

**MINUTES OF THE JOINT REGULATORS' GROUP (JRG) MEETING  
22 SEPTEMBER 2006**

**Present:**

Sarah Harrison (Acting JRG Chair/Ofgem)  
Bill Emery (ORR)  
Philip Fletcher (OFWAT)  
Sarah Chambers (Postcomm)  
Harry Bush (CAA)  
Alan Sutherland (Water Industry Commission for Scotland)  
Vincent Smith (OFT)  
Maxine Frerk (OFGEM)  
Andy MacFaul (JRG Secretary/Ofgem)

Ed Mayo (Chief Executive, NCC) - Item 2

**Apologies:**

Alistair Buchanan (Ofgem)  
Chris Bolt (PPP Arbiter)  
Iain Osborne (OFREG)  
Sean Williams (OFCOM)

**ITEM 1 Minutes of the 16 June 2006 meeting**

1. The minutes of the previous meeting were agreed, subject to minor drafting comments.

**ITEM 2 'Promoting consumer power'**

2. Ed Mayo gave a presentation on how the economic regulators and consumer advocacy bodies could take forward an agenda for 'promoting consumer power'. He said that consumer power meant individuals having the confidence and capability to act purposefully to secure their own needs in a particular market.

3. Ed Mayo argued that lock-in practices and a lack of suitable redress mechanisms and effective regulatory sanctions often weakened consumer power. He said that regulators should not neglect the demand-side in seeking improvements. Finally, he added that the solution often lay in better enforcement rather than new regulations.

4. Vincent Smith reported that OFT was setting up a new Remedies Unit and said that any advice from NCC about this would be welcome. Given the Government's plans to reorganise consumer representation in the energy and postal sectors, Postcomm and Ofgem agreed that it would be helpful to meet NCC to discuss any issues that were likely to arise.

**ACTION: POSTCOMM, OFGEM**

**ITEM 3 Response to DTI/HMT concurrency report**

5. The JRG discussed an options paper submitted by the Concurrency Working Party (CWP) and agreed that they should discuss the final draft of the joint response being prepared by the CWP at the next JRG meeting on 8 December.

6. The JRG noted that individual regulators would send separate responses in respect of some of the recommendations contained in the report.

**ITEM 4 Better Regulation issues**

7. The JRG discussed Simplification Plans and the need to avoid centrally-imposed targets on regulators to reduce burdens given the implications for regulatory independence.

8. The JRG discussed the Legislative and Regulatory Reform Bill. Sarah Chambers reported on recent correspondence with Hilary Armstrong and said that the Minister had offered Postcomm a meeting with her officials to discuss the Bill. The JRG noted that Report stage in the House of Lords was likely to take place in late October.

9. Maxine Frerk updated the JRG on the Macrory review of regulatory sanctions. The JRG agreed that it would be helpful to share best practice and to understand where the regulators were adopting different approaches.

10. The JRG discussed the Better Regulation Executive's proposals on Impact Assessments. The JRG broadly supported the proposal to remove the requirement to consult on options that might not be viable. The JRG did not support the idea of 'sign off' by Chief Economists; it was felt by some regulators that this would give the impression that economic arguments held sway over other concerns, such as safety.

**ITEM 5 Tour de Table**

*ORR*

11. Bill Emery reported that ORR's decision to grant rights to Grand Central to operate additional passenger services on the East Coast Main Line had been upheld following judicial review. He said that ORR was now seeking to have its costs paid by GNER.

12. Mr Emery updated the JRG on ORR's consultation about Network Rail's investment plan.

13. Mr Emery said that ORR intended to publish a decision on EWS Railways and the supply of coal to power stations in November.

*Ofwat*

14. Philip Fletcher reported on a recent meeting with Ed Humpherson of the NAO. He said that the NAO was intending to carry out cross-cutting studies on consumer representation issues and the history of rolling back price controls.

15. Mr Fletcher updated the JRG in relation to quality of information issues and associated enforcement action.

16. Mr Fletcher noted that the CAT's decision in *Albion Water* was due in early October.

17. Mr Fletcher concluded by saying that this was his last JRG meeting representing Ofwat. He said that Ofwat's incoming new Chief Executive, Regina Finn, would attend the JRG meeting in December. Sarah Harrison thanked Philip Fletcher on behalf of the JRG for his contribution to the Group over the years and looked forward to welcoming Regina Finn.

*Water Industry Commission for Scotland*

18. Alan Sutherland noted the political context within which all decisions in the next two years would be made.

19. Mr Sutherland said that Scottish Water's provisional licence would expire on 31 March 2008 and added that new entrants could apply for licences in 2007.

20. Mr Sutherland noted that the post of Scottish Water Chairman would shortly be advertised, and that Ronnie Mercer was a temporary incumbent.

*Postcomm*

21. Sarah Chambers noted the political context surrounding decisions on the future financing of Royal Mail, the future of the post office network and the reorganisation of consumer bodies.

22. Ms Chambers noted that she would be chairing JRG meetings in 2007. It was agreed that at the next meeting the regulators would discuss what work the JRG might want to commission in 2007.

*OFT*

23. Vincent Smith reported that OFT was considering the CAT's ruling on costs in the London Metal Exchange case. He said there could be implications for the other regulators that might not be restricted to Competition Act decisions.

24. Mr Smith said that although the CAT had found in favour of the OFT in *Celesio* it had not awarded costs to the OFT because OFT had had to supplement its merger decision with a 52-page statement. He said that the OFT was considering whether to appeal.

*CAA*

25. Harry Bush updated the JRG on Grupo Ferrovial's bid for BAA, which had prompted some necessary relaxation of the price control review timetable. Dr Bush said that CAA would continue to assist the OFT in its airports market study and would liaise closely with the OFT as both reviews were due to conclude in December.

*Ofgem*

26. Sarah Harrison updated the JRG on the network price control reviews. She said that Ofgem would publish initial proposals on gas distribution on 25 September and publish an update on transmission on 26 September. She also noted that the latter would include proposals for a 'safety net' mechanism to trigger a review in the event that discretionary capital expenditure fell substantially. She added that the transmission document would be accompanied by a report on cost of capital from Smithers.

27. Sarah Harrison reported on the security of supply outlook for winter 2006/7.

**ITEM 6      Any other business**

28. In the light of Peter Vass' report on the economic regulators and sustainable development, the JRG agreed to invite him to address the next JRG meeting on 8 December.

**ACTION: ANDY MACFAUL**

Andy MacFaul, Secretary, JRG  
17 November 2006