

Colm M H Gibson

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SUMMARY

Colm Gibson is a managing director in BRG's London Office, where he leads the Economic Regulation practice for Europe, the Middle East, and Africa. He has over 30 years' experience in regulated industries, with over 20 years at senior management level.

Colm has led successful commercial, price control, and other negotiations with regulatory and Government bodies and companies across a wide range of market sectors in the UK and Europe, including energy (especially the gas sector), water & wastewater, rail, and broadcasting. He has worked in a number of senior regulatory, strategy, competition and compliance roles in both the public and private sectors.

Colm is an expert on regulation and competition matters, including price controls, tariffs and market design. He specialises in producing evidence and reports to influence external stakeholders, particularly to support companies and regulators in price control negotiations. He is, therefore, a trained negotiator. Colm also specialises in assisting companies to prepare to challenge regulatory decisions, having successfully appealed 3 UK price controls in the gas and water sectors.

Colm has provided expert advice in a range of international gas pricing arbitrations/disputes, covering 9 gas import contracts between various companies in a total of 5 European states, and advised a range of international investors on how best to prepare for Bilateral Investment Treaty claims.

Colm has written and contributed to a number of textbooks and other publications including chapters on economic regulation of the water industry in the Encyclopedia of Law and Economics (ISBN: 978-1-84720-343-4) and (with Dr Boaz Moselle) on the role of market experts in gas price review arbitrations in "Gas Price Arbitrations: A Practical Handbook" (ISBN: 978-1-905783-77-9).

EDUCATION

University of Cambridge (St John's College), BA (Hons), 1990

University of Cambridge (St John's College), MEng, 1991

University of Cambridge (St John's College), MA, 1994

Open University, LLB (Hons), 2004

NEWS AND COMMENTARY

KKR to buy recycling group Viridor in £4.2bn deal

Financial Times

March 18, 2020

Ofwat Faces Biggest Battle with Water Companies since Privatisation

Financial Times

February 14, 2020

Water Industry Says Watchdog Ignored Need for Long-Term Investment

Financial Times

February 10, 2020

UK Water Groups Weigh Ofwat Settlement Options

Financial Times

February 9, 2020

Labour Threatens Utilities

Frankfurter Allgemeine Zeitung

December 9, 2019

UK Utility Investors Prepare to Fight with Nationalisation in Prospect

Financial Times

December 3, 2019

How a Corbyn Government Could Reshape Investor Affairs

International Financial Law Review

September 9, 2019

BRG Further Expands European Economic Regulation Practice with Latest Senior Hire

BRG press release

June 25, 2019

How Can We Stop the Next Competition Breach?

UtilityWeek

June 11, 2019

BRG Appoints Regulatory Expert to Firm's European Economic Regulation Practice

BRG

January 31, 2019

PRESENT EMPLOYMENT

Managing Director, Berkeley Research Group

PREVIOUS POSITIONS

Thames Water

Member of the Executive Leadership Group and Head of Economic Regulation
2012-2018

FTI Consulting

Director

2011-2012

LECG

Principal

2006-2011

Severn Trent

Competition & Commercial Policy Manager

1999-2006

Independent Television Commission

Competition Policy Manager

1997-1999

British Gas Trading Ltd (part of Centrica plc)

Regulatory Issues Manager

1994-1997

British Gas

Numerous economic, engineering, and regulatory roles

1986-1994

PUBLICATIONS

ARTICLES

(1) Ofwat shouldn't go unchallenged – six areas where energy networks need water companies to challenge Ofwat at the CMA, *Utility Week*, February 2020

(2) The renationalisation debate has set the mood music for PR19, *Waterbriefing.org*, February 2019

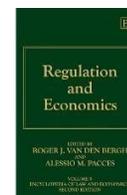
- (3) The last price control before re-nationalisation?, *The Water Report*, January 2019
- (4) SIM-ply doing the right thing for less affluent customers – The impact of customer demographics on Ofwat’s Service Incentive Mechanism scores, *The Water Report*, January 2017
- (5) Bid for a Grid – The case for a National Grid for Water, *Utility Week*, 6 July 2012
- (6) Is bigger better for water and sewerage capital programmes? – How the relative scale of a company’s capital programme influences its ability to deliver it efficiently, *WWT magazine*, 7 August 2009
- (7) Like a swan to water – How the water sector can benefit from the mistakes of other utilities when competitive markets are being designed, *Utility Week*, 15 November 2002

