



Ofcom's Investigations Programme

Report on activity between 1 April and 30 September 2006

Competition Group

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Section 1

Introduction

1.1 This report provides a detailed analysis of the work of Ofcom's Investigations Programme during the period between 1 April and 30 September 2006 and compares this activity with that for the period between 1 October 2005 and 31 March 2006. Unless stated, it reflects the position as at 30 September 2006.

Main points

1.2 The main points arising in comparing activity during this period and the preceding six months are:

- fewer complaints and disputes were received – down from 164¹ to 129;
- Ofcom opened fewer investigations – down from 15 to 12;
- fewer dispute referrals were accepted for resolution – down from 6 to 2;
- more investigations were opened on Ofcom's own-initiative – up from 3 to 6; and
- a similar level of formal enforcement action was taken.

1.3 The report also provides details of Ofcom's performance against its time targets for handling enquiries and completing investigations into complaints and resolution of disputes. Results are:

- none of the enquiries considered during the period exceeded the 15 working day target without specific defined reasons and agreement by the Director of Investigations; and
- none of the investigations opened during the reporting period had exceeded targets as at 30 September 2006. Also, 92% of all of the investigations opened by Ofcom since it assumed its powers in December 2003, that had been closed by 30 September 2006, were completed on time.

1.4 In addition, the report provides comment on the progress made against the priorities identified for the reporting period and also sets out Ofcom's main priorities for the programme over the next six months.

1.5 David Stewart was appointed Director of Investigations in April 2005 and has directed the programme for the period of this report.

Background

1.6 Ofcom has a number of roles and duties relating to identifying and responding to conduct which is unlawful or which is anti-competitive, and in resolving disputes. Responding to complaints or disputes filed by market participants - or in some instances by consumers - the Investigations Programme ensures that Ofcom

¹ These numbers include issues identified at Ofcom's own-initiative.

responds quickly, firmly and effectively to breaches of regulatory rules or relevant law and is able to act effectively in resolving disputes.

- 1.7 As a sectoral regulator, under the Communications Act, Ofcom has responsibilities to enforce *ex ante* rules (for example, rules imposed on providers with significant market power, and rules imposed on all providers as general conditions) and to determine disputes between providers of electronic communications networks and services. Ofcom also has responsibilities under the Broadcasting Acts to enforce *ex ante* powers.
- 1.8 As a national competition authority, Ofcom is empowered to enforce competition law concurrently with the Office of Fair Trading (OFT) and acts as the competition enforcement authority for the communications sector. Ofcom's role under competition law includes:
- enforcing the Chapter I and Chapter II prohibitions of the Competition Act 1998;
 - enforcing Articles 81 and 82 of the EC Treaty; and
 - investigating markets and making references under the Enterprise Act 2002.
- 1.9 Ofcom also has a role to enforce consumer protection law for the communications sector. Whilst the primary role for handling individual consumer complaints rests with the Ofcom Contact Centre, Ofcom's Investigations Programme conducts investigations under:
- The Unfair Terms in Consumer Contracts Regulations 1999;
 - Part 8 of the Enterprise Act 2002; and
 - The Communications Act 2003.
- 1.10 In July 2004 Ofcom published Guidelines setting out its approach when investigating competition complaints and resolving disputes between companies in the communications sector. The Guidelines provide companies with a clear, easy to follow tool-kit explaining how both small and large companies should prepare the evidence required before Ofcom will take forward a formal investigation.
- 1.11 In July 2006 Ofcom issued revised Enforcement Guidelines for consultation². The revised guidelines reflect the outcome of Ofcom's internal review of its investigations function³ and Ofcom's growing body of practice and established decisions in this area, as well as the developing jurisprudence of the Competition Appeals Tribunal.
- 1.12 Ofcom's approach continues to seek to reduce the costs to industry of Ofcom's work and to focus scarce resources to deliver the best outcomes for citizens and consumers. Unsubstantiated complaints, or those which could be better resolved elsewhere, are dealt with quickly at an early stage. This allows Ofcom to focus on the most serious allegations inhibiting fair and effective competition in the sector, or in relation to the most serious cases of harm to consumers.

² Available at <http://www.ofcom.org.uk/consult/condocs/enforcement/enforcement.pdf>

³ See paragraph 1.15 of previous report at <http://www.ofcom.org.uk/bulletins/crt/invest2/>

- 1.13 Ofcom is currently considering the consultation responses and aims to publish the finalised guidelines early in 2007.
- 1.14 Ofcom has published four previous six-monthly reports, setting out in detail the work of the Investigations Programme. This, the fifth report, covers the period 1 April to 30 September 2006 and compares the level of activity with that during the preceding six months.

Progress on priorities identified for the reporting period

- 1.15 In previous reports Ofcom has identified the following four areas of work for priority action:

Investigations programme review

Undertakings enforcement

Consumer enforcement

Competition enforcement

Investigations programme review

- 1.16 During the reporting period Ofcom's consultation on its draft Enforcement Guidelines closed. In these guidelines Ofcom set out a number of changes to its existing processes for the handling of competition complaints and complaints and disputes concerning regulatory rules, including more information about Ofcom's approach to consumer protection, greater clarity about the handling of investigations (including the factors that Ofcom will consider in deciding whether to conduct an investigation), changes to Ofcom's timing for the handling of competition law investigations and information about Ofcom's approach to enforcing BT's Undertakings. Ofcom is currently considering responses to this consultation and will be having further discussions with stakeholders on the issues raised in the draft guidelines, prior to issuing the finalised guidelines early in 2007.

Undertakings enforcement

- 1.17 The Investigations Programme also covers issues related to BT's ongoing compliance with the undertakings given to Ofcom on 22 September 2005 under the Enterprise Act. Ofcom will consider any complaints about BT's compliance with the undertakings following its standard processes and, if necessary, take enforcement action. In deciding whether to initiate an investigation in light of a complaint Ofcom will consider, among other things, whether the issue could be considered by the Equality of Access Board/Equality of Access Office (EAO). The EAO has published guidelines on how it will consider any complaints about BT's compliance with the undertakings. To date, Ofcom has not received any formal complaints about the undertakings.

Consumer enforcement

- 1.18 During the reporting period, the Consumer Enforcement Unit has pursued a programme of activity to tackle industry-wide practices or failure of compliance. Examples include:
- an ongoing monitoring and enforcement programme into fixed-line telecoms mis-selling, following through on policy initiatives which resulted in a new obligation on

providers in the market to establish and comply with a Code of Practice for Sales and Marketing. The programme has included:

- Formal investigation and enforcement of worst offenders (several investigations already complete, each securing significant changes to behaviour to ensure consumers' rights are protected;
 - Communicating specific targets on better performance to providers making progress but where further improvement is required; and
 - Ongoing dialogue with better performers in the market to understand best practice and to continue to drive compliance.
- a programme of investigation and enforcement of rules preventing the annoyance caused to consumers by silent and abandoned calls. This follows the publication by Ofcom on 1 March 2006 of a revised statement of policy on the persistent misuse of an electronic communications network or service. Ofcom's statement set out a number of requirements for organisations using automated calling systems, including the need to carry a recorded information message which identifies the source of the call and to include Calling Line Identification which allows people to dial 1471 and access the telephone number of the person or organisation calling them. Although outside of the current reporting period, on 3 November 2006 Ofcom issued enforcement notifications to four companies as part of this ongoing own-initiative programme to address the problem of silent calls; and
 - a program of investigation to actively monitor compliance in the industry with new rules introduced on 19 June 2006 requiring telephone companies and other communications providers to provide their customers with improved information about calls to Number Translation Service (NTS) and Premium Rate Service (PRS) numbers within two months of the new rules entering into force.

