

**Oftel statement on BT's marketing of Internet
services and use of joint billing**

19 May 2002

Contents

Introduction and summary

Chapter 1 – Background

Chapter 2 – BT's marketing of Internet services and use of joint billing

Chapter 3 – Compliance and monitoring

Introduction and summary

S.1 This statement sets out for the first time the policies which Oftel applies to BT's marketing for broadband and narrowband Internet services and joint billing of its new no-frills 'BT Broadband' product. 'Joint billing' refers to BT's ability to charge for 'BT Broadband' Internet access and telephony on its single residential blue bill. This statement also sets out the core objectives of these policies and describes the implementation and compliance regime which is being implemented to ensure that they are delivered.

S.2 Oftel aims to ensure that:

- consumers can benefit quickly and fully from new and innovative products and do not face bureaucratic hurdles in accessing information about them;
- robust, proportionate controls are put in place to prevent anti-competitive behaviour, backed by strong compliance measures policed by Oftel to ensure consistent application; and
- BT is able to market its products fairly without disproportionate regulation.

S.3 These aims are consistent with Oftel's high level strategy of obtaining the best deal for consumers, through the prevention of anti-competitive practice and promotion of the well informed and adequately protected consumer.

S.4 Recent increases in take up of broadband Internet access and BT's development of new products such as its 'BT Broadband' service have brought issues relating to BT's marketing activities and joint billing to the fore. Given it is a time of considerable change and development in Internet access markets, Oftel believes that it is important for it to provide a clear statement of policy.

S.5 The main points to note from this statement are:

- BT is not allowed to use customer billing information which only it has access to by virtue of its dominance in the provision of residential local and national voice calls to specifically target consumers for its Internet services (the definition of dominant position taken from *Investigation by the Director General of Telecommunications into the BT Surf Together and BT Talk and Surf Together pricing packages – May 2001*) (see paras 2.8-2.9);
- in order to ensure compliance with the requirement not to mis-use customer billing information there will be a comprehensive range of behavioural measures and monitoring applied to BT sales staff. Oftel has overseen the design of these controls in detail and will monitor their enforcement in part through mystery shopping exercises (see chapter 3); and
- BT is allowed to charge for its no frills 'BT Broadband' service on its existing residential telephone bill (the blue bill) (see paras 2.14-2.19).

S.6 This statement will form guidance for the Director General in his assessment of complaints or investigations on these issues which examine potential breaches of Condition 57 of BT's licence (prohibition on undue preference and undue discrimination) or Chapter II of the Competition Act 1998 (abuse of a dominant position). However, this statement will not prevent the Director General from fully

considering any complaints and representations it receives on these issues on their own merits.

S.7 Oftel will keep both the content and the application of the policies described in this document under active review. If the compliance programme described uncovers significant failings Oftel has made clear to BT that it will consider more intrusive measures to protect consumers from anti-competitive behaviour.

S.8 Oftel will formally review progress no later than six months time (ie by November 2002). As part of this review Oftel will consider any representations made to it on the issues raised in this statement. Any representations should be sent to:

John Russell
Oftel Compliance Directorate
50 Ludgate Hill
London
EC4M 7JJ

e-mail: john.russell@oftel.gov.uk

Chapter 1 – Background

BT Click investigation

1.1 The current policy governing BT's marketing of Internet services was developed in 1998 when Oftel received a complaint that BT telesales staff were using customer calling information to identify customers who already used the Internet. These customers were then being offered promotional material on BT Click, BT's pay-as-you-go Internet service. Oftel was concerned that BT was using information which only it had access to and which was derived from a market in which it had a dominant position (residential local and national voice calls) to promote this Internet service, thereby leveraging that position and giving it an unfair competitive advantage over other Internet service providers.

1.2 At the time of this complaint, BT's actions appeared to Oftel to be a breach of the Fair Trading Condition of BT's licence.

1.3 After investigating this complaint, the Director General received a commitment from BT to ensure that its telesales staff marketing BT Click would physically not have access to privileged customer calling information through BT's customer database. BT provided information to Oftel detailing how it would implement this commitment to physically separate its staff, which was sufficient to satisfy the Director General that any further breach of this type was unlikely. These 'physical separation' rules were also applied to BT's marketing of other Internet service provision including DSL.

The case for review

1.4 BT has recently announced the trial of its new 'BT Broadband' retail product. This is a self install ADSL product which provides a direct broadband connection to Internet without content (e-mail, webspace).

1.5 The new product will be sold by BT's main Retail business and *not* through its BT Openworld Internet Service Provider (ISP). It will be marketed through normal retail channels (eg 150) and billed for on the normal BT residential blue bill. 'BT Broadband' is made up of wholesale products (IPStream Home 500 and Central Plus) which other ISPs can buy on non-discriminatory terms to offer a competing retail service.

