



UKRN Consultation
Competition and Consumer Policy Directorate
Department of Business, Innovation and Skills
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26 November 2014

Collaboration Between Economic Regulators

Dear Sirs,

SmartestEnergy welcomes the opportunity to respond to your consultation on the Collaboration Between Economic Regulators.

SmartestEnergy is an aggregator of embedded generation and a supplier in the electricity retail market serving large corporate and group organisations.

We are a medium sized business with approximately 150 staff.

Please note that our response is not confidential.

SmartestEnergy's view

We believe in truly independent regulation and believe that governments should not be allowed to direct or influence the actions of regulators aside from setting their overall powers and statutory duties. We were alarmed to hear Dermot Nolan saying at the EnergyUK Conference in October this year that he considers Ofgem to be a "servant of the elected government". It is important that the regulatory regime is more stable than the life-cycle of governments as investment in the energy industry and the long term benefit of competition operate on longer timescales.

In the Energy sector, regulation is becoming more and more interventionist and reactive to government. The greatest impact of greater co-operation between regulators would be a unified voice objecting to threats and proposed interventions (either from government or opposition) on the workings of markets as this should be solely in the remit of economic regulators. There could also be peer review of proposals which could inhibit rather than encourage competition. It is not appropriate for each regulator to claim that their area of



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regulation is a special case as there should be some high level principles that could be learnt through collaboration in this area. We would, however, caution against formalising such inter-regulator review; it could create a rather unwieldy layer of bureaucracy if regulators were obliged to consult with each other and come to agreement before change could be implemented.

A good example of over-regulation from Ofgem is in the area of customer service. We are of the view that if a company is not providing good customer service those customers should be left to move to other suppliers who do provide better customer service. It is not in the interests of competition to impose more and more regulations to standardise customer service as this does not incentivise customers to move or for other suppliers to offer good and innovative customer service. The focus should be on removing barriers to switching and fining companies which mislead customers (including Third Party Intermediaries i.e. brokers, switching sites and suppliers themselves) where this occurs.

Another area where regulators could learn from each other is in the area of reporting. There are massive reporting obligations within the electricity industry and peer review amongst regulators (including the FCA) may encourage individual regulators to think twice before launching yet another Information Request.

Although we appreciate the government's desire to force collaboration in the pursuit of efficiency and better outcomes for consumers, the UKRN already has regard for collaboration in its objectives and has set out an ambitious work plan for its first year. We believe they should be given the chance to deliver on this plan and the need for intervention can be re-evaluated alongside their annual report if it is found that individual regulators are not engaging with the organisation.

In short, we would like to see the UKRN standing up for its members and arguing the case for independent regulation, drawing on the experience of regulation in all sectors.

We answer the questions in which they appear in the consultation document below.

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?

No. If any collaboration has taken place it has not been widely publicised.

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 document states that the Government believes many of the lessons learned in one sector may be relevant to other sectors and talks of the sharing of experience, knowledge and best practice. We agree with this. We believe, however, that this could go further so that regulators can challenge each other on whether their sectors are truly as competitive as they could be or whether there is a tendency to be overly interventionist. It is important that there is consistency across all sectors in terms of the level of competition.

We think it would have been helpful, for example, for Ofgem to discuss limiting the number of domestic tariffs with other regulators esp. telecoms. We are now in a situation where domestic customers are suffering because single rate tariffs are no longer available. The solution should have been a more timely tackling of misleading comparison websites.

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?

Whilst we understand the need to keep regulators separate there may be some advantages to pooling legal resource for due consideration of major changes. It seems incredible to us that Ofgem did not realise that their decision on TransmiT was potentially discriminatory and is now the subject of a Judicial Review, the occurrence of which should really have been avoided.

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.

No comment.

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.

We find it rather ironic that government is considering the mandation of greater co-operation between regulators if they are not working together as the government would like; in some ways this could be seen as not respecting the independence of regulators. Of the options given, we prefer Option 1 i.e. monitor the progress of collaboration. But if the Government does not like what comes out of the UKRN it should not try to muzzle or influence it. Government should only offer guidance if not





much collaboration is evident, but only if there is evidence that more collaboration would have resulted in better outcomes.

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?

Please see answer to Q5. In addition, we would add that option 3 (introducing a new statutory duty), would be problematic for a number of reasons; it would dilute/complicate the trade-off with other duties; would risk leaving the regulators open to litigation (if for instance a regulator made a decision without consulting other regulators a market participant could try and use the duty to challenge the decision); and could as a result add pressure to the decision making process unnecessarily.

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?

No comment.

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?

We are of the view that consideration should be given to introducing further legislation to enshrine the independence of regulators from government.

Should you require further clarification on this matter, please do not hesitate to contact me.

Yours sincerely,

[Redacted signature]

smartestenergy

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