

# Minutes of the Joint Regulators Group (JRG) meeting 19<sup>th</sup> April 2012

*CAA House, Kingsway, WC2B 6TE*

## Present:

Iain Osborne (CAA) (Chair)  
Cathryn Ross (ORR)  
Philip Cullum (OFGEM)  
Andrew Dench (HCA)  
Jessica Dalhstrom (Monitor)  
Steven Preece (OFT)  
Judith Ross (Ofcom)  
Balwinder Dhoot (Ofcom)  
Thomas Carr (CAA) (Secretariat)

## 1. MINUTES OF PREVIOUS MEETING

The minutes of the previous meeting 15<sup>th</sup> December 2011 were agreed and will be placed on the ORR website.

## 2. MATTERS ARISING

Ofgem provided a short oral update on cross regulator training. The current view suggest that when regulators are running generic training courses spare places should be offered out to the other regulators. Some of this has taken place already with the example given of ORR staff attending Ofgem's management training courses. There have been discussions on secondments; however this has not been developed.

The JRG asked if there was development of communications policy around this for advertising the spaces? JRG also considered that some thought should be put into forward planning of training and have it communicated to highlight the overlaps.

AP: Philip Cullum to follow up on the questions posed by JRG with regards to training.

OFT TDT – OFT have published their final decision on the BA/Virgin price fixing case settling of a £58.5m fine on BA. This is about half of the original settlement. OFT is also currently undertaking significant work to make provision for the CMA on which they expect BIS to be laying a Bill before Parliament soon. OFT is currently looking into remoteness and rurality and how this impacts on the application of their powers. The OFT aim to provide a fuller update at the next meeting.

## 3. BIS UPDATE

The JRG welcomed the update from the BRE on its progress with the review of the regulators. Ofcom was able to confirm that it was stated on the review website that economic regulators were now firmly outside of the scope of the review. The BIS update prompted some discussion around the economic regulators and our interactions with the Regulatory Policy Committee (RPC). The JRG saw both risks and benefits involved with further interaction with the RPC mainly concerning the narrow scope of the RPC when considered against the more holistic remit of economic regulation.

AP: Philip Cullum (Ofgem) offered to make proposals on how the JRG could respond to and engage with the RPC in a more proactive manner.

#### **4. TERMS OF REFERENCE**

The JRG moved to adopt the Terms of Reference as presented with the following amendments:

- The ToR shall be reviewed by in a year
- The language around JRG position should be altered to be more reflective of the position being a shared position of the JRG members.
- OFT status should be reflected as that of an observer rather than a member
- The OFT status should be reviewed in the light of its merger with the CC into the CMA
- Mention shall be made of the Chief Operating Officers Group
- The first set of bullet points on pg 2 of the draft 0.5 (“JRG’s governance structures are designed...”) shall be deleted.

AP: CAA to amend and circulate the ToR

#### **5. REVIEW OF THE SPLICE PROGRAMM**

The JRG was pleased with the progress that the splice groups had made. They reflected that a significant amount had been gained from the programme through discussion and collaboration across the regulators.

The JRG considered that the outputs of the splice groups would not come under any of the categories for FOI exemption and that there are a number of occasions where an FOI as a direct or indirect question would lead to joint documents being made public. Further the JRG considered that if outputs from the Splice teams are to be useful then they need to be referable to. The JRG therefore decided that publication of outputs was appropriate. That said, it was recognised that on both resource and policy grounds, published reports may only summarise a group’s work.

The JRG consider that there should be

- Greater project discipline in the management of splice projects at both the JRG and the splice working group level
- Planning for the second round of splice groups needs to take place in the autumn to ensure that it can feed into the individual regulators resource planning to ensure adequate provision
- JRG needs to present its resource requirement as a request to the individual regulators

AP: CAA shall look to draft a lessons learnt note from the splice projects, this is likely to remain in draft until all of the current workstreams have completed.

AP: Splice groups to deliver publishable reports

#### **6. TREASURY REQUESTS**

The JRG discussed the request on infrastructure sharing posed by HMT in Infrastructure 2011 report. It was noted that Hannah Nixon of Ofgem had offered to take forward this project. JRG requested that the first step would be to consider the terms of reference and a project plan that could be circulated to the JRG before the following meeting.

JRG considered No10's procurement request. After the initial meeting held at No10 there it is apparent that this is best taken forward on a bi-lateral basis between the regulators and No10; so there is no need for it to be taken forward as a JRG issue. JRG requested to be kept updated to ensure no learning is lost.

## **7. COMMUNICATIONS STRATEGY**

The JRG discussed the communications note presented by Iain Osborne following development by the communications working group. Before making decision on presentation and publication the JRG considered that it would like to see what the repository of information would look like.

AP: JRG members to provide a copy of documents that they own (i.e. agreed meeting minutes, and reports made during their period in chair) of JRG output to the Secretariat for catalogue and circulation.

