

## **MINUTES OF THE JOINT REGULATORS' GROUP (JRG) MEETING**

**19 June 2008**

### **Present:**

Harry Bush (JRG Chair / CAA)  
Bill Emery (ORR)  
Maxine Frerk (Ofgem)  
Mick Fews (Postcomm)  
Brian McHugh (NIAUR)  
Philip Rutnam (Ofcom)  
Alan Sutherland (WICS)  
Ali Nikpay (OFT)  
Kevin Hoskin (JRG Secretary / CAA)

### **Apologies**

Regina Finn (Ofwat)  
Alistair Buchanan (Ofgem)  
Sarah Chambers (Postcomm)  
John Fingleton (OFT)  
Iain Osborne (NIAUR)

### **Item 1: Welcome and introductions**

1. Harry Bush welcomed attendees.

### **Item 2: Minutes of the previous meeting**

2. Bill Emery confirmed that the attendees for the seminar on efficiency had been agreed and a suitable date was now being identified. Harry Bush emphasised the need for Indepen to provide a sufficiently stand-alone final report that would be accessible to people who had not attended the session personally.
3. Kevin Hoskin reported that the NCC had been invited to present at a future JRG session. Its preference was to attend the December meeting, when it would be in a position to discuss the initial findings from its review of economic regulators. A number of Group members reported that they had had initial discussions with representatives of the NCC on this issue.
4. The minutes of the March 2008 meeting were agreed.

### **Item 3: Approach to penalties in regulation**

5. Bill Emery introduced the work that ORR had coordinated looking at the application of financial penalties across the regulated sectors. This work had identified a relatively high level of consistency across regulators in terms of the principles adopted, although it did highlight some differences in the methodologies used to calculate the scale of any penalties reflecting, to some extent, difference in the industries concerned.
6. JRG members agreed that it would be useful to extend the initial work conducted by ORR. This work might include consideration of any impacts associated with public or private ownership, the desirability of penalising versus incentivising compliance and the importance of publicity on

behaviours. It was agreed that ORR and Ofgem would collaborate to identify an appropriate terms of reference for this work.

Action – ORR and Ofgem to compile terms of reference for further work

#### **Item 4: Regulation and high leverage**

7. Kevin Hoskin provided a brief presentation outlining the trend for increased leverage amongst regulated companies, and a brief description of recent developments in regulatory financial frameworks. The Group noted that there were differences between the frameworks that have been developed by each regulator, but observed that this was heavily influenced by the specific statutory framework in place, and the underlying economics of the industry in question. Harry Bush observed that it was vitally important that any financial framework was clearly defined and understood by all parties (i.e. direct stakeholders and wider market participants).

#### **Item 5: BRE review of regulatory budgets**

8. JRG discussed the review of regulatory budgets. It was noted that the BRE had accepted that economic regulatory functions should not be included. It was yet to be determined how safety regulation should be treated. Harry Bush noted that CAA would be arguing that this should also be omitted.
9. JRG noted the establishment of a team within BRE with responsibility for policy towards economic regulation. There was limited visibility of the proposed scope and responsibilities of the new team. It was agreed that BRE should be invited to a future session to explain the functions of this team and how it might interact with the economic regulators.

Action – Kevin Hoskin to invite BRE to a future JRG meeting to discuss its role.

#### **Item 7: Tour de table**

##### ORR

10. Bill Emery reported that ORR had issued its draft determination on Network Rail's outputs and revenue requirements for the period 1 April 2009 to 31 March 2014. The final determination is scheduled for the end of October. The draft determination required 21% efficiency savings. Network Rail has complained that this is too tough.

##### Ofgem

11. Maxine Frerk reported that Ofgem's duties and statutory guidance were back on the agenda, with particular focus on social and environmental factors.

##### CAA

12. Harry Bush reported that easyJet had launched Judicial Review proceedings against the CAA's recent decision on the Gatwick Airport price control. No other airlines had challenged either the Heathrow or Gatwick decisions. The Stansted Airport price control review had now been referred to the Competition Commission, which will provide recommendations to the CAA at the end of October. This review is being conducted in parallel with the wider market enquiry.
13. Harry Bush also reported that the DfT had published its call for evidence in respect of its review of economic regulation of airports. He noted that this may have implications for independent regulation in other sectors and encouraged members of the JRG to review it.

NIAUR

14. Brian McHugh reported that NIAUR had won the Judicial Review on the procedure for renegotiating the legacy supply contract of Kilroot power station on all counts.
15. Mr McHugh reported that the mutualisation of Phoenix Gas' transmission assets into a company limited by guarantee structure had now been completed.
16. Mr McHugh also reported that there was currently an active debate in Northern Ireland regarding the possible introduction of 'social tariffs' under which low-income customers would either be cross subsidised by other customers or via a Government fund.

WICS

17. Alan Sutherland reported that the retail customer services market had been opened up to competition on 1 April. There had been a number of market entrants. One of the more successful entrants (in terms of volumes) had subsequently left the market. This had provided a useful test of the framework.
18. Mr Sutherland reported that Scottish Water had submitted its plans for 2010-2014. If adopted, these plans would imply small reductions in customer bills in real terms.

Ofcom

19. Philip Rutnam reported that Ofcom had commenced a review of the pricing framework for BT's Openreach business, which provides wholesale access telecoms services to communications providers.
20. Mr Rutnam reported that there was currently a policy debate in the fixed / mobile networks sector related to the next generation of broadband services. In particular, this is considering whether the existing copper technology will be sufficient to support the upgraded service.
21. Mr Rutnam also reported that Ofcom was facing a series of appeals from mobile network operators.

Postcomm

22. Mick Fewes reported that Postcomm had submitted its second response to the Government's independent review of the postal services sector, this time focusing on the future of the universal service obligation. Mr Fewes noted that Postcomm's decision to outline its views in the media had been controversial with Government. However, he noted that Postcomm's approach was considered necessary in response to an earlier article about the future of the universal service published in the Telegraph.

OFT

23. Ali Nikpay reported on the on-going investigation into personal current account banking charges. The courts have ruled that the fairness of charges can be assessed by the OFT under UTCCRs (Unfair Terms in Consumer Contracts Regulations 1999). Following this judgement, the case continues.
24. Mr Nikpay also reported that the anticipated Competition White Paper had been delayed. He explained that the principle objective of the White Paper would be to streamline the process for private actions by consumers and small businesses.

25. Mr Nikpay also noted that he NAO had launched a review of the OFT. This was a follow-up to its 2006 review and was expected to report in the autumn.

Kevin Hoskin, Secretary, JRG

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