ESSAYS IN REGULATION

How Regulation Works: BT's Experience

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1. Introduction.

In addressing the question of how regulation works, my object is to give a personal perspective on the regulatory relationships, their workings, and their effects on the way business operates. This is a huge subject, so I shall concentrate on the UK in spite of the importance of our overseas regulatory relations and their increasing relevances in the UK.

The essay divides into three parts:

- remarks of a somewhat theoretical kind about the nature of regulation in a free market economy;

-an examination of the way in which ideas on what regulation is about have been incorporated into the regime for telecommunications and how these ideas have actually worked in practice; and

-some proposals for reform, which fall into two halves: those which require legislation and those which do not.

2. What is regulation about?

There are, I believe, two sorts of views of what regulation is about:

-The first is that it is about a regulator getting some person or body to do what he wants, whatever that may be, at the time -- this might be described as the _pragmatic' view of regulation. This will be a purposive activity, of course, but the purposes are unlikely to be too specifically stated or adopted, or they will inhibit the essentially *ad hoc* nature of the pragmatic approach by imposing a measure of consistency or certainty that fetters the future.

[I will allow myself a small personal reflection at this stage on the pragmatic approach even though it gives the game away as to where I stand. In my more optimistic moments I regard it as the regulator being analogous to the Centurion in St Mark's gospel who said _come' and a man cometh, _go' and a man goeth. In my more pessimistic moments I think of an analogy more appropriate to an Oxford spring afternoon: the Queen of Hearts in _Alice' who had a tendency to punctuate her remarks with peremptory cries of _off with his head!']

-The second view is that it is about laying down certain constraints on the freedom of persons or bodies to behave in certain ways, often defined by reference to some overall objectives. This might be described as the _principled' view of regulation, that regulation is essentially a rule-based activity. If you look at another book with a good Oxford pedigree, the Oxford English Dictionary, you will see that this is meant to be the core meaning of the word (though _Regulator' seems to have got a different meaning in the cowboy world of the Wild West!)

We have to recognise that, on any view, regulation inevitably involves conflict, because, however we see role, the regulator, or fixer of the constraints, will be compelling the regulatee to do things he would, or might, not otherwise have done.

Now, I said that I would examine regulation in a free market economy. In such an environment, capital is raised by private owners, and the behaviour of enterprises is controlled on their behalf by managers. We tend to believe that one of the virtues of such a free market economy is that the system of incentives created by the desire of owners to retain and increase their wealth has a tendency to lead to beneficial consequences in terms of maximisation of welfare, at least so long as there are diverse rival owners seeking the same thing for themselves, or so long as there is at least the threat of market entry by such owners. The arguments on this are familiar ones, and it is not my purpose to embark upon them here.

There are other arguments in favour of private ownership resulting from other kinds of constraints and incentives created by the capital market, and indeed yet other such arguments, no less important, which derive from the *absence* of constraints and incentives that tend to apply in an environment of

public ownership. These are very relevant, but fall outside my direct purpose here.

Quite apart from the merits of those views, in a very real sense, the notion of private ownership of enterprise may be thought necessarily to imply the second view of regulation, what I have called the _principled' view, rather than the first, _pragmatic' view. The view that regulators are free to tell a regulated entity what to do is simply inconsistent with the property rights of owners. If their rights to control the business are subject at any time to the prospect of being curtailed or frustrated, in a real sense such rights do not exist; they cannot be relied upon.

Particularly in an industry where investment decisions and service development decisions are long-term and carry major capital commitments, such a prospect is a particular threat to ownership. It may also well be the case that such industries are the ones where the barriers to competitive entry, as a result of high levels of fixed costs, are the most severe.

The natural response may be that indeed the principled view of regulation is correct. That regulation is about a system of rules which lays down the bounds of ownership. Ownership is acquired in the knowledge, or, as the lawyers would say, with notice, of what the rules are. Ownership, or property rights, are qualified and, on purchase or acquisition of shares in a regulated enterprise, the owner knows what he is getting, whether he acquires the shares in an initial flotation or privatisation, or subsequently in the market place. He can see the limits of what he gets, and that is what he pays for.

