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TELECOMMUNICATIONS COMPETITION IN
THE UNITED KINGDOM:
A REGULATORY PERSPECTIVE*

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This will probably be the last talk I give in the United States from my position at the Office of Telecommunications (OfTel). It is, therefore, a pleasant opportunity for me to adopt a slightly reflective mood: to look back on my eight years at OfTel, to share my thoughts about that experience, and to look to the future.

By way of background, I owned and operated an accountancy practice in a small community in the early 1960s. That experience shaped my approach towards telecommunication policy in some sense. As my practice grew, I needed to move into a larger office across town. In those days, telephone services were provided by the Post Office.¹ I applied for a telephone line in my new offices, with my existing number. The Post Office wrote back that they did not expect to have any lines available for a year, but because I was a business user they would try to hurry it up—to six months. I wrote to my local Member of Parliament, suggesting that this was no way to run a country; I could not run a business without a telephone line. As a result, I got my telephone in three weeks. Twenty-three years after that experience, I was in a position to start getting even!

The modern phase of U.K. telecommunication liberalization probably dates from 1981. Although the Post Office still was in the business of providing telephone services, the separation between the Post Office and the telephone service was beginning to take place. If people ask “why was Britain able to undertake this liberalization?,” the answer is that, in 1981, many people still were in the position that I had been in during the early 1960s. Actually, a quarter of a million people in London were waiting for telephone service—business people whose operations were being held up.

* This article was adapted from a speech given at New York Law School.

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1. See Post Office Act, 1969, ch. 48, § 24(1) (Eng.), *repealed by* British Telecommunications Act, 1981, ch. 38, § 12 (vesting the exclusive privilege of running the telecommunications systems throughout the British Islands in British Telecommunications, a public corporation, known as British Telecom), *repealed by* Telecommunications Act, 1984, ch. 12, § 2 (Eng.) (abolishing the exclusive privilege). Prior to 1969, telegraph and telephone services were provided by the Postmaster General. See Telegraph Act, 1868, 31 & 32 Vict., ch. 110 (Eng.) (repealed, in relevant part, 1969).

The Post Office was not doing its job, albeit partially because of sparse funding, and the Government decided that it had to solve this practical problem. (Governments normally respond more readily to practical problems than to theoretical ideals.) Provision of customer equipment and enhanced services had to be liberalized. At that time, the Post Office had a complete monopoly over all aspects of telephone equipment and services. Looking back, it really is astonishing to reconstruct the world's position then. The change since then has been enormous.

The first step was for Parliament to pass an act opening the equipment and the value-added services market to competition.² The Post Office's functions in telecommunications were transferred to British Telecom (BT).³ The law made no special arrangement for regulation; that was left to the general-competition law.⁴ The first reaction, of course, was concern about fairness. Observers feared that BT was installing equipment faster for its equipment buyers, and engaging in other practices that potentially distorted the equipment-supply market. Whether those accusations were well founded, OfTel could not judge; but they generated great concern. Also, during this time competition in network services was initiated. Mercury Communications Limited (Mercury), a subsidiary of Cable and Wireless Limited,⁵ received an operating license, though initially to provide only private rather than switched circuits.

The next step came in 1984.⁶ Though planned earlier, the Telecommunications Act of 1984 was implemented after the Thatcher Administration had been re-elected for the first time in 1983. It provided the framework for the Government's so-called "duopoly" policy for offering fixed network competition.⁷ Mercury was allowed to provide switched services—indeed, generally the same services as BT.⁸

2. *See generally* British Telecommunications Act, 1981, ch. 38, §§ 1, 10 (establishing British Telecommunications, a public corporation, to provide telecommunication services).

3. *See id.* § 10(2).

4. *See generally* JAMES P. CUNNINGHAM, THE FAIR TRADING ACT 59-418 (1974) (explaining how the Fair Trading Act affects competition law); *see also* RICHARD WHISH, COMPETITION LAW (1985) (describing competition law).