1.6 Bearing in mind the launch of the new retail product, there has also been increased interest from Operators and ISPs on the rules that govern what BT is and is not allowed to do in terms of marketing its Internet services. There has also been interest in the question of whether it is acceptable for BT to use the blue bill to charge for the new product. To date, the only published statement of Oftel's policy on the marketing of Internet services has been in the form of a short case summary describing the outcome of the 'BT Click' case. Taking these factors into consideration Oftel believes that the introduction of the new 'BT Broadband' product provides a sensible opportunity to provide a comprehensive description of Oftel's policies on marketing of Internet services and a clear view on joint billing of the new product.

1.7 Oftel notes that there have been other issues raised relating to how the costs of 'BT Broadband' are allocated within BT. Though these issues fall outside of the direct scope of this statement it is worth pointing out that there is no specific regulatory obligation that BT should internally organise itself with a separately branded ISP: BT Openworld. BT's internal organisation is a commercial matter for itself to decide upon. Under existing regulatory accounting separation rules 'BT Broadband' will be sold from the Systems Business (SB) because it comprises only conveyance (Network Services) and has no value added components. BTOpenworld's services are sold from the Supplemental Services Business (SSB) as they have such value added components as e-mail, web space and tailored content. Accounting separation rules require that there is not unfair cross-subsidisation or undue discrimination between the SB and SSB.

1.8 Against this background, Oftel has made clear to BT that even though it is sold from the SB the 'BT Broadband' product must cover its own costs and not be unfairly cross subsidised from other services within the SB. BT must also not unfairly discriminate in the provision of this product. The evidence Oftel currently has available on pricing does not raise compliance issues of unfair cross-subsidy or discrimination, but Oftel will continue to monitor pricing practice and will investigate any complaints put to it.

Chapter 2 – BT’s marketing of Internet services and use of joint billing

2.1 In assessing how it should oversee BT’s marketing and billing of Internet services Oftel has sought to address three objectives:

- enabling consumers to benefit quickly and fully from new and innovative products without facing bureaucratic hurdles in accessing information about them;
- putting in place robust, proportionate controls to prevent anti-competitive behaviour, backed by strong compliance measures policed by Oftel to ensure consistent application; and
- allowing BT to market its products fairly without disproportionate regulation.

2.2 To produce the right approach Oftel has considered, “How far can BT use its dominance in provision of residential local and national voice calls to market and bill Internet services to consumers without behaving in an anti-competitive manner?”.

2.3 As a vertically integrated and diversified company of substantial size and scale BT has advantages over smaller service providers in marketing and billing for its Internet services. However, this does not mean that all of those advantages are anti-competitive. Companies with diverse size and structure are part of the normal commercial environment. Therefore the key question Oftel has to address is, “How far are the advantages that BT has in marketing and billing for Internet access unmatched by its competitors?”.

2.4 Oftel has also examined the consumer dis-benefit which may result from restrictions on BT providing consumers with information on its Internet services. Oftel believes that introducing regulatory rules which add inconvenience to the customer experience is justifiable in only the most extreme cases of likely anti-competitive behaviour.

2.5 In carrying out this assessment, Oftel has concentrated on issues relating to marketing and billing for residential consumers. However, Oftel does believe that similar issues may apply to BT’s marketing and billing for some business customers. Oftel is currently exploring how far similar marketing rules should apply to business consumer where there will be widely varying levels of interaction between service provider and customer.

2.6 In the following sections Oftel sets out the main elements of its approach to BT’s marketing and billing of Internet services:

Use of customer names and addresses

2.7 BT is entitled use its databases of customer names and addresses in order to market Internet services on a generic basis (eg bill stuffers, non-targeted sales calls). Though its possession of extensive customer databases is a significant benefit to BT it is not impossible for other SPs/OLOs to develop a database of similar size, either by buying external data or from exploiting a customer database (or databases) derived from a presence in other markets. As part of an actively functioning market it is important that consumers can easily obtain information about services that they

may wish to purchase. Active marketing by companies forms part of this informing process. Oftel can see no particular competition concern in this situation at the present time which would cause it to prohibit BT from distributing marketing material in this manner.

Target marketing

2.8 BT is **not** entitled to use detailed billing information from its customer databases in order to specifically target individual consumers or groups of consumers for its Internet services. The level of detailed knowledge on UK consumers' telecoms usage that BT has within its customer databases would be almost impossible to replicate by a third party and therefore if used would give BT an unmatched advantage over its competitors in marketing Internet services. Oftel would consider evidence of use of such information for marketing purposes to prima facie indicate leverage and hence abuse of its dominant position.

