally, under the Competition Act do you have the power to fine companies for inappropriate action? What would be the formal rationale for fining a company for inappropriate action? How many companies have you fined?

Mr Edmonds: We have not fined any companies yet because we have not found any companies in breach of the Competition Act. We have done 15 Competition Act enquiries and in 12 of those companies we have not found evidence that the company was in breach of the Competition Act. A good example would be if a company was pricing a product at a levy that was so low that it forced competition out of the market place or was dumping a product into the market place, if that were proved yes there would then be an option to move to a fine or if the company is dominant in that part of market place, which in most of the United Kingdom market place it was BT.

Q125 Jim Sheridan: The industry is pure.

Mr Edmonds: No, the industry is not pure. The record of OfTel shows that we have got to make dozens of interventions, massive interventions every year in order to create consumer benefit. What I am also saying is that the standard of proof, the standard of evidence required under the Competition Act to find somebody guilty of an offence that leads to a fine are high standards. I believe the investigations that I carry out in my organisation are carried out to very high standards.

Q126 Mr Jenkins: Can I take you back to almost the start of the questions when the Chairman asked you a question, on page 16, 1.46, halfway down that paragraph it says, "OfTel has not encouraged consumers to engage in wholesale switching of suppliers". Do you agree with that?

Mr Edmonds: I have not done what the electricity and gas industries have done and focused on switching as the major output, if you like, of their work to benefit consumers.

Q127 Mr Jenkins: Is that yes?

Mr Edmonds: It is yes in terms of that specific question.

Q128 Mr Jenkins: You went into great detail that you have done such a marvellous job. On page 23, 2.16, on the second line the actual Report shows that the behaviour you describe is "anti-competitive". There are quite a number of cases you have where you thought the action by companies in the industry was anti-competitive, you have taken action against these companies by issuing regulatory statements against them because you did not have the power to fine them or bring them to task, would it be true by taking those two statements, as most of your answers have indicated to me, you are not the watchdog for the consumer you are the watchdog for the industry and you believe that by improving the competitive nature of the industry it therefore allows the market place to drive prices down if you take out the anti-competitive parts. Would that be true?

Mr Edmonds: No. That is only half the answer, I think the other half of my answer, the very important half of my answer, is that where I have perceived the Report describes as anti-competitive behaviour, and can I give you three examples; the internet, BT did not have a product that allowed flat rate access to the internet four years ago; may I take broadband, BT did not have connection for competitors that wanted to make broadband available to consumers; may I take partial private circuits, a very important component of the business market, in all those areas I intervened directly and strongly, not timidly, directly and strongly to force BT to put into the market place a new product that enabled suppliers, whether independent service providers or infrastructure competitors, to come in and to buy connectivity, if you like, from the BT network which enabled them to get competition into the market place. This is a fundamentally important part of the work of my organisation in the last five years, massive, massive interventions with BT. The Chairman of BT only last week suggested that the regulation and competition was taking £500 million a year out of his company, that is direct intervention by the regulator that is putting money into the pocket of the consumer.

Mr Kenny: If I may add one further figure?

Q129 Mr Jenkins: You have a figure! When two other members asked you you did not have one, which is a crucial figure. I thought coming to the Committee without that figure showed a total disregard to the fact you were not properly briefed and you should have understood if we put that in the Report you were going to be asked the figure. If you have a figure I would be pleased to hear it.

Mr Kenny: I have already apologised for that. Two of our key objectives focus on consumers being well informed and consumers being well protected. In terms of the total spend of OfTel we spend £7.5 million, about 42%, of the total OfTel budget, that covers not just publicity, it covers the work of our consumer representation selection, it covers a lot of

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work we do on marketing research and it really, as the Director General says, shows that we put the consumer at the heart of what we do.

Q130 Mr Jenkins: You spend so little on publicity, we accepted that failure. Now you are telling me that you explain to the consumer this is a very complicated and complex set of pricing tariffs, we have already accepted that, and you took great pains to point out that you could not possibly deliver that information to the consumer, unlike Energywatch, so what you were doing was overseeing and looking after the industry to ensure they did not use anti-competitive practices and you were a top-down organisation rather than a bottom-up one. I think I am getting the wrong story here.

Mr Kenny: If that is the impression we created I apologise for that. We certainly believe in getting the framework right. We also believe in making sure that all of our decisions are underpinned by a great deal of market research. We spend far more on market research, finding out what consumers' needs are than we do on any other aspect of management consultancy. We also have a contact centre which handles almost 200,000 calls a year for real consumers who we are able to help directly but whose input we are able to feed into all of the decisions that we make.

Chairman: We will break for a few minutes.

The Committee suspended from 5.56 pm to 6.04 pm for a division in the House.

Q131 Mr Jenkins: If I can take you back over the last year or so to the cases that have come to you which you deem to be anti-competitive when you did not have the powers, given the powers that you have now would you envisage that you would be laying fines against those companies?

Mr Kenny: It is very hard to give a simple yes or no answer, the reason being that anti-competitive is quite often used as a shorthand and we use it internally, as I believe the NAO have in their Report, to describe all kinds of offences against the regulatory framework, and some of those offences are absolutely blatant breaches where a fine is in order. In some cases when it has been a matter of very detailed cost investigation into the price of a product then it is possible to break the law actually inadvertently and quite often the remedy needed is about access to BT's network.

Q132 Mr Jenkins: Is that a maybe, not yes or no, a maybe?

Mr Kenny: It is on a case by case basis

Q133 Mr Jenkins: The image that you are giving to me is that you are very soft on suppliers engaging in anti-competitive behaviour, you rely on their goodwill and you work hand-in-glove with these people.

Mr Kenny: I absolutely reject that. We take firm action when we need to. The Director General quoted the Chairman of BT saying the bottom line impact on the company is £500 million. I think were you to have the chairmen and chief executives of the

mobile phone companies here who fought our action about capping mobile termination rates tooth and nail in front of the Competition Commission and in front of the High Court they certainly would not be arguing we were in any way soft on them.

Q134 Mr Jenkins: Is the profitability of the telecommunications industry lower than anywhere else in the world?

Mr Edmonds: No, the profitability of the United Kingdom telecommunications sector is good, in some cases it is higher and in some cases it is lower. Some telecommunications companies, as you know, some of the competitors are making no profit at all.

Q135 Mr Jenkins: In general is it lower than the rest of world?

Mr Edmonds: For the incumbents of BT, no, I think it is on a par with most of the rest of the world.

Q136 Mr Jenkins: Technology has made your job even more difficult because it has reduced the cost to them and they make more profit.

Mr Edmonds: I confirm what Mr Kenny has said, I do not think in any sense of the word it is fair to describe OfTel as a soft regulator. I think for the United Kingdom consumer, as I have said to you before, the prices delivered in the United Kingdom are better or competitive with anywhere in not world. The actions that we have taken in the last five years have transformed the United Kingdom telecommunications by demanding access to the BT network and getting access, that is not soft.

