

# Collaboration between Economic Regulators

Options for embedding joint working between economic  
regulators

Government Response to the consultation

March 2015

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# Foreword from Parliamentary Under-Secretary of State for Employment Relations and Consumer Affairs

The UK has a world class model of independent economic regulation. Our approach helps attract low cost investment into the UK's essential infrastructure, which in turn leads to quality, choice and low prices for consumers. We are proud of this: it is an approach which has been widely copied across Europe and beyond.

When publishing the consultation on collaboration between economic regulators, we set out our views on the potential benefits of regulatory cooperation. We considered there to be a number of areas where cooperation could lead to better outcomes over and above those already being achieved through sector-specific regulatory decision making.

This was an extensive consultation across all the main regulated sectors and with input from consumer groups. We held stakeholder sessions during this period, which proved to be extremely helpful in formulating opinions. The Government gained valuable insight into approaches to cooperation.

The responses to the consultation confirmed our thinking and a number of areas were identified where regulatory collaboration would be beneficial. Responses also set out views on whether more could be done by the Government to embed joint working between the regulators.

The UK's economic regulators joined together on 19 March 2014 to create the UK Regulators Network, with the aim of improving co-ordination across regulators for the ultimate benefit of consumers. The Government is supportive of the progress already being made by the economic regulators and this response document sets out the Governments position.



Jo Swinson MP

# Introduction

## Economic regulation

Independent economic regulation has been a vital part of the UK's framework for economic regulation since the 1980s and remains central to the Government's approach. 'Economic regulation' typically describes the functions of the regulators established to ensure that the main infrastructure sectors in the UK operate in a competitive manner in consumers' interests and, where appropriate, regulating prices where a monopoly exists. These industries provide essential services, including energy, water, communications and transport to consumers and businesses across the UK.

Effective regulation and competition enforcement in these sectors is crucial to protect consumers and to ensure businesses have access to critical inputs that facilitate competitiveness and productivity. Firms, investors and consumers in these industries have benefited from an independent, stable regulatory regime that encourages investment, innovation and competition.

Reflecting the industries which they regulate, the regulators are organised on a sector-specific basis. There is a separate regulator for each major infrastructure industry – energy, water, rail, aviation and communications. While there are common elements to their economic regulation roles, the regulators each have different statutory duties. These statutory duties have also evolved over time to reflect the different policy priorities within each sector. As a result, whilst inevitably the regulators are tasked with, and must address, very different issues specific to the sector they regulate, there are also cross-sectoral issues, common problems that each must deal with, and potential benefits that can be gained from more co-ordination and cooperation across regulators.

## Existing cooperation

Although established as sector-specific bodies, it has been acknowledged for some time that cooperation between the regulators has the potential to bring benefits.<sup>1</sup> The Joint Regulators' Group (JRG) was established between the economic regulators in 2005 to provide a structure to govern collaborative work, enabling regulators to explore common issues and approaches.

The JRG made important progress in highlighting the importance of developing a structure for joint working between the regulators. However, it also faced a number of limitations.<sup>2</sup> Recognising that there was scope for further progress in this area, the Government announced at Autumn Statement 2013, that it would undertake a study on the regulators.<sup>3</sup> Following this, on 19 March 2014, the UK's economic regulators established the UK Regulators Network (UKRN).<sup>4</sup>

The UKRN aims to improve co-ordination across regulators for the ultimate benefit of consumers. Its objectives are:

- 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

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<sup>1</sup> For example, in 2007, the House of Lords Select Committee on Regulation published a report which endorsed the benefits of cooperation and called for the Joint Regulators' Group to be improved to ensure regulators learn from each other in relation to a '*core regulatory skill set which is transferable between different economic regulators*'.

