LEAD ARTICLE

Economic regulation of rail infrastructure – Design and process across OECD countries
Rob Albon and Su Wu
Introduction

This paper reviews regulatory design and processes adopted across a representative sample of OECD countries. It focuses on design of economic regulation of rail infrastructure, covering regulatory institutions, regulatory functions, and the scope of access regulation. It also covers six elements of regulatory processes: consultation; role of users and providers; timelines; information collection, disclosure and confidentiality; decision-making and reporting; and appeals. The countries reviewed differ in terms of geographic, economic, political and legal characteristics. As a result, the industrial and regulatory structure also differs markedly across these countries, and has changed substantially over time, particularly in the last two decades. Bearing in mind the inherent differences across countries, the review of international institutions and practices offers some insights for regulatory design and practice for countries reconsidering their regulatory regimes or considering introducing regulation. The main themes drawn from the review lie in:

- a tendency towards greater independence of regulatory responsibility from regulated railway operations
- a move towards establishing a transport sector-wide regulator
- the development of novel approaches to access facilitation and dispute resolution, including requirements for a ‘Network Statement’ covering reference tariffs.

The paper is organised in the following way. Firstly, industry structure across the selected countries is reviewed, focusing on ownership and vertical composition. Secondly, regulatory design and regulatory processes across these countries are surveyed. Finally, the themes of potential interest to countries re-examining their approach to rail regulation are drawn from the background research and presented as the conclusion to this paper.

Industry structure

In all the countries reviewed, the rail industry has changed substantially in recent years. However, the present state of the rail industry varies across countries, in terms of industry structure, such as the share of private provision of the rail infrastructure and transport services, whether the industry is vertically integrated or separated, and the degree of competition in train operation.

The degree of corporatisation and privatisation of the railway industry differs across countries. Government-owned railway networks prevail in countries such as France, the Netherlands, Ireland and Australia. In France, the national rail network is government-owned and the principal freight and passenger operator is a public enterprise. Similarly, the Dutch rail network is largely operated by a government agency while a public enterprise holds the exclusive right to operate passenger services. In Ireland, there are government-owned monopoly providers of rail infrastructure and railway services respectively. In Australia, the Australian government fully owns the Australian Rail Track Corporation (ARTC) which operates the interstate and intrastate freight rail network. Metropolitan rail infrastructure is usually provided by state and territory governments. In addition, it manages the Hunter Valley coal rail networks on behalf of the New South Wales government. There is one vertically integrated rail operator, Queensland Rail (QR), owned by the Queensland state government.

Predominantly privately-owned railway networks operate in Sweden, Canada, and the US. Four of the five largest Swedish rail infrastructure providers, as well as many train operators, are privately owned. The transcontinental rail network in Canada, which is primarily used for freight transportation, is privately owned and operated by two major companies – Canadian National (CN) and Canadian Pacific (CP). VIA Rail Canada is an independent Crown corporation that operates a national network of passenger trains. The US rail network is also predominantly privately owned and operated, and the largest network operator is Conrail.
A mixture of private and government-owned rail services operate in Japan, Germany, Switzerland and the UK.

- Japan Rail (JR) Group consists of three publicly listed mainland companies, three government-owned island companies and one government-owned freight company. In addition, there are many private railways offering passenger services in suburban and country areas, integrated to various degrees into the JR systems.

- The UK’s national railway network is operated by Network Rail, a not-for-dividend company comprising of industry and public members. There are also various licensed train operator franchisees that are licensed by the Department of Transport.

- The German railway network is managed by a private joint stock company – Deutsche Bahn (DB). It provides passenger and freight services in competition with private train operators.

- The incumbent Swiss Federal Railways (SBS) is a special stock corporation that runs separate divisions in rail infrastructure, passenger services and freight services. The second-largest operator – BLS AG – is majority-owned by national and canton governments, and operates rail infrastructure and passenger train services. Other smaller private railway companies do not own any rail network but provide train operations.

Vertical separation of below-rail infrastructure from above-rail passenger and freight services has occurred in at least some instances in France, the Netherlands, Sweden, the UK and Australia. In Japan, JR Freight is separated from other JR companies that own railway network. In Germany and Switzerland, the incumbent network owners remain vertically integrated. Regional vertically integrated companies operate in the US, while vertically integrated CN and CP in Canada operate on national freight rail network.

The rail industry in all countries reviewed other than Ireland has been opened to competition. Access to freight services is usually mandated by government regulation whereas competition in passenger services often involves competitive contracting or franchising, usually in unprofitable regions. For example, franchised train companies operate on the UK national railway network, where the Department of Transport holds an auction for a franchise period of between five and 15 years.

To date, the degree of rail competition achieved varies from country to country, in part reflecting the considerable divergence in the regulatory frameworks applied to the industry in these countries.

- In Germany, above-rail competition was introduced in 1994 with 355 licensed train operators in 2006 (EC 2007). The vertically integrated incumbent DB maintains a large market share.

- In the UK, there were 56 licensed train operators in 2006 (EC 2007). The incumbent freight service provider, DB Schenker (formerly EWS), remains dominant. All passenger services are franchised.

- In Sweden, above-rail competition was permitted once the state-owned incumbent was split into passenger services and freight services in 2001. Today the former incumbents still dominate the passenger and freight markets.

- The French rail network owner was separately established in 1997. Competition in the freight segment was gradually introduced in the following years and was completed in 2006. The passenger segment is not scheduled to be fully opened to competition until 2010. There were eleven registered train operators as of December 2007 (OECD/ITF, 2008).

- In Japan, above- and below-rail competition is permitted, but railway companies must comply with the entry and exit permission system where the minister permits entry if the operator meets safety requirements and is soundly managed. One year’s notice is required when a company intends to fully or partially withdraw from a business.

The degree of competition in freight services varies across countries. A review of the development of the EU rail market shows that, in 2006, the largest market share of non-incumbent rail freight operators was reached in Sweden (32.5 per cent), followed by the Netherlands (18 per cent) and Germany (16.4 per cent) (EC 2007). Comparative data was not available for the UK, France and Switzerland.

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2 This form of competition in rail passenger services is known as Demsetz competition (Demsetz, 1968) in the literature.
While competition within rail (i.e., train operation) remains limited, the industry may be involved in inter-modal competition with air and road transport. Both the US and Canada have large and well-developed trans-continental railway systems with some rail lines in parallel with each other, primarily used for freight transportation (Posner, 2008, p. 4).

**Regulatory institutional structures**

A country’s regulatory regime is likely to be influenced by a range of geographic, economic, political, legal and historical factors. Regulatory design does not appear to be strongly influenced by the ownership of economic infrastructure, although it has often evolved in response to deregulation and increased penetration of private ownership.

Responsibility for economic regulation of rail infrastructure may rest with the national government, sub-national governments or shared by national and sub-national governments. This is a particularly important issue in the federations reviewed (Australia, Canada, Germany, and the United States). The wide range of regulatory institutional arrangements at the national level can be found as follows:

- Ministerial responsibility for decisions on economic regulation in Japan, France, Switzerland, Ireland and (for some functions) Germany. The relevant ministry in Japan is the Ministry of Land, Infrastructure and Transport (MLIT); in France it is the Ministry of Ecology, Energy, Sustainable Development and Planning (MEESDP), assisted by the Mission for Control of Rail Activity (MCAF) as an advisory committee; in Switzerland, the Federal Office of Transport supervises the railway sector (but additionally the Railways Arbitration Commission is responsible for settling access disputes); while in Ireland the Department of Transport is in charge of passenger fare changes and rail infrastructure development is subject to the approval of an independent planning authority – An Bord.

- A regulator encompassing all main infrastructure industries – including some rail functions – prevails in Germany (Federal Networks Agency (FNA)) and Australia (ACCC). The FNA shares regulatory responsibility with two federal government ministries: the Federal Ministry of Transport, Construction and Town Development (BMVBS) undertakes substantive supervision in railway regulation; while organisational responsibility lies with the Federal Ministry of Economics and Technology (BMWihe).

- A transport-sector regulator operates in Sweden (Swedish Transport Agency (JTA)), the Netherlands (Office of Transport Regulation (OTR) within the Competition Authority (NMa)) and Canada (Canadian Transportation Agency).

- In the UK, there is a rail-specific regulator (Office of Rail Regulation (ORR)) and the US Surface Transportation Board (STB).

- In Sweden, prior to the creation of a rail-specific regulator – Swedish Rail Agency (JVS) – in July 2004, the incumbent infrastructure manager Banverket acted as the industry regulator. A new transport-wide regulator – JTA – was introduced on 1 January 2009.

In some federations, sub-national governments play a role in rail regulation. For example, while US rail regulation is administered federally by the STB, at the state level either the relevant state department of transportation or the independent regulator has some functions. The New York Department of Transport is responsible for directing regulation of rail in New York, while in California, the California Public Utilities Commission has some functions in rail. In Australia, economic regulation of rail is shared by the federal and state governments.

**Regulatory functions**

Economic regulation of rail covers things such as price and quality of services, access to rail track, structural separation, market entry and exit. Given the diversity of institutional arrangements and approaches to competition, the scope of regulatory functions performed by the regulatory bodies also varies across countries.

For example, the UK’s ORR is both the industry regulator and the competition authority with concurrent power in the rail industry. Its regulatory functions include: licensing network providers and train services operators; approving access agreements; conducting five-year periodical reviews of access charges; and monitoring and enforcement.

Japan’s MLIT is responsible for: licensing railway businesses; approving passenger fares and rates under a ceiling-price permission system; and approving access arrangements. The regulator adopts yardstick regulation that encourages indirect competition between railway operators, under which a railway’s relative performance is considered at the end of each fiscal year and is used as a basis for determining efficient costs used in setting the upper limits for fares it can charge.
The MCAF in France, in its advisory role to the Minister for Transport, monitors network access conditions and conducts investigations concerning network access complaints. In Ireland, the Department of Transport approves passenger fare changes, but there is no access regulation as there is no competition in the provision of rail services. Establishment of an independent regulator is currently being undertaken in both countries in order to comply with the EU First Railway Package.¹

In the Netherlands, the OTR has a general role in supervising the railway industry in relation to Network Statements (see below), ex post supervision of access arrangements, capacity allocation and infrastructure charges.

In Germany, the FNA, which has a shared regulatory responsibility in rail with two federal ministries, is responsible for monitoring compliance with the rules governing access to railway infrastructure and has the right to object to the infrastructure manager’s decisions (e.g., when it intends to reject an application for allocation of railway embankments or for access to service facilities).

The ACCC is responsible for administering part of Part IIIA of the Trade Practices Act 1974. A key regulatory function relates to the assessment of access undertakings in relation to rail network infrastructure. In 2008, the ACCC accepted an undertaking given by the ARTC about its interstate rail network.