Q137 Mr Jenkins: On page 26 you were very pleased to tell me how many people understood the industry and I was amazed at how many people understood the industry. If the question was, "Who was your supplier and how much do you pay?" I would expect a high result because they know how much they are paying but would it tell you the comparison on prices between different providers? It cannot be that complicated, can it?

Mr Edmonds: This says that 78% of them say it is very easy or easier to make comparisons.

Q138 Mr Jenkins: The 78% is I suspect in the City but ordinary members of the public are going to be paying higher charges because they cannot do the research, they do not have the time or the strategy to do this, are we not in danger of getting a gap between the informed individuals who have the time and can select the lowest priced communications and the uninformed individuals who will pay a high price, and will they not tend to be households that do not use the telephone that much? We are in the same bracket again all the poor users pay the dearest for their services, how are you going to overcome that?

Mr Edmonds: In a variety of ways, I overcome that through price control on BT's retail network that bring down prices for all consumer in the network. I overcome that by mandating accesses to the BT network that produces the lowest charges for the internet in Western Europe. I do that by introducing

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the absolutely fascinating new concept of carrier pre-selection. 2.25 million households have opted into this new regime that I introduced a year ago.

Q139 Mr Jenkins: In a market economy by giving people full information they can make their choices, does the fact that you exist show that the market system does not operate in this sector?

Mr Edmonds: A total market system cannot operate in a world where there is a dominant incumbent, that is the whole basis of competition.

Q140 Mr Rendel: I want to get back to basics, if I may. It seems to me lying behind this whole problem is the sheer complexity of the number of ways people are charged for their phone calls, what time of day it is, how far away you are telephoning, all of the different ways you can be charged. One of the things that struck me as very odd after friends and family was introduced was I did not know who my friends were and I was not even sure who my family were. From quarter to quarter I phone different people different amounts of times. It is sometimes better to put a number on friends and family that you do not phone very often that is far away rather than keep it for a local call. Both make it difficult to judge which tariff you ought to be on. Do you agree it is rather difficult to forecast what tariff you should be on?

Mr Edmonds: Quite often it is difficult to forecast. I used the example of my son who went to New Zealand for a year, I needed a different provider for that year.

Q141 Mr Rendel: Do you think it would help forecasts if bills were forced to show which phone numbers have been phoned most frequently and how much each person you were telephoning cost you during a quarter?

Mr Edmonds: I think there is a capacity within the network for companies to provide you with that information.

Q142 Mr Rendel: Do you do anything to persuade them?

Mr Edmonds: I have not persuaded them to provide that information because it has not seemed to me to be something that either people have asked for—although you have raised it with me today—nor have I seen it as something that would add hugely to the pressures on the companies to provide lower prices.

Q143 Mr Rendel: Do you not think it would help consumers to decide which people they should put on friends and family had they known which phone number they were most often telephoning?

Mr Edmonds: They do that already. There are itemised phone bills, the phone bill from BT shows you every number that you have phoned and the price you pay for that call.

Q144 Mr Rendel: I have seen my bill, which is about nine pages long and to try and wade through each line for a particular number and add those up takes hours, absolutely hours. If I had a quick line that

simply said, you have used these 10 numbers on which you spent the most money, I would know at once those were the 10 I should put on friends and family.

Ms Wallace: I believe that BT does recommend friends and family numbers on occasion to some of its customers if they think they are not on the best one for their particular usage.

Q145 Mr Rendel: On occasion, they have done that to me on occasion but it should be a fairly standard policy. I am surprised OfTel has not suggested that to all of the suppliers. It should be fairly standard policy if customers are going to be helped to know which is the best tariff to be on.

Mr Edmonds: Not all companies offer friends and family in the same way as BT does. I take note of your suggestion, it is not an idea that we have heard until now.

Q146 Mr Rendel: One of the reasons for people being unwilling to change suppliers is because they do not know in advance which tariff is going to be the most useful to them or what their pattern or total amount of telephone calls is going to be and if it is worth them changing because they are going to make a lot of calls in the next quarter. Why do we not ask the supplier to charge people after the event? BT should look at the usage during the last quarter and work out the cheapest tariff.

Mr Edmonds: I think that is a perfectly legitimate question to put to BT. In terms of regulation it would have been a very detailed intervention by me to the company's billing process and it is an intervention that we have not taken.

Q147 Mr Rendel: You could have?

Mr Edmonds: We could have discussed doing that on a voluntary basis with them. I suspect I would not have the power to compel them to do that because I am not sure what part of their licence they would be breaching or what anti-competitive piece of behaviour they would be perpetrating were they not to do it.

Q148 Mr Rendel: You could not force them but you could ask them voluntarily?

Mr Edmonds: Yes.

Q149 Mr Rendel: That goes for other companies? I say that because if I knew that a company was prepared to charge me after the event on the best tariff I would be tempted to use them whether I thought their tariffs were low or not because I would know I would be getting the best value out of them. I am very surprised that companies do not do that, they would be enormously more attractive if they did. It would be interesting to know whether you would like to suggest this?

Mr Edmonds: I have a feeling at least one of the mobile companies offers that facility. I think it is a good idea, yes.

Mr Kenny: For new products we are introducing wholesale line rental which will allow companies to do a variety of different billing mechanisms. For

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example, it will be possible that some will charge a subscription and you can have all of your calls free, alternatively some may choose not to charge for the line rental and put all the costs on the call, and it will allow a degree of innovation which will start moving in the direction of what you are indicating.

Q150 Mr Rendel: How long do you expect an average user to have to spend each year if they were to ensure they were always on the cheapest tariff?

Mr Edmonds: Quite a long time.

Q151 Mr Rendel: In hours per year?

Mr Edmonds: I do not know, I think it is an impossible question to answer.

Q152 Mr Rendel: No estimate at all. Have you ever tried it yourself?

Mr Edmonds: No because I have sufficient knowledge of the general relativities to work out that it is probably going to take more time than the value I would gain from the exercise.

Q153 Mr Rendel: That is the point. I was thinking of it myself, I worked out that the maximum saving according to Figure 7 on page 18 is something like £50 a year. The maximum you could save for somebody on an average wage is about five hours a year, that is if you get it absolutely right and if the change is between the most expensive and the least expensive. Anyone trying to do that would find it took a lot longer than the five hours they saved to find out which one they ought to be on.

Mr Edmonds: That is possibly correct.

Q154 Mr Rendel: Nobody is ever going to make it worth while for anybody to work out the change.

Mr Edmonds: In that case why have 40% of United Kingdom subscribers at some stage changed all or part of their supplier?

Q155 Mr Rendel: I guess it is because they are guessing, they really do not have much of a clue. They are making, hopefully, a relatively well informed guess, they are guessing and hoping they come up with the right answer.

Mr Edmonds: I think that is an interesting view of the United Kingdom consumer, which you are very entitled to take. My own view is that if a product is in the market place and if that product is advertised effectively and the pricing is there and explicit people will move. Carrier preselection in the United Kingdom is now moving dramatically quickly, 2.25 million people have signed up in the last two years and that is because they are taking a conscious decision about prices.

Q156 Mr Rendel: Do you think they have all worked out which is the cheapest tariff?

