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Bundeskartellamt Protects Competition in Rail, Water, Energy and Telecommunications in 2012

The German competition authority, the Bundeskartellamt (the **BKartA**), has issued a [media release](#) highlighting actions undertaken in 2012 to protect consumers in a wide-range of industries, including rail, water, energy and telecommunications.

In the water industry, the BKartA directed the Berlin water supplier Berliner Wasserbetriebe to lower prices in order to decrease revenue by €250 million. Andreas Mundt, President of the BKartA said, 'Water supply is one of the last large monopolies in Germany. This often leads to excessive prices and impairs efficiency. Some municipal utilities seem to be used as some sort of cash cow by the municipalities. Because the competition authorities have kept a close eye on this sector, consumers have been able to save a lot of money.'

Members of a 'rail cartel' were fined a total of €124.5 million for engaging in anticompetitive agreements in relation to the supply of railway rail to Deutsche Bahn between 2001 and 2011. The cartel members divided up orders among themselves, monitored compliance with the contract volume quotas, and set protective prices in order to manipulate the contract award process. [Investigations](#) are continuing in 2013 into the supply of rails and switches to regional and local customers.

In the energy market, the BKartA [announced](#) that it imposed fines totalling €24.3 million on four manufacturers of power transformers. The BKartA found that between 1999 and 2004, the companies engaged in collusive tendering for medium sized power transformers. The cartel members' agreements were based on 'a division of labour': strategic decisions and decisions concerning market share quotas for power transformers were made at CEO level. Meetings at sales manager level dealt with agreements regarding specific projects and tenders.

In the telecommunications industry, BKartA is currently examining an agreement by Kabel Deutschland to purchase Tele Columbus. The businesses provide phone, internet and cable television services in Germany. It has been [reported](#) that the BKartA has taken a critical view of the acquisition and intends to ensure that competition is maintained in the cable market. A final decision is expected later this month.

These actions occur as the Bundeskartellamt assumes new monitoring competencies, together with the Federal Network Agency (the Bundesnetzagentur), in relation to the production and wholesale markets for electricity and gas. The Bundeskartellamt and the Bundesnetzagentur are now [required](#) under the *Energy Act* and the *Competition Act*, to conduct joint monitoring activities in electricity and gas. Recently, they jointly published the [Monitoring Report 2012](#) which analyses and evaluates developments in the electricity and gas markets.



INTERNATIONAL REGULATORY ROUND-UP

Airports

Americas

Canada: CTA Dismisses Complaints against Proposal to Stop Transporting Non-Human Primates for Research

The Canadian Transportation Agency (**CTA**) has [found](#) that Air Canada's proposed tariff revisions to stop transporting non-human primates for research are not unreasonable or discriminatory. The decision is the result of complaints submitted to the Agency against Air Canada's intention to no longer transport non-human primates for research purposes. In assessing the proposed tariff revisions, the CTA considered whether it was a business decision by Air Canada, Air Canada's competitive environment, industry practices and the additional service options available to shippers of non-human primates for research.

Communications

Americas

US: FCC Effort to Increase Wi-Fi Speeds at Airports, Convention Centres and Homes

The Federal Communications Commission (**FCC**) has [announced](#) that it is preparing to make available the 195-megahertz of spectrum in the 5 gigahertz band. This is the largest block of unlicensed spectrum to be made available for expansion of Wi-Fi since 2003. The measures are expected to increase speeds and decrease Wi-Fi congestion at major hubs, such as airports and large conference venues. This will increase spectrum that is available for ultra-high-speed, high-capacity Wi-Fi, known as 'Gigabit Wi-Fi', by up to 35 per cent. It will enable higher data

speeds and greater capacity and improved HD video distribution capability.

US: \$400 Million Provided To Healthcare Connect Fund

The FCC has [announced](#) that up to \$400 million in annual funding is available to healthcare providers as part of the Healthcare Connect Fund. The Fund is designed to support modern telemedicine, which will link urban medical centres to rural clinics or provide instant access to health records.

US: FCC Adopts Rules to Promote Deployment of Internet Services On-board Aircraft

The FCC has [adopted](#) a Report and Order establishing rules to enable a broader deployment of internet services onboard aircraft. Since 2001, the Commission has authorised a number of companies to operate Earth Stations Aboard Aircraft. That is, earth stations on aircraft communicate with Fixed-Satellite Service geostationary-orbit space stations. Satellite antennas are attached to the exterior of aircraft and carry signals to and from the aircraft, providing two-way, in-flight broadband.

