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Thank you for the opportunity to respond to BIS' consultation on Collaboration between Economic Regulators: Options for embedding joint working between economic regulators.

We consider that BIS should monitor progress (Option 1) and work with UKRN to encourage cooperation between economic regulators.

We strongly support the objectives of the recently established UKRN, which aims to improve how regulators can work together. Investors expect UK regulation to operate as a system with appropriate coherence between regimes, and the UKRN is an opportunity to enhance that coherence. It should also allow us to improve efficiency, doing once what does not need to be done multiple times. And, it should enhance our ability to take an integrated view on new challenges, where these impinge in similar ways across sectors.

The UKRN has only recently taken up this challenge and it has determined a particular way to deliver on its objectives. This is one of several options and while it should be given sufficient time to deliver, we would not be averse to a more directly resourced model should that prove necessary in due course. We also note that the UKRN has recently agreed a plan to accelerate delivery, with a further review next May – we see this as a key milestone.

We do not consider that guidance (Option 2) or the imposition of a new statutory duty (Option 3) is appropriate. Given that the UKRN was recently established voluntarily to improve collaboration, we consider that these alternative options would not be proportionate at this stage. We are particularly concerned about Option 3. A statutory duty would have limited benefit given significant areas of policy would also still be open to individual regulators' discretion. But a duty could have significant costs by, for example, making regulators focus unduly on process, impeding decision making or creating additional regulatory risks for companies. Specifically for aviation, we believe it would increase

regulatory uncertainty, given that the Civil Aviation Act 2012 was only recently given royal assent.

A response to each consultation question is given in the Appendix. Should you have any questions on our submission, [REDACTED]

Yours sincerely

[REDACTED]

## **Appendix: CAA response to the collaboration between economic regulators: options for embedding joint working between economic regulators consultation**

This Appendix provides our response to each consultation question.

### **Role of the UKRN**

Question 1) Do you have any views or experiences – on cooperation between regulators, particularly under the previous JRG regime and before the UKRN was established

The Civil Aviation Authority (CAA) was a member of the Joint Regulators Group (JRG). We received significant value from being a member of this group, through joint cooperation, research and policy discussions. The research undertaken by the JRG is available on the UK Regulators Network (UKRN) website: [www.ukrn.org.uk/?page\\_id=81](http://www.ukrn.org.uk/?page_id=81)

However, a key weakness of JRG was the difficulty of getting members to commit resources and to alter their regulatory practice in light of JRG work. We therefore shared the view that the benefits of JRG would be enhanced by increasing top-level commitment to cooperation across regulators and stronger governance around cross-regulator planning and working, including:

- Improved transparency around the selection of projects to be undertaken and the publication of a specific programme going forward;
- Dedicated resources to facilitate the delivery of projects against agreed timelines;
- Publication of findings and reports, as well as monitoring of project;
- Dedicated website to disseminate the work programme and the outputs to stakeholders and the wider public.

We also note that informal collaboration between individual regulators on matters of shared interest has always been common.

Question 2) Are there any specific areas where cooperation amongst the regulators could bring greater benefits and/or protections for consumers? Please provide any examples that you think will help demonstrate your argument

The CAA is a member of the UKRN which launched in March 2014 to facilitate and increase cooperation across the UK's economic regulators.

A number of projects have been identified for delivery by the UKRN over the first year of its operation. The outputs from these projects are likely to bring greater benefits and/or protections for consumers.

The projects currently in the UKRN work programme include:

- Cross-sector infrastructure investment: provide regulatory solutions to enable multi-sector infrastructure investment;
- Consumer engagement and switching: approaches to engagement and switching across sectors;
- Understanding affordability across sectors: identify affordability pressures and establish scope for possible solutions;
- Cross-sector resilience: tools and approaches to understand and enable effective management of risks from cross-sector threats and dependencies;
- Explaining the benefits of economic regulation: help raise understanding of what independent economic regulation can achieve, when it works best, and how we can improve;

- Organisational development: share expertise and make better use of resources;
- Market returns and the cost of capital: analyse potential for and approaches to a common framework for financeability;
- Regulating for quality: support best practice in service quality standards.

Other projects will be identified and resourced over time, based on discussions with UKRN members and stakeholders across regulated industries.

Question 3) Is there evidence of areas where sharing best practice and developing more consistency between sectors would benefit investors, regulated companies and/or consumers?

The UKRN's objectives, set out in a Memorandum of Understanding and signed by all Chief Executive Officers (CEOs), task the UKRN regulators to collaborate to achieve the following six objectives:

- Coherent and consistent economic regulation across sectors;
- Affordability and empowerment;
- A positive environment for efficient investment;
- Efficient regulation;
- Promotion of competition in the interests of consumers;
- Better understanding of the effectiveness of economic regulation.

These objectives are backed by a public commitment by the CEOs to improve the effectiveness of economic regulation.

UKRN project teams are now working on an ambitious work programme covering infrastructure investment, consumer switching, affordability, resilience, benefits, organisational development, cost of capital and quality.

We consider that the outputs from all the projects in the work programme are likely to benefit investors, regulated companies or consumers.

Question 4) Are there specific areas where better cross-regulator cooperation could improve infrastructure delivery or incentivise the more efficient use of infrastructure assets or networks? Please provide any examples that you think will help demonstrate your argument.