Mr Edmonds: I cannot think that anybody would go to the trouble of contacting their telephone supplier and moving to a different service provide unless they had not done a little thinking about some cost saving or a wider range of better services.

Q157 Mr Rendel: I am suggesting what they have probably not done is analysed their telephone bill to see who they did call, when they called them and how often they called them.

Mr Edmonds: It is an interesting discussion, I understand where you are coming from.

Q158 Mr Rendel: The point behind this discussion is that given they have probably have not done that analysis, is that not something that you OfTel could force the companies to do analysis for, even after the event, even after each quarter? If they have not charged people for what was the best tariff for them could they not be forced by you to say, "if last quarter you had been on the following tariff and the following people had been your friends and family this is the amount we could have reduced your bill by"?

Mr Edmonds: We will of course look at that suggestion. I do not think we can enforce it, as I said before. It is interesting. A statistic that I do have is that OfTel research shows that some 50% of mobile phone users are on the optimal tariff, one third of fixed line consumers are on the optimal tariff. Mobile consumers have even more flexibility and more volatility yet according to our research about half of them demonstrate they are on the right tariff. I do think that consumers are thinking, I give consumers a great deal of credit for what they do.

Q159 Mr Rendel: Can I move to 192, people said when the new system was introduced although a lot of companies set up it would eventually reduce to probably not more than two or three suppliers, would you accept that is likely?

Mr Edmonds: I believe it to be four, five or six, not two or three.

Q160 Mr Rendel: What will be the main characteristics that allow the company to survive?

Mr Edmonds: It will be an absolute blend of price, quality and reliability.

Q161 Mr Rendel: You do not think it is better publicity?

Mr Edmonds: No, there will be contrary publicity if companies fail to connect more than three in ten calls, newspapers publicise that. If OfTel and then Ofcom published their own mystery shopping exercises, as surely we will do in due course, I think the consumer will be very well-informed very quickly.

Q162 Mr Rendel: Do the companies that provide directory enquires have to pay BT?

Ms Wallace: They are required by a code of practice to use the same fundamental underlying database, that is a quality guarantee.

Q163 Mr Rendel: Do they have to pay for that?

Ms Wallace: They have to pay BT for that database at a cost orientated price as part of BT's conditions of entitlement.

Office of Telecommunications (OfTel)

Q164 Mr Davidson: Can I start off by looking at paragraph 1.25 on page 12, at the very bottom text it says, "As at September 2002, 1.45 million out of four million eligible customers were on this scheme". I read that as being only one in three of those who would benefit from being on a low user scheme are on it. Is that not a pretty damning indictment of the competitive environment, two thirds of a particular category of customer who would benefit from switching have not done so mainly, I would suggest to you, on the basis that they do not know.

Mr Edmonds: They do know because there is a licence obligation on BT to inform all consumers who fall within this category of the low user scheme and the ability to switch to that scheme.

Q165 Mr Davidson: Presumably they are not deliberately irrational, what possible explanation is there for them not doing it?

Mr Edmonds: The low user scheme uses usage as a kind of proxy, ie if you make very few calls. Lots of people may feel that it is not worth their while and effort or may not feel that—

Q166 Mr Davidson: That is weak, you are struggling a bit.

Mr Edmonds: No, I am not, I am not struggling, I am trying to find the clear way. People who make very few calls if they are very poor, which the low user scheme is about, hopefully switch into it. Lots of people may be professionals may not feel any need to switch into it, it is a conscious decision on their part, it is not that they do not know about it because the information is there.

Q167 Mr Davidson: I have heard some self-congratulatory answers but that is really the tops. Here we have a scene where two out of three users in this category would save money by switching but have not done so, many of whom you have conceded are amongst the poorest. Clearly those are the people who would have the greatest financial incentive to switch and have not done so and you are saying the end system of information is fine. Really? I find that breathtaking.

Mr Edmonds: What more can BT do than tell them they are there?

Q168 Mr Davidson: What have you done?

Mr Edmonds: The usual, we have produced leaflets on the low user scheme.

Q169 Mr Davidson: If I go to the pensioners in my area and say, "are you aware of this?" will they unanimously say, "yes, we are". Do you believe that?

Mr Edmonds: No, because no one would unanimously say that at all.

Q170 Mr Davidson: If I go to them and say to, "are you aware that you can save money by switching to a lower user tariff?" Will they say, "yes we are aware of that but we have decided not to do so".

Mr Edmonds: I do not know what they will say, they should say they are aware of it because they have been informed.

Q171 Mr Davidson: That is a very complacent answer. Can I go to paragraph 1.53 where we are talking about renting a handset, again it is irrational for them to continue to rent a handset except in really exceptional circumstances yet a substantial number of people continue to do so. Is that not again a pretty damning indictment of the provision of information?

Mr Edmonds: It may be a damning indictment but I would disagree with that. What it did demonstrate to OfTel was there was an issue there, it is an issue that we investigated and not only investigated but an issue we resolved.

Q172 Mr Davidson: "It an issue that we have resolved", so now then do I take it that the vast majority of people who would be better off buying a handset rather than renting one have done so?

Mr Edmonds: No, it is an issue we have investigated and resolved. Following discussions with me, BT have, at my suggestion, reduced their prices or will reduce their prices by 25% over the next two years. Also at my suggestion, BT will also put on the bills of all BT customers an explicit statement which will say to them there is another option, which is buying your phone rather than renting it.

Q173 Mr Davidson: How do you assess whether or not that is effective?

Mr Edmonds: This will be assessed by Ofcom in the years ahead by switching from rented phones to—

Q174 Mr Davidson: Do you have a target figure you regard as a success?

Mr Edmonds: I have not set one, it is my job to put information into the market.

Q175 Mr Davidson: Have you ever considered the adequacy of the provision of the information that by having a target which would suggest to you that if people undertake a rational act then the information provision has been successful and if they do not then it has not?

Mr Edmonds: I think it will clearly follow that what Ofcom would do after a year or two is to look at the numbers and see what is happening. I do not see how as a Regulator I can set a target because there are people who are content to rent, perfectly rational grown-up people who go on renting their phones who think it is more convenient.

Q176 Mr Davidson: If you look at the assessment we only have 4% who said they could not afford it, you have not undertaken any similar sort of assessment at some point to check why people were undertaking what would seem to be an irrational act?

Mr Edmonds: From now on the reason for renting "buying did not occur to me" would not be an answer because their BT bill every month or quarter will be a specific bit of information for people who rent their phone which says "do you know there are alternatives to renting this phone". What more can you the Regulator do to get to every household that actually rents a phone, that is what I am doing.

Office of Telecommunications (OfTel)

Q177 Mr Davidson: In two years' time if a similar question is asked and a similar percentage indicate that buying had not occurred to them would that give you cause for concern?

Mr Edmonds: It would make me think very hard about human nature in the face of the overwhelming supply of information, yes.

Q178 Mr Davidson: It would be their fault. Okay. Can I clarify, if the cost of line rental exceeds the call cost for almost half of the consumers do you provide advice at all on where there would be a tipping point between using a mobile or purchasing a mobile service as distinct from a fixed line service? Do you believe anybody ought to be able to provide that?