This indeed seems to have been the approach of the Victorian legislators who disastrously failed to change the regulatory regime for the railways in the latter part of the nineteenth century, as described in Chris Foster's recent book. Change was contrary to principle because it would have infringed property rights.

And, if I may allow myself a diversion here -- on the views of rules held by the adherents of two approaches to regulation -- both schools of thought believe in the value of rules, but for different purposes. The adherents of the pragmatic view see the value of rules as a mechanism for communicating to the regulatees and others what is wanted, rather than as a laying down of

bounds or principles that can be relied upon as guidance, which is the principled approach.

In fact, the British approach is, in my view, much closer to the first, pragmatic view, than the second. Only very recently I heard a former permanent secretary in the Cabinet Office seriously contending that there should be no rules to bound the operation of the public service: it was more important that the very expensive machinery of government should work effectively; there was no call for laying down any limits to how its objectives should be achieved. The context was a discussion of a code of ethics for civil servants and the extent of open government, but the reaction was much to my point here.

Fifteen years as a civil servant, much of that time spent dealing with commercial regulation, makes me deeply suspicious of that approach. In practice it produces vacillation, indiscipline, and waste for governor and governed. But I recognise the weaknesses of the principled approach too. The reality is that rules must change, and the changeability of rules imports risks that are, and must be, a recognisable encumbrance on those Victorian style property rights of owners. In fact, regulatory risk is an inevitable concomitant of ownership of any commercial asset.

In telecommunications, or any other fast-developing technical sector, such change is likely to be of very substantial significance. Indeed, the notion of a clear and identifiable rule is something of a phantom in itself. It was long ago recognised that every rule confers a power upon its interpreter to alter and adjust its content, conferring *an implicit discretion* to adjust outcomes to facts. Legal certainty is always in some degree a fiction, but the importance of its unreality varies from context to context.

Explicit discretions, too, have a major role to play in areas where rules are inevitably open-textured and not capable of being fully prescriptive as to a range of variable and unpredictable fact situations to which they are likely to apply.

Does this mean that the pragmatists have the day, and we have to accept that in a fast-developing sector like telecoms the search for genuine property rights unvitiated by regulatory risk is a search for a chimera? That it is the job of a director of government relations like myself just to listen to what I am told and to go and make sure that my colleagues do it?

I believe not; because recognition of the case for change and adjustment does not require denial of bounds to the mode and extent of change and the manner of adjustment. Let me invoke two leading legal thinkers from this university: as Hart and Dworkin would have put it, there are primary rules, laying down the bounds of permitted conduct, and there are also secondary, or adjectival, rules that set the bounds of change to the primary rules and set the bounds to the way in which the primary rules are applied, including the limits to, and the mode of exercise of, discretions, both explicit and implicit.

One of the most important questions in the field of telecoms regulation is the extent and existence of these rules of change and process.

3. How does this theory of regulation apply to the telecoms settlement?

I make no apology for this apparently theoretical first part to my essay. I do strongly believe that without proper recognition of these issues we shall fail to develop an effective approach to regulation.

One could sum it up in the familiar terms of the _regulatory contract', that regulation must be characterised by:

-clear primary or substantive rules;

-clear rules of change and process, effectively bounded;

and that regulation must be:

-animated by a clear sense of objective or direction which itself sets the bounds of change.

Furthermore, this bundle of rules, principles and constraints for both regulator and regulatee is accepted both by the regulator and by the regulatee. The process of acquisition of ownership is a consensual one.

How then were these issues addressed by the designers of the liberalised regime for telecommunications in 1984?

It is often said that they were faced with irreconcilable objectives:

-to create a regime which would effectively control a privatised *de facto* monopoly;

-and yet to enable it to be sold at a reasonable price to private investors.