At the EU, Member States are required to separate accounts of infrastructure management from rail operation under the First Railway Package Directives. In Australia, the Queensland Competition Authority (QCA) requires comprehensive ring fencing arrangements on the operation of vertically integrated QR. The Western Australian government requires Fortescue in the Pilbara to have some degree of accounting separation and ring fencing.

Access regulation

Reflecting the opening to competition, all countries reviewed except Ireland have a rail access regime. Access arrangements that govern price and non-price terms and conditions of access are, in the first instance, usually negotiated privately between the infrastructure manager and the respective train operator. The regulator may arbitrate when private negotiation fails.

The private negotiation of access arrangements may be facilitated in a number of ways. Following the EU Directive 2001/14/EC, requiring the development and publication of a ‘network statement’ by the infrastructure manager, France, Germany, the Netherlands, Sweden, Switzerland and the UK each introduced a network statement regime providing standard pricing and non-price conditions of access to facilitate negotiation on individual basis. In France, the creation of a reference document by the infrastructure manager involves a consultative process and ultimate ministerial approval, and there is little access disputation after its publication. Complaints and objections are made to the Minister who requests the regulator to investigate and report back.

In Japan and the UK, access arrangements must be approved by the regulator. In other countries, the regulator has a monitoring role to ensure compliance with access rules, which generally focuses on non-discriminatory access to infrastructure and associated services, and on compliance with pricing principles.²

In some countries, an alternative dispute resolution (ADR) mechanism is available. For example, the STB in the US mandates mediation in all rate disputes, while arbitration can be elected by the parties to a dispute. In Sweden, a rapporteur is engaged for the mediation of communications among various parties. In Switzerland, an independent arbitration commission arbitrates access disputes on the request of the parties involved in the dispute. Other countries – including Germany – may also encourage the use of informal dispute resolution.

In Canada, there are four types of procedures to resolve disputes (including rail access disputes) – the CTA uses ‘informal facilitation’ to resolve disputes before a formal complaint is filed; parties to a dispute over selected business-related rail matters may elect to undergo mediation supported by the CTA; formal arbitration by independent arbitrators

¹ In France, a draft bill for establishing an independent rail regulator with certain judicial powers was tabled on 19 September 2008. In Ireland, an authority with overall responsibility for co-ordinating transport in the Greater Dublin Area is to be set up under the Dublin Transport Authority Act 2008. It will be responsible for, inter alia, railway infrastructure development and regulating public transport fares.

² In the Netherlands, the regulator has a statutory responsibility of approving a framework agreement which sets out the terms of access agreement with individual access seekers for a period of five years. However, so far no such framework agreement has been submitted. Therefore, the principal role of the Dutch rail regulator is still the ex post supervision of individual access arrangements.
is available; and adjudication by the regulator may occur.

In Australia, the ACCC may arbitrate access disputes either under Part IIIA following declaration of a rail service or pursuant to a prescribed role within an approved access undertaking (ACCC, 2006, pp. 1-2).

**Six elements of regulatory processes**

This section reviews six elements of regulatory processes – consultation; role of users and providers; timeliness; information collection, disclosure and confidentiality; decision-making and reporting; and appeals – that are undertaken in conducting economic regulation.

**Consultation**

There are various ways that matters come before the regulator and various ways they are handled once under consideration. Broad and intense consultation is not common, and public hearings are rare in rail regulation. The Netherlands may hold public hearings, while Canada will do so only for more complex matters. In Japan, the MLIT must consult with the Council for Transportation in relation to passenger fares, suspension of business or recession of licence, and the formulation of basic policy. The District Transport Bureau within the MLIT is authorised to summon interested parties to hear their opinions. In Australia, the ACCC will publicly consult on the proposed terms of an access undertaking. Arbitration of access disputes are conducted privately, between the parties to the dispute.

**Role of users and providers**

It is not common for countries to have formal arrangements for users and providers to have specific input into the regulatory process. The main exceptions are the US and France. In the US, the STB has two key councils and a committee representing user groups and providers in particular areas that advise it on relevant matters to do with small-scale shipping, energy transportation and grain transportation. The STB also runs a Rail Consumer Assistance program that provides the public with access to informal assistance with any rail transportation problem. In France, the infrastructure manager is required to consult any national rail user group in the process of drawing up the ‘network statement’. One representative user group is the Freight Transport Users Association (AUTF).

**Timeliness**

Statutory requirements on times allowed for making a regulatory decision in rail are not common among the countries reviewed. However, in practice, national rail regulators (e.g., the ORR in the UK) are under a best endeavour obligation to meet a target timeframe. In Germany, the FNA has very short periods, ranging from one day to four weeks, to exercise its right to object. In Australia, the ACCC is required to use its best endeavours to make a decision on an access undertaking within six months of receiving the application. Issues in the US with slowness – for small rail rate cases – led to reforms beginning in the mid-1990s. Dispute resolution procedures introduced in 2007 expedited processes, namely the ‘three benchmark’ process for small-sized rate disputes and the ‘simplified stand-alone cost’ process for medium-sized rate disputes, that call for a board decision within approximately eight or 17 months of filing a complaint, respectively (STB, 2007).

**Information collection, disclosure and confidentiality**

Powers to obtain and disclose information, and rules about confidentiality, vary across countries surveyed. Typically, national rail regulators have the powers necessary to perform their duties and enforce legislation governing the industry, including powers to compel the production of documents and to request the provision of specified information on a regular basis. The most comprehensive annual information-collection exercise identified is in the Netherlands, where the NMa conducts an annual market monitoring exercise. The ACCC obtains information about a proposed rail undertaking on a voluntary basis, however it can compel the provision of information about the arbitration of rail access disputes (see ACCC/AER, 2008, pp. 2-3).

**Decision-making process**

Regulatory decision-making ranges from ministerial responsibility to decision by a board or commission. In all regulatory bodies surveyed, there is a distinction between the ‘commission’ or ‘board’ and staff. The commission or board is supported by staff, who prepare papers and drafts of reports for the board’s decision. In France, Ireland and Japan there is no determinative body, and regulatory decisions are made by the minister. However, change to an independent regulator is in progress in France and Ireland. In Germany, decisions about rail regulation are made by the rail regulation section of the FNA (unlike in other areas, by a Ruling Chamber). The section comprises five divisions, including an economic and legal policy division, an access to rail infrastructure and services division, an access to service facilities and services division, a charges for networks’ service facilities and services division, and a division covering business aspects of charging, monitoring and statistics. In Switzerland, arbitration decisions on fundamental issues are made by a team of five judges and decisions on other issues can be made by a team of three judges. ACCC decisions are made by
a quorum of at least three members, including the chairperson or a deputy chair, on majority voting; and prior to this, a rail matter is considered by a special committee (see ACCC/AER, 2007, pp. 23, 25).

**Appeals**

Regulatory decisions can be appealed in all countries that conduct economic regulation of rail infrastructure; sometimes as a judicial appeal (legal grounds only); sometimes on the merits and sometimes both. An appeal to regulatory decisions generally needs to be lodged within a statutory period. The regulatory decisions may stand pending the appeal outcome. Discovery rights are generally provided in accordance with court rules. The courts may accept, reject, substitute their own decisions or refer the cases to the regulator for reconsideration on particular issues.

In some countries, appeals are first made to the regulator for reconsideration. Only if the regulator does not amend the decision in the first instance, then the appeal is submitted to the court. The Netherlands has an ‘objections procedure’ where the appeal is generally first considered by a separate team of staff within the regulatory body (the NMa) prior to any court action taken. This appears to be a relatively effective means of challenging decisions as a quite high proportion of decisions are successfully challenged in this process.

All the EU countries reviewed have judicial review for regulatory decisions. In Germany, appeals are considered, in the first instance, by the Administrative Court of Cologne and further appeals to the court decisions can then be heard by the Higher Administrative Court in Munster.

**The Role of the European Union (EU)**

The EU has an influence on rail regulatory practice in member states that come under railway ‘directives’ introduced through three packages:

- The first package comprised of directives 2001/12, 2001/13 and 2001/14 (which replaced an earlier Directive – 94/440), set rules in relation to the EU internal market for rail freight transport. It specified the licensing and safety requirements of rail undertakings; the framework for the allocation and charging of rail infrastructure capacity to ensure non-discrimination; the requirement for an independent regulatory body, and the requirement of accounting separation. Directive 2001/14/EC required the development and publication of a ‘network statement’ that sets out the access conditions. The package was due for implementation by end of March 2003.

- The second package set out arrangements for the opening of the national market for rail freight transport, establishment of a European Railway Agency and a framework for railway safety. It was due for transposition into national legislation by the end of April 2007.

- The third package, adopted in 2007, required market opening for international rail passenger services, rail passenger rights and obligations, as well as the certification of train drivers. This legislation has yet to be transposed or implemented by member states.

There is no particular role of the EU in promoting corporatisation and privatisation in rail. As seen above, the extent of corporation and privatisation varies across the EU countries reviewed.

To date, 24 member states, including Germany, France, Sweden and the UK, have not been timely in compliance with the first EU Directives Package (EC, 2008). France was found to have seven issues concerning its implementation, including lack of independence of the infrastructure manager in relation to railway operators (also an issue with Germany’s implementation), insufficient implementation of the rules on access charging, and failure to set up an independent regulator with strong power to remedy competition problems in the railway industry or demand information. An additional issue with Germany was the lack of incentives for an infrastructure manager to reduce costs and charges. Sweden was found to have the absence of a regime to improve the performance of the railway network and to not publish separate financial statements. The only issue identified for the UK is that the regulator is not required to decide and take action within two months.

So far the EU has been particularly influential in the development of the market for rail freight transportation. There have been calls for the introduction of a single European regulators’ forum for rail. Development of an EU rail market has been associated with a trend for the consolidation of rail operators across country borders. For example, Railion in Germany has expanded to other EU member states as it acquired all or part of freight operations in the Netherlands, Denmark, Italy and Switzerland.

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5 Switzerland has entered rail agreements with the EU, given its strategic position in European rail transport because of borders with France, Germany, Italy and Austria.
Concluding Themes

The review of rail regulation across countries has indicated that, while there is a trend towards privatisation and vertical separation, there is a diversity of approaches both to regulatory design and processes of decision making. This concluding section discusses some themes that may provide insights for any country contemplating changes to its regulatory regime for rail.