Mr Edmonds: I think that could be a very, very complex calculation to do in an individual household, doing it on a universal basis would be almost impossible. We know that 91% of consumers in the United Kingdom have fixed lines and about 8% have mobile lines, the number of fixed lines has come down, presumably that 8% who no longer have a fixed line have taken the view there is a tipping point for them or other issues to do with convenience that make it worth while.

Q179 Mr Davidson: Arising from paragraph 1.8 where there is mention of geographically average prices being imposed on BT I take it that is for installation on the basis there is no serious competitor?

Mr Edmonds: It is for installation and call charges.

Q180 Mr Davidson: Can I just clarify on the question of installation, that means that across subsidy there is a universal charge?

Mr Edmonds: Yes.

Q181 Mr Davidson: Why should the poor people in my constituency, which is an inner city constituency, subsidise yuppies who made big property gains in London when clearly the cost of providing a service to them is much higher than providing it to poor people in the inner cities, that is effectively the redistribution of resources away from the poor people into my constituency to those who can afford it?

Mr Edmonds: It could also be the redistribution of those resources to very poor rural consumers who make a living from agriculture or fisheries.

Q182 Mr Davidson: I am aware of the alternative.

Mr Edmonds: That has been a fundamental principle of telecommunication regulations in the United Kingdom since 1984 that—

Q183 Mr Davidson: Have you ever questioned that?
Mr Edmonds: Yes, I have questioned it and I have thought about it.

Q184 Mr Davidson: What is the conclusion you reached?

Mr Edmonds: For a whole set of very good reasons to do with balance, to do with equity, to do with parity, geographical averaging of prices, both installation and call charges is desirable, and no one has actually produced a set of arguments to destroy that argument.

Q185 Mr Davidson: Do you accept it is an anti-urban policy?

Mr Edmonds: I do not think it is anti-urban, it is probably a policy that means there is subsidy from urban to deep rural areas, yes.

Q186 Mr Davidson: If there is subsidy going from urban areas to rural areas I would have thought that it is self-evident that is anti-urban. Can I finally ask, you mentioned, and this summarises some of your evidence to me, you indicated to an earlier question that your view of 192 services was that they were at best average, since they were the only supplier how could they be anything other than average?

Mr Edmonds: I was using average in the sense of not very good and not very bad. I do not think a monopoly provider necessarily has to provide an average service, if they want they could provide a very good service or a very poor service.

Q187 Mr Davidson: Then that is the average service.

Mr Edmonds: It was the only service, there was no pressure on them.

Chairman: Thank you very much, Mr Edmonds, that concludes our enquiry for today. Nobody denies your commitment to competition but of course this Report is about helping the consumer benefit from competition and I think you have gathered from the hearing this afternoon the Committee is underwhelmed by your ability to inform consumers about how they might benefit from competition, indeed consumers find the present system very confusing indeed. The BT share of the market is a huge share of the market and has been referred to by some as a confuseopoly. I think BT have changed their prices three times since the NAO produced their own short leaflet in July advising the public about how they might benefit from changing supplier, that just shows how easy it is for a dominant supplier to have a confusing range of tariffs and it is very difficult for ordinary members of the public to know how they can change supplier to get a better deal. I think we will produce an interesting report that will make various suggestions about how you might improve your information to the public. Thank you very much for appearing before us.

Memorandum submitted by the Comptroller and Auditor General

INTRODUCTION

1. My Report on how the Office of Telecommunications (OfTel) is helping consumers benefit from competition in the telecommunications market (HC 768, 2002–03) was published in July 2003. Since then there have been some significant developments which are explained in this memorandum. It incorporates information and comments provided by OfTel, BT plc and NTL.

LEGISLATIVE AND REGULATORY DEVELOPMENTS

2. The Communications Act 2003 received Royal Assent on 17 July 2003. The main provisions of the Act relating to the regulation of telecommunications are:

- *Implementation of EU Directives.* The Act brought a new EU regulatory framework into force on 25 July 2003, under which all telecommunication licences in the UK have been abolished. They have been replaced by a set of general conditions that communications providers must meet, including a requirement to provide reliable network services and to negotiate interconnection arrangements with other network operators. The new regime reduces barriers to entry to the telecommunications market and OfTel considers that it will provide a more streamlined and flexible system for current and new providers.
- *Transfer of OfTel's functions to the Office of Communications (Ofcom)* on a date to be determined by the Government, currently planned for 29 December 2003.
- *Ending a separate regulatory regime for telecommunications* by transferring OfTel's functions to Ofcom, along with those of four other regulatory bodies covering broadcasting and the management of the radio spectrum.
- *Establishing a Consumer Panel* to advise and assist Ofcom and to represent and protect consumer interests.

3. Under the new EU regulatory framework, OfTel is required to review the strength of competition in discrete communications markets to ensure that regulation remains appropriate to changing market conditions. In light of this, OfTel is carrying out reviews of key communications markets in the UK. On 26 August 2003, OfTel notified the European Commission of the findings from its first five market reviews, mainly covering wholesale charges and internet services. OfTel found that competition in some of these markets is developing, but in others firm regulation is still necessary because certain suppliers of telecommunication services still have significant market power.

4. The UK's directory enquiry market, worth about £300 million a year, was opened fully to competition on 24 August 2003. BT's 192 (UK) and 153 (international) services have been replaced by some 50 competing services with a 118 prefix. The charging structures of these services vary between suppliers. For example, there may be a fixed charge for calls or a charge per minute, or a combination of both. With OfTel's encouragement, the providers of 118 services have established a website (www.newdirectoryenquiries.com) containing information on services and tariffs to help consumers. The 118 directory enquiry service providers fund the website, generate the information on it and must comply with an industry code of practice produced and legally enforced by the Independent Committee for the Supervision of Telephone Information Services (the independent telephone information services regulator). The code covers accuracy and pricing information for all promotions, including the website. Each page of the website carries the OfTel logo.

5. The number of companies signed up to the Telecommunications Ombudsman Service (paragraph 1.42 in the Report) has increased from nine to 25, representing 95% of the fixed line and over 50% of the markets. In October 2003 OfTel announced that the service had met OfTel's criteria for dealing with complaints.