BOOKS AND MONOGRAPHS

- (1) Role of the expert in price review arbitrations (with B Moselle) in “Gas Price Arbitrations: A Practical Handbook” (ISBN: 978-1-905783-77-9)



- (2) Encyclopaedia of Law and Economics, Chapter 10: Regulation of water and wastewater (with C McKean and H Piffaut), ISBN: 978-1-84720-343-4



PROFESSIONAL EXPERIENCE

Gas price arbitrations

Lead expert in an international arbitration between a major gas exporter and a national gas company in a major north eastern European state in a dispute about gas price indexation.

Advised on two gas price arbitrations on a portfolio of long-term gas supply agreements in a major European country. The first arbitration concerned three long-term gas supply agreements including one gas supply agreement at spot pricing, and the second arbitration – running simultaneously – covered a further long-term gas supply agreement.

Advised on a gas price arbitration under a long-term gas supply contract between a regional gas company and a major gas importer in a central European country.

Advised on a gas price arbitration under a long-term gas supply contract between a municipal gas company in a central European country and a major gas importer.

Advised on a contractual dispute under a long-term gas supply contract between the national gas company of an Eastern European EU member state and a major gas producer.

Expropriation claims including Bilateral Investment Treaty arbitration claims

For a major UK wastewater infrastructure asset owner, advising on a range of nationalisation scenarios, and the potential implications for the project licence, Government Support Package, contracts, and secured financing arrangements (including consequences for drawn and undrawn, but committed, secured debt and secured swaps). Advising on the potential remedies and how a claim might be supported should nationalization occur at an undervalue.

Counterfactual valuation of a major water and sewerage undertaker in England on behalf of its shareholders in the context of potential Bilateral Investment Treaty arbitrations in the event of nationalisation at an undervalue. Creation of a “Claim Asset” for those shareholders to secure the evidence required for a claim under both UK legislation and various Bilateral Investment Treaties, should the asset be expropriated.

Counterfactual valuation of a major UK gas distribution network in the context of a potential Bilateral Investment Treaty arbitration.

Counterfactual valuation of a major UK water and sewerage undertaker on behalf of its UK FTSE listed holding company in the context of potential claim against the UK Government in the event of nationalisation at an undervalue. Creation of a “Claim Asset” for those shareholders to secure the evidence required for a claim, should the asset be expropriated.

Other international arbitrations

In an international (UNCITRAL) arbitration, advising one of the world’s largest financial corporations on the value of a loan portfolio it acquired from a quasi-government authority in the Far East. The key issues being the date at which a specific return on investment in the portfolio had been achieved, given the atypical overhead allocation methodology that had been agreed between the parties, the interaction with other similar loan interests in the portfolio acquired from other sources.

Case manager for an international (UNCITRAL) arbitration involving the attempted purchase of a grain export terminal in a former CIS republic. The main task was to place a value on the assets subject to the purchase contract, taking account of changes in commodity prices (and forecast commodity prices), changes in energy prices (and forecast energy prices), export restrictions and anticipated investments to improve productivity.

Other - litigation / mediation

Assessing the lost profits due to an alleged contractual breach involving a world leading turbine blade manufacturer.

Advising on a contentious case involving the tax treatment of investments in European gas distribution infrastructure and district heating infrastructure, and the feasibility of the associated gas transportation and distribution contracts. This included preparing expert testimony on whether the alleged operating contracts were bona fide, based on my experience of the UK gas and electricity regimes.

Assessing the lost profits due to the infringement of a pharmaceutical patent in Spain in the context of (successful) litigation, including the creation of the appropriate scenario models.

Case manager on a multinational project to quantify the damages arising from a failed pan-European IT/CRM implementation. This project involved collating and analysing a very large amount of technical, operational and financial data related to the operation of the business before, during and after the IT implementation was terminated. The analysis of the benefits that accrued to the claimant from the successful aspects of the implementation, to offset against the claim demonstrated that the total benefits exceeded the damages

claimed.