With regards to question two within the note, the JRG considered that they should spend some time upfront discussing the communications requirement of projects before they are handed to the project chair form which the project chair can make recommendations.

The JRG considered that it would be useful to signal joint working to key stakeholders. The Chair should propose an update when appropriate to go to Ministers, a summary text should also be provided for the regulators to circulate to additional stakeholders as they deem appropriate.

Ofcom questioned whether the JRG was mentioned in any of the regulators annual reports. The JRG members consider that this had not generally happened previously. However for consistency the JRG considered it would be prudent to supply a stock text to regulators for potential inclusion in annual reporting.

AP: the communications working group is to continue to develop the proposals to an operational level.

## **8. TOUR DE TABLE**

Monitor

The legislation necessary to make monitor a full economic regulator has passed through parliament. This has given them a tight time table for implementation. Monitor hope to have a provider licence in place from early next year covering the main areas of price, competition and protection in the event of provider failure. The Act set out a primary duty to protect and promote the interests of people who use health care services by promoting provision of healthcare services which is: (a) economic, efficient and effective; and (b) maintains or improves the quality of services. Monitor does not have a duty to promote competition but it must have a view to preventing anti-competitive behaviour.

Ofgem

In the implementation of the RIIO regime for transmission operators Ofgem have fast tracked the two Scottish transmission companies. Ofgem is seeking new powers for consumer redress from the government, to allow it to receive and enforce undertakings by companies that it has found in breach. Currently Ofgem can only negotiate settlements voluntarily and cannot enforce the result.

Ofgem noted that a new Regulated Industries Unit will be replacing consumer focus as an advocacy group for consumers in energy and postal services. Ofgem is also taking on the consumer confidence code as part of these changes.

#### HCA

The new regulatory framework for social housing was signed off in the last days of TSA, and it has been adopted by the regulatory board of the HCA. However there are concerns going forward due to the changes of risk at the industry level. Previously failure risk of small companies has been blunted with clear guidelines on transfer of responsibilities to larger firms. There is concern however that the larger firms are losing their ability to absorb the small firms in the current climate. HCA is looking to develop new recovery and resolution plans as well as develop further the financial ring fences that are in place. Another issue arising is a change in the client base with a number of for profit companies starting to register with the HCA. As a result of this the HCA is have to look to adapt its current regulatory framework which was built more around not for profit enterprises.

#### CAA

The Government is extending the scope of the ATOL scheme. The Civil Aviation Bill has entered the report stage and the CAA is currently progressing its work on the Price control under the assumption that they will be operating under the new legislative framework, whilst keeping the ability to progress under the current legislation. Initial views on market power at the three main London airports have been released. Finally the CAA will be in the next week or so announcing the chair of its consumer panel, which is to act as an internal challenge group.

#### Ofcom

Have provided a paper on the possible regulation of the press following a request from the Leveson enquiry, it has suggested self-regulation could work but legislative recognition might be necessary. Ofcom are consulting on a new provider led process for broadband and fixed land line switching, which it hopes will greatly speed up the process. They have also given Royal Mail greater freedom in the way it sets its prices but introduced safeguards on second-class postage to ensure consumers and competition are protected. Ofcom confirmed a budget cut this year of a further 2.6% nominal/6.2% real on a like-for-like basis. Ofcom is also taking forward work on the availability of communications services in rural areas, which they will update the JRG on as it progresses.

#### ORR

Published a joint consultation with DfT on increasing the scope of ORR's roll in the rail industry with regards to consumer complaints and consumers with disabilities; the paper also speculated on additional powers over train operating companies (TOCs). The TOCs have not support the idea of an expanded ORR remit, mainly around fears of a hybrid regulatory system under both licence to ORR and contract to the DfT. There will be a follow up in May. ORR have started PR13, which is broadly in line with the findings of the McNulty review, however ORR consider it needs to manage expectations over the range of saving possible from the McNulty review. ORR was pleased with the DfT's stance on transparency that it set out in the recent rail command paper. The ORR intends to take transparency as a significant issue going forward in making use of its current consumer powers. ORR

has set up a number of advice panels to support it in PR14 on consumer, economics and technical areas.

## **9. AOB**

ORR is taking forward a review of its use of reporters within its current regulatory practice, looking to build on its current model. HCA noted that it had carried out some similar work in this area and would be happy to share that with the ORR. Monitor noted that it has the powers but is currently unsure how it will look to develop these in practice, in the view of the regulatory burdens it will be placing on the industry. The CAA noted that it has extensive use of consultants reviewing companies, such as with its recent mid control review of Stansted. Iain Osborne noted that Uregni has had some success with reporters in water; Jo Aston was likely the appropriate individual there.

ORR also raised that they are hosting a seminar from CERA on a Study on wholes system approach, and would circulate details.

CAA noted that it would take forward discussing JRG membership with the FSA given the new framework agreed today.