5. Since 1929, this company had undertaken certain telegraphic tasks for the government and was brought into public ownership by the Cable and Wireless Act, 1946, 9 & 10 Geo. 6, ch. 82 (Eng.).

6. *See* Telecommunications Act, 1984, ch. 12 (Eng.).

7. *See id.* §§ 2, 60-73 (abolishing the exclusive privilege conferred on British Telecommunications of running telecommunications systems, and providing for the transfer of certain rights to a "successor company," appointed by the Secretary of State).

8. *See* Public Telecommunication System Designation (Mercury Communications Limited) Order, S.I. 1984, No. 1741 (Eng.).

Competition was to be limited to those two, however, for seven years. An informal, but real, duopoly also was formed to provide cellular networks, where BT was competing with another new entrant, a company in the Racal group known as Vodafone.⁹

The 1984 legislation also provided for the privatization of BT and for the formation of Oftel as regulator.¹⁰ The privatization, of course, was the primary factor that led to recognizing the need for a regulator; the concern to have a specialist regulator to develop fair competition was secondary, although this became part of Oftel's duties. The priority was to prevent the abuse of any remaining BT monopoly power and to insure that new BT shareholders could look forward to a regulatory regime free from political interference. Oftel thus was formed as a body independent of government ministers. I was appointed as the first Director General in 1984 by the Secretary of State.

When I recall that time, the messages that I received were often discouraging. It was a very different world. Many people told me, quite seriously, that I must be crazy to think about developing a competitive market in telecommunications. "Surely you don't really imagine that this would be possible in a business like that?," they asked. Another common question was how Oftel's limited resources possibly could do battle with BT's huge staff. The original thought was that Oftel should have perhaps a fifty-person staff; with the passage of time, the staff grew, however, and we now have 150. But BT had a staff of 240,000, and the contrast between "our numbers and theirs" was drawn from time to time. "You simply won't be able to keep up with it," was the usual challenge.

That was helpful in a way because it gave me something to aim at. And if you are undertaking a difficult job, it is much better to choose one regarded as impossible; you then will not disappoint expectations.

The first priority, thus, was to insure fair competition in customer-equipment supply. At the time, it appeared necessary to take a proactive line to maximize Oftel's effectiveness; Oftel had to create the expectation that it both would uncover breaches of the rules and would deal with them strongly. We had to establish the right kind of psychology—that we stood for competition and would do anything to make sure there was competition.

So I made strong statements reflecting my enthusiasm for competition. I promised to take a proactive line, saying that I would not sit in my office waiting for complaints, but rather go out looking. We surveyed buyers and dealers and asked whether they had experienced anti-competitive practices. And we worked with BT on a Code of Practice, which went beyond the

9. See Public Telecommunication System Designation (Racal Vodafone Limited) Order, S.I. 1985, No. 998 (Eng.).

10. See Telecommunications Act, 1984, ch. 12, §§ 1-2 (Eng.).

formal regulations, but which their Chairman supported as a contribution to the new environment.

Oftel's powers were quite strong. We worked under the principle that every dog was allowed one bite and that the first offense was not punishable. We had to find one offense before taking action, and then penalties flowed for future offenses. But that was sufficient. And if we took action, we created a legal right to damages in court for people who had suffered from subsequent breaches. Of course, there was also the threat of divestiture in the background. Unlike the AT&T divestiture, our philosophy was not to exclude BT from any markets. There was no selling off of local services, equipment-supply businesses, or the like. But if the competitive environment did not work as planned, we planned to have another look at that. So there always was a threat of divestiture.

All seems to have worked well. Competition has grown, and now we have an astonishing variety of equipment available in the marketplace. No doubt much of that would have happened anyway. (One must not commit the fallacy of *post hoc, ergo propter hoc*.) But because technology made such a big contribution, competition in that area clearly had to be watched. Concerns about apparatus and equipment supply were revisited recently after I received evidence, from routine financial information, that cross-subsidies might be taking place between the network business and the equipment-supply business. And, as a worldwide phenomenon, there has been a large shake-out occurring in the equipment-manufacture area, which has resulted in significant changes in the U.K. markets.

