

# SLG ECONOMICS LTD

ECONOMICS, REGULATION, COMPETITION

## **Collaboration between Economic Regulators: Response from SLG Economics Ltd**



**[www.SLG-Economics.co.uk](http://www.SLG-Economics.co.uk)**

**November 2014**

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## Collaboration between Economic Regulators: Response from SLG Economics Ltd

### Background: SLG Economics

**SLG Economics** is an economics consultancy set up by Stephen Gibson specialising in the provision of regulatory and competition policy advice to regulators, regulated companies and governments. Stephen Gibson is a recognised expert in this field with over 20 years applied regulatory and competition economics experience in the postal, rail, telecoms, broadcasting, aviation and radio-spectrum sectors - from both sides of the regulatory fence. Mr Gibson was Chief Economist and Director of Economic Policy at Postcomm – the former independent regulator for postal services in the UK from 2007 to 2011. He has also been Principal Economist at Ofcom, Head of Economics at Network Rail, Senior Consultant at NERA Economic Consulting as well as holding other senior economics positions.

Mr Gibson has published articles on regulatory economics in leading academic books and journals. He has lectured widely on economic regulation at national and international industry conferences and seminars. He is a Lecturer in Microeconomics at Birkbeck College, part of London University and has been a Lecturer at London's City University on Economic Regulation for their MSc in Regulation and Competition.

**SLG Economics** organises the **Regulators' Forum**<sup>1</sup>. The **Regulators' Forum** meets on a quarterly basis and includes all the UK economic regulators apart from Ofgem (ORR, Ofcom, Ofwat, the CAA, WICS, the Northern Ireland Utility Regulator, Monitor and CICRA – the Channel Islands Competition and Regulatory Authority). At the **Regulators' Forum**, Stephen Gibson briefs and updates delegates on recent developments in economic regulation, summarising all the recently published consultation and decision documents across all the different regulated sectors.

Stephen Gibson attended the BIS stakeholder session on collaboration between economic regulators on 3<sup>rd</sup> November 2014. This paper is **SLG Economics'** response to the consultation by BIS on Collaboration between Economic Regulators, it is not confidential.

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<sup>1</sup> <http://SLG-Economics.co.uk/the-regulators-forum/>

### Ensuring closer collaboration between regulators

The BIS consultation is very narrow in considering a limited set of options for collaboration between economic regulators. My experience of working in a senior position at a number of economic regulators (including as a member of the JRG) is that there is very limited active collaboration or even coordination between the different regulatory bodies – the difference between the level of internal co-ordination and external co-ordination is very marked. For example, the regulation of the postal, telecoms, broadcasting and radio-spectrum industries within Ofcom are much more closely co-ordinated than the very limited co-ordination between airport and rail regulation at ORR and the CAA respectively - even though there are far greater market interactions and arguments for co-ordinated regulation between different parts of the transportation sector than say between postal regulation and radio-spectrum regulation<sup>2</sup>.

What is notable is the limited level of awareness in each regulator of developments in the other economic regulators - even when they may have significant implications across all of the regulatory sectors. I am continually concerned in my interactions with regulatory staff at their limited knowledge of policy developments in other UK economic regulators. This leads to the need to 'reinvent the wheel' during policy development, requiring extra resources and with the potential to repeat mistakes from other regulators and not follow best practice. It also leads to a lack of consistency between policy developments at different regulators.

There is a remarkable difference between the level of effort that economic regulators put into making their staff aware of their own policy developments, compared with the limited emphasis they place on staff being aware of developments in other regulated sectors - even though as mentioned above in some cases the markets are actually closer across regulators than between them. Even if the final markets are different, many of the issues tackled by the regulators are genuinely common across the different sectors for example:

- approaches to engaging customers and customer groups and other stakeholders,
- the use of different types of evidence in decision making,
- the use of insights from behavioural economics, auction theory and other fields,

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<sup>2</sup> This was the main argument for the merging of Ofgas and Offer to provide co-ordinated regulation of the energy sector under Ofgem.

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- how to regulate companies without shareholders,
- issues in market definition and market power assessment, particularly where existing markets are already subject to regulation,
- the use of price cap regulation and the building block approach to price controls,
- the use of alternatives to RPI-X and the use of other less intrusive regulatory frameworks,
- the development of regulatory accounting, regulatory reporting and monitoring regimes,
- the interaction between regulatory and competition regulation (*ex ante* vs *ex post* regulation),
- how to take account of environmental and other concerns in regulatory decision making, and
- the use of impact assessments in regulatory decision making.

Ensuring that regulators are aware of developments in other sectors and so can provide a consistent approach to economic regulation across the UK economy is key to ensuring the best possible outcome from the UK regulatory regimes.

