

MINUTES OF THE JOINT REGULATORS' GROUP (JRG) MEETING

4 December 2008

Present:

Harry Bush (JRG Chair / CAA)
Bill Emery (ORR)
Steve Smith (Ofgem)
Tim Brown (Postcomm)
Iain Osborne (NIAUR)
Regina Finn (Ofwat)
Philip Rutnam (Ofcom)
Grahame Horgan (OFT)
Michael Williams (Better Regulation Executive) for agenda item 3
Ian Anthony (Better Regulation Executive) for agenda item 3
Rod Gander (JRG Secretary / CAA)

Apologies

Alistair Buchanan (Ofgem)

Item 1: Welcome and introductions

1. Harry Bush welcomed attendees.

Item 2: Minutes of the previous meeting

2. Grahame Horgan reported that Steven Preece would report back to the next meeting of the Concurrency Working Party on progress towards establishing new CWP sub-groups.
3. Regina Finn and Bill Emery suggested slight changes to the draft minutes. Subject to these amendments, the minutes of the September 2008 meeting were agreed.

Item 3: Better Regulation Executive presentation on new structure and interactions with economic regulators

4. Michael Williams said that the idea for BRE to be a central point in Government to deal with economic regulatory policy was in response to the House of Lords report on economic regulation. He said that three people from BRE were involved, and that they were currently open to ideas of whether BRE involvement was necessary and, if so, what role could it play. Mr Williams said his team had been meeting regulators and sponsoring departments. Emerging themes included whether co-ordination was required across Government or across regulators, the role of Government, the objectives and duties of regulators, whether regulators had the tools to do the job, and whether a long-term strategic vision was required. He said that he was due to report to Lord Carter by Christmas on areas to focus on in 2009.
5. Mr Williams asked those present for their views on whether there was a role for the BRE in economic regulation. Harry Bush asked whether there could be a role in communicating within Government, as understanding of independent economic regulation varied across departments. Regina Finn commented that communicating with Government was a major part of regulators' work and wondered whether BRE involvement would add value.

Steve Smith added that regulators also had to deal with new agencies, and that there was a need to clarify the roles of the regulator, Government relative to regulators and other agencies. Philip Rutnam suggested that if work was to be done it might be more useful to focus on more fundamental issues than to look ad hoc at a disparate series of topics. For example, it might be useful to consider systematically what independent economic regulation had achieved over time, identifying its strengths and weaknesses. It could also be helpful to take an international perspective: was the UK achieving best practice internationally, both in economic regulation per se and in the relationship between government and regulators. The meeting discussed whether there was a need to articulate a strategy of competitive provision of infrastructure as opposed to central planning.

Item 4: RPI-X@20 Project

6. Steve Smith provided a presentation on Ofgem's RPI-X@20 project which was reviewing the current approach to network regulation, and considering whether it remained fit for purpose, including to meet the challenge of moving to a low carbon economy. He said that Ofgem had attempted to envisage what infrastructure might be required in 20 years time, and had produced several vastly different scenarios reflecting the current uncertainties. Mr Smith added that Ofgem was concerned that the RPI-X process had become too complex making it difficult for stakeholders to engage in it.
7. JRG members discussed what issues could usefully be considered in the review. It was agreed that there were issues around whether RPI-X provided the right incentives for long-term investment. Among the issues raised were: the role of Government planning, how new technologies could be incentivised, and the treatment of efficient but stranded investment. Harry Bush suggested that a workshop could be held with JRG when the key emerging issues had been identified.

Item 5: Funding infrastructure investment - Ireland's National Development Plan

8. Iain Osborne provided a presentation on Ireland's National Development Plan. He said that in Ireland there was a single approach to assessing investment across different sectors and a commonality of purpose between parties. Mr Osborne wondered whether Ireland was spending more per capita than the UK, whether it was catching up with or exceeding infrastructure provision in the UK, and whether there was a role for economic regulators.
9. JRG members thought that Ireland's experience might reflect its small size. They identified that there were questions of how to achieve investment in areas where there were no proper price signals. Members thought there might be a role for discussions with Government on public policy issues, as at present the Government's approach was ad hoc.

Item 6: Efficiency seminar report and follow up

10. Bill Emery reported that feedback on the efficiency seminar had been positive. He noted that different regulators used different approaches, and that Indepen and the academic speakers had provided useful insights. Harry Bush noted that regulators were using more complex methodologies to assess possible efficiencies, but that the answers were usually similar whatever the approach used. JRG members recognised this but were

concerned that unless they used more sophisticated methodologies, they were at risk of being legally challenged by regulated companies arguing that the regulators had not followed best practice.

Item 7: JRG future work programme

11. Philip Rutnam asked whether JRG had the right structure or whether it should have a permanent secretariat. He also asked whether it had the correct membership. JRG members thought that a permanent secretariat would be unnecessarily bureaucratic, and that it would be better to remain as a co-operative grouping which could identify areas of work which could be carried out by a small group or by consultants. JRG members thought that there were some other regulators which might add value to JRG and could benefit from membership. Members agreed that JRG might ask Monitor (the independent regulator of NHS Foundation Trusts) and the Tenants Services Authority whether they were interested in attending meetings, at least for a period to see whether this was mutually beneficial. Members also suggested that the Financial Services Authority might be invited to attend in the context of a wider discussion of contingency planning and risk management. Mr Rutnam said that he would send members a draft letter including a list of topics for the 2009 meetings.

Item 8: Tour de Table

Ofwat

12. Regina Finn reported that Ofwat would be publishing its draft capex incentive scheme baseline on 19 December. She also reported that Defra had said it would be updating procedures for special administration for the water sector. A Water Bill had not been in the Queen's Speech but was still expected though the timescale was uncertain.

Ofgem

13. Steve Smith reported that Ofgem had published a document on how it would deal with a network company in financial distress, and was planning an exercise of how its special administration procedures would work. He also reported that the Energy Bill which changed Ofgem's statutory duties had received Royal Assent. Mr Smith added that Ofgem had published its initial findings from its investigation into the markets for gas and electricity for households and small businesses.

OFT

14. Grahame Horgan reported that it had published its Annual Plan for consultation. The Plan was structured around key themes for working in a period of economic downturn.

ORR

15. Bill Emery reported that ORR had published its determination for Network Rail for 2009-14. He also reported that ORR had published its corporate strategy for the next five years.

Ofcom

16. Philip Rutnam gave an update on progress with a major review of price controls under way for BT's Openreach process.

Postcomm

17. Tim Brown reported that Postcomm was still awaiting the final report of the Hooper review of the postal services sector. He also said that Postcomm had delayed the publication of its initial consultation document for Royal Mail's price control until 9 January 2009.

NIAUR

18. Iain Osborne reported that the Department of Enterprise, Trade and Investment had published a scoping paper for its 2009 strategic energy framework. He added that NIAUR was consulting on its five year corporate strategy. Mr Osborne said that NIAUR had published a consultation paper on the price control on Firmus Energy.

CAA

19. Harry Bush said that the CAA would be publishing its proposals for the Stansted Airport price control on 9 December. He added that the Competition Commission's final remedies proposals for the market review of BAA airports would be published for consultation in December. Mr Bush said that the final report of the Department for Transport's review of the economic regulation of airports was due in February 2009.

AOB

20. Philip Rutnam said that the next meeting would be held on 12 March 2009

Rod Gander, Secretary, JRG

December 2008