MINUTES OF THE JOINT REGULATORS’ MEETING

7 October 2005

Present: Chris Bolt (PPP Arbiter and ORR) Chairman
Bill Emery (ORR)
Alistair Buchanan (OFGEM)
Philip Fletcher (OFWAT)
Dr Harry Bush (CAA)
Sarah Chambers (Postcomm)
John Fingleton (OFT)
Stephen Carter (OFCOM)
Douglas McIldoon (OFREG)

In attendance: Rob Toal (ORR) Secretary
Simon Virley (Better Regulation Executive) (Item 2)
Michael Gibbons (Better Regulation Task Force) (Item 2)
William Mason (Better Regulation Task Force) (Item 2)

Apologies: Alan Sutherland (WI Commission for Scotland)

ITEM 1 Minutes of the 8 July 2005 meeting

1. The minutes of the previous meeting were agreed.

ITEM 2 Better Regulation Issues

2. Mr Virley gave a presentation on the BRE’s proposals for taking forward the Better Regulation agenda. Mr Virley explained that this was a radical attempt by Government to reform regulation and was more concerned with improving the quality of regulation than simply cutting red tape. Under the agenda, Government is committed to:

   • year on year reduction in administrative burdens;
   • major rationalisation of the regulatory landscape through the Hampton review;
   • a risk based approach to enforcement;
   • tougher scrutiny of new measures; and
   • the Regulatory Reform Bill to speed up the process of deregulation.

3. Mr Virley went on to explain that the Regulatory Reform Bill has two main functions (i) to speed up the process for simplifying existing legislation, and (ii) to implement the ‘Hampton reforms’. These reforms include the power to enable the merger of regulators and to amend financial penalty regimes. Mr Virley said that the merger policy was not designed to include the economic
regulators and would not be used for large and controversial mergers. The consultation period on the policy to be covered by the proposed Bill ends on 12 October.

4. Mr Gibbons explained that the BRTF had carried out a follow up exercise to its “Economic Regulators Report 2001”. That report set out a number of recommendations on how economic regulators could improve the process of regulation. In the summer of 2005, the BRTF consulted industry, consumers and regulators on progress with the recommendations. Mr Gibbons gave an update on how much progress regulators had made in:

- setting out how they prioritise their objectives – this objective had largely been implemented with regulators publishing business plans setting out their priorities, although how these were decided was sometimes unclear;
- producing impact assessments – there was wide divergence with Ofcom ahead of other regulators in the use of cost-benefit analysis;
- being run by appointed boards – boards had now been (or were set to be) implemented in almost all sectors and were working well;
- demonstrating how proposals have been amended following consultation – there had been some improvement with different levels of openness and some innovation; and
- reviewing market sectors to examine price controls and outdated licence conditions – most regulators had reviewed market sectors and reduced regulation levels.

5. In terms of areas for further work, Mr Gibbons explained that some clarification was required on the role of Government in certain sectors. He also reported that, despite a lot of work in to the area, this issue of how the RPI-X model impacted on the regulation of investment had not been resolved.

6. BRTF had also found that sector specific regulation had not transferred to competition authorities and the economic regulators were increasingly making use of competition law. Some appeals procedures (e.g. Ofcom’s) have been reformed but not by all regulators. Good progress had been made with the use of self-regulation.

7. The group discussed the Regulatory Reform Bill. It was suggested that the Ofcom experience would provide a good case study for the merging of regulators. Members were concerned that the merger powers in the Bill could create uncertainty. Mr Virley said the BRE is keen to talk in more detail about these points and that ministers were alive to the concerns, there was no intention to apply these powers more generally as large mergers would not be handled through this route.

8. Members of the group also raised the issue of the extent of regulation out of Brussels and the risk that this could in certain areas outweigh any deregulation contemplated domestically by the UK Government.
ITEM 3 Royal Mail price control review update

9. Ms Chambers explained that Postcomm were now finalising Royal Mail’s price control review. The context of the review was slightly unusual in the sense that the next price control would be implemented at the same time as the market was opened up to competition. There is disagreement with Royal Mail about the level of underlying risk to the business. Royal Mail has argued that the price control should be consistent with a company operating in a competitive market, even though it still has 99% market share. The company has a significant pensions deficit, which makes financeability an important issue for the review. Postcomm intends to publish final proposals by the end of November.

ITEM 4 Project Paperless

10. This issue was considered under Item 7

ITEM 5 Cross-regulatory working

11. The group considered Paper (06)(05) on cross-regulatory working. Mr Fletcher said that Ofwat would like CAA and ORR to become more closely involved in the joint cost of capital work and agreed to speak to Keith Mason about this.

Action: Mr Fletcher

ITEM 6 Common Commencement Dates

12. Mr Toal explained that DfT had been in touch with ORR to discuss an initiative that would bring new legislation affecting business into effect on two common commencement dates - 6 April and 1 October each year.

ITEM 7 Tour de Table

13. Mr Fletcher (Ofwat) said that Ofwat had completed its review of the previous price control process. There had been a bid for East Surrey Holdings, which had gone to the Takeover Panel. A new competition regime was being implemented for the water industry. From 31 March 2006, Ofwat would move to a statutory board structure.

14. Dr Bush (CAA) said that NATS had agreed to CAA’s final proposals for the price control review. CAA were now starting the airports review, a feature of which is that the airports and airlines will be encouraged to have much more dialogue on relevant issues. CAA were working jointly with OfT on the issue of trading slots.

15. Mr Fingleton (OfT) explained that he started as Chief Executive on 6 October and that Philip Collins had started as Chairman on 3 October. The big issues currently were the proposal to establish a new Consumer and
Trading Standards Agency and other recommendations arising from the Hampton review.

16. Mr Carter (Ofcom) said that Ofcom had accepted BT’s undertakings for operational separation. The proposals will encourage a substantial level of investment in local networks. The analogue switch off date had been confirmed as 2012, this would have a big impact on traditional broadcasting. Ofcom had announced plans for spectrum auctions in different areas. Ofcom were now discussing with HMT the organisation’s budget for the next 3 years. Ofcom were also considering the issue of how to regulate the internet.

17. Mr Buchanan (Ofgem) said that there had been some merger and acquisition activity in the energy sector. Mr Buchanan would be attending a trade and industry select committee hearing into winter energy supplies. Ofgem were preparing for the electricity and gas transmission price control reviews, which would be carried out simultaneously. Ofgem are also undertaking the gas distribution price control review. Two reports on energy issues had been received from the EC on the state of competition and the success (or otherwise) of market liberalisation. Ofgem had carried out a major consultation on its Project Paperless initiative and was working towards February 2006 for making an announcement.

18. Mr Emery (ORR) said that the merger between ORR and HMRI was now likely to take place by the beginning of the next financial year. ORR had kicked off the next periodic review with a consultation document published in August. ORR would be having discussions with the DfT and the Scottish Executive on developing High Level Output Specifications. ORR intends to publish a baseline assessment of Network Rail’s revenue requirement for the next control period in December.

19. Mr McIldoon (OFREG) said that the Northern Ireland Authority for Energy Regulation was about to agree a five-year T&D price control with NIE. The local gas company Phoenix has from 1 October increased domestic gas prices by 29.9%. Ofreg are still awaiting the decision of the Takeover Panel (referred to in paragraph 13 above) as to whether or not Terra Firma will be compelled to buy Phoenix and until the ownership issue is clarified it is difficult to be clear about the way forward for the company.

ITEM 8 Any other business

20. Mr Buchanan confirmed that Ofgem would chair the JRG in 2006.