Tendency to greater independence

Compared with other infrastructure industries like electricity, gas and telecommunications, rail is more likely to have ministerial regulation where the government owner of the operation is also the regulator. In Sweden, the incumbent infrastructure manager had acted as an industry regulator prior to the creation of the independent JVS in July 2004 (JTA since 1 January 2009). While four countries reviewed have ministerial responsibility for decisions on the economic regulation of rail, both France and Ireland are moving to the establishment of an independent regulator, and regulatory functions in Germany are shared with the FNA.

Movement towards transport sector regulators

The economic regulation of infrastructure appears to be converging towards greater use of sector-based regulators rather than either across-the-board ones or industry-based ones. Sector-based regulation is now most common for energy (combining electricity and gas) and communications (telecommunications, broadcasting and posts). Sweden has recently moved to combine industry-based transport regulators into a sector-wide one, and the Netherlands and Canada already have this model.

This tendency towards transport-sector regulation may be enhanced by another trend in rail and transport generally – the greater integration between modes of transport and ‘terminals’ such as ports and airports. The identification of bottlenecks and market power more generally extends beyond traditional ‘industry’ boundaries, and the implications of regulatory actions requires a ‘general-equilibrium’ analytical approach taking into account the substitute and complementary relationships between different production components and services provided.6

Given these major trends in transport, a sectoral regulator should (compared with an industry-specific regulator) be able to accommodate the broader implications of regulatory decisions, facilitate information flow, establish competitive neutrality, allow development of greater expertise and synergies in regulatory practice, and perhaps to lower the chance of the regulator being ‘captured’ by industry interests (Stigler, 1971).

Access facilitation and dispute resolution

Most regulatory regimes provide for access prices to be decided by negotiation with determination by the regulator in the event of a dispute. The process, notably in the US, has led to considerable concerns about the costs and timeframe for resolving disputes arising from access providers’ incentives to cause delay. Procedures have been implemented by the STB to address those concerns in cases of small and medium rates. However, delays in large cases continue to be of concern.

Several European countries have procedures that are intended to reduce the incidence of access disputes. As noted before, an EU infrastructure manager is required to develop and publish a ‘Network Statement’. The creation of such a standard access agreement through a consultative process administered by the infrastructure manager may result in fewer disputes after its publication.

The range of dispute resolution procedures also includes informal mediation and more formal arbitration. Regulators may encourage the resolution of disputes through more consultative means outside of the regulatory process before approaching the regulator.

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6 See also the perspective in Wills-Johnson (2007).
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Critical issues in regulation – from the journals

‘Stipulated settlements, the consumer advocate and utility regulation in Florida’

This paper considers the role that consumer advocacy groups have played in the course of regulatory proceedings involving the Florida Public Service Commission (PSC). The aim is to analyse the likely effects of greater involvement of consumer groups in the proceedings, and the effects of using of negotiated settlements. Stephen Littlechild examines a data set that details just over 300 revenue decisions by the PSC from 1960-2002.

Privately-owned utilities in the United States of America were traditionally regulated via litigation before public service commissions, usually whenever utilities sought to increase rates. The litigation involves the filing of testimony and formal hearings before the PSC, following which the PSC makes its decision. Florida appointed the Office of Public Council (OPC) to represent the interests of citizens in 1974, during a time when such proceedings became more frequent due to higher inflation.

Following this, the role of PSC staff shifted towards a neutral position during proceedings, developing the facts of the case and raising relevant issues for investigation. Staff then advises PSC commissioners during their deliberations.

Involved parties may reach an agreement that is formally recorded as ‘stipulated’ or negotiated settlement, prior to legal proceedings before the PSC. In practice the discussions begin after the opening filings and counter-filings of testimony, which provide a basis on which bargaining can begin. This paper examines what motivations parties might have towards stipulated settlement prior to the day of hearing.

Littlechild examines just over 300 matters before the PSC over the period 1960–2002, relating to the revenues of electricity, gas and telephone companies in Florida. The data indicate that a higher proportion of the matters relating to rate reductions were settled through stipulations, when compared to matters involving rate increases (31 per cent versus 7 per cent). In addition, the amount of stipulated rate reductions accounted for more than 75 per cent of the total value of rate reductions gained.

Littlechild surmises that both the OPC and utilities prefer to be credited with reaching stipulated settlements involving rate reductions, and particularly with larger ones. He argues a similar hypothesis in relation to matters involving rate increases, over which only 7 per cent involved stipulations. The rate increases agreed through stipulation also tended to be much smaller, with the average requested increase being $8.1 million, whereas the average for non-stipulated increases was $31.5 million.

The paper argues that greater use of stipulations has had the effect of transferring utilities from a conventional rate of return regulation to fixed-price and revenue-sharing incentive arrangements. However, more interestingly for the Australian context, the analysis also suggests that public perception had a significant influence on parties’ incentives to negotiate regulatory outcomes in Florida. The existence or otherwise of such effects in the context of Australia’s negotiate–arbitrate frameworks could have the potential to similarly influence negotiations.

‘The dynamic efficiency gains from introducing capacity payments in the National Electricity Market’

Australia’s National Electricity Market (‘NEM’) is somewhat unusual internationally, as electricity generators are paid only when they produce. This is known as an ‘energy-only’ market. In contrast, in many other liberalised electricity markets, generators receive additional payments (known as ‘capacity payments’) simply for being available to produce. The debate between an energy-only market and capacity payments dates back to before the start of the NEM. Simshauser advocates for capacity payments, claiming that an energy-only market cannot deliver a politically acceptable level of reliability, at least when wholesale prices are kept within politically acceptable bounds.

The central argument is based around modelling which indicates that when the mix of generation in the NEM is chosen to deliver the officially-desired level of reliability, competitive bids by generators (that is, bids at short-run marginal cost), yield insufficient revenues for generators to cover their costs. As a result, Simshauser concludes that the energy-only market will fail to deliver a ‘tractable equilibrium’ and that generators can only recover sufficient revenue through the exercise of market power.

Although it is true that an energy-only market periodically requires episodes of high prices to ensure that all generators are adequately remunerated, it does not follow that generators can only be adequately remunerated if reliability is sacrificed. Simshauser’s modelling takes as given that both the demand and supply curves are infinitely inelastic at times of high prices. Under this assumption, the only way supply and demand can be reconciled at times of high demand is
through some form of involuntary rationing – known as ‘load shedding’. In other words, in his model, the high prices
necessary to compensate generators, always coincide with periods of load shedding, which reduces reliability.

However, in practice, neither the demand nor the supply curves in the wholesale NEM are perfectly inelastic. For
example, if some consumers respond to high spot prices by voluntarily curtailing demand, then high spot prices can
occur with no involuntary load shedding. There are mechanisms built into the NEM to allow electricity consumers to
display their willingness to reduce demand at times of high prices. Indeed, the AER recently reported that high prices in
NSW resulted in a substantial reduction in demand of around 500 MW.

The NEM has on many occasions exhibited extremely high prices (close to the price cap of $10 000/MW) but only very
rarely, if ever, has load been shed due to a lack of available generation. The trade-off focused on (between high prices
and load shedding) rarely occurs in practice. The AEMC in its most recent review has rejected the arguments for
capacity payments, noting that the existing energy-only market has proved robust in practice.

‘Can two-part tariffs promote efficient investment on next generation networks?’
D Brito, P Pereira, and João Vareda, Working Paper, Autoridade da Concorrência [Competition Authority,
Portugal], October 2008.

This article considers whether two-part access tariffs can solve dynamic consistency problems in the regulation of Next
Generation (telecommunications) Networks (NGNs), and if they can thereby promote efficient investment in NGNs.
When prospectively regulating networks that have not yet been deployed, there is a heightened trade-off between static
efficiency (allocative and productive efficiency, brought about by limiting the incumbent’s market power) and dynamic
efficiency (providing efficient incentives to invest in a NGN). This can give rise to a dynamic consistency problem – prior
to deployment, high access charges that promote efficient investment can be optimal, but after deployment, it may be
optimal to set lower access charges to promote downstream competition. The dynamic inconsistency is that the rational
incumbent will anticipate (prior to deployment) this change in the optimal charge, and may reduce its deployed
investment accordingly. In principle, long-term regulatory commitment can overcome this, but in practice, credible long-
term regulatory commitment may be difficult.

In this model, the regulator can set two-part access tariffs – a fixed charge, and a per-unit marginal charge. The regulator
thus effectively has two instruments – each of the two parts of the tariff. The industry is modelled as a duopoly. The two
firms are a vertically integrated incumbent, and a downstream entrant that requires access to the incumbent’s network.
The firms compete in differentiated products (Hotelling-style competition).

The extent to which two-part access tariffs can ameliorate the regulatory commitment problem depends on several
factors. Firstly, if investment costs are low, the regulator can induce NGN investment even when the regulator cannot
commit to a policy. The regulator can set the marginal part of the access charge at short-run marginal cost, and use the
fixed charge to provide optimal incentives for efficient investment. However the two-part tariffs require payments from the
entrant to the incumbent, payments which may be (politically) unacceptably high. Further, where the regulator cannot
credibly commit to regulatory policy, there can be a second ‘low-level’ equilibrium outcome, in which the incumbent does
not invest when this would otherwise be socially optimal. If on the other hand, investment costs are high, the fixed
charge is not enough to induce efficient investment. The marginal charge must be raised above marginal cost to induce
investment. But after deployment, the optimal marginal charge is at short-run marginal cost, so this policy is dynamically
inconsistent. When investment costs are at intermediate levels, the social optimum may be a regulatory moratorium or
‘holiday’. However again, this requires that the regulator can commit to a policy.

This paper suggests that there might be certain circumstances under which two-part pricing can ameliorate a dynamic
consistency problem associated with promoting efficient investment in NGN. Such circumstances are highly specific,
however. Across the broader set of circumstances, the regulator in their model must have the ability to credibly commit
to a policy, in order to induce efficient investment. Paper

‘Implications for asset pricing puzzles of a roll-over assumption for the risk-free asset’

This paper seeks to address the ‘equity premium puzzle’, which is the excessively high risk premium observed on
equities that cannot be explained by the consumption-based asset pricing model and observed consumption patterns.
Correspondingly, this also leaves unexplained why the risk-free rate is lower than expected (the so-called ‘risk-free rate
puzzle’).

The puzzles arise from the fact that expected consumption follows an assumed distribution reflecting historical real-world
consumption patterns. Modelled consumption risk is then unable to generate sufficient volatility in equity returns to reflect
risk premiums observed on real world stock markets. Consumption-based asset pricing theory prices risk using a
discount factor to equate next period’s consumption with immediate consumption. If consumption patterns are altered in
the next period, the discount rate and thus the risk premium, will be impacted.

This paper attempts to overcome these puzzles by both introducing persistent uncertainty into the long-term consumption growth rate, as well as the rollover of investment in the risk-free asset for several periods. Under the rollover assumption, cash earning the risk-free rate is evaluated as a multi-period investment strategy that hedges against adverse growth rate outcomes, rather than a one-period investment.

