

MINUTES OF THE JOINT REGULATORS' GROUP (JRG) MEETING

27 March 2008

Present:

Harry Bush (JRG Chair / CAA)
Bill Emery (ORR)
Iain Osborne (NIAUR)
Fran Gillon (Postcomm)
Grahame Horgan (OFT)
Sarah Harrison (Ofgem)
Peter Culham (Ofcom)
Nick Fincham (CAA – item 3)
Kevin Hoskin (JRG Secretary / CAA)

Apologies

Chris Bolt (PPP Arbiter)
Regina Finn (Ofwat)
Alistair Buchanan (Ofgem)
Philip Rutnam (Ofcom)
Sarah Chambers (Postcomm)

Item 1: Welcome and introductions

1. Harry Bush welcomed attendees.

Item 2: Minutes of the previous meeting

2. The minutes of the December 2007 meeting were agreed.

Item 3: The interface between Government and economic regulation

3. Nick Fincham provided a brief presentation on recent interactions between Government and the economic regulators. It was noted that the commitment to independent economic regulation in the UK was much stronger than in most other European states. JRG observed that there were a number of independent reviews of regulators either on going or recently completed. It was agreed that it would be useful to discuss any lessons learnt from these reviews at a future meeting of the Group.

Item 4: JRG forward work programme (including possible seminar on efficiency)

4. JRG discussed the need to develop a more structured approach to its forward work plan. It was agreed that individual member organisations should be allocated responsibility for coordinating work on some key topics, leading to a report back to the Group. Harry Bush will write to JRG members outlining the proposed work programme for 2008.
5. JRG discussed a proposal from ORR for a seminar on the various approaches to assessing efficiency in regulatory reviews. Under the proposal Indepen would be commissioned to organise the seminar, which would include input from consultants and academics. Harry Bush suggested that

there should be more emphasis on staff from individual regulators providing more inputs to the programme. A number of JRG members supported a stripped down version of the proposal, with a view to minimising costs.

Action – Harry Bush to write to JRG members outlining the proposed work programme.

Action – Bill Emery to request a revised proposal from Indepen, to be circulated to JRG members.

Item 5: Reviews of economic regulation

6. JRG discussed the on-going House of Lords review of economic regulators. Harry Bush reported that Sarah Chambers had written to the clerk of the committee regarding the arrangements for the JRG. It was noted that there was due to be a debate in the House of Lords on 3 April.
7. JRG discussed the proposed NCC review of economic regulators. The NCC had written out to those regulators that it had included within the scope of its review. Fran Gillon indicated that Postcomm had responded, requesting that it be omitted from the scope. At this stage it was unclear what the terms of reference for the review would be. It was agreed that the NCC should be invited to a future meeting of the Group to discuss the project.

Action – Kevin Hoskin to invite NCC to present at a future JRG meeting.

Item 6: Governance of Britain Green Paper: Parliamentary scrutiny of public appointments

8. JRG discussed the proposals for parliamentary scrutiny of public appointments. Harry Bush reported that the Transport Select Committee had recommended that the roles of Chairman of the ORR and the CAA should be added to the list of appointments covered by the proposal. Sarah Harrison noted that the recently published White Paper referred to “pre-appointment” scrutiny, rather than “pre-commencement” scrutiny, as in previous publications. Bill Emery noted that it was unclear why the role of Chairman should be identified for special scrutiny given the board structure under which regulators now operate.

Item 7: Tour de table

ORR

9. Bill Emery reported that ORR had undertaken an investigation into Network Rail’s failure to complete new-year engineering works on time. This had resulted in the issuance of a record £14m fine.
10. Mr Emery reported that ORR had published its final Periodic Review framework document on 14 February. It was expecting to receive Network Rail’s business plan shortly. The draft determination would be issued in June. One of the key issues would be the potential for efficiency savings, on which ORR was likely to draw on international benchmarks.
11. Mr Emery also noted that ORR would be consulting on its five-year corporate strategy (rather than the three year planning horizon that it had previously operated to). This was intended to align its own corporate strategy with the regulatory period.

CAA

12. Harry Bush reported that the Government had concluded that Manchester Airport should be de-designated, and as such would no longer be subject to price controls from the CAA. It had, however, determined that, contrary to the advice of the CAA, Stansted Airport should remain regulated. As a result, CAA had initiated the price control review process, and would be referring the airport to the CC by the end of April.
13. Mr Bush reported that the CAA had published its final decisions on the Heathrow and Gatwick price control reviews, leading to significant price increases, reflecting high levels of investments and increases in security costs. The determinations have been heavily criticised by stakeholders and may be subject to Judicial Review.
14. Mr Bush also reported that the CAA was engaging with the CC as part of its on-going market enquiry. This is reviewing the airport markets in the South-East and Scotland. The CC is expected to publish its emerging thinking in April.

NIAUR

15. Iain Osborne reported that an all-Ireland electricity market had been introduced in November.
16. Mr Osborne reported that NIAUR had issued a consultation on an interim determination of the Phoenix Gas price control.
17. Mr Osborne reported that NIAUR was developing a five-year corporate strategy. Until now, it had been operating to one-year annual work programmes.
18. Finally, Mr Osborne reported that NIAUR was currently engaged in a Judicial Review relating to the procedure for renegotiating the legacy supply contract of Kilroot power station.

Postcomm

19. Fran Gillon reported that Postcomm had submitted an initial response to the Government's independent review of the postal services sector. This dealt with the impacts of market liberalisation and potential future market developments. It would be submitting a further response, concerning the future of the universal service obligation, in May.
20. Ms Gillon reported that the NAO would be publishing a report on the removal of retail price controls on 28 March. The report would cover developments in the postal, energy and telecommunications sectors.

OFT

21. Grahame Horgan reported that the CC was now in the remedies stage of its groceries market review. The OFT was in dialogue with the CC as it would be responsible for monitoring or enforcing any proposed remedies.

Ofgem

22. Sarah Harrison reported that Ofgem had initiated a major review of the existing RPI-X regulatory structure, known as RPI@20.
23. Ms Harrison reported that Ofgem had launched a retail energy probe prompted by rising customer concerns, recent pricing amendments by major suppliers and a widening gap between various tariffs (e.g. pre-pay and direct

debit). Its initial findings will be published in September. All options are available to Ofgem including a reference to the CC.

24. Ms Harrison also reported Ofgem's decision to find National Grid in breach of the Competition Act (Chapter II) for abuse of dominance in the domestic gas metering market. National Grid is appealing the decision to the CAT.

Ofcom

25. Peter Culham reported that Ofcom had completed its wholesale broadband access market review. It had identified various sub-national markets, the most competitive of which had been de-regulated. It was now undertaking a business connectivity market review.
26. Mr Culham reported that Ofcom had a number of cases currently under review by the CAT. This was becoming an increasingly significant resourcing issue for Ofcom.
27. Mr Culham reported that Ofcom were undertaking some work on consumer and behavioural economics. The work was currently at an early stage, but could form the basis of a discussion at a future JRG meeting.

Kevin Hoskin, Secretary, JRG

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