1.19 Key enforcement actions pursued by Ofcom to tackle specific issues of consumer harm over the past six months include:

- Imposing penalties on Just Telecoms UK Ltd (JTUK). As recorded in the last report, following the issue of a section 94 notification to JTUK, Ofcom issued a section 95 notification on 23 June 2006 setting out the steps which JTUK was required to take without delay to remedy the consequences of its contravention (including the making of refunds to affected customers) and imposed a penalty under section 96 of the Act. Ofcom regarded the circumstances of JTUK's contravention as being so serious that the maximum level of penalty was appropriate: 10% of JTUK's relevant turnover;
- Imposing penalties totalling £50,000 on Telecom Billing Services Ltd (TBS) for failing to provide the information required by Ofcom in the course of its investigation. Ofcom subsequently issued an enforcement notification to TBS after concluding that TBS had persistently misused an electronic communications service through the sending of misleading and/or unsolicited text messages inducing consumers into calling adult chat services;
- Notifications of contravention issued against 1RT Group Ltd for persistently misusing an electronic communications network or service, including the sending of unsolicited facsimile messages to telephone numbers registered with the Facsimile Preference Service ('FPS'), and setting and/or operating equipment to receive inbound fax messages so as to prolong the length (and cost) of fax-back calls unnecessarily;

- A notification of contravention against Platinum Telecom UK Ltd for serious and repeated breaches of rules governing the sale and marketing of fixed line telecoms services, including the requirement for Platinum to remedy the consequences of its actions through the repayment of refunds to affected customers; and
- A notification of contravention against E7even UK Ltd for failing to establish and maintain an approved Code of Practice for the handling of complaints and for failing to be members of an alternative dispute resolution scheme ("ADR scheme"). Specifically, E7even failed to comply with the conditions of membership of the Office of the Telecommunications Ombudsman ("Otelos"), including failing to comply with final decisions made by Otelos in relation to complaints about broadband services supplied to its customers.

1.20 Priorities for the next six months in terms of the Consumer Enforcement Unit are:

- To develop and enhance a proactive and strategic approach to enforcement of regulations designed to protect consumers, to maximise the impact and benefits of Ofcom intervention;
- Ensuring further integration of issues of consumer protection and enforcement into the policy development process in Ofcom; and
- Developing and deepening links with partner enforcement agencies through sharing of information, joint working and sharing of experience and expertise to maximise the effectiveness of all parties' efforts.

Competition enforcement

1.21 In August 2006 Ofcom closed a Competition Act investigation into a complaint from Binatone Telecom plc and a co-complainant who wishes to remain anonymous into BT's pricing of cordless fixed-line telephones. Ofcom concluded that BT had not infringed the Chapter II prohibition or Article 82 in relation to its pricing of cordless telephones for the period from April 2004 to March 2005⁴.

1.22 Although no new Competition Act investigations were opened during the reporting period (due to Ofcom not receiving any appropriate submissions) Ofcom devoted a significant amount of resource to pursuing its existing major investigations –

- [BBC Broadcast's provision of media access services;](#)
- [BT's residential broadband pricing;](#) and
- [BT's charges for NTS call termination.](#)

All of these cases have raised a range of difficult and complex issues. In the investigation into BT's residential broadband pricing, although outside of the reporting period, Ofcom sent BT a supplementary Statement of Objections ("SO") on 25

⁴ See paragraph 3.20 for a summary of the decision. The full decision can be viewed at http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_ccases/closed_all/cw_828/cordless_06.pdf

October 2006 which states that Ofcom remains of the view that BT Group plc has infringed the prohibition in Chapter II of the Competition Act 1998 and/or Article 82 of the EC Treaty and proposes to decide accordingly. The supplementary SO replaces parts of the second SO sent to BT on 27 June 2005 and has been issued to allow BT to make representations on material further analysis undertaken by Ofcom since that date. BT now has the opportunity to make written and oral representations in response to the supplementary SO.

Section 2

Overview

- 2.1 Between 1 April and 30 September 2006 Ofcom received a total of 118 complaints and dispute referrals. In addition, Ofcom identified 11 issues for possible investigation on its own-initiative. 105 of these cases were rejected or redirected within Ofcom on receipt.
- 2.2 Of the remaining 24, Ofcom moved 22 into its 'enquiry phase' (during which Ofcom decides whether to launch an investigation into a complaint or to resolve a dispute) and two were moved straight to investigation. Of the 22 cases considered in the enquiry phase, eight resulted in investigations being opened and three were still being considered as at 30 September 2006.
- 2.3 Therefore 10 (8%) of the total requests received (including issues identified at Ofcom's own-initiative) were found to warrant investigation. Ofcom opened two further investigations for which the enquiry phase commenced before 1 April 2006. A total of 12 investigations were therefore opened in the period between 1 April and 30 September 2006.

Performance and evaluation

- 2.4 The following table examines Ofcom's performance in handling the enquiries and investigations opened between 1 April and 30 September 2006. An examination of Ofcom's performance in meeting its targets for completing investigations since it assumed its powers on 29 December 2003 is discussed in section 3. It should be noted that this reflects the position as at 30 September 2006.

Ofcom's Investigations Programme

Ofcom's performance against its published targets (incorporating statutory targets) between 1 April and 30 September 2006 (as at 30 September 2006) is shown in the following table:

Category & Target	Achievement level (for closed cases opened during reporting period)
Decision to reject or accept enquiry within 15 working days	68% (of 22 opened, 19 closed) (100% with senior management agreement to extend for complex cases)
Resolution of disputes (4 months)	N/A (of two opened, none closed)
Competition Act investigations (6 months where 'no grounds for action' decision made. 12 months for an infringement decision)	N/A (none opened) Three cases opened prior to the reporting period remain open, each of these has exceeded target
Part 8 of the Enterprise Act investigations (6 months to obtain undertakings)	N/A (none opened)
Investigations into breaches of <i>ex ante</i> conditions and unfair terms in consumer contracts (4 months for a closure statement or notification that a condition has been breached)	N/A (of two opened, none closed)
Own-initiative investigations (6 months)	100% (of eight opened, four closed)
Total investigations	100% (of 12 opened, four closed) None of the eight ongoing investigations opened between 1 April and 30 September 2006 had exceeded its target as at 30 September 2006

Section 3

Detailed analysis

- 3.1 The Investigations Programme, conducted within Ofcom's Competition Group, consists of a variable case load of enquiries, investigations into complaints and resolution of disputes related to anti-competitive behaviour or complaints or disputes about breaches of various *ex ante* conditions. It does not cover complaints about content or spectrum issues. The Programme also considers consumer complaints about unfair contract terms and conducts investigations into other alleged breaches of consumer protection legislation following referral from Ofcom's Contact Centre, or on its own-initiative. However, the primary role for handling individual consumer complaints remains with the Ofcom Contact Centre.
- 3.2 The information in this section focuses on activity in the period from 1 April to 30 September 2006, as at 30 September 2006, with comparative data shown for the preceding six months. It covers:
- enquiries;
 - investigations;
 - resolution of disputes
 - Communications Act investigations
 - Competition Act investigations
 - other investigations, in particular under the Enterprise Act 2002 and the Unfair Terms in Consumer Contracts Regulations 1999;
 - appeals; and
 - cases in compliance.

