

## Statement by CAA, Water Industry Commissioner for Scotland, Oftel, Ofgem, Ofwat, ORR, Ofreg NI and Postcomm

### Introduction

For some years, a number of utilities regulators have met regularly to discuss issues which they share, and since 1999 have reported annually on this work. This is therefore the third joint statement by the regulators on their joint work. This year those involved has been widened by the inclusion of the Postal Services Commission and the Office of Fair Trading – the latter an explicit recognition of the increasing interplay between sectoral regulation and general competition policy.

### Why joint working?

2. There are a number of issues which are common to many regulators. These range from policy issues, such as the most appropriate means of assessing the state of transition from monopoly to competitive markets or the form and process for establishing price controls; to process questions, such as how best to consult those affected by regulatory proposals; to questions of corporate governance; to issues of practical organisation, where all regulators have a shared interest in how best to attract and retain, within the constraints of the public sector, skilled and professional staff. It is therefore highly desirable that the regulatory organisations should pool their knowledge and experience of issues which are experienced by all or many of them. That is the purpose of our joint working.

3. It is also important to recognise what differentiates, as well as what is similar between, regulatory organisations. There are important differences in the statutory duties and powers which define the responsibilities and are the basis for each regulator's legitimacy. The corporate structure of regulatory organisations differ. The industries in relation to which they have powers and responsibilities differ widely – in terms, for example, of the speed of technological change, the scale of new investment required, and the present state of and future prospect for competition. It is important to recognise these differences, and that

they both require and justify different approaches. Each regulatory organisation reflects these changes in how it works. The purpose of our joint working is not to aim at a single approach, but rather to develop approaches which are consistent and transparent about both similarities and differences between sectors.

#### Meetings of the regulators

4. The regulators – those individuals given legal duties as regulators or the chairman in the regulatory body so empowered – meet five times annually in the different regulatory offices. In addition, there are various working parties drawn from those regulatory organisations with particular interest in a subject, and some standing committees dealing with practical issues of relevance to all. In the main meetings, the various regulators take it in turn to chair the meeting and the secretariat is provided by one office for a 12-month period – currently Ofgem. Regular agenda items have related to Government proposals for new legislation, reports from working groups, and updates on important regulatory developments either in a sector, or in terms of competition policy generally.

#### Issues common to all the regulators

##### *(i) The Competition Act*

5. In many respects, the work of utility regulators and general competition are converging. In part, this arises from developments in the utilities, as what were monopoly activities increasingly became competitive: telephones, gas and electricity are obvious examples. It also derives from the powers given by the Competition Act 1998 to most utility regulators, concurrent with those of the Director General of Fair Trading, to investigate anti-competitive agreements or abuse of dominant market positions. This affords those regulators alternative legal routes to discharge their statutory duties, either via the specific sector legislation or via the Competition Act.

6. To clarify how regulators – both sectoral regulators with concurrent powers and the Office of Fair Trading – will use their

powers, those regulators with concurrent powers are members of a Concurrency Working Party, chaired by the OFT, which meets to promote a consistent and co-ordinated approach to the use of the Competition Act powers. In addition, general guidance on the use of Competition Act powers has been produced by the OFT, and specific sectoral guidelines on how the Competition Act will apply in particular sectors have been published by Ofwat, Ofel, Ofgem and CAA; and, on its website, by ORR. The Concurrency Working Party also plans to set up a private website on which members can inform each other about matters of common interest. Although the Concurrency Working Party acts as a forum for shared discussion of issues of common interest, it cannot legally – and does not – replace decisions reserved for particular regulators or regulatory organisations.