<sup>2</sup> For example, the JRG did not produce external outputs, have any meaningful engagement with external parties or make recommendations to change the internal or external arrangements of regulators in ways which would improve cooperation. At times the JRG also had limited senior level oversight from its members, and did not have separate resource to support its work. [source]

<sup>3</sup> HM Treasury Autumn Statement 2013, page 58, para 1.220

<sup>4</sup> The UKRN comprises the: Civil Aviation Authority (CAA); Financial Conduct Authority (FCA), including the Payment Systems Regulator; Office of Communications (Ofcom); Office of Gas and Electricity Markets (Ofgem); Water Services Regulation Authority (Ofwat); Office of Rail Regulation (ORR); Northern Ireland Authority for Utility Regulation (UREGNI); Regulator for Health Services in England (Monitor); and Water Industry Commission for Scotland (WICS).

- Better understanding of the effectiveness of economic regulation<sup>5</sup>

The Government welcomes the establishment of the UKRN. Alongside these developments, however, it is important to ensure lessons from previous experience are taken on board and that those involved in the regulatory system are able to submit views on how coordination could be best structured and maintained, and identify issues they believe are amenable to cross-regulator working. It is also important to ensure that joint working continues with full commitment from regulators in the long-run, should it continue to provide benefits.

The Government's intention to consult on options to embed and support cooperation amongst the regulators was therefore announced as part of Budget 2014.

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<sup>5</sup> Further information on the UKRN can be found at <http://www.ukrn.org.uk>

## Consultation Process

HM Government published a consultation on 6 October 2014 entitled *Collaboration between Economic Regulators: Options for embedding joint working between economic regulators*. The consultation ran for six weeks, closing on 1 December 2014. The consultation document was sent to a range of relevant stakeholder organisations and was published on the Gov.UK website.<sup>6</sup>

In the consultation document, we set out how the UK's economic regulation framework has evolved over time, the reasons for the introduction of the various regulators in the sectors they operated in, and the fact that the regulators themselves acknowledged that cooperation between them had the potential to deliver benefits. We asked questions with the view of establishing if more could be done by the Government to embed joint working between the economic regulators. A list of the questions asked can be viewed at Annex A. Respondents to the consultation are listed at Annex B.

Officials from HM Government led a number of discussions with a range of interested parties about the proposals and views from these stakeholder engagement events have been taken into account in reaching decisions in response to the consultation. Participants at these stakeholder events are also listed at Annex B. The Government would like to thank all those that contributed to the consultation. This document sets out the issues that were consulted on, a summary of respondents' views, the Government's analysis of responses, and its decisions.

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<sup>6</sup> <https://www.gov.uk/government/consultations/economic-regulators-encouraging-closer-cooperation>

# Responses to the consultation

## Overview

The Government received 23 formal written responses largely from firms active in regulated sectors and from regulators. We have published all of the responses except those where respondents requested confidentiality. These can be found on the Gov.UK website along with this document.<sup>7</sup> The table below provides a breakdown of written responses by type of responding organisation.

### Breakdown of responses by type of organisation

Type of Organisation	Responses
Firm in a regulated sector	12
Energy	(8)
Rail	(1)
Communications	(2)
Aviation	(1)
Regulator	7
Consumer body	1
Consultancy	1
Government	1
Trade Association	1
<b>TOTAL</b>	<b>23</b>

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<sup>7</sup> <https://www.gov.uk/government/consultations/economic-regulators-encouraging-closer-cooperation>



To help us understand the value of cooperation (and how the UKRN might be supported by the Government), the consultation sought views in three areas:

- i) Previous experience of joint-working and lessons learnt;
- ii) Potential benefits of joint working and cooperation; and
- iii) Possible Government support to ensure or encourage joint-working.

The consultation set out options through which the Government might support and encourage cooperation and invited views on these.

The sections below summarise responses to the consultation questions.

## Previous experience of joint-working and lessons learnt

Q1. Do you have any views or experiences on cooperation between regulators, particularly under the previous JRG regime and before the UKRN was established?

The vast majority of respondents supported cooperation between regulators in some form with many pointing to the potential for improved outcomes for business, consumers and the economy. In light of this, the fact that the JRG facilitated some cooperation meant there were some positive experiences of it, particularly among participating regulators.