2.9 BT is entitled to target its marketing of Internet services to selected groups of customers as long as the selection is not based on billing information derived from BT's customer databases. BT is entitled to target its marketing of Internet services to its own Service Provider customers as long as the targeting is not based on billing information derived from BT's customer databases. BT already has a customer relationship for sale of Internet services with Openworld customers and is entitled to exploit that.

Market research

2.10 BT is entitled to conduct market research on its customer base, as long as that research is not targeted using billing information derived from BT's customer database. BT can use the findings of such research to then target its marketing of Internet services. BT's competitors can and do also conduct wide ranging market research or buy in such research in order to target their marketing and inform consumers of their services

2.11 Targeted marketing that does not use billing data (eg to customers within a certain income bracket or certain size family) may be of particular use to consumers in informing them of products and services which may be of specific interest to them.

Inbound calls to generically discuss Internet/broadband

2.12 BT clearly has some potential to benefit in marketing its Internet services from its general association with telecoms and therefore Internet access in consumers' minds. However, Oftel believes that competing OLOs/ISPs are able to generate a material association with the Internet/broadband with a sufficient degree of marketing. Current market shares of UK ISPs give some indication that competing ISPs such as AOL and Freeserve have been very successful in generating consumer awareness of themselves as Internet Service Providers. Therefore, to strike a reasonable balance BT is entitled to market its Internet services to customers who call BT to discuss Internet/broadband access in general only as long as it mentions that there are a number of service providers other than BT which provide such access.

Inbound calls to discuss non-Internet/broadband issues

2.13 BT is entitled to market its Internet services to customers who call BT to discuss non-Internet related matters as long as the discussion on Internet services is not based on BT's analysis of customer billing information. BT is a utility provider with a large customer base. This gives it a benefit in the number of in-bound enquiries it receives which can then be used as opportunities to cross-market its Internet services. However, there are many other companies in the UK which also have substantial customer bases. These are also free to exploit the size of their customer base in order to cross-market services such as Internet access. Therefore, Oftel does not believe that other companies competing with BT could not create comparable opportunities to cross-market Internet services.

Denigration

2.14 Condition 57 of BT's Licence prohibits it from showing undue preference to, or exercising undue discrimination against, particular persons or firms. Oftel has previously interpreted this to include making inaccurate or misleading statements that denigrated the services being offered by competitors. In September 1996, Oftel issued a Provisional Order against BT after an investigation showed that BT's 150 agents had been making misleading or inaccurate statements about the service being offered by cable companies and the services that BT itself was able to offer. This Provisional Order was not made final and was allowed to lapse after BT took steps to improve its control and monitoring systems to ensure that information provided was accurate. Oftel will continue to investigate any allegations made by BT's competitors that BT has made denigratory statements and will take action where appropriate.

Joint billing

2.15 BT is allowed to use its residential blue bill to charge for its new 'BT Broadband' product as well as telephony. BT is entitled to exploit economies of scale and scope it has by having existing billing arrangements for telephony services. However 'BT Broadband' must share an appropriate share of the costs relating to the production and sending of the Blue Bill. Use of the blue bill also allows consumers to benefit from the convenience of having one bill for voice and broadband Internet charges.

2.16 It is sometimes argued that BT should be prevented from joint billing as some of its competitors are not able to do so. Oftel believes that such a prohibition would require exceptional justification as it would prevent consumers from enjoying the benefits of a new service without there being any identifiable anti-competitive behaviour for this prohibition to rectify.

2.17 It is perfectly possible for ISPs to successfully charge their end users using their own billing mechanisms. Many ISPs bill end users through a combination of credit cards, direct debit and on-line billing. This arrangement does not involve a paper transaction with the ISP and is arguably more efficient and cost effective than issuing paper bills.

2.18 It is possible that some ISPs may wish to have open access to the blue bill in order to charge for their services. Under Surftime arrangements participating ISPs can have their ISP charges on the BT blue bill. However, it is Oftel's understanding that most ISPs have not wanted to bill for their services on the BT blue bill as it causes customer confusion over who is responsible for the ISP service and potentially dilutes ISP brand awareness. This indicates that the advantage of joint billing for ISPs is not so great as to outweigh potential disadvantages.

2.19 It should also be borne in mind that Oftel has proposed the introduction of a BT wholesale line rental product which would allow those Internet service providers interested in offering voice telephony the ability to develop their own joint billing platform without access to the blue bill.

2.20 Therefore Oftel does not believe that sole access to the blue bill gives BT such an appreciable advantage over its competitors that open access should be mandated.