Leading the LECG team quantifying the lost profits from the failure of the relevant authorities to grant a Marketing Authorisation for an alternative bioequivalent paroxetine salt in a European market, contrary to EU legislation. The project involved assessing the likely strategy and response of the incumbent (the seller of the originator product), the potential to introduce and behaviour of Authorised Generics and the behaviour of True Generic competitors.

On behalf of Microsoft, Managing the data collation exercise for the dataset required for EU merger clearance of Microsoft's proposed merger with Yahoo, which required the collation of market share datasets for every Microsoft and Yahoo product offering in every EU market.

Price control reviews – Electricity and Gas

Seconded to the Dutch energy regulator (the NMa Energiekamer) to advise on all aspects of the implementation of the EU's Third Gas Directive in relation to third party access to gas storage and import/export capacity in the Netherlands, including storage pricing and price controls.

Advising the Dutch gas transmission system operator ("GTS") in the context of its CPI-X price control.

Member of Ofgem's Price Control Review Forum for the gas distribution (RIIO-GD1) and electricity and gas transmission (RIIO-T1) price control reviews.

Advising a supplier to an Electricity Distribution Network Operator ("DNO") in a contractual dispute over the interpretation of the regulatory allowance for in Ofgem's DPCR5 price control.

Advising an electricity distribution company in the context of its Electricity Distribution price control ("DPCR5") for two geographic areas, including on how to challenge the price control decision at the Competition Commission. This included analysing the submissions made by the company and Ofgem's results and published methodology to assess the strength of the evidence and arguments put forward by the company, and providing training to key individuals on the Competition Commission process.

As Regulatory Issues Manager for British Gas Trading Ltd (part of Centrica plc), managing the regulatory relationship with Ofgas across a broad range of issues, including price control negotiations, tariff design, amendments to licence conditions, and regulatory investigations. Whilst in this role, building good personal relationships with his counterparts at Ofgas, culminating in a price control settlement that allowed a materially greater profit margin than the benchmark set in the immediately preceding electricity supply price control review.

Working level knowledge and experience of four MMC reviews in the energy sector (as a member of the British Gas MMC team). This included supporting British Gas in two successful challenges brought by British Gas against Ofgas's price controls. In the first case, the MMC's decision was "...a modification to the tariff formula from ... RPI-5 to RPI-4", increasing revenue by over £100 million. In the second case, the MMC's decision was to reduce the scope of business to cover only the supply to users of 2,500 therms and below (as opposed to 25,000 therms and below).

Negotiating with OFGAS on how the recommendations made by the MMC were to be implemented for both British Gas' supply business, and BG TransCo. This included the detailed design of BG TransCo's first RPI-X price control formula, and the design of the modifications to the British Gas supply price control.

Leading companies' and regulators' teams in a range of RPI-X price control negotiations, including the technical level negotiations on the British Gas Trading Ltd price control. This involved managing the development of the models of the relevant businesses.

Other competition and economic regulation experience in energy

Course Director for the EDF Corporate University course on the UK Electricity industry for senior executives of ERDF.

For the introduction of regulated common carriage access to British Gas' transportation and distribution and storage network, developing the BG Transco's gas transportation charging methodology, including the LRMC based entry and exit charges, LPS (Low Pressure Distribution System) charges and connection charges.

Providing technical analysis and support for strategic projects in the Gas Industry, including the development and implementation of the original British Gas transportation and storage pricing methodology, the first Network Code and 10-year statement. This included designing and developing the mathematical models of the BG TransCo's low pressure gas distribution network that were used as the basis for BG TransCo's pipeline tariffs.

As part of the British Gas MMC Team, developing mathematical models to inform and refine British Gas' regulatory strategy in respect of submissions to the MMC.

Developing an econometric model to identify the optimal timing of end user price changes for a price regulated energy company, taking into account the particular carry forward mechanism, interest and penalties applied by the regulator to over and under collections in any given price control period. This demonstrated to the company that for a given RPI-X price control formula, it was possible to increase the revenue that the company could collect, by timing tariff changes appropriately.

Managing the regulatory interface with Ofgas on behalf of British Gas Trading Ltd, dealing with matters such as tariff revisions, the implementation of new tariffs, and billing problems.

Project managing the electricity pooling and settlement system project for Centrica plc's competitive entry into the GB electricity supply market.

