

## **MINUTES OF THE JOINT REGULATORS' GROUP (JRG) MEETING**

**4 September 2008**

### **Present:**

Harry Bush (JRG Chair / CAA)  
Michael Beswick (ORR)  
Sarah Harrison (Ofgem)  
Sarah Chambers (Postcomm)  
Tim Brown (Postcomm)  
Iain Osborne (NIAUR)  
Keith Mason (Ofwat)  
Philip Rutnam (Ofcom)  
Alan Sutherland (WICS)  
Grahame Horgan (OFT)  
Steven Preece (OFT) for agenda item 3  
Alex Blowers (Ofcom) for agenda item 4  
Kevin Hoskin (JRG Secretary / CAA)

### **Apologies**

Regina Finn (Ofwat)  
Alistair Buchanan (Ofgem)  
Bill Emery (ORR)

### **Item 1: Welcome and introductions**

1. Harry Bush welcomed attendees. Sarah Chambers introduced Tim Brown, who would be replacing her as Chief Executive at Postcomm in October 2008.

### **Item 2: Minutes of the previous meeting**

2. Michael Beswick reported that ORR was currently discussing its approach to financial penalties internally and would engage further with Ofgem and others to take forward the earlier work once these discussions were complete. Kevin Hoskin reported that the BRE had been invited to present at a future JRG session and that it had accepted the invitation.
3. The minutes of the June 2008 meeting were agreed.

### **Item 3: CWP working group update and lessons learnt from experience of using competition powers**

4. Steven Preece provided a presentation on the operation of concurrency during 2007/08, in line with the OFT's commitment to provide an annual review to the JRG. The presentation focused on the experience of operating under the prioritisation criteria, and the outcome of the CWP sub-group's work on procedural issues.
5. Mr Preece noted that the adoption of the prioritisation criteria seemed to be having a positive impact for both the OFT and other bodies. It was agreed that the review of procedural issues had been a useful exercise in identifying areas common practice (or otherwise) and had built on already strong informal relationships across organisations.

6. The Group discussed possible areas of new work for CWP sub-groups, including consumer protection issues and litigation. There was strong support for taking these issues forward, although it was noted that any exercise would need to be well structured given the resource constraints faced by members.

Action – OFT to develop the future work programme in discussion with CWP members

#### **Item 4: Interactions with Europe – lessons learnt**

7. Alex Blowers provided a brief presentation outlining Ofcom's experience of operating within a European context. Mr Blowers noted that whilst the number of staff dealing full-time with European issues was relatively few (around fifteen), there were probably more than 100 people across the organisation that had regular engagement on European issues. Ofcom had worked hard to develop strong relations in Europe both at a working level and at senior management level.
8. JRG members discussed their experiences of working within a European context. There was general agreement that European bodies were broadly receptive and open to engagement with regulators, but it was noted that this engagement was most effective when the regulator's role and responsibilities were fully understood.

#### **Item 5: RES Act implementation**

9. The Group discussed the implications of the RES Act requirement to publish a report on regulatory burdens. Most members indicated that they intended to discharge this requirement through a combination of their existing business planning and reporting processes, and as part of regulatory impact assessments.

#### **Item 7: Tour de table**

##### ORR

10. Michael Beswick reported that ORR was coming to the end of its Periodic Review of Network Rail's track access charges, and would be publishing its conclusions in October. This is the first review to be conducted under the new regulatory framework within which the Government is required to specify its high level output requirements and proposed funding. On the whole, the process had worked successfully.
11. Mr Beswick reported that there were a number of open access applications for train slots on the East Coast Main Line. ORR would be required to take a view on the appropriate allocation of the limited spare capacity available on the route.
12. Mr Beswick also noted that the Competition Commission had published its provisional findings report on the rolling stock leasing market investigation. This identified four key features that might distort competition: the shortage of rolling stock; the operation of the franchising system; limited incentives for competition; and high barriers to entry.

##### Ofgem

13. Sarah Harrison reported that Ofgem remained on track to publish the findings of its investigation into energy supply markets in the autumn.

14. Ms Harrison reported that Ofgem was progressing work on the next electricity distribution price control with the next policy paper due in December. Ofgem had also published a consultation on the treatment of pension costs in price controls.
15. Ms Harrison noted that work was now underway on the RPI at 20 project, which is reviewing Ofgem's approach to economic regulation. A report on this project would be presented at a future JRG session.