However, the majority of responses reflected a general lack of awareness of JRG activity and the view that it provided for limited cooperation. The perception was that it had minimal engagement with external parties and had minimal impact on the economic regulation landscape. As a result, there was limited evidence of sectors having taken account of any joint working. Reasons noted for this included the lack of resources, including executive staff and senior level oversight and difficulty getting members to commit resources.

While the perception was that the JRG has failed to meet its objectives or expectations, there was also recognition from some respondents that the objectives of the JRG were more limited – acting more as a forum for discussion than an active group for collaborative work. Some respondents highlighted one of the possible reasons the JRG did not realise the benefits it could have done was a perceived tension between regulatory independence of each regulator and coordination between regulators.

## Potential benefits of joint working and cooperation

Q2. 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.

Q3. Is there evidence of areas where sharing best practice and developing more consistency between sectors would benefit investors, regulated companies and/or consumers?

Q4. 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.

Having asked the question of how effective previous attempts at cooperation had been, the consultation sought to understand what benefits further cooperation might bring. The consultation document set out the potential areas which the Government considered might gain most from joint working, cooperation and sharing of best practice. These areas included:

- Issues which would otherwise act as a deterrent to infrastructure investors, such as the perceived complexities in understanding numerous different regulated frameworks;
- Scope for improvement in consumer outcomes, through learning about how each sector approaches consumer engagement and empowerment; and
- Sharing best practice on common duties around promoting competition and protecting consumers, the quality of regulatory decisions, and encouraging common methodologies.<sup>8</sup>

A summary of the views expressed on how cooperation between regulators could bring greater benefits to consumers, in sharing best practice and improved infrastructure delivery are set out in turn below.

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<sup>8</sup> These issues were set out from page 14 of the consultation document.

## **Greater benefits and/or protections for consumers and sharing best practice**

Respondents were able to highlight a significant number of areas that, with greater coordination, could deliver benefits and/ or protections for consumers. There was significant support among respondents for the UKRN's existing work programme. Much of the additional suggestions for joint working to benefit consumers relate also to areas where the regulators could share best practice or be more consistent and so these are considered together. Common themes that emerged from respondents included:

***Sharing of knowledge and experience on common issues:*** for example, reconciling multiple statutory objectives, coordination on safety where split across regulators, the appropriate number of tariffs, consumer affordability across sectors and the cumulative impact of investment on consumers, trade-offs between different groups (rural or urban and vulnerable consumers), reducing regulatory barriers, and consumer engagement mechanisms.

***Analytical approaches and methodologies:*** for example, approaches to efficiency benchmarking, assessment of risk, incentive and penalty mechanisms, determining cost of capital, regulatory impact assessments, policy evaluations, investment and performance incentives, and consistent application of competition assessment, enforcement and process for review.

***Communication and interactions:*** for example, stakeholder engagement, regulatory decision making processes, clarity and accessibility of reasoning in regulatory decisions, use of websites, and a cross-regulator peer-review or challenge process.

***Sharing of resources:*** for example, legal resources, sharing of staff, encouraging staff to move between regulators.

A number of respondents highlighted risks of overly burdensome joint-working, including: the passing on of bad regulatory practice, unintended restrictions on regulators being able to make appropriate adjustments to reflect sector specific issues or contexts, and the stifling of innovation and experimentation across regulators.

## Improved infrastructure delivery

Respondents were also able to highlight areas that, with greater coordination, could improve infrastructure delivery. Alongside significant support among respondents for the UKRN's existing work programme relating to infrastructure coordination, respondents highlighted the difficulties faced by investors, including the impact of differences in regulatory frameworks in impeding overall coordination across sectors.

Specific examples of cross-regulator cooperation highlighted by respondents – often framed as benefits from sharing best practice or expertise in these areas – included:

- Greater cooperation of engineering activity to minimise disruption;
- Synergies in investments across different sectors where coordinating spending or jointly prioritising spend may be useful. facilitation of cross-sector investment decisions around major national infrastructure investments in order to minimise waste and delay, by local and central Government should be considered;
- Consistency over the propensity to intervene and ensuring overall regulatory policy (measured by leniency or strictness) is similar across sectors;
- The introduction of incentive/penalty mechanisms to help incentivise regulators to better coordinate on infrastructure development could be effective;
- Better understanding of the quality of service / performance regimes;
- Sharing knowledge over the regulatory reporting regimes and stakeholder engagement; and
- Estimation of appropriate returns on assets.