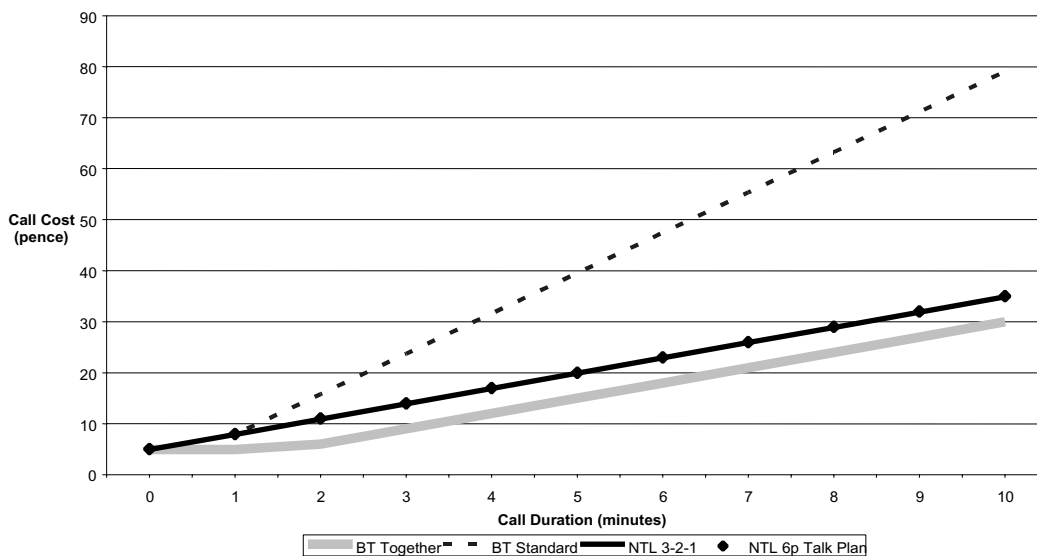
CHANGES TO TARIFFS

6. The UK telecommunications market continues to change in response to competitive pressures, thereby giving consumers the opportunity to benefit from new services and tariffs. For example, Tesco and Sainsbury's now offer a fixed line telephone service. Tesco claims that its tariffs could save consumers up to 30% on the cost of their home telephone calls.

7. My Report included examples of tariffs to illustrate the complexity of the market and the potential savings available to customers who change their tariff package or supplier. Since the Report was published, BT and some other suppliers have made changes to their tariffs which affect several of the figures in the Report. The main changes are explained below.

Figure 2: Graph 1 (page 11) showed that for a national peak call, *BT Standard* was the most expensive tariff after one minute, with *BT Together* cheaper than NTL (3-2-1 tariff) for calls of less than five minutes duration and NTL the cheapest for calls longer than that. Following changes to BT's tariffs, *BT Together* is now cheapest for all calls regardless of duration.

Graph 1A: National peak calls—revised graph as at 1 October 2003



Note: The NTL 3-2-1 and NTL 6p Talk Plan tariffs follow the same line

Graph 1B: National peak calls—graph in Report

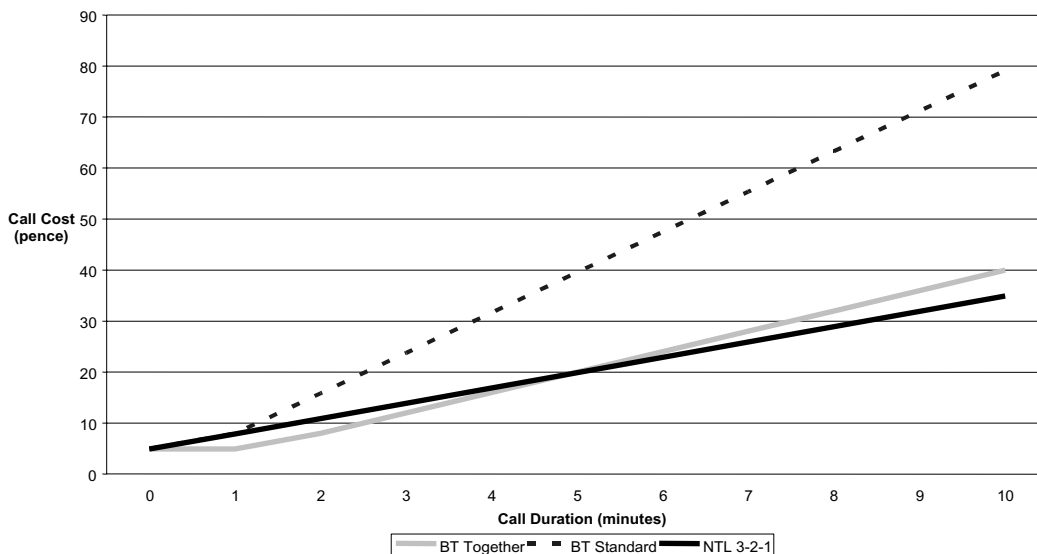
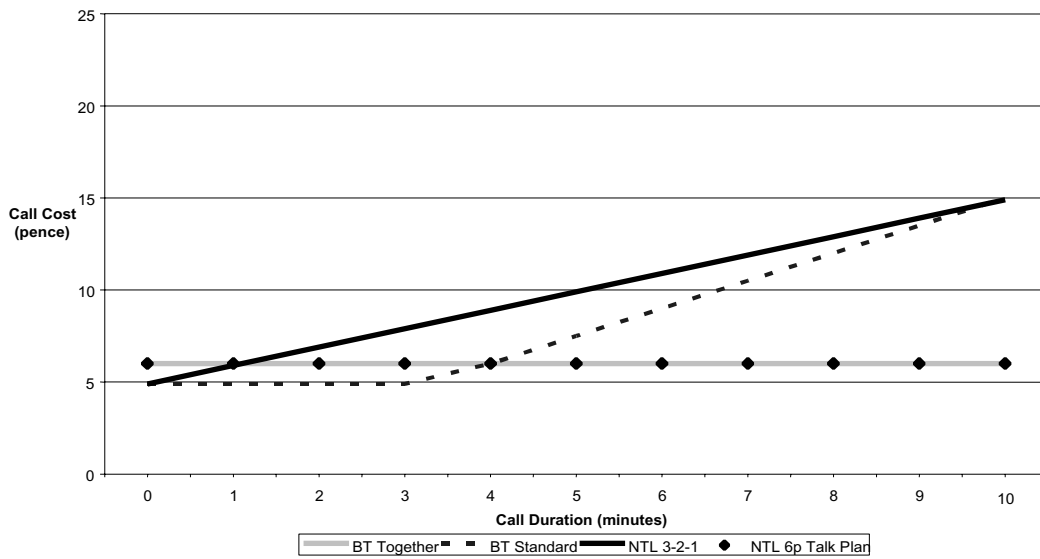


Figure 2: Graph 2 (page 11) showed that for a national weekend call, BT Standard and BT Together, which cost the same, were cheaper than NTL (3-2-1 tariff) for calls of less than five minutes duration and NTL was cheapest for longer calls. The BT Together and NTL 6p Talk Plan tariffs now allow callers to speak in the evenings and weekends for up to an hour for a flat rate of six pence. As a result, BT Standard is the cheapest for calls under four minutes duration and BT Together and NTL 6p Talk Plan are the cheapest thereafter.