At the start, we had three major U.K. companies in the public-equipment area—the General Electric Company P.L.C. (GEC) and the Plessey Company (Plessey), which had worked together on development of a digital exchange known as System X; and STC P.L.C. (STC), which eventually opted out of the business. More recently, GEC and Plessey merged, and again merged in Siemens,¹¹ in 1989; STC was taken over by Northern Telecom Limited¹² in 1991. To that extent, the United Kingdom has lost its own major player in that area.

Nevertheless, a great deal of good development activity is taking place in the United Kingdom. There is a lot of manufacturing activity, and, from the customer's point of view, developments have been pretty good. Equipment is being supplied on a basis that is consistent with good, well-priced services. Competition in the supply market has increased. L.M. Ericsson¹³ began manufacturing in the United Kingdom, which was the right kind of development because protecting the industry against competition from foreign firms would have been a mistake. The danger

11. A giant German electrical conglomerate.

12. A Canadian telecommunications equipment manufacturer.

13. A Swedish telecommunications equipment manufacturer.

in over-protecting your industry, of course, is inefficiency, and customers always pay the price for inefficiency.

After investigation, Oftel concluded that there was an unfair cross subsidy. We, therefore, ordered action to remedy the position: namely, that BT should work out financial plans with Oftel for removing the cross subsidy, implementing those plans, and reporting actual results periodically. I took action just before Christmas 1991, and received the plans in April 1992. So we made good progress in that area and in the development of a very highly competitive market.

The exciting area, however, has been network competition. We are pushing the frontiers there, where the big prizes are to be won for the future. I always have believed that competition is the regulator's best weapon. Whenever tempted to solve a problem by regulation, my instinct was to see first if it could be dealt with by encouraging competition because markets always outstrip regulators in their creative imagination. As time has gone by, I have come to believe that more strongly.

Oftel began, in 1984, with the duopoly policy. The government's idea was that if there were lots of competitors in the marketplace, they might all be weak and competition might fail. The approach, therefore, was that if we focused competition on one company—i.e., Mercury—we would have stronger competition and insure some level of success. Perhaps that was effective; it is impossible to tell whether it would have worked better if we had had more competitors from the beginning. We did start that way, however, and we have grown a strong competitor.

At the end of 1990, as we came to the end of the seven-year period set for the duopoly, it was clear that we could not be content with that form of competition. The duopoly had been successful, but competition between two is not real competition—certainly not the kind that really makes the marketplace dynamic. Oftel felt a strong need to push competition to the limit—not to decide as a regulator how much competition the market could sustain, but to let the market open up and use the opportunities.

So we undertook a joint review between the government and Oftel, which resulted in the policy commitment to stop limiting the number of competitors. There would no longer be any numerical limit on the number of competitors domestically because there was absolutely no reason for it.

We believed, for example, that the answer to whether fiber optics should be provided to the home—or whether radio services would have a larger role—could be found by opening the market. Markets are not perfect, but regulators and government on the whole are more imperfect than markets. My aim was to create a situation in which radio and cable would have a chance to prevail.

There was a lot of debate in Britain about whether we should have a national objective of establishing optical fiber in every home. I was at the center of that, and my feeling was that one should not adopt that as an

objective; it might turn out that optical fiber was not the right way to go, and one ought to give radio its chance. The adoption of an objective to establish optical fiber would have made it hard for radio to enter the market. And I doubt whether the enormous amount of investment required will turn out to be a problem. Given the time spans involved and the prospect for reducing prices, the world's capital markets are ultimately capable of handling that for most markets.

In retrospect, it is surprising that the introduction of competition seemed like such a big hurdle. Many people thought it would be. Government ministers from other European countries claimed that competition might be acceptable for the United Kingdom, but not for their countries because of social objectives that had to be considered when developing a telephone network. Well, the United Kingdom also had social objectives, and it pursued these policies much more effectively due to competition—just as U.S. competition enables it to meet social objectives with the benefits of competition's efficiency.

