

**MINUTES OF THE JOINT REGULATORS' GROUP (JRG) MEETING
24 FEBRUARY 2006**

Present:

Alistair Buchanan (JRG Chairman/Ofgem)
Chris Bolt (PPP Arbiter)
Bill Emery (ORR)
Philip Fletcher (OFWAT)
Dr Harry Bush (CAA)
Alan Sutherland (Water Industry Commission for Scotland)
Vincent Smith (OFT)
Sean Williams (OFCOM)
Maxine Frerk (OFGEM)

Andy MacFaul (JRG Secretary/Ofgem)
Rick Haythornthwaite (Chairman, Better Regulation Commission, Item 2)
Amy Bishop (Better Regulation Commission, Item 2)
Tim Matthews (Team Octopus, Item 3)

Apologies:

Sarah Chambers (Postcomm)
Douglas McIldoon (OFREG)
John Fingleton (OFT)
Stephen Carter (OFCOM)

ITEM 1 Minutes of the 7 October 2005 meeting

1. The minutes of the previous meeting were agreed.

ITEM 2 Better Regulation issues

2. Setting out his views on the better regulation challenge, Rick Haythornthwaite stated that it was time the Government and regulators tackled the mounting regulatory burden, which to a large extent reflected an overly cautious attitude to risk. Mr Haythornthwaite said that regulation was subject to the law of diminishing returns because increasingly the regulatory burden outweighed the benefit, and that, while regulation was not necessarily bad, often it was not the best answer. He called for a systemic attack on the administrative burden and a culture that encouraged and rewarded innovation. He believed that better regulation could be a source of economic advantage by boosting productivity.

3. Mr Haythornthwaite said the Better Regulation Task Force's 2001 report had been strongly supportive of the economic regulators. He added that it was up to the regulators to work out how best to regulate and noted a better regulation 'architecture' (eg RIAs, Boards) that had largely been put in place. He felt the economic regulators were doing much of the best thinking on better regulation.

Simplification Plans

4. Mr Haythornthwaite said that it was not his job to second-guess regulators but added that it was reasonable for the Better Regulation Commission (BRC) to check whether they were asking the right questions and to push for Simplification Plans. The BRC, he said, would want to consider whether a Simplification Plan was meaningful (ie. whether it had measurable, deliverable and credible outcomes).

5. Mr Haythornthwaite said he couldn't fault the level of activity within Government departments, but remarked that it would need real leadership to produce serious,

ambitious plans to reduce the regulatory stock. He said the quality of the initial departmental Simplification Plans varied considerably. The BRC had commented privately to departments on the draft plans and would publish its views on the final plans in the hope that that would drive up quality. After that, Mr Haythornthwaite expected a continuous dialogue between the BRC and government departments.

General discussion

6. Philip Fletcher reported that Ofwat, Defra and the Drinking Water Inspectorate had had constructive discussions about how best to promote better regulation in the water and sewerage industries. He said the discussions had been ignored in the remit to PWC. It was agreed PWC's mapping exercise could only ever be superficial.

7. Vincent Smith raised the issue of outsourcing regulatory office functions; Mr Haythornthwaite said he was in favour of introducing market-based instruments.

8. Mr Haythornthwaite said that BRC did not support putting the Enforcement Concordat on a statutory footing.

9. It was suggested that the tide of legislation coming from Parliament represented a severe challenge for those wishing to reduce the regulatory burden. It was agreed that European legislation and regulations were often contrary to the principles of better regulation. Harry Bush said that aspects of the European 'Single Skies' legislation represented an example of over-regulation (of small airports) which could damage the competitiveness of the UK aviation sector. Sean Williams said the 'Television without Frontiers' Directive raised similar issues. Mr Haythornthwaite said the BRC was taking a particularly close interest in better regulation at the European level and asked the regulators to send him details of bad European regulations.