Graph 2A: National weekend calls—revised graph as at 1 October 2003



Note: The BT Together and NTL 6p Talk Plan tariffs follow the same line

Graph 2B: National weekend calls—graph in Report

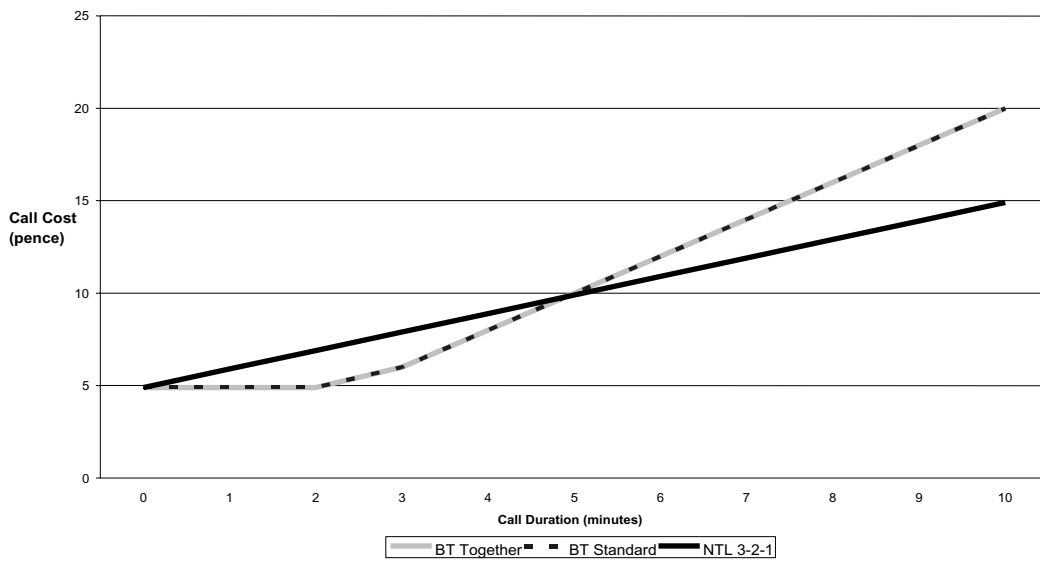
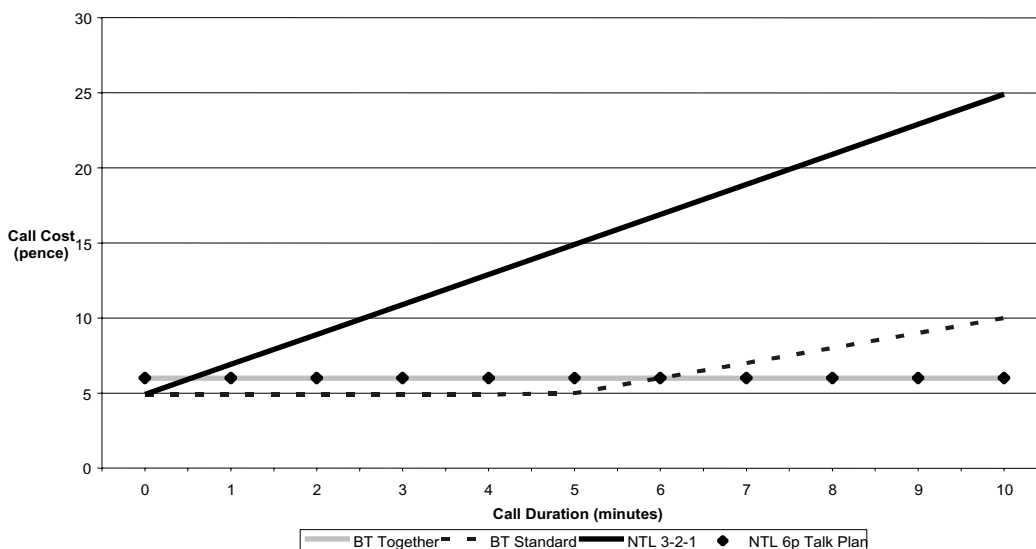


Figure 2: Graph 3 (page 11) demonstrated that NTL was the most expensive provider for local off peak calls, with BT Standard and BT Together costing the same for calls up to three minutes duration, after which BT Together was cheaper. BT Standard remains the cheapest for calls up to six minutes, after which BT Together and NTL 6p Talk Plan are cheapest.

Graph 3A: Local off peak calls—revised graph as at 1 October 2003



Note: The BT Together and NTL 6p Talk Plan tariffs follow the same line

Graph 3B: Local off peak calls—graph in Report

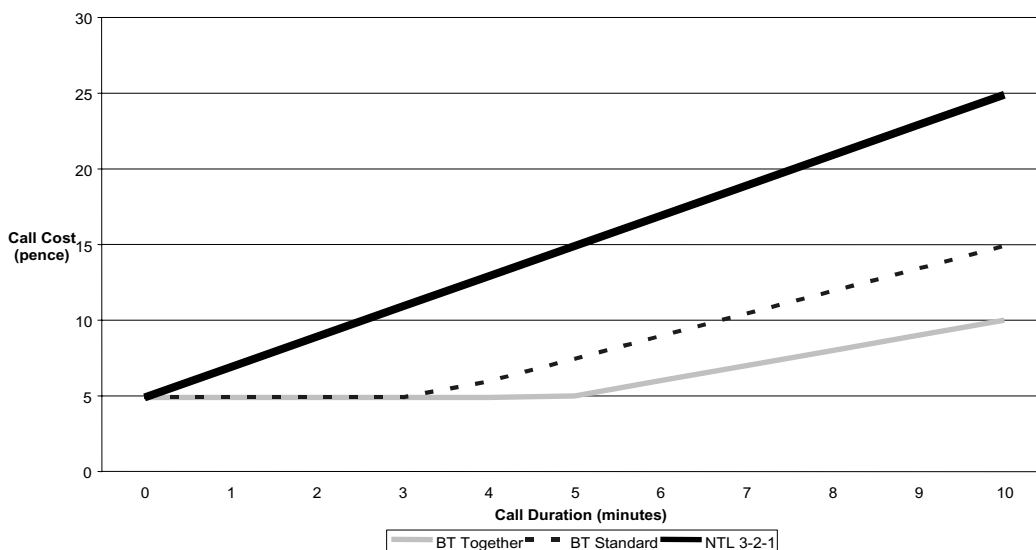


Figure 6 (Page 17) showed the cost of calling a selection of countries at the weekend using available discounts. On 1 September 2003 BT reduced the cost of calls to 14 countries with high levels of traffic. On 4 November it plans to increase costs in respect of 40 countries with very low volumes of calls where call charges have not reflected underlying costs. In addition, on 1 September 2003 BT amended its *International Option* tariff for *BT Together* customers so that for a premium of £1 per month they can call one of 17 countries for five pence per minute.

Figure 7 (Page 18) showed the annual cost for a typical medium user of different BT tariffs. BT has revised its tariffs and reduced the spread between the most expensive and cheapest tariffs from £50 to £43 (see revised Figure 7 below). The cheapest available tariff, *BT Together Option 1 with Domestic Friends & Family* (£292 per annum), is £23 more expensive than the previous cheapest tariff. But *BT Together* customers can now make calls for a flat rate of six pence for up to an hour during evenings and weekends and can therefore make longer calls more cheaply. This may have the effect of changing the usage profile of Ofcom's typical medium user.

