

## **UKRN response to consultation on encouraging innovation in regulated utilities.**

### **1. The importance of innovation**

The UK Regulators' Network (UKRN) welcomes the focus on innovation in regulated utilities. Innovation delivers benefits for citizens, consumers and the economy and is high on the agenda for UKRN members.

Companies should be allowed to innovate, and regulators must ensure regulation doesn't get in the way of new ideas. Innovation makes for more efficient, more imaginative and more responsive companies and is central to helping companies compete both in the UK and internationally.

Innovation can also bring great benefit to consumers. It can improve the range of services available to consumers, including the development of services consumers didn't even know they wanted. Innovative companies can find new and more convenient or cost-efficient ways of delivering services to consumers, as well as thinking creatively about how to meet the needs of a diverse range of consumers, including those in vulnerable circumstances. Innovation in regulated utilities is also crucial if they are to leverage the benefits of rapid developments in data and AI, as well as play their part in responding to the demands of national and global challenges such as climate change.

This innovative culture should also be reflected in regulators themselves. Developments such as the use of data and AI have great power to make regulation more efficient and more responsive to the needs of consumers and businesses. Regulators must foster a culture that is open to innovation to keep up with the latest innovations not only among the companies we regulate, but also in the approach to regulation itself.

### **2. The role of regulators**

The role of regulators is to deliver for consumers, and it is this that guides our work and our approach. Innovation is not an end, nor is it a metric through which to measure success. However, it is an important tool to help us deliver better outcomes for consumers. Therefore, part of the role of regulators is to create an environment that supports innovation. This is a core part of the work of the UKRN and our members and we are pleased to see some of this work highlighted in the consultation.

Innovation can also create the need to change regulation, and regulators need to be responsive to that. Innovation in the market can create new opportunities for consumers which need regulators to change so that these opportunities are not blocked or made overly complex<sup>1</sup>. We continue to work to understand how the markets that we regulate are

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<sup>1</sup> Spectrum sharing is a good example of this, which was only enabled when devices were developed which could manage the risks of interference.

changing and the implications of this for how we regulate, responding with changes to our approach to regulation where necessary.

It is also important to note that in some of the markets covered by the consultation, rather than regulation being a blocker to innovation, the challenge is one of low levels of innovation in regulated companies. While still requiring a focus on how regulation might interact with innovation the dynamic here is different, with the regulator's role to encourage and incentivise innovative behaviour.

Innovation can also create new scope for consumer harm, which may also require changes to regulation, or to how regulators think about the markets they regulate. For instance, innovation can lead to new services or ways of doing things that fall outside current regulatory processes and therefore leave consumers unprotected. While innovation offers great potential for improving outcomes for vulnerable consumers, it can often focus on those consumers who are most active in a market or most digitally literate or engaged. This can result in increasing the disparities between those who are digitally savvy and able to access new deals or new ways of doing things online, and those who rely on increasingly outdated offline services.<sup>2</sup>

Regulators therefore need not only to be alive to the need to encourage innovation, they also need to carefully consider the impact of innovation on how they approach regulation, including whether innovation requires us to reduce the regulatory burden or to put in place new regulatory protections for consumers.

In all of this regulators, and the sectors we regulate, benefit from sharing experience and approaches. This helps regulators learn from one another and work together to make improvements. The UKRN plays a key role in bringing regulators together, providing a forum to share best practice, work through challenges and apply learning across sectors.

### **3. Introduction of a duty to innovate**

We do not think, given the existing focus on innovation across the regulators, that an additional statutory duty to promote innovation is necessary. Regulators are already committed to encouraging innovation in their sectors, and this focus on innovation will continue.

In the context of regulation, innovation should be a means to an end, not a primary aim in itself. It is a vital tool for achieving a wide range of benefits. However, it needs to be balanced with other considerations as regulators seek to achieve their primary objectives.

We see this flexibility to balance a range of objectives and considerations as central to the ability of regulators to fulfil their primary duties. We would be concerned that including a

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<sup>2</sup> Ofcom's 2018 Adult's Media Use and Attitudes report found that 12% of UK adults do not go online. While many of these are older people, this number also includes people of working age (16-64), particularly those in the DE socio-economic group. Twelve per cent of working-age adults in DE households are non-users of the internet, three times as likely as those in non-DE households (4%).

statutory duty to promote innovation could reduce regulators' ability to balance competing needs, particularly if this was drafted in such a way as to give it more weight than other areas which regulators need to consider.

A catch all duty to promote innovation is not the only way in which legislation can be drafted to include innovation. An alternative approach is to include innovation in legislation where it is most relevant. For instance, the recent NIS Directive, in which both Ofgem and Ofcom, among others, are cited as competent authorities, refers to the need for companies to achieve a standard in line with 'the state of the art' in the measures they take 'to manage risks posed to the security of the network and information systems on which their essential service relies'. This is an example of regulation that require industry to continue to innovate, in an area (i.e. cyber security) where doing so is essential for regulation achieving its aim over the medium term.

In addition, we also recommend that the government, in partnership with regulators, explore what would be required to enable regulators to require industry participation when conducting trials of innovative policy approaches. This would help to build the evidence base for interventions that are novel and untested, increasing the scope for innovation. We note the recommendation made in the CMA's Energy Market Investigation as a potential starting point for thinking in this area. This recommended that Ofgem should establish an ongoing programme to identify, test (through randomised controlled trials (RCTs), where appropriate) and implement measures to provide domestic customers with different or additional information with the aim of promoting engagement in the domestic retail energy markets; and introduce a licence condition to require suppliers to participate in the Ofgem-led programme, to ensure the programme's effective implementation.

#### **4. UKRN and innovation**

Encouraging innovation will continue to be a central part of the UKRN's agenda. Our annual plan for 2019/20, which we will be publishing in the Spring, will set out how we will continue to support regulators to innovate and to encourage innovation in regulated sectors. It will also include details of initiatives to foster innovation in the context of opportunities and challenges posed by data and new technologies.