The other nations' social obligations were the provision of universal service: that is, providing service in rural areas at much the same price as in urban areas. These nations were worried that competitors might focus their efforts on the more profitable areas, forcing the incumbents to reduce prices to match the competition and, therefore, increase prices in the rural areas. That, however, can be avoided by regulation without too much difficulty; it is a legitimate policy objective.

So we required BT to provide universal service at a more or less uniform price. Oftel established arrangements to insure that competition did not undermine this plan by requiring the competitors to contribute to the cost as part of the interconnection arrangements. Such a situation would not work if the market were polarized, where, for example, urban customers telephoned urban customers, rural customers telephoned rural customers, and the two did not cross. The interconnection arrangements would not solve the problem in that case. More far-reaching arrangements would be necessary—perhaps a sort of levy. But we are very far from that; the actual experience has been that BT has been able to provide services in rural areas without contributions from its competitors. This obligation is an offset of BT's advantages from having very large economies of scale in its network. Perhaps in the future others will have to make a contribution.

The decision to extend competition forced another decision that perhaps should have been faced earlier—our policy on entry assistance. I had taken the view that entry assistance was necessary. A new entrant facing a 100% monopolist needs a long time to build its network. It costs a lot of money. And, the economies of scale are rather low because of a small customer base—a problem of getting to first base.

It seemed appropriate to solve this with discounted prices for interconnection—a similar line to that taken in the United States.¹⁴ Under the interconnection arrangement, the operators (BT and Mercury, initially) were required to attempt to negotiate an agreement. If they could not reach an accord, either one could appeal to Oftel. As might be expected, they failed to reach agreement. Mercury appealed, and I gave it some entry assistance.

As with all things, my inclination was to explain exactly what I had done and why I had done it. The regulations, however, did not make an explicit reference to entry assistance; they talked about this and that and covering costs. As an accountant, I knew that cost could mean almost anything, and so I asked counsel: “Can I give discounts to Mercury?” He said, “Yes, I think you can do it, but if I were you, I wouldn’t explain it to anyone because if you do you’ll find yourself in court and you might prefer not to do that.” I took his advice, did not end up in court, and achieved the objective.

But this may have been unfortunate because it created a situation in which new entrants could not understand the reasoning for the discounts and, therefore, could not figure out what they might expect to get. It also was unfortunate because it adversely affected the behavior of both BT and Mercury. BT seemed to feel that the discounts might continue forever because there was no defined limit to the policy. Mercury may have thought the same thing—also with regrettable consequences. It would have been better if we had been able to explain our actions and had promulgated clearer regulations. Of course, this was a new thing then. And perhaps it was not feasible to have done any better under the circumstances.

After review of competition policy and the commitment to an open market, we had to face up to this. It is one thing to give an ill-defined amount of entry assistance to one competitor; it is another thing to give it to the next one, the next one, and the next one. The case for giving it to one is that it will improve things for the customer; the new efficiencies will encourage lower costs and lower prices. But will that be true for the third, fourth, fifth and so on? Given the existence of economies of scale, there obviously is a danger of over-encouraging entry and finishing up with higher prices.

So you have to set boundaries. We conducted a lot of economic modeling. As a result, we decided to limit entry assistance and discounting of interconnection prices so that no individual firm would get those

14. See generally Michael Botein & Alan Pearce, *The Competitiveness of the U.S. Telecommunications Industry: A New York Case Study*, 6 CARDOZO ARTS & ENT. L.J. 233, 262 n.99 (1988) (noting, however, that long distance resellers and other common carriers in the United States “now pay access charges equal to those paid by AT&T”).

benefits on more than ten percent of market share. And we guaranteed BT that it would get full prices after it had lost fifteen percent. We could give entry assistance to more than one entrant, but the fifteen percent ceiling limited the extent to which we could give it. And while it meant a regulatory, rather than a market judgment, it seemed necessary to remedy this situation.