In fact, there was nothing dishonourable or disreputable in seeking to reconcile these two objectives. There was a regulatory or public policy objective in achieving a coherent, saleable asset or piece of public _property'. For good public policy reasons, this property was then to be transformed into private property, privately owned and hedged about with all the legal and economic disciplines and opportunities that attach to privately owned assets. Those opportunities and disciplines were a public policy objective in themselves. Contrary to the established mythology, maximising the value of the property was not, in fact, high on the list of objectives -- there was a strong feeling at that stage that its value was too large, given the decision to sell more than fifty per cent, for the market to swallow.

There was also a strong awareness of the need to confer sufficient powers and discretions on the new regulator to enable him to deal with the market dominance of this monster, and a recognition that it would be necessary to change the rules. This recognition was, however, accompanied by an appreciation that there should be effective *change rules* to give the owners some reassurance that change would be balanced and fair and predictable, so far as possible, in the way it was brought about.

As a result, the main features of the regime which followed were a balanced mixture. I shall concentrate briefly on four key areas -- *price control*, *information*, *discrimination or unfair trading*, and *interconnect*.

Price control was based entirely on an RPI-X price cap -- which initially was much more simple than it became in subsequent versions, for example by being deliberately based on prior year movements in the RPI -- with its familiar properties of:

i.incentives for owners (out-performing the implicit efficiency standard would increase profits);

ii.non-intervention by the regulator for a five year period;

iii.flexibility for the managers to run the business and adjust prices within the cap; and

iv.a _drop dead' provision at the end of the five year period so that a new price cap constituted a change that would be subject to the fullest change rules. (The change rules themselves will be examined below.)

This was highly principled.

But other major features of the regime were highly discretionary, perhaps pragmatic. The regulator's power to call for *information* was in effect completely at large: the Director General can in practice call for any information at any time from BT. Moreover, he can do the same to any other licensee, and thus can obtain an unrivalled view of the overall market.

The jurisdiction on *discrimination*, which includes in practice a power to regulate over-, and under- (or _predatory') pricing, is also completely at large, because the regulator dictates what amounts to what is or is not discrimination in his unfettered discretion to determine what is _undue'; and only _undue' discrimination is outlawed. Similarly, with _unfair' cross-subsidy (conditions 17 and 18).

Even the universal service obligation has a discretionary let-out in the form of the regulator's power to determine what is a _reasonable demand', which alone constitutes an enforceable claim to service.

The critical area of *interconnect* was somewhere in between. It was designed initially to be flexible and free depending on negotiation; but when negotiation failed (as it inevitably would in the great majority of these difficult cases where agreement is simply unachievable between operators with fundamentally opposed interests), then regulatory discretion was to take over. This discretion is severely circumscribed, however, by a very rigid cost plus approach on pricing, though the regulator effectively prescribes the service to be provided. It was envisaged that there would be an interplay

between the threat of intervention and the disciplines accepted in the negotiation.

These are just a few critical features of the regime, but I think they demonstrate that it was a mixture of the principled and the discretionary at the primary rule level. How then did the legislature address the need for secondary rules, objectives, change rules, overall standards?

3.1 Objectives.

Section 3(2) of the 1984 Telecommunications Act lists these in describing the way in which the Director General shall exercise his powers.

A balance is required between protection of the consumer, promotion of competition, and promoting the success of UK telecoms in exports, new technology, overseas expansion; but it is for the Director General or Minister, according to who is exercising the power or discretion, to prescribe his own balance.

In practice, competition has come first, consumer protection second, and the others have been forgotten. The operation of this balancing act has proved highly discretionary and open textured and at the root of all the powers. In the early days the approach was at least specific. Brian Carsberg placed overwhelming emphasis on injecting competition into the market place, but justified other intervention on the basis that the regulator must be a surrogate, or mimic, for competition. See for example his public statements on the second price cap in 1988. On market entry he asserted a _cost/benefit analysis' which led to a series of devices to assist market entry. The cost of artificially _tilting the playing field' to achieve market entry and, increasingly, to sustain competition in the market was recognised as a cost to BT's customers and to BT; it was regarded as justified by the _competitive spur' effect on BT.