Revised Figure 7: The annual cost for a typical medium user of different BT tariffs

<i>Tariff</i>	<i>Annual cost £</i>	<i>Extra cost compared with the cheapest £</i>
BT Together Option 2 ¹	333	43
BT Standard	315	25
BT Standard with Domestic & International Friends & Family	311	21
BT Standard with Domestic Friends & Family	310	20
BT Together Option 1 ²	297	7
BT Together Option 1 with Domestic Friends & Family ²	292	2
BT Working Together (no longer available to new customers)	290	—

Notes:

1. In this table, BT Together Option 2 has replaced BT Together with unlimited local calls, which has been discontinued. For an additional line rental, Option 3 includes free UK calls up to an hour in duration.

2. On all BT Together options, customers can now register for the Friends and Family Overseas discount free of charge. For the typical medium user this will result in an annual saving of £1.

Source: National Audit Office analysis of BT tariffs at 1 October 2003

Original Figure 7: The annual cost for a typical medium user of different BT tariffs

<i>Tariff</i>	<i>Annual cost £</i>	<i>Extra cost compared with the cheapest £</i>
BT Standard	319	50
BT Standard with Domestic & International Friends & Family	315	46
BT Standard with unlimited local calls	313	44
BT Standard with Domestic Friends & Family	313	44
BT Working Together	296	27
BT Together	274	5
BT Together with Friends & Family	269	—

Source: National Audit Office analysis of BT tariffs

8. On 7 October 2003 BT announced that it is to cut its telephone handset rental prices by 15% from January 2004 and by a further 10% (off the current price) from January 2005. This followed a Competition Act investigation by Of tel and publication of my Report which set out the saving that a consumer could make by purchasing a handset rather than renting one from BT. Of tel has estimated that the total rental reductions will save consumers £11 million a year. Of tel has also agreed wording with BT to go on the front of the telephone bill of rental customers, alerting them to the reduction and the option of purchasing equipment.

6 November 2003

Memorandum submitted by the Office of Telecommunications

INTRODUCTION

1. The Comptroller and Auditor General's Report (HC 768, 2002–03) published in July 2003 included a recommendation that Of tel should ensure that the latest changes made to its handling of complaints and management of investigations enable it to complete investigations within four months. The Report also observed that Of tel did not issue any enforcement orders during the period covered by the Report. This memorandum explains what action Of tel has taken in these areas since the period covered by the Report.

CASEWORK PERFORMANCE

2. The Report noted that for investigations completed in the two year period from July 2000 to June 2002, Of tel took, on average, just over six months to complete an investigation. The Report recommended that Of tel should formally assess its progress in meeting the new four month target for resolving disputes under the European Framework Directive. Of tel has concluded the initial review as recommended in the Report.

3. In summary the review found that since 1 July 2002:

- the average duration of all investigations fell from 6.4 months to 4.2 months (an improvement of nearly nine weeks);

- the average time to complete dispute investigations conducted under the new procedures has been 3.9 months; and
- casework quality has improved.

4. Until 31 March 2003 Oftel's casework targets were to complete 80% of investigations within six months and 100% within 12 months. Oftel revised its targets from 1 April 2003 as follows:

Table 1

OFTEL'S REVISED CASEWORK TARGETS

<i>Type of complaint</i>	<i>Procedure</i>	<i>Timescale for resolution</i>
1. Disputes	Dispute resolution under the new Directives	Four months
2. Consumer complaints about unfair contracts	Existing complaint procedures	Four months
3. Complaints about breaches of general or USO conditions	Existing complaint procedures	Four months
4. Complaints about anti-competitive behaviour	C. Act 1998 investigation	Six months where no infringement decision is made 12 months for infringement decision
5. N/A	Own initiative investigation under the new Directives	Six months

Summary of closure times

5. Between 1 July 2002 and 30 September 2003 Oftel closed a total of 110 investigations. These took on average 18 weeks (4.17 months) to close. This shows an improvement in completion time of nine weeks over a sustained period compared to the average completion time of cases examined by the NAO. The following table breaks down the total performance figures outlined above into quarterly periods.

Table 2

CASES CLOSED BY QUARTERLY PERIODS

<i>Period</i>	<i>Number of cases closed</i>	<i>Average duration</i>
Jul-Sep 2002	20	5.0
Oct-Dec 2002	26	3.8
Jan-Mar 2003	20	4.5
Apr-June 2003	21	3.4
July-Sep 2003	23	4.3
Total	110	4.2

6. Oftel has also assessed casework performance for investigations opened after the organisational changes were implemented on 1 July 2002. 58 investigations that had been opened after 1 July 2002 had been closed by 30 June 2003. These took an average of 2.7 months to complete. In order to obtain a measure of how effective the organisational changes have been, Oftel has compared these figures with cases opened after 1 July 2001 and closed by 30 June 2002 (ie the preceding 12 months). In this period 42 investigations were completed at an average duration of over 3.9 months. This shows that whilst 16 more cases were opened, completion times improved by over five weeks.

Performance against post 1 April 2003 targets

7. As can be seen from table 1 above, the new targets are to complete all cases within four months with the exception of investigations under the Competition Act 1998 and Oftel own-initiative investigations under the new EU Directives. By 30 September 2003 Oftel had closed 17 full investigations that had been opened on or after 1 April 2003.

six month target

- Two investigations were opened under the Competition Act 1998 and both were closed as a matter of administrative priority within two months. One Oftel own-initiative investigation was opened under the Telecommunications Act 1984 and was completed within five months. Therefore Oftel met its targets for these cases.

four month target

- The other 14 investigations were subject to four month targets. 13 investigations were completed within four months with only one case exceeding the target. An explanation for the reasons leading to Oftel missing the target in this case was provided in the closure document published on the Competition Bulletin.

Disputes completed under the new procedures

8. Oftel has completed three cases that were received after 1 April 2003 and fall under the “dispute” category under the new procedures. In addition Oftel applied the new procedures to one other dispute that was received prior to 1 April 2003. The average completion times for these four cases was 3.9 months.

CASEWORK QUALITY

9. A quality check of closed investigations is carried out by Oftel with all cases being graded as either “very good”, “good”, “satisfactory” or “unsatisfactory”.

10. Of the 87 full investigations closed between 1 July 2002 and 30 June 2003, 66 quality assessments have been carried out to date¹. The ratings have been as follows:

Table 3

CASEWORK QUALITY RATINGS

<i>Rating</i>	<i>Percentage</i>
A. Very good	27%
B. Good	48%
C. Satisfactory	23%
D. Unsatisfactory	2%

11. The NAO Report observed that for the two year period from July 2000 to June 2002, 56% of investigations were rated as “good” or “very good” with most of the remainder being “satisfactory”. The above table shows that despite Oftel completing investigations considerably quicker since 1 July 2002, quality has not been compromised with the number of investigations attracting the “good” or “very good” rating rising from 56% to 75%. This would suggest that the reorganisation of Oftel’s Compliance Directorate in July 2002, together with closer (weekly) monitoring of all cases by Oftel’s Compliance Management Board is having a positive impact on both the timely completion and quality of casework.

