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Ofcom

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9 December 2014

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Dear Bernadette

Consultation on collaboration between economic regulators

In light of your consultation on encouraging closer co-operation between economic regulators I thought I would offer some reflections on our experience in this area. As a member of the UKRN, Ofcom supports the position set out in the UKRN's response to the consultation. That is, we are in favour of option 1 - to monitor the UKRN's progress and review its effectiveness in 2015. However, I thought it would be useful to highlight some points particular to Ofcom, both in terms of our work with other regulators – through the UKRN and otherwise - and the potential impact of the different consultation options.

Ofcom's work with other regulators

Firstly, it is worth noting that since our inception in 2003, Ofcom has established important direct relationships with a number of other regulators, both economic and non-economic. In some areas, Ofcom shares regulatory duties with another organisation and must engage on a regular basis in order to effectively carry these out. For instance, we share responsibility for tackling nuisance calls with the Information Commissioner's Office and co-ordinate our actions through a Joint Action Plan to ensure the best outcomes for consumers.

We also share information and carry out work with other regulators in areas where communications services underpin another regulated sector (or vice versa). The most recent example of this has been our collaboration with the Payment Systems Regulator to produce a report on innovation in consumer electronic payments. This analysis will be used to inform both regulators' future work programmes on a topic relevant for both the financial and communications sector.

In addition to our bilateral relationships, we also recognise the value of more formal structures to encourage co-operation and knowledge-sharing. Ofcom was previously a member of the Joint Regulators Group (JRG), which we believe was a useful vehicle for cross-regulator dialogue. The JRG undertook valuable work by pooling resources and expertise to look at topics where consumers and industry might benefit from regulatory collaboration.

However, we recognise that the JRG model was not necessarily able to extract the full potential value of collaboration between regulators. For instance, without a full-time secretariat the JRG was limited in the amount it could deliver and its work programme therefore tended to focus on technical issues, rather than strategic priorities.

By creating a network backed by a permanent office, we believe that the UKRN will be able to deliver a step-change in how regulators can co-operate. This includes a more ambitious work programme, higher-quality outputs and providing thought-leadership in areas that will benefit from cross-regulator collaboration. The UKRN will also be more accountable for its work than its predecessor forum, with more emphasis on the outward communication of its analysis and findings. This includes a dedicated website and a public consultation on priorities through its annual planning process. The explicit commitment by CEOs to drive progress will help to ensure that its recommendations are implemented within member organisations.

Ofcom is an active member of the UKRN, and for the first two years we are hosting the UKRN Office (which is staffed by secondees from within Ofcom). We are also leading the UKRN's work on resilience, regulating for quality and enabling innovation in infrastructure, and we are contributing actively to its other workstreams. We are committed to participating in the UKRN's work programme going forward and hope that our own practices will benefit from the recommendations this produces.

We recognise of course that the UKRN will ultimately be judged by external stakeholders on its ability to deliver positive change for consumers. While the UKRN's recent set of initial publications – including the first phase report on infrastructure interactions and the separate guide for investors - help to demonstrate progress, we are clear that more work will be required to see through the potential benefits.

The consultation options

After reviewing the consultation options, we consider monitoring progress and working with the UKRN (option 1) to be the most appropriate of those outlined. Given that the UKRN has only been in operation for a relatively short period, we believe it is reasonable to give it time to demonstrate its effectiveness. Once the UKRN has been able to carry through its ambitious initial work programme we welcome scrutiny of its output and feedback on future priorities.

In our view, neither guidance from Government (option 2) nor a statutory duty to co-operate (option 3) are necessary, in light of the regulators' commitment to making a success of the UKRN.

Members of the UKRN have demonstrated their commitment to co-operate with each other by agreeing to establish the network and continuing to contribute to its work. Providing

guidance or implementing new legislation might prove to be an attempt to address problems identified under the previous framework of co-operation that no longer apply.

We are also concerned that guidance or legislation could create unclear tensions with existing statutory duties. As described above, it is important that regulators retain sufficient discretion to apply decisions that do not necessarily align perfectly with other sectors, should this be justified by different market circumstances.

Moreover, we are concerned that a duty to co-operate could make sound regulatory decisions open to legal challenge on the basis of an allegation of insufficient collaboration with other regulators. Protecting decisions against such a challenge could place an undue burden on regulators and inevitably draw focus away from implementing core duties. This is particularly relevant in the communications sector, given that we operate under an appeals regime that is not itself aligned with that operating in other regulated sectors.

We also note there may be risks if any new duty applied only to members of the UKRN. This may compromise valuable ongoing collaboration between members in areas that do not directly relate to economic regulation, which could present particular risks for Ofcom given our work described above.

I hope the above is helpful in demonstrating Ofcom's commitment to continuing to collaborate with other economic regulators. As always, we will continue to think about how we can improve our co-operation with our regulatory colleagues to deliver better outcomes for citizens and consumers. We look forward to engaging further with you on these questions through the UKRN.

Yours sincerely

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