

**MINUTES OF THE JOINT REGULATORS' GROUP (JRG) MEETING
28 MARCH 2007**

Present:

Sarah Chambers (JRG Chair/Postcomm)
Sarah Harrison (Ofgem)
Bill Emery (ORR)
Nick Fincham (CAA)
Vincent Smith (OFT)
Richard Moriarty (Postcomm)
Mick Fews (JRG Secretary/Postcomm)
Professor Richard Macrory - Item 2

Apologies:

Iain Osborne (Ofreg¹)
Alan Sutherland (Water Industry Commission for Scotland)
Sean Williams (OFCOM)
Regina Finn (OFWAT)
Alistair Buchanan (Ofgem)
Chris Bolt (PPP Arbiter)
Harry Bush (CAA)

ITEM 1 Welcome and introductions

1. Sarah Chambers welcomed Richard Macrory and attendees.

ITEM 2 Economic regulators and regulatory justice

2. Richard Macrory gave a presentation based on his review of regulatory sanctions available to regulators.
3. Professor Macrory outlined the basis of his work and the key recommendations that he made in his report. He explained that the key principles underlying regulatory justice were firstly that sanctions should aim to bring any business back to compliance, not for punishment per se, and secondly to ensure that offenders did not benefit from non-compliance.
4. Professor Macrory explained that the Cabinet Office was preparing primary legislation that would allow regulators to use undertakings and administrative penalties where appropriate. Professor Macrory expressed some concern that the principles which he had formulated were not elevated to a state beyond which he had intended.
5. Professor Macrory observed that there was little research available about how effective sanctions work in practice for different business sectors. He suggested that this is an area in which regulators may consider commissioning research.
6. The JRG discussed ways in which the range of sanctions available could be applied and the difficulty of identifying affected parties. Of particular interest was

¹ The Office for the Regulation of Electricity and Gas became the Northern Ireland Authority for Utility Regulation on 1 April 2007.

the need to engage the public and to consider the public's perception about what are suitable sanctions.

ITEM 3 Minutes of the previous meeting and other matters

7. The minutes of the previous meeting were agreed.

ITEM 4 House of Lords Select Committee on Regulators

8. The JRG discussed their experiences of giving oral evidence to the Select Committee on regulators.

9. The JRG agreed to facilitate a meeting of those who will be attending the House of Lords round table event scheduled for 12 June. [Secretary's note: meeting now set up at Postcomm's offices on 8 June]

ACTION: Secretary to the JRG

ITEM 5 The role of the JRG – opportunities for working together more effectively

10. The JRG discussed the opportunities that existed for regulators to work together more effectively. The JRG discussed whether additional, refocused groups or adhoc arrangements would be appropriate. The JRG decided that it was important that adhoc arrangements for joint working are not overshadowed or replaced by more formal arrangements which could prove to be bureaucratic.

11. Particular thought was given to how sustainability issues would be considered by JRG. The JRG considered that a series of ad hoc events co-ordinated by Ofgem in conjunction with Ofreg and Ofwat would be most appropriate.

12. The JRG agreed that a database of contacts would be established and that current working groups would be asked to identify forthcoming issues of concern which would be used to produce a JRG forward work plan.

ACTION: Secretary to the JRG

13. The JRG also discussed a suggestion that the Chairs of the regulators' Audit Committees meet to share experiences to ensure consistency of approach. It was agreed that such a meeting could be useful, and JRG members would float the idea with their Audit Committee Chairs

ACTION: JRG members

14. The JRG also agreed that minutes of JRG meetings would in future be published, once agreed, on the websites of all JRG members.

ACTION: JRG members

ITEM 6 Tour de Table

OFT

15. Vincent Smith updated the JRG about progress in the construction cartel case.

ORR

16. Bill Emery updated the JRG on the roles of HM Railway Inspectorate and the Rail Accident Investigation Branch in the investigation of the Grayrigg accident.