The proposed model simulates returns by rolling over a risk-free asset to generate 50 years of data, which were compared to actual data. The findings indicate that rollover methods generate outcomes that are more consistent with observed risk premiums. The premium on the risky asset increases and the risk-free rate is reduced, due to their respective relationships with multi-period consumption risk. The result is that historical equity returns in the model are matched to plausible real world investor risk aversion.

This article indicates that persistent volatility might be needed to correct price equity risk. Persistent volatility implies risk premiums that change over time, which could suggest that a time-varying equity risk premium could improve accuracy of WACC decisions.

‘Vertical contracts between airports and airlines: Is there a trade-off between welfare and competitiveness?’

This working paper analyses the theoretical implications of certain types of vertical contracts between airports and airlines in the US, Europe and Australia. The types of vertical contracts considered fall into three categories. The first are individually negotiated prices which are typical in Europe, where airports can give discounts to some airlines. The second category covers contracts that lease full control of airport space to the airlines, which are more common in Australia. The third refers to contracts that utilise two-part tariffs, whereby the airline pays a variable fee that approaches operating cost for the use of facilities, terminals and runways, plus a fixed rent that pays part of the airport investment. These arrangements are more common at US airports.

The paper finds that the first two categories, individually negotiated and lease-style contracts, are likely to be anti-competitive because other airlines can be driven out of the downstream market. The third category of contracts involving two-part tariffs leads to more competition because there is no foreclosure in the downstream market. However Barbot’s modelling reveals there can be welfare trade-offs.

The first type of contract results in higher welfare because double marginalisation is eliminated, which is the application of successive margins in the prices charged to the airline and to passengers (instead a single margin is applied). The third contract, comprising two-part tariffs, results in higher consumer surplus due to its pro-competitive effects in the downstream market.

The second type of contract creates anti-competitive effects for the outside airlines, when they are required to sub-lease from their competitors. This leads to lower consumer surplus in Barbot’s model unless there are efficiency improvements. Although Barbot suggests this contract is more common in Australia, it is unclear to what extent this analysis is directly applicable to Australian circumstances. For example, Barbot’s model does not incorporate the option for airlines to seek access via declaration of terminal facilities. Notwithstanding this, the paper applies an innovative approach to understanding the competition effects of vertical contracts in airline industries. Paper

‘Does weather explain the cost and quality performance? An analysis of UK electricity distribution companies’

This paper conducts an analysis of UK electricity distribution companies to examine sensitivity of benchmarked cost and quality performance of firms to climatic and geographical factors, which are beyond the control of the management.

This paper develops a multi-stage analysis approach to examine the relationship between weather conditions and efficiency performance at firm level:

- At the first stage, Data Envelopment Analysis (DEA) is used to measure relative efficiencies (in terms of technical or economic efficiency scores) of firms in selected models of traditional inputs and outputs.
- The second stage adopts factor analysis (FA) to combine a set of weather factors into a few composite indicators.
- At the third stage, Tobit regression analysis is used to examine how efficiency scores, derived from stage one,
are affected by the weather composite indicators (derived from stage two) or by individual weather factors.

The results indicate that the weather factors often do not have a significant economic and statistical effect on the overall performance of the firms. While there is some evidence of statistically significant weather effects in some models of economic efficiency, the effects are small. This may be attributable to the limited variability in weather for the sampled electricity firms (all in Great Britain).

In addition, this paper finds that the inclusion of network length as an output in the DEA model based on total expenditure internalises the weather effect on efficiency. This justifies the use of network length as an output in Ofgem’s current benchmarking model.

This paper shows that the use of benchmark techniques in incentive regulation of network utilities requires careful consideration of modelling non-controllable factors. Sensitivity analysis that extends the basic DEA model to include alternative inputs such as total expenditure and network energy losses is important. Despite the finding of insignificant weather effect, this paper indicates some importance for electricity distribution operators to improve their operating and investment practices to mitigate the climatic impact in the presence of increasing weather variability and climate change. Paper

‘Testing for economies of scope in European railways: An efficiency analysis’

This paper conducts an efficiency analysis to examine the presence of economies of scope in the European railway industry that exhibits a diversity of approaches to the introduction of competition into the railway industry. In some countries, such as the UK and Sweden, ownership separation of infrastructure managers from transport operators has permitted competition in downstream passenger and freight transport services through open access and competitive contracting. In other countries, such as Germany and Austria, the incumbent railway companies remain vertically-integrated and are subject to the requirement of providing third-party access on a non-discriminatory basis. An argument for vertical integration is the presence of economies of scope that could render efficiency advantages to vertically-integrated and are subject to the requirement of providing third-party access on a non-discriminatory basis. An argument for vertical integration is the presence of economies of scope that could render efficiency advantages to vertically-integrated companies over vertically separated companies. Using a sample of railway companies from European countries in the period 2000 to 2004, this paper compared a group of vertically integrated companies with another group of ‘virtually’ integrated companies. These ‘virtual’ companies are constructed by combining companies separately operated in infrastructure management, passenger operation and freight operation. The relative efficiencies of the vertically-integrated companies are compared against a reference technology frontier formed by the ‘virtually’ integrated companies, using a data envelopment analysis of a super-efficiency model. The majority of vertically integrated companies are found to operate more efficiently than the best-practice ‘virtually’ integrated companies, suggesting the existence of economies of scope in rail operation. The author concludes that integrated railway companies operating in countries with a high degree of rail competition generally exhibited economies of scope. However, it is possible that, in countries with a low degree of market opening, economies of scope exist due to other factors such as privatisation and industry structure. Paper

‘Liberalisation of the European ramp-handling market: A transaction cost assessment’

An important component of regulatory reform during the past two decades has been the notion that the natural monopoly or uncontestable segments of an industry should be separated from the contestable or competitive segments, and competition fostered in the latter. The separation of generation from transmission in electricity is one example. At the same time, there can be a number of benefits associated with elements remaining vertically integrated, such as economies of scope. The literature on the economics of transactions costs emphasises other possible benefits from vertical integration – for example, vertical integration can foster investment in sunk relationship-specific assets.

This paper examines a European Commission (EC) requirement to open up competition for ‘ramp handling services’ at airports. These are services related to the loading, unloading, and refuelling of an aircraft while it waits at the airport gate. In an effort to introduce competition gradually, member states that insist on limiting the number of handling companies at an airport are required to award licences to entrants only temporarily as a means to ensure competition ‘for the market’ (the maximum duration permitted is seven years). Incumbent handlers, on the other hand, were permitted to be issued with permanent licenses. The paper’s central focus is to assess whether the time limits on new entrants distorts their investment decisions and ‘result[s] in inferior economic performance during the process of liberalising handling markets’.

The author argues that the limit on contract duration reduces the incentive of independent handlers to make investments which require a longer-term commitment. Although smaller airlines, or airlines which provide only occasional services to an airport, can make use of the services of independent handlers, large, dominant airlines with a high volume of services from an airport (airlines which use the airport as a ‘hub’) require handlers to invest in dedicated specialised handling
equipment and operating staff. As a result, large or dominant airlines essentially have no choice – they must use the dominant handler at the airport. The authors conclude that the ‘temporary licensing runs contrary to the Directive's objectives and propose that the licensing requirement should be abolished in a future revision of the Directive’.

This paper is a reminder that while vertical separation can be a valuable tool for stimulating competition, the use of contractual arrangements to at least partially recapture some of the benefits of integration can be appropriate. In this case, if longer-term contractual arrangements were allowed, it could appear to reduce competition over the shorter-term. However there could also be offsetting benefits from enhancing the ability of entrant ramp-handlers to compete for the business of incumbent, dominant airlines.

‘TOC ‘n’ roll: Bargaining, service quality and specificity in the UK railway network’

This paper models the complicated regulatory mechanism for railway operators in the United Kingdom. The country is divided into franchise areas, and exclusive rights to operate passenger services are allocated to successful bidders on a periodic basis. Operators of passenger services are known as Train Operating Companies (TOCs). TOCs do not own the rolling stock used to provide rail services. This is leased from one of three rolling-stock leasing companies, known as Rolling Stock Companies (ROSCOs). When TOCs bid for franchise rights to operate passenger services, they must enter a broad agreement with one of the three ROSCOs to lease rolling stock. On award of the franchise, the successful TOC can finalise (‘re-negotiate’) with the ROSCO. One of the aims of this system is to reduce the sunk costs of entry in passenger services, and thereby to promote competition.

A crucial variable is the degree of specificity of rolling stock to a particular geographic area – rolling stock requirements of a TOC vary according to such things as the attributes of the rail infrastructure, the number and characteristics of stations, and the geographic terrain. ROSCOs can possess rolling stock that is more specific to particular franchise areas or, alternatively, is more adaptable to other areas. Use of less suitable rolling stock in a particular franchise area reduces ‘quality’ and, therefore, the amount of revenue the TOC can make from its operations.

The authors construct an elegant and complicated model of the relationship between TOCs and ROSCOs. The model is based on the theoretical literature concerning ‘incomplete contracts’, which studies the impact that parties’ inability to write complete contingent contracts has on incentives to invest, particularly in assets that are relationship-specific. ‘Incomplete contracts’ are best understood as to ‘complete contracts’, where (unrealistically) every contingency is covered in the contract. Although the exposition is quite detailed, the authors also provide appealing intuitive explanations of their model and results.

The authors establish an important trade-off in the UK regulatory arrangement. On the one hand, they argue that the UK system provides a weaker incentive to invest in specific train design and (therefore) less incentive to provide a higher quality of service, when compared to vertical integration (that is, where the TOC and the ROSCO are under common ownership). On the other hand, the leasing arrangement and rules do allow for greater competition. This more competitive and flexible structure of the regulation, pertaining to the separated TOCs and ROSCOs, may result in benefits in excess of the negative effects of lower asset-specificity. Paper

‘Access pricing and investment: A real options approach’

This article is a contribution to the literature that analyses the role of real options in utilities regulation and access pricing. The ‘real option’ in this case is the option to delay an investment. The authors investigate the economic welfare effects of access prices that take into account the value of such a real option.

The analysis is based on a three-period model, in which a vertically-integrated incumbent is required to give access to its network to downstream competitors. The incumbent can decide to invest immediately in period 0, to delay until period 1, or not to invest at all. The investment takes one period to build, is irreversible (costs are sunk) and characterised by economies of scale. There is demand uncertainty, which is not resolved until period 2.