A number of respondents noted the scope of joint-working could potentially be wider than economic regulators, including other agencies that were considered as playing an important role in many infrastructure projects<sup>9</sup> or the role of local and central

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<sup>9</sup> The Environment Agency, Scottish Environmental Protection Agency, Natural England, Natural Resources Wales, and (following set-up) the Oil and Gas Authority were all mentioned.

Government in facilitating cross-sectoral investment decisions around major national infrastructure plans.

Both current regulators and these additional Government agencies could possibly be required to consider any cross-utilities impact as part of their decision making process. One respondent suggested that regulator objectives could be wider, including, for example, security of supply within their remit.

As with the benefits to consumers, respondents also pointed to risks associated with ineffective joint-working, including highlight the inherent differences between sectors, different duties, and questioned the benefits of independent application of any outcomes from joint-working. Some respondents noted that any UKRN recommendations should still be subject to the same consultation process prior to a decision being taken and implementation.

## Options for supporting and encouraging cooperation

Alongside the information sought above, the principle reason for the consultation was to seek views on the extent to which the Government should support and encourage greater cooperation, if at all.

The consultation presented three options:

- Option 1: Monitor progress of the UKRN and review its effectiveness in 2015, giving the UKRN time to bed in and then make an assessment of the regulators ability to cooperate under the new arrangements.
- Option 2: Provide guidance to the regulators/UKRN on the Government's overall approach to cooperation, giving regulators more clarity on the policy aims, outlining where the Government sees the potential for cooperation without undermining the independence of the UKRN.
- Option 3: Introduce a statutory duty on regulators to cooperate through appropriate changes or additions to the regulators existing statutory duties, to facilitate and support cooperation between regulators.

The consultation sought to determine what, if any, additional support the Government should provide in ensuring the long-term commitment of regulators to effective joint working and delivery of the UKRN's objectives. The Government sought views on the preferred option (either one of the three above or another), the reasons for this preference, and on methods through which the options might be best implemented.

Q5. Do you believe that the 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

Q6. Do you have any views on the advantages and/ or disadvantages of each of the three options identified? Do you have a preferred option?

Q7. What are your views on how best to implement each of the three options identified without becoming overly burdensome or impacting regulatory stability?

Q8. Are there any other options which the Government has not identified? If you identify any, what are the advantages and disadvantages of such options?

## **Clear preference for voluntary cooperation at this stage**

The responses received showed a clear preference for option one, voluntary cooperation, at this stage (95 per cent of all respondents), with almost no outright support for option two (one respondents) or three (no respondents).

The predominant argument made in favour of option one was that the Government should give the UKRN the opportunity to deliver successful cooperation. The creation of UKRN has been well received and, as it is in its relative infancy, it was suggested that it should be given time to become established and develop an approach to effective collaboration.

Respondents also indicated that, given the UKRN has begun a work programme with clear objectives, it should be allowed to deliver against these objectives. Responses from the regulators were particularly strong in questioning the need for additional involvement from the Government with some noting that it is difficult to see where further co-operation would be beneficial or what the Government's aims are in this area.

A further point made by a number of respondents was that the Government had to be mindful of avoiding any intervention that might risk compromising the effectiveness or independence of the regulators. All the regulators have core duties in respect of their sectors, which they are statutorily bound to deliver. A number of respondents noted that the existing core duties had to remain the central function of the regulators, rather than adding to their duties or over-emphasising cooperation, risking the regulators becoming distracted from their core duties.

## **Importance of ongoing monitoring and a review of the voluntary approach**

Whilst the majority advocated a proportionate voluntary approach, many respondents were also clearly mindful of the need for the UKRN to be a success and its progress monitored.

