

Minutes of the Joint Regulators' Group (JRG) meeting

Wednesday 9 December 2009 at 10 am at Ofcom

Present:

Peter Culham, JRG Chair/Ofcom
David Edwards, Ofcom Secretariat
Cavendish Elithorn, OFT
Bill Emery, ORR
Nick Fincham, CAA
Sarah Harrison, Ofgem
Hannah Cook, Ofgem (item 2)
Peter Marsh, TSA
Keith Mason, Ofwat
Hannah Nixon, Ofgem (item 2)

Apologies:

Chris Bolt, PPP Arbiter
Sonia Brown, Monitor
Tim Brown, PSC
Iain Osborne, NIAUR
Chris Bolt, PPP Arbiter

1. Minutes of previous meeting

Minutes of the meeting of 16 September 2009 were agreed. As a matter arising, Peter Culham reminded JRG members that it had been agreed that Sarah Chambers, Director, Consumer and Competition Policy at BIS, would attend meetings as an observer from time to time.

2. RPI-X@20 – presentation by Hannah Nixon

Hannah Nixon presented a set of slides to explain emerging thinking on Ofgem's comprehensive review of its RPI-X framework, used for the past 20 years to regulate electricity and gas transmission. Ofgem expected to publish a consultation in January 2010; gain Board approval in the Summer; and publish recommendations in the Autumn. The review was being undertaken in a context of unprecedented uncertainties for networks and investment in the sector, including: economic turmoil; domestic and EU policy developments; and uncertainty as to what needs to be done to deliver a sustainable energy sector at value for money.

The review was not about fixing a broken regulatory regime but to ensure it was fit for purpose to deliver given the particular challenges facing the energy networks. It would assess the merits of a modified ex ante framework; an ex post framework and other measures to enhance competition. None of these were mutually exclusive and the final mix could include a longer term definition of efficiency and extension of the current 5-year regulatory time horizon. It was envisaged that the regulatory asset base would remain important for investment decisions. Ofgem sought to encourage firms to think hard about their business planning, to be output focussed and to act on more

commercial lines. Their reward could be lighter regulatory scrutiny. Ofgem was also looking at ways to enhance the role of consumers in energy regulation, including potentially by extending to them the right to challenge price control decisions. Ofgem had published a number of working papers.

It was agreed that Ofgem would provide an update on RPI-X@20 to the JRG in the Summer of 2010.

3. Regulators' role in promoting infrastructure investment

Peter Culham explained that the Digital Economy Bill proposed a new primary duty for Ofcom to promote appropriate levels of investment in electronic communications networks. The Bill also proposed a duty to report on the state of communications infrastructure. The proposals had arisen from the Government's Digital Britain project and it was possible that similar duties could be given to other regulators.

Some already had duties. The CAA currently had four duties for the purposes of economic regulation of airports, one of which was to encourage investment in time to satisfy anticipated demand, although the Government was expected to make an announcement the next day to replace those four duties with a single primary duty and five subordinate duties. It remained to be seen, however, whether these changes would make it to the statute book. The TSA was required to fulfil ten objectives in its regulation of social housing, none of which were given precedence but included some overlapping infrastructure investment duties. Ofwat had an investment duty related to return on capital.

There was brief discussion of the helpfulness of infrastructure investment duties and a range of views. Such a duty could be little different from trying to replicate the conditions in a competitive market. It could augment a regulator's powers or make no real difference to decision making. And if it sat as one amongst other primary duties it could raise difficulties in balancing priorities.

4. JRG in 2010

Hosting and chairing arrangements for the JRG rotated on an annual basis. Keith Mason agreed to consider hosting the JRG in 2010, making use of Ofwat facilities at the OFT. There was brief discussion of forward agenda planning and agreement that issues of genuine cross-cutting interest were of most value. JRG members would bear this mind when suggesting agenda items.

5. Any other business

There was no other business. Date of the next meeting TBC.