17. Mr Emery reported that the High Court had decided that ORR's decision about the EWS and E.ON contracts and its direction to amend the contracts made the contracts void. E.ON is to appeal to the CAT against the direction to E.ON and EWS to amend the contracts.

Ofgem

18. Sarah Harrison reported that the final proposals for the gas transportation and electricity transmission price controls had been accepted.

19. Ms Harrison said that the first gas distribution price control initial proposals would be published in May with a decision due in December.

20. Looking ahead, Ms Harrison said that the Sustainable Development Commission's report on Ofgem would now be due in June or July and that the Energy White Paper would be published in May. A Climate Change Bill is also due to be published. A new independent Committee with responsibility for Climate Change has been formed and has been in talks with Ofgem and others.

21. Ms Harrison also said that Ofgem is due to publish its Corporate Strategy in which it will seek to engage further with consumer issues via its new 'Consumer First' project.

CAA

22. Nick Fincham reported that the CAA had published price control proposals in respect of Heathrow, Gatwick and Stansted airports. Responses had been received and references in respect of Heathrow and Gatwick airports would be made to the Competition Commission by the end of March. The Competition Commission were due to report in September. It is likely that their views on cost of capital will be of interest to other regulators. This raises issues around the process for publishing the Competition Commission's report, which the CAA will consider in conjunction with the Competition Commission.

23. Mr Fincham said that in December 2006, the OFT had published a proposal to refer BAA in the South East and Scotland to the Competition Commission.

24. Mr Fincham referred to the Council of European Transport Ministers' decision on open skies. The decision is likely to be good news for passengers, although it would not permit access to routes within the United States.

25. Mr Fincham said that the House of Commons Transport Select Committee is to begin an investigation into passenger experience at UK airports. CAA is expecting to appear before the Committee.

Ofreg

26. Iain Osborne reported via Sarah Chambers that Ofreg was to go live as the water regulator from 1 April. It would as a result be re-branding (the Northern Ireland Authority for Utility Regulation) and expanding.

27. Mr Osborne reported that Viridian had now been acquired by an investment bank Arcapita and that legislation to create an Irish electricity wholesale market had now been passed by both UK and Irish parliaments. A joint regulatory committee will be established with the Irish Commission for Energy Regulation.

Ofwat

28. Regina Finn updated the JRG via Sarah Chambers on progress on the Competition Commission's investigation of the South East Water / Mid Kent Water merger. Ms Finn reported that the Competition Commission seem to have developed an increased appetite for detailed information.

Postcomm

29. Sarah Chambers reported that Ministers had now agreed the future financing of Royal Mail. The European Commission had however indicated that it was investigating the financing package as a possible infringement of EU state aid rules. The issue could well take up to 4 or 5 years to resolve.

30. Ms Chambers provided details about three recent successful postal legal cases. Royal Mail had lost its appeal against a £9.62 million fine imposed by Postcomm for breach of mail integrity rules. The judge took little time to deliver his judgement about the manner in which Postcomm had calculated the level of penalty which gave very helpful encouragement to regulators on the use of judgement / discretion by regulators, where precise analysis / calculations are not possible. Ms Chambers would circulate copies of the judgement, which might be useful to others. Postcomm had also secured a criminal conviction about theft of mail and was now considering how best to deal with criminal matters in the future. Royal Mail had successfully appealed against a JR against Postcomm brought by Postwatch. The outcome of this appeal had vindicated Postcomm's original position.

31. Richard Moriarty explained Postcomm's progress on the Mail Strategy Review and the Interim Review of the 2006 – 2010 price control. Mr Moriarty described ongoing work about the scope of the universal service and the scope of the current price control.

ITEM 7 Any other business / date of next meeting

32. Sarah Chambers confirmed that the dates of the Postcomm chaired JRG meetings would be 14 June, 28 September and 6 December. Ms Chambers asked all JRG members to propose agenda items for the forthcoming JRG meetings

ACTION: JRG members

Mick Fews, Secretary, JRG
March 2007