Enquiries

- 3.3 When a matter is brought to Ofcom as a complaint or dispute, it is first reviewed by the Competition Group's Operations Team to assess whether the matter should be rejected on receipt for any reason, such as the information provided falling short of the submission requirements as set out in the complaint and dispute Guidelines. If the matter is accepted, it is then considered as an enquiry, during which Ofcom decides whether it intends to launch an investigation into a complaint or to resolve a dispute or, after more detailed consideration, to reject the matter. Ofcom's target is to complete the enquiry phase within 15 working days of receipt of a complete submission. Where Ofcom needs extra time to decide whether it is appropriate to open an investigation or to resolve a dispute, its policy is to explain why to the parties concerned.
- 3.4 Between 1 April and 30 September 2006 the Operations Team received a total of 118 complaints and disputes from which Ofcom opened 13 enquiries. 11 enquiries were also opened on Ofcom's own-initiative. Of these 24 enquiries, 22 related to telecommunications and two to broadcasting matters.

Enquiries by outcome

Number of enquiries	01/10/05 to 31/03/06	01/04/06 to 30/09/06
Total received ⁵	164	129
Rejected / redirected on receipt	130	105
Rejected during enquiry	17	11
Still in enquiry phase	3	3
Accepted for investigation	14 ⁶	10 ⁷

3.5 Where there is a valid reason why the decision to investigate a complaint or accept a dispute cannot be made within the 15 day target period, Ofcom will extend the enquiry phase. Six of the 24 enquiries opened between 1 April and 30 September 2006 were held in enquiry phase beyond the 15 day target. All decisions to extend the enquiry phase were taken by the Director of Investigations. Of these six enquiries, none resulted in an investigation being opened. The reasons leading to extension for these six enquiries were as follows:

- to allow for a visit to a target company's premises and additional informal discussions on improvements to sales processes. This resulted in improvements being put in place and a decision to forbear on opening an investigation;
- to allow Ofcom time to determine whether the issue in question was best handled as a policy review project or an investigation. The complaint was subsequently withdrawn;
- so that a mobile service provider could explore a commercial settlement with an end user. An agreement reached was reached and an investigation was not opened;
- in order to give BT the opportunity to provide Ofcom with details of its regulatory governance process in respect of new products. The information provided, taken in conjunction with the Undertakings signed by BT in September 2005, resulted in Ofcom's decision not to pursue the enquiry further;
- in order that Ofcom could agree with the Office of the Information Commissioner who was the appropriate body to investigate the complaint; and
- in order that Ofcom could confirm the views of the parties on the suitability of referring the dispute for alternative dispute resolution.

3.6 The longest period that any of the six cases were kept in enquiry phase was 46 working days and this was an enquiry opened on Ofcom's own-initiative. On

⁵ Includes issues identified at Ofcom's own-initiative.

⁶ Includes three investigations that were not subject to the enquiry phase. One further investigation was opened for which the enquiry phase commenced before 1 October 2005.

⁷ Includes two investigations that were not subject to the enquiry phase. Two further investigations were opened for which the enquiry phase commenced before 1 April 2006.

average, these cases were in enquiry phase for 29 working days. Apart from the six cases where extensions to the enquiry phase were agreed for specific defined reasons, the remaining 15 enquiries on which a decision had been taken by 30 September 2006, were all completed within the 15 day timescale.

Reasons for rejection/redirection on receipt

Number of enquiries	01/10/05 to 31/03/06	01/04/06 to 30/09/06
Total rejected / redirected	130	105
Redirected to other Ofcom Group	93	93
Did not comply with guidelines	13	8
Other	24	4

- 3.7 All but one of the matters that were redirected to other Ofcom Groups were referred to the Ofcom Contact Centre to respond. The other complaint was transferred to the Spectrum Policy Group. Together, these represented 89% of all complaints that were rejected or redirected. The number rejected on the grounds that the submission requirements of the Ofcom guidelines had not been met again represented a fairly small minority (8%) of total rejections.

Reasons for rejection during the enquiry phase

3.8 Once a matter is accepted as an enquiry, it may still be rejected in the 15 day enquiry phase and not accepted for investigation. The reasons for rejection in the enquiry phase are set out in the following table.

Numbers of enquiries	01/10/05 to 31/03/06	Numbers of enquiries	01/04/06 to 30/09/06
Total rejected	17	Total rejected	11
Not for Ofcom	0	Not for Ofcom	1 ⁸
Already considered/considering	2	Already considered/considering	0
Change in behaviour	2	Change in behaviour	5
Withdrawn	3	Withdrawn	0
Administrative priority	3	Administrative priority	3
Insufficient information	0	Insufficient information	0
Incorrect information	0	Incorrect information	0
No indication of breach	6	No indication of breach	1
Other	1	Other	1 ⁹

Summary of enquiry activities

3.9 In summary, Ofcom received a lower level of complaints and disputes during the period 1 April and 30 September 2006 than the preceding six months. Ofcom opened fewer investigations following consideration of these complaints and disputes, but more investigations were opened on Ofcom's own initiative.

Investigations

3.10 Once a complaint is accepted for investigation or a dispute accepted for resolution following the enquiry phase, Ofcom has different targets for concluding cases depending on the type of case. These deadlines are currently:

- four months to resolve a dispute, except in exceptional circumstances;
- four months to complete a Communications Act investigation into a complaint¹⁰;
- four months to complete an investigation under the Unfair Terms in Consumer Contracts Regulations;
- six months to find "no grounds for action" under the Competition Act/EC Treaty;

⁸ This case was transferred to the Office of the Information Commissioner

⁹ Parties to the dispute were referred to ADR

¹⁰ This deadline applies to cases where we take no action or issue a s.94 notification; in cases where we fine, or issue a notification other than under s.94, this deadline does not apply

- 12 months to complete an infringement decision under the Competition Act/EC Treaty;
- six months to obtain undertakings under the Enterprise Act 2002; and
- six months to complete an investigation opened on Ofcom's own-initiative (except Competition Act/EC Treaty investigations where the twelve month target for an infringement decision applies).

3.11 Ofcom is proposing to introduce revised targets for completion of investigations under the Competition Act/EC Treaty as set out in its revised draft enforcement guidelines.