For the purposes of applying the discount provisions, the market is to be defined as part of the regulatory proceeding and is not defined in the present rules. The issues about identifying the market are complicated, and it seemed proper to hear arguments on both sides at the time, rather than try to adopt rules that later turn out to be unwise. But some things obviously would be untenable—for example, deciding that a Birmingham company's market share should be assessed against the national market.

The situation is somewhat different on the international-carriage issue. As noted, our decision after the duopoly review was to have unlimited competition at the domestic level. While we would also have preferred making that possible at the international level, we advised the government that the world was not ready for it. Too few countries shared our belief in open competition. If we had opened our markets without limit, then we might have found entry from countries that had monopoly environments; these countries could distort competition and damage our interests. So we have talked to a few nations (including the United States) with similar policy views and hope to make arrangements for competition on international calls with them, subject to the government's approval.

Among the countries viewed optimistically is the United States. The Federal Communication Commission's (FCC's) approach to the regulation of international operators—treating them as dominant—undesirably tilted the level playing field. We thought that companies should be regulated on the basis of market power, rather than nationality of ownership, and we asked the FCC to change its approach. We very much hope that at its end we shall have a basis for moving ahead, but it will be for the government to decide because, in this area, Oftel plays only an advisory role. It seems desirable, however, and the government probably will approve it if it gets satisfactory reciprocity.

Discounts probably would be available to foreign firms. There was a ten-percent market-share limit on the one side, with a fifteen-percent market-share limit with regard to BT's down side. We need to develop arrangements that take that into account. The regulations are quite general on that basis, however, applying to new entrants as much as to existing operators.

In general, our progress with competition is encouraging. As I look at the U.K. market, I conclude that "this is really happening now." We are on a track to vigorous competition in the operation of networks. One of the pioneering things in Britain was to argue for local-exchange competition. Focusing on the fundamentals, there is strong reason to think

that eventually local competition will become more important than long-distance competition. At the local level, there is both direct communication with customers and development and packaging of innovative services. Moreover, innovative tariffing at this level may make its impact on the market.

All of these developments encourage competition. Economies of scale are sometimes stronger at the local level than at the long-distance level, and in a few scarcely populated areas, economies of scale are particularly high. But on some long-distance routes, they are also high, and it is hard to choose between them on those grounds.

Of course, the pricing imbalance encouraged companies to start off with long-distance and international competition, but they overlooked that this imbalance could be adjusted through regulation of the interconnection rates. In any event, pricing imbalance is probably a temporary phenomenon. There are good regulatory and economic reasons for wanting to see telephone call charges come down and standing charges go up, relatively. There is a sort of inevitability about that; and as it occurs, it will become clearer that there was no reason to prefer long-distance competition over local competition.

We have the same kind of problem with average pricing as the United States.¹⁵ There is a little-used facet of our regulations that allows high installation prices in areas if the actual cost is over a certain benchmark. So the basic rule is averaging, but in a few outlying areas, actual cost can be charged. That makes it difficult to have competition in these outlying areas. The economies of scale are so large in many of those outlying areas that competition may not be very realistic, at least by traditional technology. It may be feasible, however, by radio technology.

The present political realities of life in Britain are such that no regulator will push for de-averaging of pricing until technology makes it inevitable. Given economies of scale, some regulatory schemes might maintain uniform pricing, while encouraging competition in the remote areas. Competitors in rural areas would have to benefit from access charges, levies, or whatever—in effect, turning the interconnection arrangement around in their favor. But this is not likely in the near future, and things are going well enough in the other areas. Also, many of the benefits of competition migrate to the more remote areas; the achievements in the heavily populated areas can be applied in rural areas, so by a sort of yardstick process one gets efficiency benefits there too.