US: FCC Announces Appointment of New Chief Economist

The FCC has [announced](#) the appointment of Steven Wildman to the position of FCC Chief Economist. Professor Wildman is an expert on communications and media issues and is serving as the Acting Chair of the Department of Telecommunication, Information Studies and Media at Michigan State University. Professor Wildman will commence his role in January 2013.



Europe

France: The ARCEP Finds Fall in Revenue and Increase in Consumption

The Autorité de Régulation des Communications Electroniques et des Postes (the **ARCEP**) has released a [report](#) that finds that in the third quarter of 2012, revenue generated by electronic communications services was €9.7 billion, excluding VAT. This is a 4.8 per cent decrease compared to Q3 2011. The report also found that mobile customers' consumption levels have risen sharply. Voice calling traffic has increased by 15.8 per cent compared to Q3 2011. This is the largest increase in the past eight years. SMS traffic increased by 23.1 per cent and mobile data traffic increased by 72.1 per cent.

Germany: Telekom Applies for Introduction of Vectoring

Telekom Deutschland GmbH (**Telekom**) has submitted an [application](#) to the Bundesnetzagentur for modification of the regulatory conditions for access to the local loop. Telekom has requested restrictions on competitors' access to the street cabinet. Telekom is planning to introduce the mathematical process of vectoring to its network. Vectoring delivers higher transmission rates in copper-based local access network. The process reduces the crosstalk noise from copper pairs in a cable.

Ireland: The ComReg Issues Electronic Communications Sector Report for Q3 2012

The Commission for Communications Regulation (**ComReg**) has released its [Quarterly Report](#) on the Irish telecommunications market for 1 July to 30 September 2012. The ComReg found that total quarterly electronic communications revenues (almost €931 million)

increased from the previous quarter by 0.1 per cent. However, this is a decline in revenues by 2.6 per cent compared to the same period last year. Total voice traffic (fixed and mobile) declined this quarter while there was an increase in total broadband subscriptions.

UK: The Ofcom Sets Out Proposals to Address Mid-Contract Price Rises

The Ofcom has released a [consultation](#) on how to protect consumers from price rises during fixed-contracts for landline, broadband and mobile services. The Ofcom has proposed to allow consumers to exit their contract without penalty if their provider introduces any price increase during the term of the contract. The consultation follows the Ofcom's review into the fairness of certain contract terms. The consultation closes on 14 March 2013.

UK: 4G Auction Bidders Announced

The Ofcom has [announced](#) the bidders in the 4G mobile spectrum auction which will start in January 2013. They are: Everything Everywhere Limited (UK); HKT (UK) Company Limited (a subsidiary of PCCW Limited); Hutchison 3G UK Limited; MLL Telecom Ltd; Niche Spectrum Ventures Limited (a subsidiary of BT Group plc); Telefónica UK Limited; and Vodafone Limited. The new spectrum will increase the amount of airwaves available to mobile phones by more than 75 per cent. The Ofcom's competition assessment of the UK mobile market found that UK consumers are likely to benefit from better services at lower prices if there are at least four credible national wholesalers of mobile services.



Oceania

New Zealand: New Guidelines for Prepaid Phone Card Industry

The New Zealand Commerce Commission (the **NZCC**) has released [new guidelines](#) for the prepaid phone card industry. This follows customer complaints that some cards did not provide the number of calling minutes advertised. The NZCC provided an example where a customer bought a \$10 phone card and made a call to the UK, which left a credit balance of \$9.38. The following month the customer was unable to make any further calls as there was no credit left on the card. According to the phone card company, the credit balance had reduced due to a daily fee of 20 cents plus GST, which applied after making the first call. The customer had not seen this fee on the advertising materials. The phone card company was fined \$140,000 for this and similar advertising.

Energy

Europe

EU: ACER calls for Amendments of the Network Code on Capacity Allocation and Congestion Management for Electricity

The Agency for the Cooperation of Energy Regulators (the **ACER**) has released an [opinion](#) on the Network Code on Capacity Allocation and Congestion Management for Electricity (the **Network Code**) identifying areas where it does not comply with EU Framework Guidelines. According to the ACER, the Network Code is pivotal to the completion and functioning of the European Union Internal Energy Market. The Network Code provides requirements and responsibilities of transmission system operators (**TSOs**) and other entities performing functions within coordinated capacity calculation, allocation and congestion management for the

day ahead and intraday timeframe in the electricity market.