The authors compare the welfare effects under an Option to Delay Pricing Rule (ODPR) with those under (a) an Efficient Component Pricing Rule (ECPR), and (b) unregulated conditions (monopoly pricing). The authors propose an ODPR where access is priced as the difference between the welfare-optimal price cap including the real option value (with no downstream competition), and the incumbent’s marginal cost. An ECPR is also considered, which links retail and wholesale prices by pricing access at the incumbent’s true opportunity cost of selling one unit of access to an entrant.

The authors find, in the context of their model, that optimal access regulation depends on market conditions – that is, on the nature of demand, revealed in period 2.
The authors cite a literature which argues an ECPR-type methodology might be able to ameliorate the interaction between demand uncertainty and investment irreversibility. They suggest the results indicate that (except for under certain specific conditions) an ODPR might be superior to an ECPR in terms of economic welfare.

The reader may note that the welfare consequences of the ODPR are compared only to those (1) of unconstrained monopoly pricing and (2) under the ECPR. This comparison is relevant because as noted above, the authors’ focus is on earlier arguments that the ECPR might mitigate demand uncertainty and investment irreversibility. However, the ECPR has itself come under some criticism for potentially ‘preserv[ing] in place any existing monopoly pricing’ because it potentially compensates the incumbent for any loss of monopoly profits. Indeed, Camacho and Menezes themselves state that ‘an ECPR embeds full monopoly rents’.

The authors’ analysis does not compare the ODPR to other pricing rules, so the scope of the authors’ findings is therefore limited to the potential impacts of investment delay through a comparison among unconstrained monopoly, the ECPR, and the authors’ proposed ODPR. In particular, the welfare effects of the ODPR are not compared with other non-ECPR access pricing regimes.

‘Quantifying the scope for efficiency defence in merger control: The Werden-Froeb-Index’

This paper introduces the Werden–Froeb Index (WFI) which measures a certain type of efficiency that potentially arises as a result of horizontal mergers. This efficiency results from reductions in (marginal) production costs, which are likely in most cases to be passed on to consumers. The index does not measure other merger-specific efficiencies, such as fixed overheads, which can be part of an efficiency defence, but which do not directly affect the level of competition.

The WFI is based on Compensating Marginal Cost Reductions (CMCRs), which measure the post-merger reductions in marginal costs theoretically required in order to return the market to the status quo, in terms of prices and quantities. The index is a weighted average of the CMCRs and is compatible with both Cournot (quantity) and Bertrand (price) models of competition. The authors note that by taking the status quo as a ‘baseline’ when calculating the CMCRs, detailed information about products outside the merger is not required.

Gopelsroeder et al. note several of the WFI’s drawbacks. The index abstracts from any post-merger reallocation of production to more efficient divisions of the combined firm. In addition, the approach cannot account for any post-merger incentive to reposition portfolios of products, such as repositioning or discontinuing brands. The authors also point out that the effects of any post-merger change in the mode of competition are excluded, such as the potential for coordinated effects.

However, the authors argue that a number of benefits exist when using the WFI as a possible complement to the Hirschman-Herfindahl-index (HHI) in merger control. In particular, the WFI offers the possibility of identifying the potential for efficiency gains at earlier screening stages of merger review. Gopelsroeder et al. suggest that so-called ‘safe-haven’ HHI thresholds could be augmented with the WFI. For example, they suggest that mergers resulting in otherwise unacceptable changes in the HHI concentration measure could be expected to raise less concern if a sufficiently low (and credible) WFI is also associated with the matter. Mergers requiring higher compensating cost reductions could instead be subject to closer analysis under later stages of review.

More generally, the authors also argue that the benefits associated with self-assessment offered by the HHI exist equally with the required efficiency gains isolated by the WFI. These include considerable private and public savings in costs associated with merger enforcement.


2 See for instance R Albon,‘The use and abuse of the “Efficient Component Pricing Rule”’, Network, 25, September 2007, which provides a history with commentary of the debate surrounding the ECPR.
International round-up of regulatory decisions

This section contains a sample of recent regulatory decisions in leading OECD countries and the European Union, with emphasis on energy, telecommunications, posts, water, rail, airports and ports.

Canada: CN and CPR exceed western grain revenue caps for crop year 2007–08
On 30 December 2008, the Canadian Transport Agency (CTA) announced that both the Canadian National Railway Company and the Canadian Pacific Railway Company exceeded their revenue caps in the movement of western grain, for the 2007–08 crop year. Link

Canada: Canadian Transport Agency (CTA) makes interswitching determination
On 6 February 2009 the CTA determined that certain rail activities in the portage junction area between the BNSF Railway Company and the Canadian National Railway Company constitute interswitching for the purposes of the Canada Transportation Act 1996. The rates to be charged for these activities are therefore the regulated rates. Link

Europe: ERGEG publishes status review of the EU energy market
On 15 December 2008, the European Regulators Group for Energy and Gas (ERGEG) published, alongside 27 national reports, a status review of progress towards a well-functioning EU energy market. The key findings of the review were: competition in retail gas and electricity markets is almost non-existent, insufficient unbundling is an obstacle for competition and security of supply, political interference endangers competition, and the consumer is the top priority in 2009. The Status Review referred to the situation in 2007 and focused on the deficiencies identified by the European Commission’s energy sector inquiry findings, published on 10 January 2007. Link

Europe: EC clears Dutch regulator’s proposal to open up cable networks
On 9 January 2009, the Dutch telecommunications regulator (OPTA) notified the EC of a draft decision to impose regulatory remedies on the four main cable operators in the Dutch market for wholesale broadcasting transmission services. Although all four operators are deemed to have dominant positions, only the two largest would be obliged to grant access to their networks. The smaller operators would be subject to ‘light-touch’ regulatory intervention. In a letter with comments to OPTA on 11 February 2009, the EC cleared OPTA’s proposal, although it invited OPTA to withdraw the regulations as soon as a more competitive market structure emerges. Link

Europe: ERG publishes third report on international roaming data
On 13 January 2009, the European Regulators Group (ERG) published its third benchmark data report on international roaming. The report covered the period April 2008 to September 2008, the first full peak travel season following the full implementation of Regulation 717/2007. The ERG considered that national averages for wholesale and retail Eurotariff voice prices were in full compliance with the regulation in all member states. At the overall ERG level, both retail and wholesale prices for data roaming were found to be following a significant downward trend from the fourth quarter of 2007. Report

Europe: European Competitive Telecommunications Association releases annual regulatory scorecard
The European Competitive Telecommunications Association (ECTA) released on 28 January 2009 its annual Regulatory Scorecard. This benchmarks the telecommunications regulatory framework in 20 European countries. Of these countries, the report found that the most effective rules for telecommunications competition across a broad range of measures were in place in the UK and the Netherlands. Entrants in the Czech Republic and Poland faced the most difficult market conditions. Across the region, incumbents were found to have maintained, on average, around 50 per cent share of the market although some dominant firms – such as Telefonica in Spain – had increased their market share. The report concludes that, ‘the competitiveness of multi-national European firms is being undermined by the variations in regulation which push up the cost of building networks across Europe’. Link

Europe: Informal agreement reached on energy reform package
On 24 March 2009, the European parliament announced that an informal compromise position on the third energy reform package had been negotiated by representatives of the Parliament Industry Committee and the Czech Presidency. The compromise text strengthens the Council common positions (announced on 12 January 2009) in certain respects, in particular in relation to consumer protection, but it accepts the Council’s three options for unbundling of production/supply from network activities. The agreed compromise must now be endorsed by representatives of the council and the full industry committee, before being put to a vote in parliament in either late April or early May 2009. If approved by parliament at second-reading, the council can then formally adopt the package before the summer. Link
Europe: Nordic postal operators propose merger

Sweden’s Posten AB and Post Danmark have announced plans to merge. This is the first cross-member merger of state-owned postal companies since the EC introduced legislation requiring member states to open their postal markets and remove state monopolies by 2011. The EC is expected to open a probe to determine the mergers effect on postal services within Scandinavia in the next few days. [Link]

France: CRE publishes monitoring report on the functioning of the French wholesale markets for electricity and gas

On 8 January 2009, the CRE published its first monitoring report on the functioning of the French wholesale markets for electricity and gas in 2007. The report discussed key indicators in the sector and provided recommendations to improve regulatory processes and market transparency. [Press Release]

France: Release of electricity and gas market observatory, fourth quarter 2008

France’s energy regulator, the Commission for Energy Regulation (CRE) released the *Electricity and Gas Market Observatory* (the *Observatory*) for the fourth quarter of 2008. The purpose of the Observatory is to provide the general public with indicators for monitoring the deregulation of the wholesale and retail electricity, and gas markets in metropolitan France. [Observatory]

France: SNCF fined and commits to allow more competition for online ticket sales

On 5 February 2009, the Conseil de la Concurrence, France’s competition authority, found that the SNCF, the national rail incumbent, discriminated in favour of its subsidiaries by exploiting the website voyages-sncf.com. The SNCF was fined €5 million and required to make substantial commitments regarding its future behaviour. [Link]

Germany: Federal network agency (FNA) supports development of ‘white spots’ by alternative providers in the broadband market

On 3 March 2009, the FNA announced a decision that allows competitors of the incumbent Deutsche Telekom AG (DT AG) more easily to develop and supply fast internet connections in rural areas that have little or no coverage (‘white spots’). Under the decision, DT AG must grant its competitors access to the subscriber line at master street cabinets. These must be erected at locations that have not, or only inadequately, been provided with broadband access. The FNA will determine the access fees to be paid to DT AG in a separate approval process. [Decision]

Germany: FNA grants partial exemption from regulation for OPAL pipeline

On 25 February 2009, the FNA exempted the OPAL gas transmission pipeline ‘as far as possible’ from tariff regulation for 22 years. As a necessary condition for exemption is that the pipeline is an interconnector, the FNA only exempted transport of gas arriving from Russia and going to the Czech Republic. Domestic transport and transport from the Czech Republic to Germany will not be exempt. The FNA rejected the application to exempt another pipeline (NEL) on the grounds that it is a domestic pipeline and not an interconnector. [Press Release]

Germany: Ministry publishes energy guidelines

In early 2009, the German Ministry for Economy and Technology published guidelines to ensure a reliable, economical and environmentally friendly energy supply over the long term. The guidelines emphasise energy efficiency, the role of renewable energy sources and innovation and suggest the need to create a clear and consistent framework in the form of an ‘energy constitution’ as well as the creation of a consistent incentive structure to achieve long-term goals. [Source: NERA, Global Energy Regulation, Issue 117, February 2009 (no link)].