On monitoring, respondents pointed to the importance of a published work programme that is consulted on and that progress in joint working is regularly monitored by the Government. Respondents highlighted the importance of UKRN consulting with its external and independent panel of advisors on individual workstreams. Other suggestions included annual progress reports to ensure accountability and visibility, and periodic value for money assessments.

Alongside ongoing monitoring, respondents pointed to the need for the Government to review – and commit to review – the voluntary arrangements within a period generally ranging from 18 months to two years (although ranging up to five years). Many respondents pointed to the possibility of additional involvement by the Government (guidance or a statutory requirement) should the voluntary approach not prove successful.



Some respondents highlighted that any monitoring and reporting would require clear criteria against which the UKRN could be judged, including identifying work that would not have been produced without UKRN, the extent to which UKRN work has fed through to regulator decisions and practices, and delivered positive outcomes for consumers.

While still favouring option one, one respondent raised concerns that, without binding recommendations, joint-working may be over-ruled by existing statutory objectives that limit the regulator to considering benefits and costs in a single sector. Cross-sector investments that are therefore beneficial to consumers overall or to the wider economy might risk being rejected without the ability to take into account wider benefits and cost as a core objective.

### **Risks of greater Government involvement**

As outlined above, a number of respondents believe that the preferred voluntary approach should be subject to review in due course and, should the current arrangements be ineffectual, consideration given to further intervention. However, the majority of respondents also highlighted significant risks with pursuing either of the two other options involving greater Government intervention.

Several respondents stressed the risks that an additional statutory duty could pose to the effectiveness and independence of regulators and the clarity of their objectives. It was noted that regulators have a number of statutory duties already and a further duty may dilute their clarity of purpose as an additional duty would have to be balanced with existing objectives, as it does with its existing objectives. While some respondents believed that the goal of collaboration should always be subsidiary to the main statutory objectives of each regulator, others thought that imposing a statutory duty may even be counterproductive to the underlying objective of greater collaboration. Some responses raised the issue of the consistency with which regulators would take account of their new duty alongside a range of different existing duties.

In light of this, a number of respondents saw the possibility of additional legal risks and resource burdens on regulators arising from an additional duty, which may lead to additional scope for judicial review.

Although not favoured amongst respondents, were the Government to introduce a new duty to promote collaborative working, it was suggested that this should not be restricted to cooperation between economic regulators. Instead, the duty should be framed so as to require cooperation with other designated (economic *and* non-economic) regulators where relevant to the particular decision, recognising that this may vary from case to case.

In the context of clearly preferring option one, there was some limited support for option two, the introduction of guidance. Respondents noted that certain elements of guidance would be helpful where this encourages useful activity, and that it created fewer legal risks than a statutory duty. In assessing option two, many respondents highlighted risks around implementation.

In particular, producing guidance that could be applied in meaningfully to all economic regulators, with varying duties and legislative frameworks, would be challenging and risked being too overarching to be effective or so prescriptive that it would not take account of the differences between regulators.

Concerns were also raised over the status or standing of any guidance – for example, how it would interact with Strategy and Policy Statements, the process for resolution should guidance not be followed, and on the timing and duration of any guidance.

### **Exploring other options**

Given the strong preference for a voluntary approach and continuation of the existing arrangements, very few respondents pointed to alternative options that might be considered beyond the three presented. One respondent suggested that rather than having a different regulator for each sector a single regulator that covers multiple or all sectors would enable a more coordinated approach. Another suggestion was that regulators could be given a duty to take into account any wider costs or benefits to consumers outside their specific sectors.

## Government response

### Summary of the Government Decision

The Government supports Option 1, a voluntary approach to coordination and the continuation of existing arrangements at this stage. The Government will continue to monitor the progress of UKRN and commits to undertake a review of the effectiveness of the current approach in 2016.

The Government welcomes the establishment of the UKRN and believes it represents a significant improvement in collaboration between economic regulators compared to the previous arrangements. The Government is supportive of the work the UKRN has undertaken so far and of its future work programme.