France: CRE Consults on GRTgaz's and TIGF's Balancing Rules

The French Regulatory Commission for Energy (the **CRE**) has released a [public consultation](#) in relation to balancing rules for natural gas transmission networks. The proposed rules are designed to implement balancing rules that comply with the European Commission's ACER1 framework guidelines on balancing, adopted on 11 October 2011. The code would apply from 2015. The consultation closes on 21 January 2013.

Germany: Bundesnetzagentur Publishes Paper on Technical Facilities for Renewables Installations

The Bundesnetzagentur has released a [position paper](#) on technical facilities for installations regulated under the Renewable Energy Sources Act (the **Act**). The Act requires that renewable energy, mine gas and combined heat and power installations are equipped with technical facilities that enable the grid system operator to control output remotely.

Netherlands: NMa Revokes Licence of Energy Provider

The Netherlands Competition Authority, the Nederlandse Mededingingsautoriteit (the **NMa**), has [revoked](#) the licence of energy provider Orro Energy (**Orro**). Orro provided electricity and gas to households and small and medium-sized businesses (**SMBs**). Orro can no longer serve its customers because it is no longer able to pay for energy that it purchases. The NMa is reviewing options for Orro's customers. These may include arranging for one provider to take over Orro's customers or redistributing them proportionally among the other providers.



UK: The Ofgem Announces Major Investment to Upgrade Britain's Gas and Electricity Networks

The Ofgem has [announced](#) that up to £24.2 billion will be available to deliver new and upgraded infrastructure for Britain's gas and electricity networks. Of this, £4.5 billion will only be made available over the course of the new, longer price control period of eight years from 1 April 2013 to 2021, provided that businesses are able to justify this expenditure. The cost of running and maintaining Britain's energy networks up to 2021 brings the total package to £38.2 billion.

UK: Final Proposals for RIIO-GD1 Published

The Ofgem has released its [Final Proposals](#) for the next gas distribution price control (**RIIO-GD1**). The price control will be set for an eight-year period from 1 April 2013 to 31 March 2021. This is the first gas distribution price control under the new RIIO model, where Revenue = Incentives + Innovation + Outputs. RIIO employs different process for setting price controls. Businesses are required to develop and submit business plans, supported by the views of stakeholders, that set out what they will deliver. Those plans assist in setting price control components. The Final Proposals will come into effect through changes to gas distribution licences. The Statutory Licence Consultation closes on 22 January 2013.

Posts

Europe

Ireland: ComReg Consults on Price Increases Proposed by An Post

The Commission for Communications (**ComReg**) has published a [consultation](#) on An Post's application to increase the prices of

universal postal services that weigh less than 50 grams. Prices for these postal services were last increased in 2007. The proposals by An Post include an 18 per cent increase to the price of the Domestic Stamped Letter from 55 cents to 65 cents. The consultation closes on 31 January 2013.

Rail

Americas

Canada: Railways Exceed Western Grain Revenue Caps

The Canadian Transportation Agency (**CTA**) has [found](#) that revenues of the Canadian National Railway Company (**CN**) and the Canadian Pacific Railway Company (**CP**) for the movement of western grain have exceeded their revenue caps for crop year 2011-2012. CN's grain revenue of \$542,756,316 was \$240,185 above its revenue cap. CP's grain revenue of \$494,436,705 was \$400,132 above its cap. More than 33 million tonnes of grain were transported, which is 6.2 per cent higher than the previous crop year. CN and CP will now pay the excess revenue, plus a five per cent penalty to the Western Grains Research Foundation, a farmer-financed and directed organisation set up to fund research that benefits Prairie farmers.

Europe

UK: The ORR Publishes Volume Incentive Consultation

The Office of Rail Regulation (**ORR**) has published a [consultation](#) in relation to proposals to improve the effectiveness of the Volume Incentive. These proposals relate to its design and payment rates. The Volume Incentive is a payment to Network Rail which encourages it to be more responsive to unexpected demand for use of network capacity over and above an agreed level. The Volume Incentive acts as a



counterbalance to the service reliability and punctuality targets. The consultation closes on 5 February 2013.