Contributing fully to a range of commercial projects including the de-merger of Centrica plc from British Gas, the subsequent acquisition of Accord Energy by Centrica plc (holding sole responsibility for obtaining OFT clearance for the merger), and the creation of the Accuread meter reading joint venture.

As a Process Engineer, specialising in LNG and Salt Cavity gas storage, and in particular designing 20% of the salt cavity storage gas capacity at Hornsea in the UK.

Valuation of a UK Gas Distribution Company in the context of a transaction.

Price control experience – water and wastewater

Advising Affinity Water on key areas of its response to Ofwat's Draft Determination on its PR19 price control, including in particular how the Regulatory Asset Base should be treated and funded, credit metrics, how financeability should be assessed, and the calculation of the appropriate "fast money", "slow money" ratio for the price control.

Advising SES Water on key areas of its response to Ofwat's Draft Determination on its PR19 price control, including retail costs, econometric modelling, leakage assumptions and power and energy costs.

Leading the Thames Water team responsible for negotiating the economic and financial aspects of the PR14 price controls for Thames Water (one for the Thames Tideway Tunnel, one each for the wholesale water and wastewater networks, and two retail price controls). Thames Water was the only company to secure a revenue allowance in excess of its business plan requirements for each of water, wastewater and financing costs at PR14.

Leading the Thames Water team responsible for negotiating the PR16 non-household business price controls for Thames Water, immediately prior to the sale of Thames Water's non-household business to Castle Water.

Advising Bristol Water plc on its successful challenge to the Ofwat PR09 price control at the Competition Commission. This included working extensively on Bristol Water's statement of case to derive and collate relevant evidence, including evidence substantiating company projections of opex (including pensions costs); evidence supporting the company's capital expenditure plan; technical discussions of tax, depreciation, accounting issues, etc.; economic analysis regarding the cost of capital; econometric analysis of Ofwat's efficiency targets; analysis of the company's financeability and projected credit rating; and analysis and critique of the incentive mechanisms employed by Ofwat.

Advising the Water Industry Commission for Scotland ("WICS") on a range of regulatory price control issues, including:

- identifying and quantifying factors that constrain the size of water and sewerage capital investment programmes that can be delivered efficiently (published January 2008, and presented at the NI Water conference in 2009). This was used by the Water Industry Commission for Scotland to advise Scottish Ministers on the appropriate objectives for Scottish Water's capital programme;
- ensuring that the capital efficiency benchmarking analysis undertaken for Scottish Water was consistent with that undertaken by Ofwat in England and Wales; and
- advising on the scope of disaggregated financial information that should be included within Scottish Water's business plan before the next strategic review of charges.

Auditing the Draft Business Plan and Final Business Plan for a Water and Sewerage company ("WaSC") for its PR09 price control prior to submission to Ofwat, with a view to ensuring that it would retain maximum evidential value for any subsequent Competition Commission challenge. This WaSC secured the greatest improvement of any WASC between Draft and final Determinations at PR09.

Advising the Northern Ireland Authority for Utility Regulation ("NIAUR") setting the 2009 RPI-X price control for Northern Ireland Water ("NIW"), this included:

- re-deploying Ofwat's full PR04 methodology using updated data;
- undertaking efficiency analysis using both top-down analysis (published in 2009);
- undertaking efficiency analysis using econometric (COLS) techniques (rebuilding the Ofwat COLS models using LIMDEP); and
- reviewing and critiquing NIW's strategic business plan submissions.

Auditing & error-checking Severn Trent Water's Final Business Plan submission for the PR04 price control. This included

- identifying key themes, and providing a "threadmap" setting out the various places where each of these themes was encountered in the business plan;
- ensuring that the various business plan documents and key statistics were mutually consistent;
- identifying where the plan documents could be strengthened; and
- identifying the appropriate assumptions about market opening and competition for inclusion in the business plan.

Price control experience – Rail

Working with a major rail infrastructure company to develop econometric benchmarking models of its efficiency levels for operations, maintenance and renewals expenditure by route.

Advising Network Rail in the context of its price control (as reported in the FT). This involved:

- undertaking a detailed review (published April 2008) of the top-down efficiency analysis methodology adopted in the rail industry;
- providing a detailed critique of the ORR's revised benchmarking; and
- critiquing the international benchmarking exercises undertaken by the ORR.

