

Minutes of the Joint Regulators' Group (JRG) meeting

Wednesday 15 December 2010 at 2.00pm at Postcomm

Present:

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| Keith Mason | JRG Chair (Ofwat) |
| Peter Culham | (Ofcom) |
| Sarah Harrison | (Ofgem) |
| John Thomas | (ORR) |
| Cavendish Elithorn | (OFT) |
| Colin Sharples | (Postcomm) |
| Chris Hemsley | (CAA) |
| Richard Moriarty | (TSA) |
| Sarah Chambers | (BIS) (Observer) |
| Jane Swift | (BIS) Items 2 and 3 |
| Paul Griffiths | (BIS) |
| Tony Metcalfe | (BIS) |

1. Minutes of previous meeting

The minutes of the meeting of 22 September 2010 were agreed (with minor amendments) and will be placed on the Ofwat website.

2. The Post-election landscape and regulatory reviews

Sarah Chambers (SC) gave an update on BIS's position in relation to government's reviews. SC said the thrust of these was not cost cutting or reducing the members of public bodies' purse. It was to find the right outcomes for the economy and a less burdensome way of doing things. JRG agreed that these were sensible aims. The competition framework (discussed at item 3) and the consumer protection framework are the focus

SC commented that the thinking had not as yet extended as far as the sectoral regulators. However, BIS has recently published its paper on 'The Principles of Economic Regulation'. This would reflect the current importance of investment in

infrastructure: the impact of the divergence of frameworks on the cost of capital and the need to promulgate best practice.

It was noted that the sectoral reviews currently in progress (Ofgem, Ofwat and ORR) would continue under their own terms of reference.

3. Proposals for changes to the competition framework

Jane Swift (JS) had circulated two papers to JRG. One on anti-trust and the other on concurrency and sector regulators. These papers set out ideas that would form part of a consultation document in February next year on proposals for a Single Competition and Market Authority (SCMA). This would be a very open consultation document and BIS were seeking a wide variety of views.

Tony Metcalfe (TM) introduced the paper on anti-trust. There is a concern that there are too few anti-trust cases and that they take too long to process because of the extended opportunities afforded to challenge. TM outlined possible options for reform ranging from no change, through a more prosecutorial approach, to the creation of an Internal Tribunal within the SCMA. TM presented some statistics comparing the number of anti-trust cases in the UK with those of other EU member states.

JRG discussed the merits of each option and their experience of the current process. SC suggested that these showed the UK lagging in terms of deterrent actions.

JRG agreed the current process was slow but this was likely to be because the incentives encouraged risk averse behaviour. JRG asked what criteria would be used to assess each of the options. TM suggested that 'speed of response' and 'maintenance of protections for parties' were likely to be two. TM also noted that counsel's opinion was being sought on each of the options.

Paul Griffiths (PG) introduced the paper on concurrency and sectoral regulators. PG noted there were two broad areas to cover – concurrency itself and the appeals process for decisions by sectoral regulators. For concurrency, PG noted that there seemed to be a difficulty in achieving a 'critical mass' of cases in the regulated sector and there was a strong view that the Market Investigation Reference (MIR) route was not working well. PG outlined a number of options for reform ranging from improvements to make the process easier for sectoral regulators to use through to removing concurrent powers. SC commented that the latter was not a preferred option currently.

JRG discussed its experience of MIRs and how they might be improved. The timescales for MIRs was contrasted with the much shorter timescale for market

studies and JRG encouraged BIS to be more radical in respect of timescales. JRG agreed that retention of concurrent powers was important because they provided, as a minimum, a strong deterrent to incumbents. The example of the Telecoms Strategic Review was cited. The use of SCMA resources by sectoral regulators was seen as a positive step that could be taken.

In respect of appeals, PG expected the Competition Commissions' functions to move to the SCMA and BIS saw little benefit in trying to harmonise these processes. JRG discussed the standard and type of review carried out by the CC for sectoral regulators. It was suggested that a cost benefit test might be usefully applied to some appeal powers.

4. Tour de table

Ofgem: MF noted that the Supreme Court had upheld Ofgem's decisions in relation to National Grid's fine in respect of meters. This now exhausts National Grid's routes to appeal.

ORR: ORR noted the report by Infrastructure UK and the approach to incentivising investment. It asked whether there was enough consistency across regulators. ORR felt this needed further discussion at JRG.

Ofcom: PC noted that Ofcom had two appeals on regulatory issues at the CAT. The first is on leased lines and the second is Local Loop Unbundling. The latter one has now been published with only very detailed changes made. It was noted that clarity on the type of review to be carried out (eg principles or detail) would be helpful to all parties.

CAA: CH noted that the Airports Act would give the CAA Competition Act type powers. They were also expecting a complaint about changes at Heathrow. The CAA would be issuing a consultation in the new year on Guidelines on assessing SMP.

OFT: CE commented that OFT had a lot of appeals arising from its decisions on construction and tobacco issues.

The OFT would shortly be issuing Competition Act Cases Procedural Guidance consultation.

Postcomm: Postcomm had issued its interim price control for Royal Mail in

November. It was also working on the 2012 price control concurrently.

CS noted that the Postal Services Bill had been published and would go back to Parliament in January. It was less favourable to competition than expected.

TSA: RM noted that the TSA's duties had now been realigned along 'economic regulation lines' in common with other regulators. This re-affirmed the importance of the independence of economic regulation.

Ofwat: KM noted the key themes coming from the Defra review were the regulatory burden, the extent of customer engagement and market reform.

KM stated Ofwat had recently issued a number of discussion documents on its review of price setting and its regulatory compliance project.

5. Any other business

- i. The chair of JRG for 2011 was discussed. ORR agreed to take up the role. ORR will arrange dates for 2011 in the New Year.