Summary of investigation and dispute resolution activity

Number of cases	01/10/05 to 31/03/06	01/04/06 to 30/09/06
Total opened	15 ¹¹	12 ¹²
Of which closed by 30/09/06	12	4
Ongoing as at 30/09/06	3	8

Notes

- All investigations opened between 1 April and 30 September 2006 related to telecommunications matters.

Complaint investigations and disputes by type

Number of investigations	01/10/05 to 31/03/06	01/04/06 to 30/09/06
Total opened	15	12
Disputes	6	2
Communications Act	7	10
Competition Act	0	0
Enterprise Act	0	0
Unfair Terms in Consumer Contract Regulations	2	0

¹¹ The enquiry phase for one of these investigations commenced before 1 October 2005

¹² The enquiry phase for two of these investigations commenced before 1 April 2006

Disputes

Analysis of disputes by type

Number of disputes	01/10/05 to 31/03/06	01/04/06 to 30/09/06
Total opened	6	2
Pricing	5	1
Requests for new products	0	1
SLAs / processes	0	0
Other	1	0

Disputes by outcome

Number of disputes	01/10/05 to 31/03/06	01/04/06 to 30/09/06
Total opened	6	2
Closed without determination	0	0
Closed following determination	4	0
Withdrawn	0	0
Ongoing as at 31/03/06	2	2

3.12 The two dispute referrals accepted for resolution between 1 April and 30 September 2006 were as follows:

- Dispute between Hay Systems and T-Mobile UK Limited about SMS termination via Signalling System 7
- Dispute between Thus and BT about payment terms for PPC, IEC and IBC products

Disputes – performance against targets

Number of disputes	01/10/05 to 31/03/06	01/04/06 to 30/09/06
Total opened	6	2
Completed within deadline	4	N/A
Missed deadline	2	N/A
Ongoing as at 30/09/06	2	2

- 3.13 The two disputes accepted for resolution between 1 October 2005 and 31 March 2006 that remained open at 30 September 2006 relate to referrals made by The Number and Conduit against BT about BT's charges for directory enquiry information (OSIS). On 14 March 2006 Ofcom announced its view that exceptional circumstances had arisen under section 188(5) of the Communications Act 2003, since the acceptance of the disputes meaning that the disputes would not be resolved in four months. Ofcom issued draft determinations to The Number, Conduit and BT in relation to these disputes on 17 August 2006 and consulted on the drafts until 29 September 2006. Ofcom is currently considering the responses received and plans to issue final determinations to resolve the disputes shortly.
- 3.14 The two disputes accepted between 1 April and 30 September 2006 were ongoing as at 30 September 2006 and at that date neither had exceeded the four month target for resolution.

Communications Act investigations**Analysis of Communications Act investigations by type**

Number of investigations	01/10/05 to 31/03/06	01/04/06 to 30/09/06
Total opened	7	10
Misuse of Personal Numbers	1	1
Number portability	0	0
Pricing	2	0
'Save'/ win-back activity	0	2
Silent calls	0	1
ICSTIS referrals	1	0
Other	3	6

Communications Act investigations by outcome

Number of investigations	01/10/05 to 31/03/06	01/04/06 to 30/09/06
Total opened	7	10
Closed without breach	1	2
Closed following formal intervention	4	1
Closed following change in behaviour	0	0
Withdrawn/stopped	1	1
Ongoing as at 30/09/06	1	6

Formal intervention

- 3.15 The previous report outlined the formal intervention taken by Ofcom in closing one of the investigations opened between 1 October 2005 and 31 March 2006 that had been closed by 31 March 2006. As can be seen a further three cases were closed following formal intervention by Ofcom since then. These were:

Own initiative investigation into possible misuse of 070 personal numbers allocated to 1RT Group Ltd

Ofcom opened this investigation in February 2006 into the potential mis-use of 070 numbers allocated to 1RT following receipt of a significant number of complaints from consumers. On 28 April 2006 Ofcom widened the scope of its investigation to consider whether 1RT was persistently misusing an electronic communications network or service in contravention of section 128 of the Communications Act 2003 ("the Act").

Ofcom concluded that there were reasonable grounds for believing that 1RT is in contravention of section 128 of the Act in that it had:

1. sent facsimile messages containing marketing material to telephone numbers registered with the Facsimile Preference Service ('FPS') without the explicit consent of the users of those telephone numbers, thereby causing them to suffer annoyance, inconvenience and/or anxiety; and
2. set and/or operated the equipment that it uses to receive inbound fax messages so as to prolong the length of fax-back calls unnecessarily. As a result of this, the senders of faxes have incurred higher charges for sending the return faxes to 1RT (a return fax is stated to be required by 1RT in many of its fax messages for it to stop sending unsolicited fax messages and part of the revenue from the return fax is received by 1RT), thereby causing them annoyance, inconvenience and/or anxiety.

Ofcom further concluded that there were reasonable grounds for believing that 1RT was in contravention of General Condition 17 in that it acted as both end user and range holder of certain 070 numbers allocated to it, in contravention of guidelines issued by Ofcom.

Ofcom therefore issued notifications to 1RT on 18 August 2006 under section 94 and section 128 of the Act, setting out the contraventions, requiring 1RT to comply with the requirements of General Condition 17 and secure that its misuse of electronic communications networks and services contrary to section 128 of the Act is brought to an end (and is not repeated), and to remedy any consequences of its breaches.

Own-initiative against Platinum Telecom regarding allegations of misconduct in selling and marketing of telecommunications services

Ofcom closed this investigation and issued a notification to Platinum Telecom under section 94 of the Act. Ofcom's investigation found that there were reasonable grounds to believe that Platinum Telecom had breached Ofcom's rules concerning sales and marketing activity. Ofcom's action followed more than 75 customer complaints and evidence gathered by Ofcom and Hertfordshire Trading Standards.

The notification issued to Platinum Telecom on 12 September 2006 set out the breaches and the steps the company had to take. The notification also required Platinum Telecom to remedy any consequences arising from its conduct.

Specifically, Platinum Telecom had contravened GC 14.5(b) which requires it to comply with the provisions of its Code of Practice for Sales and Marketing for dealing with its Domestic and Small Business Customers ("the Code"). Platinum Telecom failed to comply with the provisions of the Code by:

- i. Failing to ensure that "copies of this [Platinum Telecom's] code are available free of charge in various formats on request, including via [Platinum Telecom's] website www.platinumtelecom.com" (page 1 of the Code);
- ii. Failing to "respect [a person's] wishes if [the person has] registered with any relevant preference service, including the Mailing Preference Service, the Telephone Preference Service, the Fax Preference Service and the E-Mail Preference Service" (page 1 of the Code);
- iii. Failing to ensure that "on making contact, [Platinum Telecom's] representatives will immediately identify themselves, state [Platinum Telecom's] company name, the purpose of the call and how long it should take" and "[Platinum Telecom's representatives] must offer only factual and accurate information about [Platinum Telecom's] services and contracts and must not misrepresent [Platinum Telecom's] services or those of other companies" (pages 2 to 3 of the Code); and
- iv. Failing to ensure that "if [the customer] enter[s] into a contract [the customer] fully understand the terms and [is] sure that this is what [the customer] want[s] to do" (page 3 of the Code).