The analysis demonstrated that the ORR had double counted the scope for efficiency improvements, leading to substantial concessions from the regulator.

Advising Network Rail on preparations to challenge the ORR's price control decision at the Competition Commission.

Other competition and economic regulation experience

Advising on the appropriate regulatory funding framework for the Thames Tideway Tunnel ("TTT").

Developing a methodology for a UK economic regulator whereby cost reflective departures to regulated wholesale prices can be made.

Managing Severn Trent's regulatory interface with Ofwat on competition matters, including, influencing the development of various pieces of primary and secondary legislation.

Negotiating and securing a full Water Supply operating licence for ST Select Ltd, under the new water supply licensing ("WSL") regime introduced by the Water Act 2003. This included ensuring that the company's business plan was compliant with Ofwat's requirements, securing appropriate parent company guarantees, and leading the negotiations with Ofwat. ST Select Ltd was amongst the companies that secured a full licence on the first date that they became available.

Representing the water industry on Ofwat's Advisory Groups on water supply licensing, network access terms and access pricing.

Leading the Severn Trent Water team that worked with Electralink Ltd and Formfill Ltd to develop and test both a data transfer catalogue and a data transfer service for the proposed introduction of competition in the UK water industry. This included the development of a full data transfer catalogue (published in 2000 as part of Severn Trent Water's original Network Access Code), as well as the specifications for the managed data service and data flows.

Developing the tariffs and terms and conditions for Tankered Trade Effluent to access Severn Trent Water trade effluent and sewage treatment facilities.

Developing and publishing the Severn Trent Water Network Access Code, the first in the water industry. This set out the principles, terms and conditions for third party access to Severn Trent's Water transmission and distribution networks.

Leading a variety of commercial negotiations on behalf of Severn Trent Water, including the negotiation of bulk supply agreements, and the negotiation of bulk discharge agreements.

Securing both of Severn Trent Water's inset arrangements, thereby extending the geographical area Severn Trent Water was authorised, under statute, to supply. This included leading the negotiations with Wessex Water over the terms of the wholesale supply and discharge agreements, leading the negotiations with Ofwat throughout the licensing process and working closely with Northern Foods (the end customer) to ensure that the contractual structures managed risks appropriately.

Designing and developing the Severn Trent Water's competition scenario models, in partnership with Birmingham University. These models were used to simulate the extent of market competition in the UK water market for a variety of different competition regimes and market opening timetables, and included the simultaneous implementation of competition via insets (i.e. changes in franchise areas), retail-only competition and common carriage competition.

Designing and implementing the Severn Trent Water Competition Compliance Programme in line with international best practice. This includes, in particular, moving Severn Trent to a regime where it gathers evidence to prove compliance in line with the Sarbanes-Oxley Act philosophy.

Advising a UK water regulator on the scope for vertical separation and on how competition might be introduced into the water market.

For Severn Trent, project managing the implementation of the processes and systems necessary to comply with the new water competition regime for third party access (introduced by the Water Act 2003), including the creation of the Severn Trent Licensee Services Department.

Advising a number of regulated UK utility companies on how Business Plan submissions should be structured to be the most influential and thereby secure the more favourable regulatory outcomes.

Leading a valuation project to value various major subsidiaries of AWG plc (the owner of Anglian Water).

Regulation & competition in broadcasting

Setting the RPI-X price control for the Channel 5 DTT multiplex including managing the development of the models of the relevant business.

Advising RTÉ and RTÉNL on how to respond to ComReg's formal information request in the context of ComReg market investigation into the wholesale broadcasting transmission market in Ireland, and its proposals to introduce additional ex ante regulation.

For a UK broadcasting regulator, evaluating the advantages and disadvantages of having concurrent competition enforcement powers under CA98.

As the Competition Policy Manager for the ITC, developing and implementing the ITC's competition investigation procedures (published 1998).

As a competition regulator, leading the ITC competition investigation into channel bundling that led to the prohibition of Minimum Carriage Requirements ("MCRs") for pay-television channels, and allowing views to purchase premium channels in combination with any basic channel package (published June 1998).

Leading the ITC competition investigations into the practice of bundling television and telephony, the deep discounting of BSkyB's premium channels, and allegations of derogation of competitors.

Representing the ITC as member of the ITC/Oftel joint working group on Electronic Programme Guides.