ACTION: REGULATORS

ITEM 3 Project Paperless

10. Alistair Buchanan explained that Project Paperless had its origins in criticisms made by stakeholders during the corporate strategy consultation of 2004/5 that Ofgem produced too many documents and that they were inaccessible to the reader. In response, Mr Buchanan said that Ofgem had determined - with the help of consultants 'Team Octopus' - to change the internal culture and ensure that documents would be clearer, shorter and fewer in number. He reported that the first consultation and decision documents in the new template had been published in January. Mr Buchanan said that during 2006 Ofgem would look to apply Project Paperless principles to industry code modification and derogation decisions.

11. Tim Matthews of Team Octopus explained the remit that he had been given by Ofgem senior management to develop new document templates for Ofgem. He outlined the main features of the new template and contrasted them with Ofgem's previous 'house style', and added that the template had been agreed by lawyers. Mr Matthews emphasised the importance of training staff to write 'for the reader'.

ITEM 4 DTI and better regulation

12. Mr Buchanan reported on the regulators' meeting in December with the DTI Minister responsible for better regulation, Barry Gardiner. He said Ofgem had agreed with DTI that Ofgem would publish a Simplification Plan at the same time as it published its Corporate Strategy - scheduled for 31 March - and that DTI could refer to it when publishing its draft Simplification Plan at the end of 2006.

13. Mr Fletcher said Ofwat had seconded a member of staff to Defra to work on better regulation issues. Bill Emery observed that the Department for Transport (DfT) had shown limited interest in ORR's Simplification Plan but that ORR was looking to take forward its Simplification Plan as part of its Corporate Strategy. Dr Bush reported on a pre-Christmas DfT seminar which highlighted that the main threat to better regulation of airports came from European initiatives.

ITEM 5 Parliamentary matters

14. Maxine Frerk reported on the progress of the Legislative and Regulatory Reform Bill, which contained a broad power to merge regulators, and noted the increasing amount of adverse press coverage. She also mentioned potential changes to Ofgem's duties as a result of Mark Lazarowicz's Climate Change and Sustainable Energy Bill, and remarked that the changes were not necessarily consistent with the better regulation agenda.

15. Mr Fletcher drew attention to Ofwat's discussions with Defra about a clause in the Natural Environment and Rural Communities Bill giving public authorities a duty to have regard to conserving biodiversity when carrying out their functions. The regulators agreed to consider the impact of the duty on their own work.

ACTION: REGULATORS

16. Mrs Frerk summarised proposals contained in DTI's consultation on the future of consumer representation, and flagged that there could be an issue for Ofgem about who deals with particular types of complaint in the energy sector. Mr Williams said OFCOM was watching carefully DTI's proposals for a consumer panel and contact centre.

ITEM 6 DTI/Treasury concurrency report

17. Mrs Frerk suggested that as far as possible the regulators prepare a joint response. Mr Smith flagged that OFT would respond separately on certain issues and agreed that OFT would report on progress at the next JRG meeting.

ACTION: OFT

ITEM 7 European Commission Article 82 discussion paper

18. Mr Smith reported that the Commission's discussion paper represented an attempt to shift policy towards economic effects, though the French and Germans were resisting this. Mr Smith said that paper concentrated on abuse rather than the definition of dominance, and covered exclusionary conduct only; the Commission would tackle exploitative conduct in due course.

19. Mr Smith said the paper set out a three-stage process: first, using an avoidable cost test to establish whether the conduct was capable of foreclosing the market; second, establishing the actual effects of the conduct; and finally, establishing whether there was a credible efficiency defence. Mr Smith noted that the Commission was seeking comments by the end of March.

ITEM 8 Tour de Table

Ofgem

20. Mr Buchanan reported that DG Competition's interim statement on its sectoral investigation backed the liberalised UK energy market. He hoped that the Commission would use its powers to force continental energy companies to restructure and to provide more information on gas in storage.

21. Mr Buchanan gave the JRG an update on the Government's Energy Review. He said the Government was focusing on carbon reduction and security of supply.