The interconnect rules on access deficit contribution waiver and the cable and radio asymmetry rules (precluding BT from exploiting radio and broadcast cable technology) were openly declared examples of this approach.

The cost/benefit analysis itself was never explicit. Sometimes the market entry devices themselves were less than explicit -- for example the 1985

interconnect determination for Mercury was not exposed as a market entry device (through the implicit waiver of any Mercury contribution towards access costs) until the White Paper was published in 1991.

But the stability of this approach based on Oftel as a surrogate for competition and a set number of market entry devices proved in practice to be illusory and temporary. Just a couple of major examples will suffice to establish the point:

-The price cap regime became progressively more severe and detailed despite the growth and success of competition. The result was a far more detailed and restrictive state control of prices than ever existed under the nationalised industry regime, where, in practice, managers were free to do what they wished with very limited departmental intervention and without any pressure from market forces.

-During the course of 1992 it emerged that Oftel was resistant to the introduction of flexible price _packages' despite clear benefits to consumers and general recognition that that form of variable pricing was the way competitive markets would in fact operate.

I want to make a brief aside about this _pro-competitive' stance, because I think it bears some very careful study. My own perception is that, in practice, until the White Paper decisions in 1991, this stance provided a pretext for market management of an intensely pragmatic kind *whenever* change or discretion powers arose. Issues were *always* resolved, regardless of other merits, in favour of BT's competitors, usually Mercury, sometimes Racal and others.

3.2 An aside on the pro-competitor bias.

The essence of the policy is that Oftel and the DTI have picked market entrants and given them special regulatory advantages. The legitimacy of this so-called pro-*competition* focus, but in fact pro-*competitor* focus, is now questionable, for any number of different reasons:

-Most of BT's competitors are either well entrenched and profitable (MCL, Vodafone) or have dominant positions elsewhere, using profits to extend markets (e.g. US Bell operating companies in cable TV, France Telecom, and now the mighty AT&T across the piece).

-At some point, even the most late developing of infant industries must grow up.

-Competition has grown but it has needed -- and certainly has been perceived to need -- considerable protection from Oftel. While one explanation is that entry barriers are higher than expected, a simple alternative is that it is difficult to better BT's improving performance.

-One possibility is that the gestation period of competitive strength is longer than expected and that the impact of the currently established competition is in the pipeline but will only be fully felt in the future. This would mean that Oftel is playing a very dangerous game, because, at some point, changes in market share could be very rapid, not necessarily based on efficiency but because of the help competitors have had, and impossible (because of the long lags) for Oftel to control. This could place BT in difficulties unanticipated by Oftel.

-Another possibility is that the most powerful competition will be felt from the next generation of technologies (e.g. radio and the full use of the potentialities of fibre) and new alliances in the market. (In a sense Oftel may have backed the wrong horse but hobbled BT's ability to compete with potential winners when they eventually emerge.)

-In other words, it is becoming apparent that the cost of supporting competitors is high in the short term -- consumers pay more and get less attractive products because of constraints on BT's activities. And this _investment' may have been wasted because it has been used to do the wrong things. This is the story of most attempts at social engineering by government.

-We need to rethink the sources of efficiency and the nature of competition in telecommunications. Oftel looks only at present market shares, and it had great difficulty in attempting to model competition at the time of the latest RPI-X review. Competition is not only about

market shares in a static environment; it is also about innovation through exploring possibilities for profit in a constantly changing environment. As Iain Vallance said recently at Cranfield, in a multi-competitor environment outcomes will be practically impossible to predict, and therefore responsible regulation by market management becomes impossible.