Ireland: Leased line market review decision notice and decision instrument

The ComReg released a decision notice and decision instrument on 22 December 2008 in relation to a review of the markets for the terminating segments of wholesale leased lines. The decision notice and decision instrument set out the ComReg’s final decision and the remedies necessary to address the competitive problems identified in the market for wholesale terminating segments of leased lines. [Decision Notice and Instrument]

Ireland: ComReg publishes output of SB-WLR code of practice

The Commission for Communications Regulation (ComReg) published on 20 January 2009 the outcome of its review of the Code of Practice for Single Billing via Wholesale Line Rental (SB-WLR). Two documents were published to replace the previous code of practice. [Link]
Ireland: ComReg specifies maximum fixed and mobile number porting charge

On 29 January 2009, the ComReg published its final decision on the maximum charges for wholesale fixed and mobile number porting. The maximum charges will remain in place for a period of two to three years. [Link](#)

Netherlands: Regulator publishes policy note on electricity transport scarcity

The Netherlands Competition Authority (NMa), published a Policy Note in January 2009 setting out its views on the increasing scarcity of capacity on electricity networks, which is causing problems for parties seeking to connect to the grid. The provision of transport capacity and network connections are legal obligations of network operators in the Netherlands. The NMa intends to use its Policy Note as a guideline in its evaluation of congestion-related disputes in the future. [Link](#) (in Dutch)

Sweden: Release of broadband survey 2008

The Swedish communications regulator, the Post and Telecom Agency (PTS) released its annual *Broadband survey* on 23 February 2009. According to the survey, Sweden, in general, has a good supply and a relatively high level of capacity in the broadband access networks. However, the survey also found that 4,400 households and businesses lack the basic prerequisites for broadband and access may be limited by geographical and cost-related factors. [Link](#)

United Kingdom (UK): Ofcom publishes UK broadband speeds report

On 8 January 2009, the Ofcom published a report on broadband speeds and consumer satisfaction of broadband services in the UK. The report found that UK consumers receive an average broadband speed of 3.6Mbit/s. This compares with an average maximum possible speed of 4.3Mbit/s across the UK. [Media Release](#)

UK: Ofcom publishes technical report on delivery of high quality on-line video services

On 12 March 2009, the Ofcom published a commissioned study, by Analysys Mason, examining the impact that congestion could have on the ability to provide high-quality video services over the internet in the UK and what regulatory measures, if any, may be required to alleviate problems that may arise. [Link](#)

UK: 2007–08 electricity distribution quality of service report

On 19 December 2008, the Ofgem published a report setting out the quality of service performance of the 14 electricity distribution network operators for the period 1 April 2007 until 31 March 2008. According to the report, the underlying average number of customer interruptions per 100 customers had fallen by 15 per cent and the number of customer minutes lost had reduced by 9 per cent since the introduction of the scheme in 2002. [Report](#)

UK: Ofcom revises regulatory principles and publishes approach to postal services regulation

In anticipation of new regulatory responsibilities for postal services, the Ofcom updated its regulatory principles and published its approach to postal services regulation. The Ofcom signalled that following the proposed transition of regulatory responsibilities from Postcomm, the Ofcom will undertake a strategic review of approaches to future regulation which secure the universal service, including the framework for access regulation that is consistent with a duty to provide universal service. [Link](#)

UK: Ofcom publishes telecommunications market data update

On 9 February 2009, the Ofcom published its telecommunications *Market Data Update* for Third Quarter 2008. The update shows a range of indicators in the fixed line, mobile and internet communications sectors. [Link](#)

UK: Ofgem announces energy supply probe remedies

On 23 March 2009, the Ofgem announced a package of new rules for energy suppliers to protect customers and address problems with the retail energy market identified in the Energy Supply Probe. Following a consultation in January 2009, the Ofgem intends to introduce a new licence condition to ban unjustified price differentials by requiring cost-reflective pricing. In addition, Ofgem intends to introduce a ‘retail remedies package’, comprising new licence conditions relating in particular to statements, tariff information, protecting small business consumers and transparency, and a set of new, overarching standards of conduct that suppliers should meet in all their dealings with customers. Ofgem intends to consult on these proposals in detail during April 2009. [Press Release](#)

UK: Ofgem requests urgent review of constraints on GB transmission system

On 17 February 2009, the Ofgem wrote to National Grid (NG), the owner of the electricity transmission network in England and Wales, requesting an urgent review of existing commercial and charging arrangements for access to the GB transmission system. The Ofgem also requested NG to consider whether changes were necessary before the next
charging year (starting April 2009), to more effectively manage the costs of constraints, and to ensure that any constraint costs are recovered on an equitable basis from customers, suppliers and generators. The request occurred in the context of a significant increase in the forecast cost of constraints for the year commencing 1 April 2009. Link

**UK: Ofwat releases report on the potential for more active water rights trading**

On 5 December 2008, the UK water regulator, the Ofwat, released a report commissioned jointly with the UK Environmental Agency, *Exploring views on the potential for more active water rights trading*. See ‘Notes on interesting decisions’.

**UK: Competition commission (UKCC) publishes determination on price control appeals brought against Ofcom**

On 16 January 2009, the UKCC published its determination on price control appeals brought against the Ofcom’s March 2007 decision on wholesale mobile phone voice termination. The UKCC found that two of the price control matters raised by British Telecom were well founded – spectrum costs and the network externality allowance – but rejected the price control matters raised in Hutchison 3G’s appeal. The Tribunal will now consider the UKCC’s determination before making a final ruling on the appeals and giving directions to the Ofcom. Link

**UK: UKCC directs BAA to sell three airports**

The UKCC confirmed on 29 March 2009 that it will require BAA to sell both Gatwick and Stansted airports as well as either Edinburgh or Glasgow airport. See ‘Notes on interesting decisions’.

**UK: Business and enterprise committee publishes report on future challenges for energy policy**

On 12 December 2008, the Business and Enterprise Committee of the House of Commons published a report on the implications of a number of recent developments within the energy sector to the future of the UK’s energy policy. See ‘Notes on interesting decisions’.

**UK: Government releases impact assessment of the postal services bill**

On 26 February 2009, the Government released an impact statement on the *Postal Services Bill 2009*, which will enact the Hooper package of recommendations from a review of the postal services sector. The Bill will amend the UK legislation governing the UK postal services sector as set out in the *Postal Services Act 2000*. Among other things, the Bill provides for the transfer of regulatory responsibility from the postal services sector to the Ofcom. Finalisation of new arrangements will be subject to obtaining state aid and competition clearance from the EC. This is unlikely before early 2010. Impact Assessment

**US: Maryland Legislators Ask for Industry Re-regulation**

On 6 February 2009, two bills were introduced in the Maryland State Senate requiring a return to a regulated electric market. See Notes on Interesting Decisions


The National Regulatory Research Institute (NRRI) released on 21 January 2009 the report of an independent study of ‘special access’, which is non-switched point-to-point telecommunications service provided over the public switched network by incumbent local exchange carriers (ILECs). The study was commissioned by the National Association of Regulatory Utility Commissioners. This report addressed whether ILECs have market power over wholesale special access services and the effectiveness of the FCC’s current regulatory policies in protecting consumers and sustaining a competitive market. Report

**US: Supreme Court Rules in Favour of AT&T in Price-Squeeze Case**

On 25 February 2009, the US Supreme Court reversed a decision of a San Francisco Court in an antitrust dispute between AT&T and competing ISPs, including Linkline Communications. The ISPs claimed that AT&T had engaged in a ‘price-squeeze’ by setting high wholesale prices and low retail prices in order to eliminate competitors. The Supreme Court ruled that AT&T was under no obligation to provide wholesale services to Linkline and other rivals. The case has now been sent back to a trial judge who will decide whether AT&T was charging a low retail price in order to push competitors out of business. Link

**US: Senate Judiciary Committee Approves Bill Removing Antitrust Exemptions from Railroads**

The US Senate Judiciary Committee approved on 18 March 2009 legislation to repeal the antitrust exemptions protecting freight railroads from competition. The *Antitrust Enforcement Bill 2009* amends the *Clayton Act* and other legislation to make federal antitrust laws applicable to all common carriers subject to the Surface Transportation Board, regardless of whether the carrier filed a rail carrier rate or whether a complaint challenging a rate is filed. Link
Regulatory decisions in Australia and New Zealand

**New Zealand Commerce Commission**

**Commerce Commission consults on draft guidelines on carbon claims**

On 3 March 2009, the Commerce Commission released draft guidelines which inform businesses about their obligations surrounding carbon offset and neutrality claims and how they are affected by the *Fair Trading Act*. The Commission sought feedback on the draft guidelines until 3 April 2009. [Draft Guidelines](#).

**Commerce Commission webcasts the Broadband at a Crossroads conference**

The Commerce Commission conference *Broadband at a Crossroads*, held at the Langham Hotel in Auckland on 26 and 27 February 2009, is now available via webcast. See ‘Notes on interesting decisions’.

**Commerce Commission commences review of backhaul**

On 15 January 2009, the Commerce Commission commenced a review of the links that provide access seekers using the unbundled copper local loop (UCLL) service with a backhaul link between the telephone exchange housing their equipment and their interconnect point. In the June 2008 UCLL Backhaul Determination the Commerce Commission undertook to review regularly the links to determine the obligation on Telecom to supply the regulated backhaul service to users. [Media Release](#).

**Commerce Commission responds to undertakings for mobile termination access services**

The Commerce Commission received undertakings from Vodafone, Telecom and NZ Communications on 15 January 2009. The undertakings relate to mobile termination services and were received as part of the Commission’s investigation into whether termination services should be regulated under Schedule 1 of the *Telecommunications Act*. On 25 March 2009, the Commerce Commission responded to the telecommunications companies with its preliminary views. Any revised undertakings are to be supplied by 22 April 2009. After the Commission has received any revised undertakings it will issue a draft report. A conference will be held before the Commission releases a final report [Media Release](#).

**Commerce Commission releases discussion paper as part of next generation networks study**

On 24 December 2009, the Commerce Commission released a discussion paper providing an overview of the international drivers and implications of Next Generation Networks (NGN) deployment and the relevance of these forces in the New Zealand market. The discussion paper was the second part of the Commission’s NGN study, which was announced in March 2008. [Discussion Paper](#).

**Schneider ordered to pay $1.1 million for cartel activity targeting electricity sector**

Proceedings brought by the Commerce Commission resulted in the December 2008 Auckland High Court ruling to impose a NZ$1 050 000 penalty on Schneider Electric SA after the company admitted participating in a price-fixing and bid-rigging cartel in the gas insulated switchgear industry. Schneider was also ordered to pay NZ$50 000 in costs to the Commission. [Media Release](#).

**Commerce Commission releases third report on broadband quality**

The third quarterly report on broadband quality was released by the Commerce Commission on 23 December 2008. The report found a further improvement in the September quarter in the broadband service performance of the five largest internet service providers (ISPs). [Report](#).