Platinum Telecom is required to:

- i. Put procedures in place to ensure that copies of its code are available free of charge in various formats on request, including via its website www.platinumtelecom.com (page 1 of the Code);
- ii. Ensure its representatives respect a person's wishes if the person has registered with any relevant preference service, including the Mailing Preference Service, the Telephone Preference Service, the Fax Preference Service and the E-Mail Preference Service (page 1 of the Code);
- iii. Ensure that on making contact, representatives state clearly that they represent Platinum Telecom and offer only factual and accurate information about Platinum Telecom's services and contracts. Additionally, Platinum Telecom must not misrepresent its services or those of other companies (pages 2 to 3 of the Code); and

- iv. Ensure that customers entering into a contract fully understand the terms, in particular the length of the contract and the level of the termination fee for terminating the contract within the term (page 3 of the Code).

Under the terms of the notification, Platinum Telecom is required to remedy the consequences of its contraventions.

Ofcom would expect that the steps Platinum Telecom takes to remedy any consequences arising from its contravention may include, but are not limited to, refunding in full and/or waiving all 'breach of contract' or other termination charges paid and/or otherwise payable by a customer:

- i. to whom any misrepresentation was made by Platinum Telecom or one of its employees, agents or representatives; or
- ii. who was not clearly informed during the transfer process of the length of the minimum contract term and/or the fact that early termination fees were payable and/or the nature of the early termination fee.

If Platinum Telecom fails to comply with the requirements of GC 14.5(b) and/or fails to remedy fully any consequences arising from its contravention by the deadline, Ofcom may issue an enforcement notification under section 95 of the Act and/or may impose a financial penalty (of up to 10 per cent of turnover) under section 96 of the Act.

Own-initiative against Telecom Billing Services Ltd about unsolicited text messages inducing telephone calls

Ofcom closed this investigation in September 2006 and issued a notification to TBS under section 128 of the Act. As a result of its investigation, Ofcom had reasonable grounds to believe that TBS had persistently misused an electronic communications service thereby causing others to suffer annoyance, inconvenience and/or anxiety.

Specifically, Ofcom had reasonable grounds for believing that TBS used a text messaging service to send misleading and/or unsolicited text messages to consumers. As a result of the receipt of these misleading and/or unsolicited text messages, consumers had been induced into calling the adult chat services provided by TBS for which TBS billed the consumers a minimum of £12.95.

The notification issued to TBS on 29 September 2006 sets out the breaches of section 128 of the Act and the steps that TBS must take, including remedying any consequences arising from its conduct. Ofcom would expect that the steps TBS takes to remedy any consequences arising from its contravention might include, but are not limited to, refunding in full and/or waiving all outstanding charges paid and/or otherwise payable by a customer to whom any misleading text message was sent by TBS, or to whom any unsolicited text message which contained sexually explicit text advertising its adult chat services, or which induced recipients to call sexually explicit chat services, was sent by TBS.

If TBS fails to cease the notified conduct and/or fails to remedy the consequences arising from its contravention of section 128 of the Act by the deadline, Ofcom may issue an enforcement notification under section 129 of the Act. Ofcom will also consider TBS' actions when deciding whether it should impose a penalty on TBS under section 130 of the Act. The maximum penalty that may be imposed under section 130 of the Act is £50,000 per contravention.

Earlier in the investigation Ofcom had imposed penalties totalling £50,000 on TBS following failure by TBS to comply with requirements to provide information to Ofcom. Ofcom had issued two Notices to TBS under section 135 of the Communications Act

2003 requiring the provision of specified information. Ofcom considered that TBS failed to provide all the information required by those Notices.

- 1.1 The one case that was opened and closed as a result of formal intervention during this reporting period was:

Own-initiative investigation into E7even's billing for services and adherence to its Code of Practice for handling complaints

Ofcom issued a notification to E7even on 17 August 2006 under section 94 of the Act. Ofcom will continue to monitor that E7even complies with Ofcom's notification and will take any further enforcement action necessary.

Ofcom's investigation found that there were reasonable grounds for believing that E7even contravened the regulatory rule requiring communications providers to establish and maintain an approved Code of Practice for the handling of complaints (General Condition 14.4), and failing to issue compensation promised to customers.

Ofcom's investigation also found that there were reasonable grounds for believing that E7even contravened the regulatory rule requiring E7even to be a member of an alternative dispute resolution scheme ("ADR scheme") so that customers could benefit from the protection that access to an ADR scheme provides (General Condition 14.7).

Specifically, E7even had failed to comply with the conditions of membership of the Office of the Telecommunications Ombudsman ("Otelo"), including final decisions made by Otelo in relation to complaints about broadband services supplied to its customers.

The section 94 notification issued by Ofcom required E7even to comply with the requirements of General Conditions 14.4 and 14.7, and to remedy fully any consequences arising from its failure to comply with those General Conditions.

Ofcom reserved its position with respect to a further regulatory rule requiring that communications providers not render bills to customers unless the bill accurately reflects the true extent of the services provided (General Condition 11.1) and will consider whether to take action under this General Condition once it has seen whether consumers are able to secure adequate outcomes as a result of this notification.

Given that E7even is now required to comply with regulatory rules and to remedy any consequences of its failure to comply, Ofcom would expect that the steps E7even takes may include, but are not limited to:

- complying with all relevant rules of membership of Otelo for its period of membership, including payment of case fees and complying with past and present decisions, including payment of compensation to consumers and small business customers;
- joining a Dispute Resolution Scheme, either Otelo or CISAS, to ensure that consumers have access to a body that can resolve their individual complaints regarding E7even; and
- ensuring that it complies with an approved code of practice for handling complaints.

If E7even does not comply, Ofcom will consider whether further enforcement action, including a fine, is appropriate.

Ofcom considers that the investigation of outstanding individual complaints by an ADR scheme such as Otelo, combined with the requirement that E7even comply with previous Otelo decisions regarding the payment of compensation to affected E7even customers, is the action most likely to secure redress for E7even's former customers in this case.

Communications Act investigations - outcome in terms of parties affected

Number of investigations	01/10/05 to 31/03/06	01/04/06 to 30/09/06
Resolved in favour of complainant	4	1
Resolved in favour of company subject to complaint	1	2
Not applicable	1	1
Ongoing as at 30/09/06	1	6

Communications Act investigations – performance against targets

Number of investigations	01/10/05 to 31/03/06	01/04/06 to 30/09/06
Total opened	7	10
Completed within deadline	5 (83%)	4 (100%)
Missed deadline	1(17%)	0
Ongoing as at 30/09/06	1	6

Competition Act investigations

- 3.17 Competition Act cases are the biggest and amongst the most important and contentious investigations Ofcom undertakes. Ofcom is committed to using the Competition Act where appropriate. On each occasion before using its powers under the Communications Act for competition purposes, Ofcom will consider whether a more appropriate way of proceeding would be under the Competition Act and will proceed under the Competition Act if it is more appropriate to do so.
- 3.18 The Competition Act was amended as of 1 May 2004 in order to implement EC Regulation 1/2003 (the "Modernisation Regulation") into UK law. Since then Ofcom has had the power under the Act to apply Article 81 and Article 82 of the EC Treaty in full, in addition to the Chapter I and Chapter II prohibitions of the Competition Act.