As set out in the consultation document, the Government recognises the importance of preserving the independence of regulators and ensuring that regulators are able to function as effectively as possible through focusing on a core set of objectives. The Government has taken account of the support expressed in responses for allowing the current arrangements become established, and is at this time, not planning to introduce a statutory duties for regulators in this area. Similarly, due to the lack of support amongst respondents the Government will not introduce guidance on cooperation between regulators. The Government is content to support a voluntary approach to collaboration between economic regulators at this stage, and will assess progress in 2016.

Nevertheless, the Government is mindful of ensuring that the promising start to greater collaboration represented by the establishment of the UKRN, the commitment of regulators – and their senior management – to its objectives and its initial work programme continues in the long-term.

The Government will therefore continue to monitor progress of the UKRN, including both:

- the willingness of regulators to continue to work collaboratively, to identify common issues and areas where best practice, knowledge and expertise can be shared; and
- the extent to which UKRN outputs are feeding into the substantive decisions and practices of the regulators to drive benefits for consumers, regulated firms and investors.

In the consultation document, we had suggested that review of the UKRN would take place in 2015. Given the timing of the consultation and where the UKRN is in its work programme, we consider that the review would be better placed in 2016.

This will allow the UKRN time to deliver on current commitments and take on board suggestions which have come through this consultation. We will then be in a better position to evaluate its effectiveness once it has been in operation for two years and identify what, if any, changes may be needed. A key part of any review will be the governance structure of the UKRN and scope for accountability mechanisms, should these be considered necessary, while ensuring the independence of the regulators is retained.

During this time, we will also ensure the collaborative joint-working between regulators is mirrored by a similarly collaborative approach between departments across the Government.

A significant number of areas were highlighted as part of the consultation where regulators could work together to benefit consumers, share knowledge and ensure better infrastructure delivery. The Government is keen to ensure that these numerous and potentially fruitful avenues of joint working feed into the UKRN work programme, and deliver tangible changes that benefit consumers, firms and investors.

## Annex A

### Consultation questions

**Q1.** Do you have any views or experiences on cooperation between regulators, particularly under the previous JRG regime and before the UKRN was established?

**Q2.** Are there any specific areas where cooperation amongst the regulators could bring greater benefits and/or protections for consumers?

**Q3.** Is there evidence of areas where sharing best practice and developing more consistency between sectors would benefit investors, regulated companies and/or consumers?

**Q4.** Are there specific areas where better cross-regulators cooperation could improve infrastructure delivery or incentivise the more efficient use of infrastructure assets or networks?

**Q5.** Do you believe that the 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.

**Q6.** Do you have any views on the advantages and/ or disadvantages of each of the three options identified? Do you have a preferred option?

**Q7.** What are your views on how best to implement each of the three options identified without becoming overly burdensome or impacting regulatory stability?

**Q8.** Are there any other options which the Government has not identified? If you identify any, what are the advantages and disadvantages of such options?

## Annex B

### List of consultation respondents and stakeholder session attendees.

#### Consultation respondents

CAA  
Centrica  
Citizens Advice  
Easy Jet  
EDF Energy  
Energy UK  
FCA  
National Grid  
Network Rail  
Ofcom  
Ofgem  
Ofwat  
ORR  
Sky  
SLG Economics  
SmartestEnergy  
SSE  
TalkTalk  
UK Cards  
Association  
UK  
Power Networks  
UKRN  
United Utilities  
PLC  
Welsh  
Government

## List of stakeholder session attendees.

02/Telefonica  
Anglian Water  
Anglian Water Business  
(National)  
Bristol Water  
BskyB  
CAA  
Centrica  
Electricity North West  
Energy Networks  
Association  
FCA  
Heathrow  
Monitor  
National Grid  
Network Rail  
Ofgem  
Ofwat  
ORR  
Scottish Power  
Severn Trent Water  
Smartest Energy  
South West Water  
Southern Water  
SSE Power Distribution  
SLG Economics  
TalkTalk  
Thames Water  
UK Power Networks  
UKRN  
United Utilities Water  
Sales Ltd  
WICS



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