ENFORCEMENT ORDERS

12. Since the period covered by the NAO’s Report Oftel has issued 23 Directions under the Telecommunications (Interconnection) Regulations 1997 and three enforcement orders following investigations. A summary of the concerns resulting in the issuing of enforcement orders for each investigation follows:

Vanco v BT: Use of Indirect Sales Channels

- BT was on the verge of losing a large business customer contract to a small operator called Vanco. Vanco offered to undercut BT’s published prices and had provisionally secured the business from the customer. BT then offered to introduce the customer to a third party sales agent and that firm passed a sum of money to the customer, negating the impact of Vanco’s undercutting. The consequence of this was that *prima facie* BT had effectively operated a discount scheme without publishing details of it, which was contrary to Condition 54.9 of its licence. On 10 February 2003, Oftel issued a Provisional Order requiring BT to publish the details of the discount within three days. BT subsequently withdrew the offer and Oftel did not therefore confirm the Provisional Order.

¹ Nine investigations were exempted from the Quality Assurance process and a further 12 assessments have yet to be completed. However, Oftel has no reason to suspect that the assessments still to be completed will significantly alter the improving trend of the quality of its investigations.

1st Rate Telecom: misuse of Personal (070) Numbers

- The investigation related to the misuse of Personal (070) Numbers that were allocated to 1st Rate Telecom. Oftel's numbering rules specify that 070 numbers are to be used to offer find-me-anywhere services that enable an individual to be contacted, whatever their location, on a single telephone number. Following an investigation, Oftel found that 1st Rate Telecom was using the 070 numbers to provide access to a virtual chat service, in contravention of the numbering rules, and that calls to the service were being charged for at far higher rates than were advertised. By breaching the numbering rules, 1st Rate Telecom was acting in contravention of its operating licence. In order to protect consumers and ensure compliance with 1st Rate Telecom's licence, Oftel issued a final order that required 1st Rate Telecom to comply with the numbering rules.

Komtel: use of automatic calling equipment

- Following complaints from a large number of consumers about very short duration calls being made to their mobile phones, Oftel opened an investigation into whether automatic calling equipment ("ACE") was being used to generate calls. ACE allows thousands of numbers to be automatically called without the need for a "live" person to make the call. The calls made by Komtel were of such short duration (fractions of a second) that it was almost impossible for the called party to answer the call and in many cases were so short that the phone did not even ring. The calls were, however, long enough for the mobile phone to register that a call had been missed and for it to provide details of the caller's number. A number of the consumers who were called rang back the number to see who had been attempting to contact them, incurring unnecessary expense. All telecommunications licences prohibited the use of ACE to make calls of the nature described above, unless the called party's consent is first obtained. Network monitoring information obtained by Oftel from BT showed that Komtel had been using ACE to make calls and had, therefore, acted in contravention of its operating licence. Oftel issued a final order that required Komtel to comply with its operating licence in order to ensure that consumers were protected.

David Edmonds

Director General of Telecommunications

27 October 2003

Supplementary memorandum submitted by the Office of Telecommunications

During the course of the evidence that I and my colleagues gave before your Committee on Monday 10 November 2003, I undertook to provide the Committee with further information in relation to the enforcement action that Oftel took earlier this year against BT in relation to the "Vanco v BT: Use of Indirect Sales Channels" investigation that was summarised in my supplementary memorandum to the Committee of 27 October 2003.²

In particular I was asked to provide details of:

- The ownership of RHM Telecommunications (the indirect sales channel introduced to IBM Global Services by BT);
- Whether Oftel had any face to face meetings with RHM Telecommunications during the course of its investigation;
- The value of the rebate offered to IBM by RHM;³ and
- The sanctions available to Oftel to take action against BT at the time of the investigation.

In addition I am providing details of the subsequent work Oftel conducted following the issue of the Enforcement Order referred to in my press release announcing the Provisional Order.⁴

Questions 79–80 (Mr Bacon): Ownership of RHM Telecommunications

During the course of the investigation BT stated that it did not own or otherwise directly or indirectly control RHM. Oftel received copies of contracts between the two parties and had no reason to believe that BT's assertion was untrue.

As was stated in our evidence, having established that BT had no role in ownership of RHM, we had no locus in relation to the statutory investigation of BT's behaviour to investigate the ownership of RHM further. Our concern was whether BT was breaching the terms of Condition 54 of its licence by effectively offering an unpublished discount scheme in respect of a product for which it had price publication obligations. We concluded that BT's introduction of RHM to IBM and the subsequent offer from RHM had this effect and hence an offence had been committed.

² Ev 23–26.

³ Commercially confidential—not printed.

⁴ Not printed.

Questions 94–95 (Mr Bacon): The sanctions available to Ofstel to take action against BT

Ofstel opened its investigation on 11 December 2002 and closed it on 3 March 2003. Ofstel considered carefully the options available to conduct the investigation and decided to investigate the matter under the Telecommunications Act 1984. This was also the stated preference of the complainant after taking its own legal advice. I chose to use this instrument, which did not contain any provision to impose financial penalties on discovery of a breach of BT's licence conditions, rather than our Competition Act powers because:

- The lower threshold for a Provisional Order to tackle a breach of the Telecommunications Act (loss or damage to an affected party) was met, and therefore action could be taken much more quickly under this route.
- The Competition Act threshold for interim measures which, if met, would allow Ofstel to take enforcement action at an early stage in its investigation and prevent further potential abuse was unlikely to be met in this case, as the harm to Vanco, although real, would probably not have met the test of the prevention of “serious, irreparable damage to a particular person or category of person” set out in the statute.
- It was considered that more than one instance of this practice may have been required to constitute an abuse under the Competition Act. To have sought such evidence would have delayed resolution on this case and, as we indicated to the Committee, subsequent investigation did not reveal any similar cases or patterns of behaviour by BT or the agents it used.

The Communications Act 2003 came into force on 25 July 2003 after Ofstel closed this investigation. Under the new Act Ofstel (and Ofcom) has the power to fine if a breach persists following notification of a breach by Ofstel (or Ofcom). Ofstel argued strongly for this power in the course of debates on the White Paper and draft Bill which preceded the statute.

Question 112 (Mr Bacon): Face to face meetings between Ofstel and RHM

Ofstel used its statutory powers under Section 53 of the Telecommunications Act 1984 to extract information from RHM in writing on the subject of its meetings and draft agreement with IBM. Failure to comply with such a request would have been a criminal offence. The documentary information provided by RHM was so clear-cut that the test for taking enforcement action under the Telecommunications Act was clearly met and therefore Ofstel did not consider it necessary to delay the decision and necessary action by holding any face to face meetings with RHM during the course of its investigation.

OFTEL'S FOLLOW-UP WORK

Because of the seriousness of this case, Ofstel subsequently undertook a number of discussions with third party agents and other licensed operators and sent questionnaires to a number of business customers to see if other examples of this type of behaviour could be identified for formal investigation. As noted in the paragraph above, no such cases were forthcoming. BT also worked rapidly under pressure from Ofstel to put in place a new compliance regime for its use of third party sales agents, which puts controls in place to prevent such an action happening again.

Taken together, the rapid enforcement action, the trawl for similar cases and the introduction of tighter controls by BT lead me to conclude that Ofstel acted both appropriately and effectively in handling the case.

David Edmonds CBE

Director General of Telecommunications

28 November 2003