Ofwat

22. Mr Fletcher said that security of supply was a major issue and that before the summer hosepipe bans would be introduced in much of the south east of England. He suggested that the use of standpipes in the worst affected areas could not be ruled out if rainfall continued to be very low.

23. Mr Fletcher referred to a series of Competition Appeal Tribunal (CAT) cases in which the CAT had found in favour of small businesses. He remarked that the interim judgment in *Albion Water* potentially called into question the whole basis of access pricing for water.

24. Mr Fletcher said that the discussion paper on financing network business undertaken with Ofgem had been published on Ofwat's website. Mr Buchanan mentioned that Professor Keith Palmer, who reviewed the draft paper, had agreed to address the next meeting of the JRG on 16 June.

CAA

25. Dr Bush reported that as part of the airports review his staff had met Ofgem to discuss in particular how best to finance 'lumpy' investment.

26. Dr Bush said that the CAA had published a statement in relation to Grupo Ferrovial's bid for BAA.

27. Dr Bush said that the CAA and OFT would shortly publish joint work on allocating airport slots.

OFCOM

28. Mr Williams said that an OFCOM consumer panel audit of OFCOM's consumer policies had concluded that while the policies were sound OFCOM could do more to demonstrate their effectiveness to consumers. Mr Williams said OFCOM would address any shortcomings in a non-bureaucratic way.

29. Mr Williams noted that the operational separation of BT had to come into effect this year.

30. Mr Williams said that in March OFCOM would consult on removing BT's retail price controls on the basis that OFCOM's wholesale market remedies are effective.

31. Mr Williams said that harmonisation under the Electronic Communications Framework Directive would not be desirable if it weakened the UK's existing regime.

32. Mr Williams flagged a pilot scheme in Cardiff in the autumn for next generation networks deployment.

ORR

33. Mr Emery briefly outlined progress on the price control review.

34. Mr Emery said that ORR would assume rail safety responsibilities on 1 April. As a consequence, he said staff numbers would rise from 160 to 380, turnover would rise to £32.7m, and ORR would be moving to new offices in Kemble Street.

35. Mr Emery reported that ORR would shortly publish its decision in relation to three applications for rights to operate additional passenger services on the East Coast Main Line.

36. Mr Emery updated the JRG on the long-running Competition Act investigation of EWS Railways about the supply of coal to power stations. He said ORR expected to publish a final decision in the autumn.

37. Mr Emery said that although Network Rail had implemented a satisfactory recovery plan, ORR intended to impose a modest financial penalty for a licence breach relating to information on the network capacity capability of freight lines.

Water Industry Commission for Scotland

38. Alan Sutherland reported that in November 2005 the Commission had published its determination of the prices that customers would pay for water services from April 2006 to March 2010. He also referred to the ongoing debate about the future financing of Scottish Water, and mentioned that Scottish Water was creating a separate business for non-household customers.

Office of the PPP Arbiter

39. Chris Bolt said that this year his Office would be conducting the first annual review of Metronet.

OFT

40. Mr Smith outlined the impact on OFT's resource requirements of the Government's plans for Consumer Direct. Mr Smith also flagged that discussions were ongoing with the Government following the decision not to create a separate Consumer and Trading Standards Agency.

41. Mr Smith reported on a difficult Public Accounts Committee hearing about enforcing competition law in markets. He said that the OFT had accepted all the Committee's recommendations, including carrying out ex-post evaluations of competition enforcement work.

42. Mr Smith said that the OFT would circulate to the JRG a note on the provision of informal advice as part of the merger control process, and that the OFT intended to publish revised interim arrangements in due course. He flagged the implications of the CAT's interventions for OFT's work. Mr Buchanan and Mr Williams said that they would want to discuss this with OFT. Mr Smith also said monitoring of remedies was an issue and that OFT had received lots of requests to vary behavioural undertakings.

ACTION: OFT, OFCOM, OFGEM.

ITEM 9 Any other business

43. There was no other business. The next JRG meeting is on 16 June.

Andy MacFaul, Secretary, JRG
12 April 2006