U.K. cable-television companies are also making interesting progress in providing local competition in telecommunications. Cable systems are

15. See generally Calvin S. Monson, *Pricing Flexibility and the Public Interest*, 124 PUB. UTIL. FORT. 18 (1989) (arguing that a system of rigid average pricing makes it difficult for companies in high-cost areas to enter the market).

permitted—indeed encouraged—to provide local telephone competition. They are just starting to get under way; we have awarded approximately 130 cable franchises, covering about 15,000,000 homes—about two-thirds of the homes in the country. As of spring 1992, 35,000 customers received local telephone service from cable television companies. That number is increasing by about 4000 per month. It is just getting started, but it is becoming a reality.

I have visited some of these companies and seen their activities. When I asked how long it takes to repair faults that affect their telephone service, they said, "forty minutes." I said, "what do you mean, forty minutes?" They responded, "that's the average time it takes to repair faults." Although it is easier to provide good service with just a few customers, this is encouraging.

We recently licensed some operators to provide local competition through "radio tails"—the last leg by radio rather than by cable. This is consistent with our philosophy of encouraging competing technologies. Indeed, the regulator's aim as to different technologies should be to make sure that each one has a reasonable shot at the market. One cannot absolutely guarantee that present markets will work effectively; one can be pretty sure, however, that if regulators try to choose, they will choose the wrong ones. It is, therefore, much better to let market imperfections do their best.

Mobile services have been a great success in the United Kingdom. We began with two, and they now have roughly 1,250,000 customers between them—about three times the number in either France or Germany, similarly sized countries that started without competition. We have licensed three personal-communications networks, but they really are just additional competition for mobile services. Two of them recently have merged. So we will have two rather than three. But that is acceptable; it will make four mobile networks altogether, and hopefully provide vigorous competition.

Oftel's projections suggest that these mobile networks will be able to charge prices for ordinary telephone service comparable to those of local exchange carriers (LECs) in a few years. My prediction is that in roughly ten years perhaps as many as 10,000,000 people will have a telephone in their pocket. When people talk about LECs, it really will be a mobile network they are referring to. Eventually, there will be a cable in the home only for motion pictures and broadband services. And some people will decide not to have a cable at home, instead relying on mobile services for their needs.

The advantages of mobile services are particularly great for customers with low telephone usage because the fixed costs of service are so low relative to those of cable. Mobile services thus will compete with fixed services. Incidentally, this will determine how many other countries get basic competition—countries that have decided to have competition for

mobile services but not for fixed. Mercury is quite well established as a long-distance and international competitor, with others lining up to enter the market.

With that in place, all we need now is a stable environment and a little bit of time for it to become fully effective. Fortunately, with the current U.K. political environment, the industry has time. In the life of this government—of up to five years—the competitive market will become firmly established to the point where it will be impossible to roll things back.

Yet, as long as there is a dominant operator in the marketplace, it is essential to continue regulation. The question then becomes: what is the right sort of regulation?

One needs to choose regulatory devices for their incentive effects. If the first message is “promote competition as your first regulatory weapon,” the second is “let’s have incentive forms of regulation where we must have regulation.”

Price-cap regulation is a good example of incentive regulation. The idea is to set a ceiling on price increases, which is linked to some independent economic variable. The limit is set with regard to allowing the regulated company to earn a reasonable rate of return, but it is not adjusted from year to year. You say, “we’re going to have that for five years,” or whatever, and you live with it. If the company becomes more efficient than expected, it makes more profit. This encourages it to become more efficient, which is the aim of the exercise.

When I hear people grumbling about BT’s high profits, I say, “I can deliver lower profits if that’s what you want, but you may then have to put up with higher prices.” And they look surprised. I explain: “If you’re going to regulate profits, what motivation is there to reduce costs? Costs will be higher in that environment, and so prices will be higher.”

The present U.K. price cap is RPI (RPI is the general index of consumer prices) minus 6.25%. The requirement thus requires that average price increases be 6.25% below the inflation rate. This system works well and has efficiency properties. A common concern, however, is that it may lead to unexpected results—i.e., because of the difficulties of making predictions (which is a necessary part of the system), you cannot really forecast the profit with great accuracy, and the monopolist may make excessive profits.