-Regulation has greatly constrained BT's ability to take advantage of its economies of scale and scope in exploring possibilities of new technology and service development. Regulation has concentrated on innovation (including the discovery of new products and services) as an entry barrier. This has had a cost to consumers (and the UK's competitive strength in international markets). Accounting separation could make this worse by tempting the regulator to make network innovations available to interconnecting operators at prices which do not reflect their true investment costs, let alone an appropriate market valuation.

-The regulator's indiscriminate and myopic support of any competition is getting him into a position where he is forced constantly to attempt to set BT's prices in detail and to outguess the market. Decisions are becoming increasingly short-term and detailed. This is the reverse of what privatisation was about. It is unprincipled and unpredictable.

-The regulator needs a new, more principled vision of regulation in a dynamic environment. How does he see the market in ten years time? Which forms of competition will be established? Which regulatory interventions are likely to be high cost _competitive spurs' to BT (and other established players) and which low cost?

-The regulator must justify this vision to customers and other stakeholders and be prepared to explain particular decisions to intervene -- and, vitally, not to intervene -- against the background of both short-term pressures and long-term objectives. If the regulator cannot do this he has no business making _stabs in the dark'.

-We need also a much better map of the benefits and costs of competition in order that there can be a well-informed debate. We are beyond the stage of blind faith in supporting any and all competition everywhere

and anywhere. Such an approach would certainly lead to inefficiency and may lead to instability.

-With a new regulator it is now time for a wider public debate on the future of telecommunications. Such a debate needs much more information and more thought about the nature of competition which will meet long-term objectives. Academics can provide a vital role here in exploring industry dynamics and measuring costs and benefits. Telecommunications economics is an exciting field, and there is a huge amount which we do not yet understand.

-Until this closer analysis comes about, the regulatory system will certainly not command the level of acceptance necessary to legitimise the interference with property rights that the continuation of a regime of market management demands. But it is not only market management regulation which demands these kinds of studies; the bounds of legitimate competition law are far from set and come under huge strain in this field. Debates about the _prohibition approach' to issues of abuse of market power have brought awareness of this to the fore.

3.3 Safeguards and change rules.

So much for the role of purposes in the regime. I turn now to the safeguards, or rules, intended to articulate and modulate the processes of change and adjustment within the overall purposes of the regime.

Apart from establishing an overall sense of direction, the legislators addressed the change rules issue and the need to define the scope of change and adjustment by relying on two kinds of safeguard:

-Judicial review is the safeguard by which discretion is controlled. The essence is that the regulator must operate within the law. Judicial review provides a judicial remedy to ensure compliance, but judicial review is of little use in practice because the Director General (on legal advice) does not give reasons or explanations for decisions. Because of the nature of the judicial review remedy, which depends on decisions being either beyond all reason (_irrational') or founded on faulty grounds, a policy of refusing to disclose the grounds on which decisions are made effectively makes the decisions immune from challenge and above the law. This approach might be described as

highly pragmatic: _Stick to the eleventh commandment. Ensure that you are free to ignore the rules by ensuring you won't get found out.' Whether or not to give an explanation is not, of course, a legal question; it is a policy one. Refusal to do so amounts to a claim to be above the law. We may have effectively dealt in this country with the Divine Right of Kings some years ago. We apparently still have a Divine Right of Regulators.

-The fundamental change rule incorporated in the 1984 Act was _change by agreement with the regulatee or through Monopolies and Mergers Commission endorsement of the Oftel proposal'. This has proved, in practice, of very little value as a constraint on a highly fluid regime. Oftel is free to lay down what is referred to the MMC and can _plea bargain' by threatening a sweeping reference if the regulatee does not agree to a more limited proposal. For example, in 1991 Oftel said that unless BT complied with proposals on access deficit contribution waivers, BT's structure would be referred. As a result, in practice, the MMC procedure is neutered by the Director General's discretion over the scope of references on licence amendments. Similarly, even if BT _wins', in the sense that the Director General's proposals are rejected, the Director General has discretion as to what to do with such a ruling. In practice, so long as the MMC agrees that there is a problem, or public interest _mischief' -- for example that an expiring price cap does indeed need replacement -- the Director General is effectively free to reach his own conclusions on the remedy. This is not theoretical; it happened when the CAA, on receipt of an RPI-4 ruling, went for RPI-8. This was subsequently changed, but still to a level substantially tougher than RPI-4.