See response to Questions 2 & 3. Recent UKRN analysis of cross-sector infrastructure interactions found that:

- the issues affecting interactions are not so big that they prevent investments taking place;
- interactions can in some cases make the process more difficult, time-consuming or costly;
- there are examples of the process around interactions working well.

UKRN also identified area where stakeholders considered improvements could be made including:

- clear points of contact;
- firm timescales;
- design specifications and information;
- governance and decision making;

- accuracy of asset information;
- consistent treatment;
- costing transparency;
- access agreements and financial terms;
- adoption / learning of best practice;
- co-ordination of on-site access.

Specifically as regards aviation, it should be noted that airports are akin to small cities, and already inherently involve many kinds of infrastructure working together smoothly. In general, this does not require any regulatory intervention.

### **Options for supporting and encouraging cooperation**

Question 5) Do you believe that Government should take further steps to support and encourage cooperation between regulators? If so, what would be your favoured approach and what benefits do you think this would bring? Please include, if appropriate, any issues which you consider may inhibit cross-sector cooperation.

With CEO leadership and an ambitious work programme, the UKRN network has already increased levels of cooperation between regulators. This occurs at all levels of regulators from senior leadership to managers and combined project teams.

The UKRN has only recently taken up this challenge and it has determined a particular way to deliver on its objectives. This is one of several options and while it should be given sufficient time to deliver, we would not be averse to a more directly resourced model should that prove necessary in due course. Such a directly resourced model could include a larger secretariat and a central pool of expertise on selected issues.

We also note that the UKRN has recently agreed a plan to accelerate delivery, with a further review next May – we see this as a key milestone.

Before this review, we believe that Government should work with the UKRN to ensure that the benefits from collaboration and the existing projects and work programme are maximised. This is outlined in more detail in Question 6.

Question 6) Do you have any views on the advantages and / or disadvantages of each of the three options identified? Do you have a preferred option?

#### Option 1

Option 1 is our current preferred option. The UKRN has only been in operation for less than a year, so we consider that it should be given a reasonable amount of time to demonstrate that it can meet its objectives and deliver benefits to consumers.

As well as it being too early to implement alternative regimes, we have more basic concerns with the Government providing guidance to the regulators on cooperation or introducing a statutory duty on regulators to cooperate. In summary, we believe these options would be disproportionate and potentially harmful. Our concerns and the disadvantages are set out below.

#### Option 2

Guidance can be interpreted differently and consequently the level of co-ordination between regulators that is achieved may be limited. In addition, as the UKRN has already indicated a willingness to address concerns about co-ordination, any alternative action on this issue could undermine the goodwill currently present between regulators.

More fundamentally, in the event that guidance was issued, and there was disagreement between the government and a regulator (notwithstanding that guidance is only that), this could increase uncertainty and, therefore, the perceived risk and cost to the sector, which could harm consumers.

This is particularly the case given that there is already strategic guidance given to some regulators and it is not clear how any conflict (real or perceived) between general guidance to all regulators and specific guidance to individual regulators might be managed. Such action could also raise questions as to the independence of economic regulation in the UK, which is respected (and often used as a bench-mark) world-wide.

### Option 3

As with Option 2, given the number of duties that regulators must already consider, the imposition of a new duty would not guarantee an increase in consistency or the level of co-ordination between regulators (especially given that the duties that individual regulators have are not consistent across their various functions). Indeed, the reverse might occur as each regulatory decision will have to make decisions in the context of even more duties, all of which can be interpreted differently.

The evaluation of this option is further complicated as no detail is provided as to whether this new duty would be a primary, secondary or other duty or what the intensity of that duty might be. It is therefore unclear how, in practice, any such duty could have any real 'teeth' in judicial review or other proceedings. It could even be argued that a statutory duty for regulators to cooperate among themselves would be of limited additional practical value. It is likely that there significant areas of policy would still be open to individual regulators' discretion.

A new duty may, therefore, increase the complexity, time and cost of decisions, increase uncertainty and increase the scope for legal challenge, while, at the same time decreasing the transparency of regulatory decisions. In the particular case of the CAA, given that the Civil Aviation Act 2012 is relatively new, the imposition of a new duty, so soon after the Act being given royal assent, could also further undermine regulatory certainty (not to mention raise questions as to why this concern was not identified by government officials in the development stage).

Question 7) What are your views on how best to implement each of the three options identified without becoming overly burdensome or impacting regulatory stability?

As Option 1 requires little other than the government to provide time and space for the UKRN to meet its objectives, we do not consider that any additional burden will be imposed. We also do not consider that this option will adversely affect regulatory stability. Indeed, we consider there is significant scope for Option 1 to increase regulatory stability across the UK.

Determining the potential impact on the level of regulatory burden or regulatory stability is difficult since Option 2 and Option 3 are described only in broad terms. We refer you to our response to Question 6 for more information on this issue.

Question 8) Are there any other options which the Government has not identified in paragraph 3.3. If you identify any, what are the advantages and disadvantages of such options?

There are many possible ways for Government to engage on economic regulation. However, rather than devising further options and scenarios at this time, we suggest the main task is to identify in what ways current arrangements are not optimal. The best solution will depend on exactly what problem is diagnosed.