**National roaming update released by the Commerce Commission**

On 23 December 2008, the Commerce Commission released a national roaming update stating that Vodafone and NZ Communications had recently agreed new prices for roaming services. The update was provided in relation to the Communications and Information Technology minister’s September 2008 request for the Commission to consider whether there were reasonable grounds to commence an investigation into whether regulation of national roaming should be extended to include price. The Commission expected to decide whether reasonable grounds exist early in 2009. [Media Release](#).

**Commerce Commission publishes a discussion paper on the regulatory provisions of the Commerce Act 1986**

On 19 December 2008, the Commerce Commission released a discussion paper on the regulatory provisions of the *Commerce Act 1986*. The discussion paper set out the Commission’s preliminary views on the new and significant...
changes to the regulatory provisions in the Act, which were introduced through the *Commerce Amendment Act 2008*. The period for submissions on the discussion paper closed on 19 February 2009. [Discussion Paper]

**Final TSO determinations released by Commerce Commission**

On 19 December 2008, the Commerce Commission released its 2007–08 final determinations on the cost of the Telecommunications Relay Service (TRS) for the hearing impaired and the proportion of cost to be met by each party liable to contribute to the cost of the TRS and the local residential telephone service obligation. Each TSO final determination covers the period 1 July 2007 to 30 June 2008. [Final Determination]

**Minister transmits statement of economic policy on telecommunications**

On 5 February 2009, the Minister for Communications and Information Technology transmitted a statement of economic policy to the Commerce Commission, advising that it is the economic policy of the Government that decisions concerning the regulation of telecommunications services should be consistent with, and take full account of, New Zealand’s relevant international obligations. This statement was transmitted to remedy the fact that the *Telecommunications Act 2001* is silent on the need to consider international commitments. [Media Release]

**Australian Competition and Consumer Commission (ACCC)**

**ACCC Proceedings against Telstra on ULLS and LSS**

On 19 March 2009, the ACCC announced it had instituted proceedings in the Federal Court in Melbourne against Telstra Corporation Limited for alleged contraventions of the *Trade Practices Act 1974* (TPA) and the *Telecommunications Act 1997* (Telco Act) in relation to its standard access obligations for the Unconditioned Local Loop Service (ULLS) and Line Sharing Service (LSS). The matter has been listed for a directions hearing in the Federal Court, Melbourne on 17 April 2009. [Media Release]

**ACCC releases water trading rules issues paper**

The ACCC released its issues paper rules for water trading within and between states in the Murray Darling Basin, in accordance with the *Water Act 2007*, on 6 March 2009. The ACCC is seeking submissions by Friday 1 May 2009. [Issues Paper]

**ACCC proposes to approve coal scheme at Port of Newcastle**

On 26 February 2009, the ACCC issued a draft decision proposing to grant authorisation to Port Waratah Coal Services (PWCS) and Newcastle Coal Infrastructure Group (NCIG) for a short-term capacity balancing system until 30 June 2009. Authorisation is conditional upon the parties finalising an implementation memorandum by 31 March 2009, which sets out an agreed framework and details how the necessary long-term solution will be implemented on a timely basis. [Draft Determination]

**ACCC proposes to deny authorisation of the queue management system at Dalrymple Bay Coal Terminal**

The ACCC issued on 23 February 2009 its draft determination proposing to deny authorisation to users of Dalrymple Bay Coal Terminal to extend the operation of their Queue Management System (QMS). In denying interim authorisation, the ACCC reiterated the significant doubts it had as to whether the QMS would continue to be in the public interest beyond 2008, without evidence of a long term solution being developed. [Media Release]

**ACCC reviews transmission declaration and issues final report**

On 19 March 2009, the ACCC issued its final declaration report for the domestic transmission capacity service (DTCS). The domestic transmission capacity service is a generic service for the carriage of voice, data or other communications using wideband or broadband carriage. In the report, the ACCC decided to vary the existing declaration to exclude the capital–regional transmission routes and exchange service areas that the ACCC previously determined should be exempt in its final decision on Telstra's transmission exemption applications in November 2008. The ACCC also decided to extend the varied declaration for five years. [Final Report]

**Notification of five telecommunications access disputes**

On 3 February 2009, the ACCC reported that it had received notification of five access disputes under Part XIC of the *Trade Practices Act 1974*. The disputes were variously between Telstra, Optus Networks Pty Limited, Optus Mobile Pty Limited and Hutchison 3G Australia Pty Limited and related to the price paid by Access Seekers to Access Providers for the Domestic Mobile Terminating Access Service (MTAS). [Media Release]
ACCC issues position paper for water planning, management charge rules

On 23 January 2009, the ACCC released its position paper, seeking submissions on the development of rules for charges for water planning and water management activities, under the Water Act 2007. The position paper relates to rules applying to charges levied to recover the costs of water planning and water management activities. The ACCC expects to issue draft advice and draft rules in April 2009. [Position Paper]

Australian Rail Track Corporation (ARTC) withdraws application to vary Interstate Rail Access Undertaking

The ARTC advised the ACCC on 21 January 2009 that it had withdrawn its application to vary its 2008 Interstate Rail Access Undertaking. The ARTC indicated in its withdrawal request that it intends to submit a new variation application after addressing the issues raised in the ACCC’s draft decision on 18 December 2008, in which the preliminary view of the ACCC was that it was not appropriate to consent to the variation as then proposed. [Media Release]

ACCC submits advice on water market rules and water charge (termination fee) rules to the minister

On 23 December 2008, the ACCC submitted its advice on water market rules and water charge (termination fee) rules to the Minister for Climate Change and Water. In providing this advice, the ACCC considered stakeholder submissions in response to recent issues papers, position papers and draft advice to the minister, and the Murray–Darling Basin water market and trading objectives and principles contained in Schedule 3 of the Water Act 2007. [Media Release]

Tribunal confirms wholesale access to Telstra network still required

On 23 December 2008, the Australian Competition Tribunal confirmed that there was an ongoing need for access to Telstra’s network and that, in effect, the ACCC had proposed scaling back that regulation too soon. The tribunal reviewed the decision made by the ACCC in August 2008, which was to grant Telstra limited exemptions from its obligations to supply the wholesale line rental service and local carriage service, in certain exchange service areas. [Media Release]

ACCC issues two reports under the Telstra accounting separation regime

The ACCC issued on 22 December 2008, an imputation and non-price terms and conditions report for the September 2008 quarter and a current cost accounting report for 2007–08, in relation to Telstra. Both reports were issued under Telstra’s enhanced accounting separation regime. [Media Release]

ACCC issues telecommunications fixed services cost model for consultation

The ACCC commenced a public consultation on 19 December 2008 on a model commissioned by the ACCC for regulated fixed-network services. The model can estimate a price for access to Telstra’s copper wire network by infrastructure-based service providers to supply broadband and voice services. [Media Release]

ACCC issues MTAS declaration review draft report and indicative prices

On 19 March 2009, the ACCC issued its draft report, reviewing the declaration of the domestic mobile terminating access service (MTAS). In the report, the ACCC proposed to extend the current MTAS declaration for five years. The ACCC also issued final pricing principles and indicative prices for the MTAS. The indicative price for the MTAS from 1 January 2009 to 31 December 2011 will be 9 cents per minute. [Media Release]

ACCC modifies digital radio access undertakings

The ACCC proposed on 19 March 2009 an undertaking regarding the access arrangement for the transmission service necessary for digital radio services, which are due to begin in Adelaide, Brisbane, Melbourne, Perth and Sydney no later than 1 July 2009. The undertaking modified those previously submitted by the multiplex licensees and followed the ACCC’s 18 December 2008 decision that the submitted undertakings would require substantial changes in order to be approved. [Media Release]

ACCC commences declaration review for DDAS and ISDN

On 18 March 2009, the ACCC issued a discussion paper to facilitate a review of the Digital Data Access Service (DDAS) and Integrated Services Digital Network (ISDN) declarations in regional areas. The ACCC is seeking submissions on its discussion paper until 15 April 2009. [Discussion Paper]

ACCC issues report on airport performance

On 30 March 2009, the ACCC issued its annual airport monitoring report. Under the monitoring arrangements set out by
the Australian Government, the ACCC is responsible for reporting annually on the quality of service relating to the supply of aeronautical services and facilities at Adelaide, Brisbane, Melbourne, Perth and Sydney airports, as well as aeronautical prices, costs and profits. Report

Australian Energy Regulator (AER)

AER approves lower charges for energy efficient public lighting in Victoria

On 5 March 2009, the AER released a final decision on the charges distributors can levy on local councils in Victoria for the operation and maintenance of energy efficient public street lighting. The AER's decision follows an earlier draft decision by the Essential Services Commission of Victoria (ESCV), whose responsibilities for the economic regulation of electricity distribution network service providers (DNSPs) in Victoria were transferred to the AER on 1 January 2009. Final Decision

AER issues positions paper on the framework and approach process for Victorian DNSPs


In parallel with the distribution determination process, the AER has also developed a proposed demand management incentive scheme (DMIS) to apply to the Victorian DNSPs. Media Release

AER receives GasNet access arrangement variation proposal

On 18 December 2008, APA GasNet Australia Pty Ltd submitted a variation proposal to its access arrangement covering the GasNet system in Victoria approved by the ACCC on 25 June 2008. The AER decided to treat the proposal as a full access arrangement proposal, determining it to be a material access arrangement variation proposal under rule 66 of the National Gas Rules (NGR). Interested parties were invited to make submissions to the AER on issues relevant to the proposed variation by 19 February 2009. Media Release

AER seeks to extend timeframe for review of electricity transmission and distribution WACC parameters

The AER is currently undertaking a review of the Weighted Average Cost of Capital (WACC) parameters to be adopted in determinations for electricity transmission and distribution businesses. On 16 February 2009, the AER lodged a rule change proposal with the Australian Energy Market Commission (AEMC) seeking to extend the timeframe for the completion of this review from 31 March 2009 to 1 May 2009. The AEMC is yet to make a determination on the proposed rule change. Submissions to the AER regarding the 11 December 2008 proposed statement (transmission) and proposed statement of regulatory intent (distribution) on the WACC parameters closed on the 28 January 2009. Media Release

First interim report on the review of energy market frameworks in light of climate change policies

On 23 December 2008, the AEMC published the first interim report on its review of energy market frameworks in light of climate change policies. The report’s preliminary conclusion was that existing market rules and regulations are generally robust and capable of handling the stresses likely to be caused by the Australian Government’s Carbon Pollution Reduction Scheme (CPRS) and expanded Renewable Energy Target (RET). First Interim Report

Review of the effectiveness of competition in electricity and gas retail markets in South Australia

