

Regulation, customer protection and customer engagement

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The UK utility regulation framework developed in the 1980s was intended to improve on the restrictive, inefficient and burdensome regulatory approach in the US. But the UK regulatory process has itself now become increasingly burdensome. Meanwhile, utilities and customer groups in the US and Canada have developed methods of negotiating and settling regulatory issues that more directly reflect the interests of customers, often embody incentive price caps as in the UK, and avoid unduly burdensome regulatory processes. There is now scope for UK regulators to learn from overseas.

The Federal Power Commission encouraged gas pipelines and their customers to negotiate and agree prices for use of the pipeline as a means of coping with a large backlog of applications for tariffs. Later, the Federal Energy Regulatory Commission (FERC) continued this practice as a means of securing outcomes that better meet the needs of the parties than a regulated outcome, and at lower cost and with less delay. Other regulatory bodies such as the National Energy Board in Canada and various state regulatory bodies in the US have also encouraged negotiated settlements.

This paper then examines how three UK utility regulators – the CAA, Ofgem and Ofwat - are responding to these developments. In setting the last airport price control, the CAA adopted a process of ‘constructive engagement’, whereby the airports and airlines were invited to discuss and agree certain inputs to the price control while the CAA determined other inputs. Recently, extensions to the controls at Heathrow and Gatwick have been the subject of negotiated agreements, and discussions are underway with respect to adopting a negotiated settlement approach for the next price control period.



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Ofgem and Ofwat have both considered this approach quite carefully. They have both decided to increase the role of customers in the price control process, but have decided not to invite companies and customers to negotiate and agree elements of the price control. Ofgem concluded that customer groups would be unwilling or unable adequately to reflect the interests of present and future customers. Ofwat says that the process is onerous and requires substantial commitment from any customer or negotiator. Whether or not these explanations seem plausible, these regulators seek to secure many of the benefits of the approach via a less committed process.

There is scope for governments to encourage a regulatory approach that offers the prospect of better outcomes for customers and a less onerous process for all concerned.

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