2.21 It should be noted that by including 'BT Broadband' on the blue bill the overall cost of that bill will increase. This has the potential to increase the number of customers who may fail to pay their bill leading to the disconnection of their Internet and basic telephone service. It is Oftel's policy to reduce the number of telephone disconnections and we would have concerns if the introduction of 'BT Broadband' led to rise in these numbers. Oftel has discussed this issue with BT which has clarified that the terms and conditions for 'BT Broadband' will make it clear that non-payment of the connection/rental charges for that service will result in removal of the broadband element but not of the telephone service provided over the same line. BT has also stated that it will not use the threat of disconnection of telephone service as a lever to encourage payment for other services. Oftel will monitor this issue to see whether any particular concerns at increased disconnections arise when 'BT Broadband' becomes commercially available.

Marketing scenarios

2.22 Bearing in mind these principles a set of marketing scenarios follow with the relevant regulatory view:

- i) BT sends out a generic telephone census to all its residential customers asking for information on Internet usage patterns. *Does not create a regulatory problem as other companies would be able to replicate.*
 - ii) Following receipt of the completed census forms BT markets its broadband services to those customers that have stated they are heavy Internet users. *Does not create a problem as this uses information which was collected in manner which other companies could replicate.*
 - iii) BT calls all customers with high Internet usage patterns based on information from their residential blue bill and offers them BT's broadband service. *Likely to be abusive as no other company has, or is likely to be able to obtain, that kind of detailed information.*
 - iv) BT markets its broadband services selectively to Openworld customers. *Does not create a problem as long as BT doesn't additionally use customer billing information to market certain services to those Openworld customers.*
-

v) A customer dials 150 and asks for information on broadband in general. They are offered BT's broadband service. *Is not a problem, as long as BT mentions that there are other Internet access providers. ISPs may be able to generate numerous enquiries on broadband.*

vi) A customer dials 150 to discuss call waiting option. BT asks if they are interested in Internet services. *Is not a problem as long as the discussion on Internet services is not started because of analysis of customer billing information and BT mentions that there are other Internet access providers. Behavioural rules need to be in place to ensure compliance.*

Chapter 3 – Compliance and monitoring

BT's approach to compliance

3.1 In late 2001 BT approached Oftel with proposals to move to a new 'behavioural' regime for BT's marketing of its Internet services. BT expressed the view that the 'physical separation' regime established following the 'BT Click' case (see paragraphs 1.1-1.3) created an irritating experience for end users who had to be passed between different parts of BT if they called in on a general retail channels (eg 150) and wanted to talk about Internet services. BT proposed measures which would allow existing policies to be properly enforced without the need for 'physical separation'.

3.2 Oftel believes that robust rules must be in place to oversee the behaviour of BT staff to ensure that this new approach is implemented systematically and transparently. To do this, BT's own internal compliance systems must also be robust and Oftel itself must be able to demonstrate that it is taking action to police those systems.

3.3 Against that background the basics of the new regime are:

- general BT call centre advisers on retail channels such as 150 are allowed promote and sell BT Internet Service Provision services on in-bound and out-bound calls;
- BT call centre advisers must stick to Oftel approved prompts and scripts to prevent potentially anti-competitive mis-use of customer information;
- mystery shopping of conversations by call centre staff will take place to ensure that they are compliant with marketing rules. This will be conducted by the third party company that conducts BT's internal mystery shopping exercises;
- Oftel will have direct access to the findings, questions and terms of reference of this mystery shopping; and
- Oftel will also conduct a smaller scale mystery shopping exercise to act as a control on the results provided by BT. It would welcome sight of similar exercises carried out on behalf of third parties.

3.4 Oftel has agreed the questions that will be asked by BT in their mystery shopping exercise and will shortly be provided with copies of the questionnaires that conversations will be marked against to ensure compliance. This mystery shopping has recently started and BT will provide Oftel with the first set of results in June/July. Oftel intends to start its own mystery shopping exercise shortly thereafter. Oftel may expand its own mystery shopping depending on the results it receives from the first exercise.

3.5 Oftel intends to publish the overall results of these mystery shopping exercises when it conducts its six month review of marketing rules.

3.6 If there is evidence that the new system is not working (in accordance with the policies set out in chapter 2 of this statement) whether by deliberate act or inadvertently, Oftel will consider reverting to the 'physical separation' approach. This

will happen if problems emerge at any stage: Oftel will, in such circumstances not wait for the six month review in November 2002 before taking action.

3.7 As part of its six month review Oftel will look at the findings of mystery shopping exercises to see if the application of marketing policies it working in practice. Oftel will also examine the scope of its policies in the light of market developments to see if they should be changed in any way.