The result is that there is virtually no control on Oftel's powers to amend BT's licence or on the way in which discretions are exercised. Oftel can make BT do virtually anything. It is certainly not widely recognised how sweeping this power is in its effects. Oftel has also suggested that it is appropriate to make proposals which err on the tough side, on the ground that BT can always refer the matter to the MMC. Apparently it has actually adopted this approach in the erroneous belief that the MMC remedy represented a realistic mitigating factor.

4. How has it worked in practice?

If we look at the way this brew has actually cooked over recent months, the conclusion is that UK telecoms regulation is currently characterised by inconsistency, instability, and uncertainty.

In support of the proposition that the system has been inconsistent, let me briefly rehearse the well-known saga of price rebalancing.

-BT in April 1990 suggested that a relaxation was needed in the undertaking preventing the Company bringing exchange line prices closer to cost (the famous RPI+2 rule). In May Oftel encouraged BT to make a proposal. In July the Company's approach was very publicly rejected and its accounting methods publicly attacked for good measure.

-In November 1990 in the Duopoly Review Green Paper, the case for faster rebalancing was rejected. It was argued, fallaciously, that line and call costs were _joint' and you could not sensibly distinguish between the two services; so the case for rebalancing, apparently, did not exist.

-In the 1991 White Paper, however, the case was accepted, subject to provision of a special price _package' providing an additional subsidy of the standing charge for lines for low usage customers and no change in the real burden of the residential bill for the typical, or median, customer. The general desirability of price rebalancing was indeed positively endorsed by Oftel; in BT's licence amendment in September 1991 a sanction was accordingly incorporated for failure to rebalance to the full extent allowed. (BT could only recover full contribution from competitors to the access subsidy if it made increases to line rentals to the full measure permitted by the RPI+2 cap on line rental charges.) As a deliberate concession towards faster rebalancing BT was also allowed straightaway to raise business rentals at RPI+5 rather than RPI+2. But further rebalancing would have to come in 1993 when the existing RPI+2 undertaking expired. Great emphasis was placed by the regulator on the importance of sticking to agreements.

-Yet in the June 1992 price control review the situation returned to square one -- rebalancing of rentals was to proceed at the same pace (RPI+2) as from 1984. Indeed there was a movement backwards -- the connection charge was cut to £99 and increases pegged to RPI, and a

new low user scheme was required, compelling BT to halve an already uneconomic rental for a quarter of the Company's residential customers -- reversing much of the rebalancing previously achieved under the RPI+2 constraint. The median residential bill criterion was dropped. The provision in the licence forcing BT to rebalance was also dropped, and most of the RPI+5 concession was removed. All less than a year after the White Paper regime had come into operation!

-It is reasonable to ask: what assumptions about pricing should BT use for its longer term planning on the basis of the above?

-A new philosophy, a _distributive' theory, was introduced to the effect that residential customers should have a _fair share' of the benefits of regulation. The regulator as a surrogate for competition had gone. One was reminded more of Denis Healey in _pip squeaking' mode! The real motivation may well have been different from the stated aims. Increasing the burden of the low user scheme would make it more difficult for BT to cut call charges, and the real reason may well have been to disable BT and help competitors in the new, very exacting RPI-7.5 environment. But the rationale offered by the regulator was the _distributive justice' approach. Accepting this in good faith, what assumptions about the future direction of regulation should BT draw from this? Apparently the Company is to be an instrument for achieving Oftel's views (completely unknown to us) of social equity!