The 6.25% figure is higher than it otherwise might be because we recently brought international prices under control, and those prices are high in relation to cost. On the other hand, the opportunity for further improvements in efficiency is still quite large. BT has announced that it plans further reductions in its work force during 1993, and worldwide comparisons suggest that there is a lot more room for further improvement. OfTel will continue to aim to set price caps that give BT a

good chance of making a fair return, and a chance of making a better return if it is super-efficient.

Arguably, BT may not be too concerned with making excessive profits, if they are efficient. Perhaps the more practical observation is that this is not a big danger. As I have noted, there has been some complaining about BT's profits that occurred largely because we originally did not regulate international-call prices, which created extra profits. Last year, BT made a higher rate of return on capital on the regulated businesses than expected because inflation was higher than expected. When I recalculated my model with the actual instead of the expected inflation, the predicted return came out two percent higher. The prediction error, therefore, was in the inflation forecast, which naturally is caused by the RPI minus X approach. Higher rates of return, however, are appropriate in inflationary times. Accounting tends to overstate rates of return in that situation; and interest rates also are higher in inflationary times. This did not cause me great concern; price-cap regulation seems to be working well and should be continued.

There is a need to preserve quality of service under this approach—otherwise price-cap regulation can give a perverse incentive to save costs by reducing service quality. Strangely, the British regulatory system originally did not include rules about quality of service. Although it was, in a sense, a mistake, it did not matter very much because Oftel was able to deal with this informally.

We agreed with BT that it would publish indicators, and that it would introduce the path-breaking "customer-compensation plan," which is another good example of incentive regulation. BT promised to repair faults within two working days, to give firm dates for installing new service, and to meet them within two working days. If it fails on either criterion, it must pay customers a minimum of five pounds per day and up to 5000 pounds if customers demonstrate financial loss. Although the amounts were small, the effect was, not surprisingly, quite sharp, and the quality of service was dealt with quite well.

Just before the 1992 dissolution of Parliament for the election, the government introduced the "Citizen's Charter" legislation;¹⁶ this included formal powers for Oftel to set quality of service standards. But there was no implication that things were unsatisfactory; the proposal simply tidied up a loose end.

Customer complaints have been an area of difficulty. Oftel has a complaint-resolution function. There was a case for that because of BT's monopoly power. A competitive market relies on the assumption that if a firm fails to solve the customer's complaint, the customer will go to a

16. Local Government Act, 1992, ch. 19 (Eng.).

competitor. In a monopoly, however, complaints may be handled less well.

A particular problem area was billing. BT's billing system always seemed to be quite accurate. Nevertheless, there have been some highly publicized errors, and particularly a lot of controversy about "chat lines" and "recorded messages"—the equivalent of "976" services in the United States. This causes many billing disputes, even if, in fact, the bill is perfectly accurate. It was necessary to do something. The difficulty again was that we had little in the way of formal regulatory powers; but we did take several actions. Primarily, we encouraged the development of itemized billing, which is now available to nearly 80% of BT's customers; Mercury provided this as a competitive strategy from the start. Also, there is an independent quality-assurance assessment of the metering and billing systems, and, from time to time, Oftel takes direct action to improve BT's control systems when particular weaknesses appear.

But there still was the problem of how to solve individual cases, e.g., the customer who said, "We've always had a bill of fifty pounds, and this quarter it was 500 pounds, and BT did all the investigations and they can't find anything wrong." You feel that there is more to this than meets the eye, but there was no basis for doing anything about it. Because of these concerns, the Citizen's Charter legislation has given Oftel formal dispute-resolution powers in billing. We now will be able to conduct hearings and make binding decisions about billing disputes. To that extent, we will be carrying out a quasi-judicial role, and we shall need quasi-judicial procedures to support that role. But it will be a less expensive way of resolving complaints than through the court.