3.19 No Competition Act investigations were opened during the reporting period. Three Competition Act investigations opened prior to the reporting period are ongoing and relate to:

- **Complaint from Freeserve (now Orange Home) about BT's residential broadband pricing**

Ofcom is investigating whether BT has abused a dominant position in relation to its residential broadband pricing policies contrary to the Chapter II prohibition and Article 82. In particular, Ofcom is assessing whether BT has operated a margin squeeze through the pricing of its residential broadband services from June 2002.

- **Complaint from Energis Communications Ltd about BT's charges for NTS call termination**

This investigation is considering whether BT's charges for termination of certain types of NTS calls, effective from 1 May 2004, constitute an abuse of a dominant position.

- **Complaint from Independent Media Support Limited against BBC Broadcast about provision of media access services**

IMS's complaint relates to an agreement between BBCB to provide media access services to Channel 4. IMS alleges that:

- it is in breach of Chapter I of the Act because it prevents, restricts or distorts competition;
- it is in breach of Chapter II of the Act because it confers long-term exclusivity and has the potential to foreclose the market which amounts to an abuse of a dominant position; and
- the price prevailing under the contract is predatory.

The investigation is considering the allegations made and will consider whether or not BBCB has infringed Chapter I and/or Chapter II and/or Article 81 and/or Article 82.

3.20 Ofcom closed one Competition Act case during the reporting period that was opened in a prior period. This related to a complaint against BT about the pricing of cordless fixed-line telephones.

Ofcom concluded that BT Group plc has not infringed section 18 (the Chapter II prohibition) of the Competition Act 1998 or Article 82 of the EC Treaty (Article 82) in relation to the pricing of its digital cordless telephones.

Ofcom's decision was made following an investigation which was opened on 26 April 2005 following the submission of a complaint on 29 March 2005. The complaint alleged that BT was dominant in the supply of cordless telephones in the UK and that BT had abused its dominant position by predatory pricing behaviour in its supply of digital cordless telephones. The complaint was submitted by Herbert Smith on behalf of Binatone Telecom plc and a co-complainant who wishes to remain anonymous.

Ofcom issued draft non-infringement decisions to the parties in respect of this matter on 20 October 2005 (first draft decision) and 9 May 2006 (second draft decision). Ofcom considered the comments that were made to it in response to those drafts.

During its investigation, Ofcom considered the available evidence and concluded that the relevant market is for the wholesale distribution of all consumer fixed-line telephone equipment in the UK and that BT is not dominant in the relevant market. Consequently, BT's conduct is not caught by the Chapter II prohibition or the prohibition in Article 82 and, therefore, there are no grounds for action.

In the course of the investigation, Ofcom also considered evidence from BT in relation to its pricing to assess whether, in the event that Ofcom had found BT to be dominant in that market, its conduct could have been considered to be predatory pricing prohibited by Chapter II and Article 82. Ofcom concluded that even if Ofcom had found BT to have been dominant in that market, it would have then gone on to find that BT was not abusing its dominant position by engaging in predatory pricing. This reinforced Ofcom's conclusions on dominance since part of the basis of the complainants' submissions in relation to BT's alleged dominance was that BT's adoption of a predatory strategy had raised barriers to entry.

Competition Act investigations – performance against targets

Number of investigations	01/10/05 to 31/03/06	01/04/06 to 30/09/06
Total launched	0	0
Completed within deadline	N/A	N/A
Missed deadline	N/A	N/A
Ongoing as at 30/09/06	N/A	N/A

Other investigations by type

- 3.21 No investigations were opened during the reporting period under the Enterprise Act 2002 or the Unfair Terms in Consumer Contract Regulations 1999. Ofcom is one of a number of qualified bodies under the Unfair Terms in Consumer Contracts Regulations 1999. Unfair Contract Terms cases are generally referred from the OFT, where Ofcom is better placed to deal with the issue, or may be made to Ofcom directly.

Number of investigations	01/10/05 to 31/03/06	01/04/06 to 30/09/06
Total opened	2	0
Unfair terms in consumer contracts	2	0
Enterprise Act	0	0
Ongoing as at 30/09/06	0	N/A

Other complaints by outcome

- 3.22 The two investigations opened in the previous period under the Unfair Terms in Consumer Contracts Regulations are now closed. In relation to all but one issue

raised by Ofcom under the Regulations, the companies under investigation amended its contracts to the satisfaction of Ofcom. In relation to one further issue concerning the font size of the terms and conditions of 3, Ofcom reserved its position. Ofcom will revisit this issue in the event that any evidence arises of potential or actual unfairness to the detriment of consumers.

Other investigations – performance against targets

Number of investigations	01/10/05 to 31/03/06	01/04/06 to 30/09/06
Total opened	2	0
Completed within deadline	2 (100%)	N/A
Missed deadline	0 (0%)	N/A
Ongoing as at 30/09/06	0	0

Summary of investigation and dispute resolution outcomes

3.23 Taking all types of complaint investigation and disputes together, the following picture emerges.

Number of cases	01/10/05 to 31/03/06	01/04/06 to 30/09/06
Total opened	15	12
Dispute determinations	4	0
Communications Act notifications	4	1
Communications Act – no breach	1	2
Competition Act 'no grounds for action' decisions	0	0
Competition Act Administrative priority decisions	0	0
Withdrawn/stopped	1	1
Closed for other reasons (i.e. company altered behaviour)	2	0
Other	0	0
Ongoing as at 30/09/06	3	8

3.24 Relative to the 129 matters brought to Ofcom between 1 April and 30 September 2006 (including issues identified at Ofcom's own-initiative), there have been relatively few complaint investigations and disputes opened (only 10 with an additional two opened for which the matter was referred to Ofcom prior to 1 April 2006)

Summary of investigation and dispute resolution performance

Number of cases	01/10/05 to 31/03/06	01/04/06 to 30/09/06
Total opened	15	12
Completed within deadline	11 (92%)	4 (100%)
Missed deadline	1 (8%)	0 (0%)
Ongoing as at 30/09/06	3	8

3.25 Overall, between 29 December 2003 when Ofcom assumed its powers and 30 September 2006, Ofcom opened 102 investigations within the Investigation Programme. As at 30 September 2006, 87 of these investigations had been closed with 15 ongoing. Of the closed cases, 80 (92%) were completed within Ofcom's

target for completion but the target was exceeded in seven cases. Previous reports have commented on the reasons for targets being missed for the four cases closed during those periods. Three cases closed during the current period exceeded Ofcom targets. These were:

- **Complaint against BT about the pricing of cordless fixed-line telephones**
This investigation exceeded the 6 months internal deadline for a no grounds for action Competition Act 1998 decision to allow the parties to comment on two draft decisions before issuing a final decision.
- **Dispute between ntl, Kingston Communications, T-Mobile, Vodafone and BT about BT's charge for its Text Direct Service**
On 22 February 2005 BT notified the industry, via Network Charge Change Notice ("NCCN") number 599 that its connection charge for the Text Direct service would increase from 20p to £3.84 per call, effective as of 1 April 2005. This increase was disputed by ntl, Kingston Communications, T-Mobile, and Vodafone, who failed to resolve the matter with BT through commercial negotiation. On 12 July 2005 Ofcom undertook to resolve the dispute by determining whether the level of BT's connection charge for its Text Direct service was consistent with Universal Service Condition 4.3. On 11 November 2005 Ofcom took the view that exceptional circumstances had arisen in the case and the requirement to resolve the dispute in four months, in accordance with section 188(5) of the Communications Act 2003, did not apply. On 12 June 2006 BT issued a further notification to industry, NCCN 713 that stated its connection charge for the Text Direct service would be 36p per call, effective as of 1 April 2005. On 30 June 2006 Ofcom closed the case after ntl, Kingston Communications, T-Mobile, and Vodafone withdrew their dispute with BT.
- **Own-initiative against Telecom Billing Services about suspected persistent network abuse**
This investigation missed the six month target due to the fact that TBS failed to comply with statutory information requests issued to it by Ofcom under section 135 of the Act. As a result of this, the case team had to spend considerable time in pursuing this matter with TBS, including issuing two notifications under section 138 of the Act and a Notice under section 139 of the Act imposing penalties totalling £50,000. TBS' continuing failure to provide the requested information delayed the investigation. A section 128 notification was issued in just over nine months.

3.26 Of the 15 ongoing cases, Ofcom's completion targets have been exceeded in six cases. These are:

- **Freeserve.com plc (now Orange Home) complaint about BT's residential broadband pricing**
Ofcom has yet to reach a final decision in this investigation which involves a detailed analysis of margin squeeze issues and has to date resulted in three statements of objections being issued to BT.
- **Complaint from Energis Communications Ltd about BT's charges for NTS call termination**
Ofcom continues to progress its analysis after receiving additional information that may be relevant to its assessment of Energis's complaint.

- **Complaint from Independent Media Support limited against Red Bee about media access services**
Ofcom will shortly be issuing its draft decision to the parties for consultation.
- **Disputes from The Number and Conduit against BT about charges for DQ information**
See explanation at paragraph 3.13.
- **Thomson Directories complaint about access to data on BT's central directory information database**
This investigation is being conducted in parallel with two disputes referred against BT about charges for directory enquiry information. As recorded at paragraph 3.13, Ofcom announced on 14 March 2006 its view that exceptional circumstances had arisen in these disputes under section 188(5) and that the disputes would not be resolved within four months. Ofcom intends to complete this investigation at the same time as it resolves the two disputes.

Appeals

- 3.27 None of Ofcom's investigation decisions made during the reporting period have been appealed to the Competition Appeals Tribunal (CAT). However, two appeals were made by BT to the CAT against the extended scope of the two ongoing disputes between BT and The Number and between BT and Conduit about charges for directory enquiry information. These appeals were adjourned until December 2006 following a Case Management Conference held on 27 June 2006.
- 3.28 Ofcom won its appeal in the Court of Appeal of the CAT's judgment in Floe Telecom v Ofcom. The Court of Appeal confirmed in June 2006 that the CAT did not have the power to impose a timetable on Ofcom after setting aside Ofcom's original Competition Act decision and remitting the case back to Ofcom for re-investigation.
- 3.29 On 31 August 2006 the CAT dismissed an appeal from Floe Telecom following the re-investigation of two non-infringement decisions made by Oftel in 2003 relating to the refusal to supply GSM Gateway services that had been remitted back to Ofcom by the CAT¹³. The complaints had been brought against Vodafone by Floe Telecom and T-Mobile by VIP Communications. Following Ofcom's reinvestigations, decisions were issued on 28 June 2005 setting out Ofcom's conclusions that Vodafone and T-Mobile had not infringed the Chapter II prohibition of the Competition Act 1998 or Article 82 of the EC Treaty. The VIP appeal will now continue with a hearing set down for 13 and 14 December 2006.
- 3.30 In addition, there is one further ongoing appeal of an Oftel decision before the CAT. This relates to BT's residential broadband pricing. Oftel's reassessment of certain pricing issues raised by Freeserve (now Orange Home) in a letter of 26 March 2002 was concluded by way of a non-infringement decision on 20 November 2003. Wanadoo appealed this decision. The CAT has postponed this appeal to a date to be fixed.

¹³ This is the same case as referred to in paragraph 3.28.

Cases in compliance

3.31 When an investigation is complete, there may be a need to monitor ongoing compliance. There was one investigation that was both opened and closed during the reporting period which required ongoing monitoring of compliance. This was:

- **Own-initiative investigation against E7even about breaches of consumer protection obligations**

During this investigation Ofcom concluded that there were reasonable grounds for believing that E7even had not met its regulatory requirements to deal efficiently with complaints or to provide access to an ADR scheme for its customers. Ofcom therefore issued a section 94 notification to E7even on 17 August 2006 requiring the company to remedy the consequences of its actions, including access to ADR to all former customers, in order to provide redress to those customers who had outstanding complaints against E7even. If E7even does not comply, Ofcom will consider whether further enforcement action, including a fine, is appropriate.

3.32 A further three investigations that Ofcom closed during the reporting period but which had been opened prior to 1 April 2006 were subject to compliance monitoring. They were:

- **Own-initiative investigation against Telecom Billing Services Limited about unsolicited text messages inducing telephone calls**

Ofcom issued a section 128 notification to TBS on 29 September 2006. The notification required that TBS cease the notified conduct and remedy the consequences of its contraventions. TBS was given until 3 November 2006 to carry out these actions and to make representations to Ofcom in response to the notification.

TBS made no representations about the notification. Ofcom is in the process of monitoring whether TBS has complied with the section 128 notification by taking all appropriate steps to cease the notified contravention and to remedy the consequences of that contravention. Should Ofcom conclude that TBS has failed to take all such appropriate steps, Ofcom will consider whether it is appropriate to issue an enforcement notification under section 129 of the Act. Ofcom will also consider TBS' actions when deciding whether it should impose a penalty on TBS under section 130 of the Act. The maximum penalty that may be imposed under section 130 of the Act is £50,000 per contravention.

- **Own-initiative investigation against Platinum about breaches of consumer protection obligations**

On 12 September 2006 Ofcom issued a section 94 notification requiring Platinum Telecom to comply with its code of practice for sales and marketing and remedy the consequences of that contravention. Platinum Telecom was given until 16 October 2006 to:

(i) Put procedures in place to ensure that copies of its code are available free of charge in various formats on request, including via its website www.platinumtelecom.com (page 1 of the Code);

(ii) Ensure its representatives respect a person's wishes if the person has registered with any relevant preference service, including the Mailing Preference Service, the Telephone Preference Service, the Fax Preference Service and the E-Mail Preference Service (page 1 of the Code);

(iii) Ensure that on making contact, representatives state clearly that they represent Platinum Telecom and offer only factual and accurate information about Platinum Telecom's services and contracts. Additionally, Platinum Telecom must not misrepresent its services or those of other companies (pages 2 to 3 of the Code); and

(iv) Ensure that customers entering into a contract fully understand the terms, in particular the length of the contract and the level of the termination fee for terminating the contract within the term (page 3 of the Code).