**SLG Economics** seeks to bridge that gap by running the **Regulators' Forum**<sup>3</sup>. The **Regulators' Forum** provides delegates with a quarterly summary of all the regulatory consultation papers and decision documents across all the regulated sectors over the previous three months. It highlights new or different approaches that are being taken by the regulators and their implications for the different regulated sectors. This provides a real overview of developments across the different regulators which is essential if regulators are to collaborate and co-ordinate their work more effectively. One way to increase the effectiveness of the co-ordination between economic regulators would be for them to place a higher priority on staff engagement in groups like the **Regulators' Forum** - it is a shame that Ofgem is alone among the UK economic regulators in not being a member of the Regulators' Forum and so does not benefit from the discussion of recent regulatory developments and that the UKRN has chosen not to join the Forum.

The **Regulators' Forum** is a highly effective way for regulators to keep up to date with developments in economic regulation across the UK. As one delegate to the Forum commented:

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<sup>3</sup> <http://SLG-Economics.co.uk/the-regulators-forum/>

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*“The Regulators’ Forum is an extremely effective means of keeping up to date with developments across all the various sector regulators. Without Stephen’s hugely extensive and deep analysis of key regulatory decisions, I doubt whether any of us would have the time or spare resource to do a 1/10th the analysis Stephen manages to deliver in his round up of regulatory developments”.*

Another delegate commented:

*“As a long standing attendee of the Regulators’ Forum, I have been impressed by Stephen’s comprehensive overview of regulatory developments across the different utility sectors. He provides an insight into and understanding of recent regulatory proposals based on his extensive experience of regulatory and competition economics which would be difficult to gain from elsewhere.”*

## **Question 1: Views and experience on co-operation between regulators under the previous JRG regime**

As a senior executive at two UK regulators (Ofcom and Postcomm) during the previous JRG regime, I found that the JRG provided for very limited cooperation between the regulators. There was limited feedback into the senior management group and even less cascaded through the organisation – it is difficult to think of one regulatory change or significant issue that was led from the JRG. Part of the problem was the lack of an executive staff at the JRG to develop their ideas, but the greater issue was the tension between regulatory independence and regulatory coordination.

An example of the failure of the JRG was the RPI-X@20 programme, which was led by Ofgem as a comprehensive review of the price control approach to economic regulation and should clearly have been a cross-regulatory review. However this programme never really engaged the other regulators, nor were its findings fed into the regulatory approaches of the other regulators. Similarly the more recent trend to move from using RPI to CPI within the price cap has been independently researched and considered by each of the regulators in their price control reviews, rather than the research being coordinated across the different regulatory bodies<sup>4</sup>.

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<sup>4</sup> This issue was discussed at a recent meeting of the Regulators’ Forum, following a presentation on the subject led by Ofcom

**Question 2: Are there areas where cooperation amongst regulators could bring greater benefits and/or protections for consumers?**

As discussed above, greater understanding of the regulatory regimes and regulatory developments across the different economic regulators would help to bring greater benefits and/or protections for customers by ensuring that each regulator took account of the research and understanding acquired by the other regulators in its regulatory decisions. One approach that was used at Postcomm was to ask another regulator (in that case Ofcom) to peer review / provide informal comments on regulatory documents (particularly where they touch on cross-regulatory questions), before they are published. Similarly, schemes for regulatory staff to move between different regulators as part of their career development and a far greater emphasis on secondments and job swaps between regulators would help.

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

As discussed above, SLG Economics believes that sharing best practice and developing consistency between sectors in their regulatory approach and analysis and well as their decision making processes is critical to Better Regulation and better outcomes for all stakeholders – Consistency is one of the principles of good regulation set out by the Better Regulation Commission.

**Question 4: Are there specific areas where better cross-regulator cooperation could improve infrastructure delivery or incentivise better use of assets?**

Yes, for example better cross-regulator understanding of the quality of service / performance regimes in the airport infrastructure and rail infrastructure regulatory regimes (as well as post and telecoms) would potentially improve the effectiveness of these regimes. Similarly the regulatory reporting regimes in water, energy and post would potentially benefit sharing knowledge between sectors. However as well as the regulatory remedies used, regulators could also benefit from greater sharing of their approach to regulation – for example in how they gain input and feedback from customers where these are individual consumers rather than businesses and how they use market research and other forms of evidence to support their decision making.

## **Question 8: Are there any other options which the Government has not identified?**

The Government is seeking to ensure collaboration through the UKRN, however it needs to ensure that changes are disseminated through the regulatory bodies rather than their simply having discussions at a cross-regulatory body. One of the ways to achieve this is to ensure that the regulators place proper priority on ensuring that as many policy staff members as possible are aware of and understand the developments in other regulatory bodies. One way to achieve this would be through greater prioritisation of and attendance at bodies like the **Regulators' Forum**.

If the UKRN is to become the prime means for regulatory co-ordination, it needs to ensure that it does not mimic the JRC in losing its profile and focus over time. One approach might be to have a regular (periodic) review of the outputs and effectiveness of the UKRN and their delivery against their workplan.

**SLG Economics**

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