A number of interesting issues are arising in relation to harmonization within the European Community (EC). One issue is the proposal to have a European committee for mutual recognition of licenses; a license issued in one country would carry the right for the holder to compete in another. But this would only apply to value-added and data services, which have been liberalized throughout Europe. It would not apply to network operators in European countries that have not yet embraced competition.

I am a great believer in the principle of subsidiarity—making decisions at as local a level as reasonable. To develop good regulation throughout Europe, the EC should build from the ground up, starting with the development of effective regulatory bodies at the national level. It is important to remember that in most European countries regulatory bodies are still at the very early stage of their lifetime, if they exist at all.

Eventually, there will be a need for European-level regulation—e.g., for international services and international aspects—which could develop by bringing together the national regulators, maybe in a federal framework. It would be an effective way for it to grow up. It would also seem to deal with the accountability problem quite well, and there is a danger that decisions in Brussels under the present EC Constitution might

not be as accountable as desired. If regulation builds through the national regulators, however, officials would be accountable. That seems to me to develop a more satisfactory structure.

The British regulatory system has been a singular one. One characteristic is its independence from government, which it shares with the United States. In most other countries, regulators report to government ministers on their detailed decisions. As a result, the European Commission may not have gone far enough in advocating the separation of regulation and operation; after all, most telephone companies are still state-owned, and the regulator reports to the minister, who also owns the telephone company. Regulatory separation has not actually been achieved if the regulator has not been made independent of government.

Perhaps the uniqueness of the British system is that it uses a one-person regulator instead of a commission. Oftel's enabling act gives the Director General regulatory powers, with the Office to assist him or her.¹⁷ I think that this has worked well. But of course I would, wouldn't I! It enables us to take fast action in many circumstances. It avoids some of the high costs associated with the long, drawn-out procedures that may be inevitable within commissions, although other factors are involved in that.

Perhaps most important, it makes it easier to establish a clear policy line. For example, U.S. observers often express surprise when I take a very strong public line on pro-competitive policy. They note that "we couldn't speak like that in the United States because we would offend all our fellow commissioners." But in the United Kingdom, the regulator must be able to take a very strong pro-competitive line to create the confidence that people need to enter the marketplace. That has been an advantage of our system.

Also, a legislative end-run is quite unlikely in the United Kingdom. The difference lies in the relationship between the executive and the legislature in Britain. Whereas the United States has something closer to the classic model of the real balance of powers, the U.K. executive and legislature are really combined. The nub of that is that the Parliament cannot actually do things unless the Government agrees. If an individual Member of Parliament wanted to introduce legislation that would undermine the system, it would almost certainly be blocked by the Government.

People do often go to members of Parliament, and the members raise issues with Oftel. We try to answer questions and to satisfy them. And I can be summoned before Parliamentary committees and commissions and be given a hard time, although it does not happen very frequently.

17. See Telecommunications Act, 1984, ch. 12, § 1 (Eng.).

To conclude, we seem to have made excellent progress. Since 1984, BT's prices have beaten inflation by about thirty percent. Regulation through price caps has helped to bring this about. The improvements in quality of service also have been dramatic. Currently, BT is repairing more than ninety percent of its service-affecting faults in one day. In 1984, it was achieving about eighty-five percent in two working days; it did not then even have a one-day statistic. In 1984, five percent of all long-distance telephone calls failed because of some problem with the network. Today, the number is 0.5%—a tenfold improvement. The waiting time for new service is negligible in most cases. Almost all people get service in about a week. So we have made good progress. But, as they say, "you ain't seen nothin' yet." The next five years really will bring this to its culmination. One of your countrymen recently said to me that the two most important current developments in telecommunications are the personal-communications network and the development of competition for LECs. In both areas, the United Kingdom has led the world; at the present time, serious telecommunications observers cannot afford to be absent from the U.K. market. Oftel has tried to create a dynamic telecommunications market: a place suppliers want to serve. I will be watching, over the next few years, from a slight remove, just enjoying the realization of all of that.

