

26 November 2014

UKRN Consultation
Competition and Consumer Policy Directorate
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Dear Sir or Madam,

Response to Consultation on Regulatory Collaboration

This letter is TalkTalk's response to the Government's consultation on Collaboration between Economic Regulators, dated 6 October 2014. TalkTalk is pleased to have been asked to respond to this consultation. Our very existence depends upon the presence of strong economic regulation in the communications market and so we are keen to ensure that regulation is effective.

In TalkTalk's view, there are limited gains to be made from increased collaboration between regulators. In Section 2 of its consultation document, the Government sets out the various potential benefits from increased co-operation with regulators, setting out a number of potential benefits. TalkTalk's views on the likelihood of such benefits arising in practice is as follows:

- *Coordination on affordability*– which we understand to be the concept of offsetting price rises in one sector by reductions in regulated charges in other sectors. TalkTalk's business model is to operate as a value provider, and as such we continually seek to introduce innovative new products to our consumers, which allows them to save substantially compared to customers of our rivals. We are therefore acutely aware of affordability concerns. However, we do not consider that there would be any benefits from increased regulatory coordination in this area. The best way to ensure affordability for consumers is to create the conditions for competition to flourish in downstream retail markets, and to regulate strongly in upstream infrastructure markets where firm(s) have significant market power. It is this process of competition which will ensure that consumers have access to affordable products.

TalkTalk considers that it would be a highly retrograde and harmful step for regulators to seek, when setting regulated prices, to take into account recent changes in consumers' other utility bills. Such a policy would be likely to have a number of detrimental effects, including:

- causing a large increase in regulatory risk both for regulated firms and their wholesale customers, since wholesale charges will no longer be set on an objective and transparent basis, but will be influenced by behind-the-scenes discussions with other regulators;
- this increase in risk will raise the cost of capital of regulated firms and their wholesale customers, and as such will deter investment and increase costs to consumers;
- creating economic inefficiency, since wholesale prices would not reflect underlying costs.

These detrimental effects will more than offset any putative consumer benefit from more stable aggregate utility bills. Coordination on affordability should therefore be avoided.

- *Cross-sector infrastructure delivery* – TalkTalk does not believe that this is likely to be a major concern for the communications sector. There would be little benefit for mobile or broadcasting infrastructure, as this is remotely delivered to residences, and does not require infrastructure to consumers' premises. While fixed-line broadband infrastructure does interact to a certain extent with the infrastructure of other utilities, in TalkTalk's experience there would be little benefit from increased regulatory coordination, which is likely to be at too high a level to make any practical difference to outcomes.
- *Sharing best practice* – in principle, sharing best practice would appear to be low risk and potentially positive. In practice, however, TalkTalk has concerns about this form of regulatory coordination. In general, TalkTalk considers that Ofcom is a well-performing regulator, with processes and quality of analysis above other UK regulators. As such, we are concerned that other regulators' relatively poorer practices could contaminate Ofcom's approach to regulation. Moreover, we see no reason why best practice sharing should take place via a formally established group, rather than by regulators reviewing documents placed into the public domain by their regulatory peers and informally discussing each others approaches.

Introducing increased regulations of (for example) the form of bills is likely to harm innovation and therefore the very consumers that it seeks to help. A good example of such misguided regulation has been Ofgem's disastrous imposition of a maximum number of tariffs which can be offered to consumers in energy markets, which has had the impact of harming consumers by reducing their

choice, reducing innovation, and by increasing the costs of suppliers, costs which will be passed on to consumers.¹

It is important to note that there will also be deadweight costs of maintaining the UKRN— as noted at §1.12 of the consultation document, the CEOs of the regulators commit time to attending UKRN meetings, and the regulators are funding a secretariat to take forward a work plan. These costs will have to be set against the benefits of the UKRN (to the extent that there are any such benefits). As such, TalkTalk does not consider that the benefits of large scale coordination will outweigh its costs. There is therefore no clear or strong case for taking further steps to support and encourage cooperation between regulators.

If, notwithstanding this, Government chooses to provide some additional support to collaboration between regulators, then it should do so in the manner that creates the least restrictions for potential regulatory options, permitting this collaboration to be unwound in the future. As such, it would be highly inappropriate to create a new statutory duty to cooperate; and even guidance on cooperation would be excessive. If Government chooses to intervene in any way, it should at most be to monitor the progress of UKRN; such monitoring should not solely take the form of seeking the positives of coordination, but should also attempt to uncover any problems created by regulatory coordination. If there is no case for ongoing Government support of the UKRN, then such support should be withdrawn.

TalkTalk hopes that this submission makes its position clear. We look forward to Government announcing what its next steps, if any, will be.

Yours sincerely

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¹ See Littlechild, S. (2012), *Ofgem's Procrustean Bed*, January 23rd.