#### CAA

16. Harry Bush reported that the Competition Commission had published its provisional findings on its market study, recommending the break-up of BAA. The Competition Commission was also conducting a separate review into the price control for Stansted Airport, and was expected to provide its advice to the CAA at the end of October. The CAA would then set a revised five-year price control to come into effect on 1 April 2009, having regard to this advice.
17. Mr Bush reported that the CAA was preparing for its decision on the price control for Gatwick to be judicially reviewed, although EasyJet's request had not yet been cleared by the courts.
18. Mr Bush noted that the framework for economic regulation of airports was currently under review by the Department for Transport. This is an internal DfT review, with advice from an expert panel led by Professor Martin Cave.

#### NIAUR

19. Iain Osborne reported that on-going issues with the political process in Northern Ireland had delayed work on the water price control proposals. As a result, the review was being conducted to a compressed timetable.
20. Mr Osborne reported that arrangements for an all-Ireland gas market were under development. This followed the successful introduction of an all-Ireland electricity market.
21. Mr Osborne added that social tariffs remain a subject of active debate in Northern Ireland as recent increases in energy prices led to an increase in the number of customers classified as experiencing fuel poverty. This was particularly relevant in Northern Ireland, where a high proportion of homes were already equipped with standard energy efficiency features.

#### WICS

22. Alan Sutherland reported that there were positive signs for the development of competition in Scotland, with all three new entrants now signing up customers. A number of significant business users had now switched supplier, and local councils were actively exploring opportunities.
23. Mr Sutherland also reported that WICS were currently undertaking work on the appropriate approach for assessing the cost of capital for Scottish Water. It would be publishing a paper on this issue shortly.

#### Ofcom

24. Philip Rutnam reported that Ofcom was continuing to work on the review of the pricing framework for BT's Openreach business, which provides wholesale access telecoms services to communications providers.
25. Mr Rutnam reported that Ofcom was undertaking a review of public service broadcasting. Ofcom is in favour of plurality in the provision of this service, as opposed to sole provision by the BBC.

26. Mr Rutnam also reported that Ofcom was undertaking an Enterprise Act investigation into potential consumer detriment in the pay-TV market.

Postcomm

27. Sarah Chambers reported that findings of the independent review of postal services were now not expected until October or November. The review was considering a broad range of issues including the financing of Royal Mail, the company's pension deficit, the universal service obligation and the structure of economic regulation. Given the importance of these issues, Postcomm has delayed the publication of its Initial Proposals on the Regulatory Framework from 2010 until after the publication of the independent review's conclusions. The delays were compressing Postcomm's own timetable.
28. Ms Chambers suggested that Postcomm might provide a more detailed report on the outcome of the review, and general lessons that might be drawn from it for the future of economic regulation at a future JRG session.

OFT

29. Grahame Horgan reported that the hearing on criminal charges in connection with the fuel surcharges case would take place shortly. The high-profile nature of this case would be important, both in terms of incentivising compliance, and in publicising the leniency arrangements for whistleblowers.
30. Mr Horgan reported that the Motor Industry Service and Repair Code had completed the first stage of the OFT's Code approval process. Once finalised, the Code would provide customers with a higher degree of basic consumer protection than required under law.
31. Mr Horgan also reported that the OFT was in discussions with the Competition Commission regarding potential remedies under the Payment Protection Insurance case. These discussions were provisional, as the Commission had not yet concluded that there was an adverse effect on competition.

Ofwat

32. Keith Mason reported that Ofwat had received business plans from water companies for the next control period. If confirmed, these plans would imply a total industry investment programme of around £29 billion. This would represent a large increase compared to the current period, which had been expected to represent a peak in levels of investment.
33. Mr Mason reported that Severn Trent had accepted its fine for providing false information to Ofwat and delivering poor service. As a result, Ofwat would not be facing appeals to penalties imposed to date from the water and sewerage companies.

**AOB**

34. Sarah Chambers reported that she would be taking up the role of Director, Competition and Consumer Policy at BERR at the end of her term as Chief Executive of Postcomm.

Kevin Hoskin, Secretary, JRG

September 2008