Platinum Telecom was also given until 16 October to remedy the consequences and make representations to Ofcom. Platinum Telecom has set out the steps it has taken to remedy the consequences of the breach. Ofcom is continuing to monitor complaints against Platinum Telecom.

- **Own-initiative investigation against 1RT about potential misuse of personal numbers**

On 18 August 2006 Ofcom issued notifications to 1RT under sections 94 and 128 of the Act. Ofcom concluded that there were reasonable grounds for believing that 1RT was in contravention of section 128 of the Act in that it had:

1. sent fax messages containing marketing material to telephone numbers registered with the Facsimile Preference Service ('FPS') without the explicit consent of the users of those telephone numbers; and
2. set and/or operated the equipment that it used to receive inbound fax messages so as to prolong the length of fax-back calls unnecessarily.

Ofcom further concluded that there were reasonable grounds for believing that 1RT was in contravention of General Condition 17 in that it had acted as both end user and range holder of certain 070 numbers allocated to it, in contravention of the revised Personal Numbering guidance.

The notifications required 1RT to comply with the requirements of General Condition 17 and to secure that its misuse of electronic communications networks and services contrary to section 128 of the Act was ceased (and was not repeated) by 22 September 2006. The notifications additionally required 1RT to remedy any consequences of its breaches by 22 September 2006.

Ofcom is in the process of considering representations received from 1RT in relation to the notifications and is monitoring the actions of 1RT in order to assess whether 1RT is complying with the requirements of the notifications

3.62 Four further cases closed prior to 1 April 2006 were subject to ongoing monitoring during the reporting period. These were:

- **Own-initiative investigation into Inclarity's possible misuse of Personal Numbers**

Ofcom considered whether Inclarity's use of 070 numbers to provide telephony services to northern Iraq was in accordance with General Condition 17 of the General Conditions of Entitlement.

Ofcom was concerned that the service offered by Inclarity was not in accordance with appropriate use of 070 numbers as set out in revised Personal Numbering

guidance issued by Ofcom on 24 January 2004.

Inclarity made some changes to the way its service worked, and set out its intention to make further changes which Ofcom considered would ensure that Inclarity's use of 070 numbers was consistent with the revised guidance and complied with GC17.

Ofcom has required Inclarity to provide quarterly reports on progress against the intended changes up to and including when the work is complete.

- **Own-initiative investigation into Just Telecomms UK Ltd (JTUK) trading as Lo-Rate Telecom regarding allegations of misconduct in selling and marketing of telecommunications services**

In August 2005 Ofcom launched an investigation following complaints from small business customers of JTUK. The evidence gathered in the course of the investigation appeared to show that JTUK had engaged, and was engaging, in conduct which included:

- misleading potential customers into believing that JTUK was part of, or otherwise affiliated with, British Telecommunications plc (BT);
- demanding early termination charges of up to £395 + VAT per line when customers realised they had been misled and sought to cancel the transfer of their phone lines to JTUK or to revert to their original service provider; and
- disconnecting or threatening to disconnect services if those termination charges were not paid.

On 14 March 2006 Ofcom therefore notified JTUK, under section 94 of the Act, that Ofcom had reasonable grounds for believing that JTUK was contravening, and had contravened, General Conditions 13.1 and 14.3 of the General Conditions of Entitlement. Under the terms of that notification, JTUK was required to take action itself to: (a) bring any such contraventions to an end; (b) remedy the consequences of any such contraventions; and (c) make any representations to Ofcom that it wished to make in response to the notification. The opportunity period specified for taking actions (b) and (c) was one month.

Following issue of the section 94 notification Ofcom reviewed the available evidence and the representations made by JTUK. Ofcom was satisfied that JTUK had been in contravention of GC14.3 and, furthermore, had failed to take all appropriate steps to remedy the consequences of that contravention. On 23 June 2006 Ofcom therefore served an enforcement notification on JTUK under section 95 of the Act setting out the steps which JTUK was required to take without delay to remedy the consequences of its contravention. In addition, Ofcom also decided to impose a penalty on JTUK under section 96 of the Act. Ofcom regarded the circumstances of JTUK's contravention as being so serious that the maximum level of penalty was appropriate: 10% of JTUK's relevant turnover.

The steps which the enforcement notification required JTUK to take included:

- refunding termination charges to customers who were mis-sold to;
- providing weekly reports to Ofcom on customers contacted and refunds paid; and
- fully co-operating with, and complying with the adjudications of, the Telecommunications Ombudsman scheme (Otelco).

Ofcom is actively monitoring JTUK's compliance with the enforcement notification and will take further action if appropriate.

- **Investigation into Universal Telecom Limited regarding allegations of misconduct in selling and marketing of telecommunications services**
In September 2005 Ofcom opened an investigation following complaints from small businesses about fixed-line telecoms mis-selling by Universal Telecom Limited. Evidence gathered as part of Ofcom's investigation suggested that Universal Telecom had failed to comply with the requirement under General Condition 14.3 ("GC14.3") (a) to establish and maintain a Code of Practice for Sales and Marketing that complied with the guidelines.

Ofcom therefore issued a section 94 notification to Universal Telecom on 2 November 2005 setting out its failure to comply with GC14.3 and gave Universal Telecom until 5 December 2005 to comply with GC14.3.

Following the notification, Universal Telecom revised its Sales and Marketing Code of Practice. Ofcom considered Universal Telecom's revised Sales and Marketing Code of Practice, and did not take any further enforcement action under GC14.3 at that time.

However, Universal Telecom is required under GC14.3 (b) to comply with the provisions of its Sales and Marketing Code of Practice. Ofcom continues to monitor Universal Telecom's compliance with its Sales and Marketing Code of Practice. Where evidence suggests that Universal Telecom is not complying with the requirements of its Code of Practice, Ofcom may open a separate investigation under GC14.3.

- **BT complaint about an alleged breach of General Condition 18 by Spacotel**
BT received a request from a customer who wanted to import non-geographic numbers from Spacotel to BT. BT complained to Ofcom that Spacotel had failed to comply with its obligation under General Condition 18 to complete the arrangements for non-geographic number portability between Spacotel and BT, or to commit to firm timescales for doing so.

Ofcom concluded that Spacotel had contravened and was contravening General Condition 18.1 ("GC18.1") and General Condition 18.2 ("GC18.2"). Ofcom therefore issued a section 94 notification to Spacotel, setting out the contravention and requiring Spacotel to comply with GC18.1 and GC18.2 as soon as reasonably practicable after 28 February 2006 (as determined in accordance with agreed industry guidance).

3.63 Four cases that had been subject to monitoring were closed during the reporting period. They were:

- Own-initiative investigation against BT Wholesale about PPC trunk charges;
- Industry wide programme of enforcement of the requirement to implement and comply with a Dispute Resolution Scheme;
- Own initiative investigation into possible persistent misuse of networks or services and possible misuse of 070 personal numbers by TelXL; and
- Own-initiative investigation against Patientline Limited about misuse of personal numbers.