UK: The ORR Announces New Charges for Rail Freight Operators

The ORR has [announced](#) new charges for freight operators to access the rail network, to be introduced from 2016. The charges are designed to better reflect costs. They include a maximum cap of £1.68 per 1000 gross tonne kilometre on the average variable usage charge that freight operators will pay to access the rail network. In addition, a new freight specific charge will be introduced that is payable for commodities that cannot easily be transported by road. These include coal that is supplied to the electricity industry, spent nuclear fuel and iron ore.

Water

Europe

Northern Ireland: Utility Regulator Publishes NI Water Price Control Determination

The Utility Regulator has released its [final price control determination](#) for NI Water for 2013 to 2015. Charges will decrease by an average of 6 per cent below inflation in each of the two years. The determination also provides for investment in water and sewerage assets of £324 million. There is also an emphasis on improving levels of service measured through the 'overall performance assessment' score. The objective is to narrow the gap between NI Water and the average water company in Great Britain.

UK: The Ofwat Consults on Negotiating Bulk Supplies

The Ofwat has released a [consultation](#) on proposed guidance to the water, and sewerage

and water companies in England and Wales to negotiate 'bulk supplies' and to reduce barriers to water trading. A 'bulk supply' is the supply of water from one appointed water business to another. Businesses can contract between each other where the 'bulk supply agreement' sets out the terms and conditions of the bulk supply, including the price. The objective of the guidance is to make negotiating bulk supply agreements easier. The closing date for the consultation is 12 March 2013.

AUSTRALIAN REGULATORY ROUND-UP

Communications

ACCC Consults on 'Pull-Through' During Migration to NBN

The Australian Competition and Consumer Commission (ACCC) has released a [discussion paper](#) inviting comment on two measures developed by Telstra under its migration plan. The measures relate to a process that will be used by NBN Co at times to connect premises to the National Broadband Network. In some cases NBN Co may need to use an existing copper or HFC line to pull the NBN fibre through the conduit that leads from the street to the premises. The consultation closes on 1 February 2013.

Energy

Review of Competition in NSW Retail Electricity and Natural Gas Markets

The Australian Energy Market Commission (AEMC) has [invited submissions](#) on an issues paper in relation to the consultation process for its review of competition in New South Wales retail electricity and natural gas markets. This is the AEMC's first review in New South Wales since the introduction of full retail contestability



in the state's energy market ten years ago. Submissions are due by 8 February 2013.

Last Resort Planning Power 2012 Review

The Australian Energy Market Commission (**AEMC**) has released the [final report](#) for its Last Resort Planning Power Review in relation to the National Electricity Market (**NEM**). The National Electricity Rules require the AEMC to report annually on whether planning by transmission network service providers had responded to inter-regional network congestion. The Review found there was an appropriate level of consideration of interconnector capacity.

AER Approves Victorian Electricity Network Tariffs for 2013

The Australian Energy Regulator (**AER**) has [approved](#) increases in Victorian electricity network tariffs for 2013 for distribution network service providers (**DNSPs**). Network tariffs make-up between 30 to 40 per cent of total residential electricity bills in Victoria. Network charges for the average residential customer are expected to increase by 16 per cent in 2013. This is an average increase in retail tariffs of about 5 per cent. Network charges for Powercor and SP AusNet include the pass-through of additional costs for bushfire-related safety expenditure.

AER Releases State of the Energy Market Report

The AER has released its sixth [State of the Energy Market Report](#). The report examines the factors that have increased energy prices. It also reviews the policy and regulatory initiatives

under way to address the problem. They include the move towards a national approach to setting reliability standards and reforms to allow consumers to manage their energy use and save on energy costs by shifting consumption away from peak times.

AER Publishes Final Decision on Electricity Transmission Service Target Performance Incentive Scheme

The AER has published its [final decision](#) on a new electricity transmission service target performance incentive scheme (**STPIS**). The AER's final decision is to amend the scheme to focus more on lead indicators of reliability, change the way performance against the market impact component is measured to improve consistency of performance and introduce a new network capability component for TNSPs to identify and implement low-cost solutions to network limitations.

Posts

ACCC Issues Guide to Resolving Disputes between Australia Post and Bulk Mail Users

The ACCC has issued a [guide](#) to resolving disputes that may arise between Australia Post and bulk mail users. Australia Post's bulk interconnection service is offered to businesses that send bulk quantities of letters for delivery within Australia. Australia Post provides bulk interconnection services at lower rates than for its standard mail service.