Illustrations of the fact that the system is subject to sudden changes include the following:

-The Competition and Service (Utilities) Act conferred completely new powers on Oftel one year after a White Paper that indicated that this was not on the agenda. Oftel now has power to determine service standards and terms completely free of the change rules which were regarded as a keystone of the original settlement.

-The recent Abuse of Market Power Green Paper has major implications for telecoms. Virtually anything BT does could be construed as an abuse by somebody. The sections about regulated industries were very hard to follow. Even the current DTI proposal to confer an interim order-making power on Oftel, apparently, will create an entirely new,

and in practice unbounded, discretion in Oftel to interfere in our business. These latest proposals, by allowing *ad hoc* interim orders or prior undertakings where a reference could be regarded as justified create an environment where more _pragmatic' regulation can operate whenever the regulator regards an action as _undesirable' or _abusive', terms which are left completely undefined.

-The regulator is becoming interventionist rather than setting rules in terms of customer service objectives and allowing BT to work out how to observe them. For example, the June 1992 price cap review led to requirements on the minimum number of kilometres of fibre to be incorporated in the network as well as the £99 maximum connection charge (why £99?) and the new low user scheme. This introduces additional instability. Hence the scope of the powers is constantly being broadened by legislation and extended by regulatory interventionism. The use and direction of the powers has not been as expected -- interventionism and now social engineering rather than rule setting and enforcement -- and it is difficult to anticipate what the regulator will do because of lack of consultation. From BT's point of view, regulation has appeared to become unpredictable and in effect an exercise of arbitrary power.

5. Reform.

Regulation has the power to make or break BT and the prosperity of the sector. As the _regulatory contract' has now broken down in all key areas it must be renewed by:

-Re-establishing the original objectives so as to restore the balance envisaged by the 1984 Act among competition, consumer protection, and the growth of the whole UK industry at home and overseas. A clear vision of the extent and duration of the market entry devices is needed. The White Paper view should be reaffirmed -- no more new devices; we should progress towards open competition.

-Rebuilding the safeguards. Oftel must begin to give reasons for its decisions. In cases of licence amendments, MMC references must be limited to the particular amendment in dispute. Oftel should accept a policy of following MMC findings and proposed remedies unless they

are actually impracticable to implement, in which case the Oftel proposals should be abandoned. Change imposed by Oftel without MMC endorsement is not acceptable and surely not what Parliament intended.

-Restoring understanding of the scope and use of the powers, involving more genuine dialogue and consultation. Keywords here are *predictability*, *stability*, *continuity*, and a clear sense of *direction*.

All the above steps can be taken within the existing, very open textured legislation. Others will require primary legislation, and these include:

-The promotion of stability by running Oftel with a board rather than with a single individual as the statutory decision-maker. Decisions involving use of formal powers -- Orders, MMC references, and so on -- should be taken by the panel, as happens in the United States. This will provide balance, breadth of experience, and continuity, as well as the sharing of a burden which should be recognised as being very heavy.

-BT should have the right to take the initiative in changing the rules by applying to Oftel for a licence change with reference to the MMC in the event of disagreement. In this way the continuous propensity of the regime to add rules and constraints, rather than to relax them where the case merits it, can be counterbalanced to some extent.

-Oftel should be bound formally by MMC decisions. Such decisions should be implemented by Oftel except where it is not practicable to do so, and if the MMC fails to come up with a remedy which Oftel is satisfied is practicable, there should be no change. The rule on this issue, proposed above as a matter of policy, should be made a matter of law.

6. Conclusion.

Regulation is at a crisis, and Oftel is floundering in a morass of uncertainties. BT does not seek favours, but wishes to see a fair regulatory system in operation enabling it to plan and build a business committed to the service of its customers. The original regime made a reasonable attempt to

get this right, but it has degraded since, and we need to get it back on track. I am hopeful that the new Director General will address the task of setting a new direction, based on principles that we can all accept.