*(ii) Developing efficient regulatory organisations*

7. A concern shared by all regulators is that their organisation should be, and be seen to be, effective and efficient. To ensure that experience is shared, a group has been established of the Principal Establishment and Finance Officers and Chief Operating Officers of the regulatory organisations. Particular studies which it has carried out include:

- (a) work on the WS Atkins Efficiency Review: this review, established by HM Treasury, considered the working practices of Ofel, Ofgem, Ofwat and ORR. The Chief Secretary made a statement on the WS Atkins review on 2 July. The review's overall conclusion was that the regulators were professionally run organisations, whose costs, although rising faster than inflation, were very small in comparison both with the revenue of the industries regulated and with the benefits received by consumers. It identified three main areas of concern relating to the information needed to judge efficiency, the cost of support services and staff structure. Responding to these and more detailed recommendations, and learning from instances of best practice identified by WS Atkins in individual regulatory organisations, has been a continuing workstream;

- (b) risk management: there has been work on developing risk registers;
- (c) electronic data records and IT: best practice experience is being shared;
- (d) pay and grading: many of the regulatory offices are revising their pay and staff structure arrangements.

In general, this group shares experience on questions of recruitment, training, staff development; and on financial and management information systems.

*(iii) Communications*

8. All regulators have the aim of communicating effectively with all those affected by their work. For all of us, explanation of our aims and consultation with those affected by our actions are central to our success. The communications group discusses how best to achieve this, and co-ordinates the public affairs activities of the regulatory organisations. It has been particularly concerned with web development.

Other Areas of Joint Work

9. For each of the following areas of joint working a lead office has the responsibility of directing the work.

*(iv) Best practice on service delivery services (Ofwat)*

10. This joint working group has considered the similarities and differences in service measures and standards used in the various sectors and identified the scope for joint approaches. These include, for example, a measure of the ease of telephone contact for the water, electricity and telephone industries; the publication of customer satisfaction data in the energy, rail and water industries; and approaches to appropriate regulatory response to a failure to meet defined standards.

*(v) Price Control (Ofwat)*

11. Those regulators responsible for price controls have discussed approaches. In particular, the questions of the factors affecting the various judgements made on appropriate levels of cost of capital for regulated companies have been discussed. In addition to the work within the joint working group, these have been frequent bilateral discussions. Ofgem and Ofwat have identified a number of issues, particularly broad questions of corporate structure, including the proposed development of high geared financial structure.

*(vi) The transition to competitive markets (Ofgem)*

12. A question which occurs in many sectors is how to judge whether a market has in fact evolved to become competitive; and what is the appropriate response by the regulator. The answers to these questions will be influenced by the extent to which, and the way in which, competitive forces may be expected to operate, and the assessment of them. No broad approach is likely to prove useful (since it risks a level of generalisation which may be unhelpful), and specific approaches are being pursued in individual sectors.

*(vii) Regulatory accounts (Ofgem)*

13. The Government's paper on utility regulation "A Fair Deal for Consumers" suggested that there would be benefits in regulated companies producing regulatory accounts to a more standardised format. This joint working group has made substantial progress, and have agreed a set of common regulatory accounting principles. These were set out in proposals published in April 2001, which defined regulatory accounting guidelines, their relationship to UK GAAP, the arrangements for their audit and their timing. The joint working group is now monitoring the introduction and development of these guidelines.

*(viii) Social and Environmental Issues (Ofgem)*

14. The duties towards the environment and towards disadvantaged consumers vary widely by regulatory organisation. In some sectors (water, gas and electricity) the regulator may receive guidance from the relevant Secretary of State. At least one regulator (ORR) has clear environmental but constrained social duties. The joint working party has devoted time to exploring how particular initiatives in individual sectors operate, the scope for comparable approaches elsewhere, and the impact of these actions on regulatory responsibilities.

*(ix) Best practice in compiling and disseminating comparative price information (Of tel)*

15. A problem common to services offered in a wide variety is how to ensure customers can access relevant and comprehensible price information. While internet information may provide a solution, it is not a solution available to all consumers, and may intensify problems of social exclusion. A number of approaches, involving industry initiatives, indices, and the specification of what should be covered by any price survey, have been developed for the telephone, gas and electricity industries.