On 18 December 2008, the AEMC published the second final report on its review of competition in South Australian electricity and gas retail markets. The report recommends that price regulation should end no later than December 2010 for electricity and June 2011 for gas and outlines the framework for phasing out regulation. Second Final Report

New South Wales water industry infrastructure services access regime: Application for certification

On 19 December 2008, the NCC received an application from the New South Wales government for a recommendation that the state’s access regime for water industry infrastructure services is an effective access regime. If the access regime is certified as effective, then the service subject to the regime is exempt from declaration under Part IIIA of the Trade Practices Act 1974. The NCC expects to publish its draft recommendation in mid-April 2009. Link
A ustralian Capital Territory

Independent Pricing and Regulatory Commission

ICRC releases issues paper on retail electricity tariffs

On 11 February 2009, the ICRC released an issues paper in accordance with the Attorney-General’s direction to set a standard price tariff for the supply of electricity to franchise customers in the ACT. The ICRC expects to release a draft report on 3 April 2009. Issues Paper

Electricity Feed-In Industry Code

On 27 February 2009, the ICRC determined an industry code, the Electricity Feed-in Code. The code sets out practices and standards for the operation of the scheme for feed-in from renewable energy generators to the electricity network. Code

New South Wales

Independent Pricing and Regulatory Tribunal (IPART)

IPART releases draft determination on regulated retail electricity prices

On 12 March 2009, IPART released its draft report for 2009/10 of the electricity purchase allowance that is included in regulated electricity prices. Under the June 2007 determination of retail electricity prices, IPART undertook to annually review allowable electricity purchase costs. Submissions on the draft report are due on 14 April 2009. Draft Report

IPART releases draft determination of water prices for Gosford and Wyong

On 5 March 2009, the IPART released a draft determination of water, sewerage and stormwater charges to apply from 1 July 2009 till 30 June 2013, for the Gosford City and the Wyong Shire Councils. The draft determination includes increases in water, sewerage and stormwater prices in order to fund capital works programs in the area. Link

IPART releases a report on energy and water use in the Hunter, Gosford and Wyong Areas

On 19 December 2008, the IPART released a research report, ‘Residential energy and water use in the Hunter, Gosford and Wyong’, based on a household survey conducted between March and July 2008. The report is intended to allow IPART to better understand the impacts of pricing determinations on customers. Report

Queensland

Queensland Competition Authority (QCA)

QCA releases final report on GAWB investigation of contingent water supply strategy pricing principles part B

On 22 December 2008, the QCA released a final report approving the Gladstone Area Water Board’s (GAWB) proposed criteria for triggering augmentation in response to drought or unexpected additional demand. The report on augmentation triggers was the second stage of the QCA’s investigation into the GAWB’s contingent water supply strategy principles. Final Report

QCA releases Annual Decision Making and Ring-Fencing Audit Report

On 20 February 2009, the QCA released QR Network's 2007–08 Annual Decision Making and Ring-Fencing Audit Report in accordance with QR Network's access undertaking. The audit report found that QR Network has complied in all material respects with its decision making and ring-fencing obligations. Report

QCA releases final decision on revenue cap adjustment

On 20 February 2009, the QCA released its final decision to approve QR Network's 2007-08 revenue cap adjustment proposal, as submitted on 3 November 2008. Final Decision

South Australia

Essential Services Commission of South Australia

2009 rail access regime inquiry issues paper

The ESCOSA released an issue paper on 20 February 2009, in relation to its inquiry into the Access Regime that applies
to the major intrastate railways in South Australia. See ‘Notes on interesting decisions’

**Tasmania**

*Office of the Tasmanian Energy Regulator*

**Director of gas releases gas codes consultation paper**

The Director of Gas published in March 2009 a Consultation Paper which proposes amendments to the Gas Retail Code and the Gas Distribution Code to expand the scope of annual return requirements for gas entities. Under the *Gas Act 2000*, gas licensees are required to lodge an annual return with the Director of Gas each year. Consultation closes 8 April 2009.

**Victoria**

*Essential Services Commission*

**Transfer of functions from essential services commission of Victoria to AER**

On 24 December 2008, the ESC confirmed that it would transfer its regulatory responsibilities for energy distribution in Victoria to the Australian Energy Regulator (AER). On 1 January 2009, the AER therefore assumed economic regulatory responsibility for the five poles-and-wires electricity networks and three gas distribution networks in Victoria. [Media Release](#)

**Western Australia**

*Economic Regulation Authority (ERA)*

**ERA releases final report on the pricing of recycled water**

On 6 February 2009, the ERA published the final report of its *Inquiry into Pricing of Recycled Water in Western Australia*. The report contains a set of pricing principles intended to allow recycled water customers to gain access to wastewater on the same terms and conditions as the Water Corporation. [Final Report](#)
Notes on interesting decisions

US: Maryland legislators ask for industry re-regulation
On 6 February 2009, two bills were introduced in the Maryland State Senate requiring a return to a regulated electricity market. The Maryland electricity sector was deregulated in 1999, with the purpose of establishing customer choice; creating competitive retail electricity supply and electricity supply markets; deregulating the generation, supply, and pricing of electricity; providing economic benefits for all customer classes; and ensuring compliance with federal and state environmental standards. However, competitive retail electricity markets have not developed as envisaged, and retail electricity rates have increased significantly since the removal of price regulation. In addition, no new sizable generation capacity has been constructed in Maryland since 1992, so that the state is reliant on imports to meet new demand. The proposed regulatory changes would give the Public Service Commission (PSC) authority to direct utility companies to construct new generation plants. The PSC would also implement price caps on electricity charges. On 24 March 2009, the Senate Finance Committee passed the bill, with an amendment to exempt large commercial and industrial customers. The Senate was expected to vote on the bill by early April 2009. [Link]

Business and Enterprise Committee publishes report on future challenges for energy policy
On 12 December 2008, the Business and Enterprise Committee of the House of Commons published a report on the implications of a number of recent developments within the energy sector to the future of the UK's energy policy. On 28 July 2008, the Committee published its findings on a significant market enquiry. A number of industry changes have occurred since then, including the creation of the Department of Energy and Climate; the release of the government's fuel poverty package; a significant increase in retail energy prices; and the release of the Ofgem’s Energy Supply Probe. The report contains the committee’s views on a range of challenges facing energy policy and makes recommendations to government and the Ofgem in relation to issues such as energy prices and the need for intervention to ensure investment in gas storage, new electricity generation capacity and network infrastructure, and to improve liquidity in the wholesale markets. It also recommends implementation of measures proposed by the Ofgem in the context of its energy supply probe, in particular to remove differential retail pricing, and it urges consideration of whether the Ofgem should be given additional powers to guard against market abuses. This was the last energy report by the Business and Enterprise Committee, as responsibilities for the energy sector were transferred to the Energy and Climate Change Committee as of January 2009. [Report]

CC directs BAA to sell three airports
On 29 March 2007, the Office of Fair Trading (OFT) referred the supply of airport services by BAA in the UK to the Competition Commission (CC) for investigation. The CC was asked to determine whether any features of the market prevent, restrict or distort competition and, if so, what remedial action might be taken. The CC’s final report was issued on 19 March 2009. The report found there to be competition problems with adverse effects for both passengers and airlines at all seven of BAA’s UK airports (Heathrow, Gatwick, Stansted and Southampton in the South of England, and Edinburgh, Glasgow and Aberdeen in Scotland). Common ownership was the principle concern, precluding competition between airports across the country. Additional problems at London airports were identified as being caused by the current system of regulation, planning and aspects of government policy. Aberdeen airport was also found to exhibit characteristics of a local monopoly because of its isolated geographical position. In line with the report, the CC confirmed that it will require BAA to sell both Gatwick and Stansted airports as well as either Edinburgh airport or Glasgow airport within two years. The airports are to be sold in sequence, beginning with Gatwick, then Stansted, followed by either Edinburgh or Glasgow. The sale of Gatwick was initiated by BAA in September 2008 and the sales process is already under way. The CC will have to approve each sale, to ensure the purchasers are independent from BAA. At Aberdeen airport, BAA will be required to improve consultation with airlines and publish certain financial and other information. The final decision also makes recommendations on the current regulatory system for airports and supports a licensing regime proposed by the Department for Transport during consultation. [Link]

UK: Ofwat releases report on the potential for more active water rights trading
On 5 December 2008, the UK water regulator, the Ofwat, released a report commissioned jointly with the UK Environmental Agency, Exploring Views on the Potential for More Active Water Rights Trading. The report formed the basis of a joint response to the Cave interim report (chaired by Professor Martin Cave) on innovation and competition in the UK water market and explored the potential barriers to participation in water rights trading. The report identified a number of ‘passive’ barriers to trade such as a limited understanding of the potential value to participants and the actual trading process; and the tendency to hoard water because of future uncertainty. The identified ‘active’ barriers to trade included trade restrictions; the cost of transport; the length of the process (averaging 6–18 months); and a general perception that the Environmental Agency uses the opportunity to reduce water licences. Options for overcoming these barriers were also discussed in the report. [Report]
Commerce Commission webcasts the *Broadband at a Crossroads* conference

The Commerce Commission conference *Broadband at a Crossroads* was held at the Langham Hotel in Auckland on 26 and 27 February 2009 as part of the Commerce Commission’s Next Generation Networks (NGN) study. The study aims to facilitate a broad and informed discussion of the potential implications and opportunities of next generation networks and is the first under the Commission’s new sector-monitoring powers. Participants were not charged an attendance fee for the conference. The key note international speakers included:

- Kip Meek, Chairman of the UK Broadband Stakeholder Group
- Scott Marcus, Senior Consultant at Wissenschaftliches Institut fuer Kommunikationsdienste (WIK), international expert on IP interconnection
- Jos Huigen, Director Regulatory and European Affairs, Koninklijke KPN NV, the Dutch fixed and mobile network operator (via video conference)
- Benoit Felton, Yankee Group (Europe), discussing open access network models
- Robert James, Nokia Siemens, discussing whether the utility model is the optimal future approach
- Dr Kireeti Kampella, Juniper Fellow

The conference is now available via webcast from the NZCC’s website. [Webcast](#)

ACCC releases water trading rules issues paper

Under the *Water Act 2007*, the ACCC is required to provide advice to the Murray–Darling Basin Authority on the development of water trading rules for inclusion in the Basin Plan. Water trading rules are to deal with the interstate and intrastate transfer of water rights. The ACCC released on 6 March 2009 its issues paper rules for water trading within and between states in the Murray–Darling Basin. The paper seeks submissions on issues relating to, among other things, restrictions on ownership of water rights; leasing, subdivision and amalgamation of rights; the incorporation of physical and environmental constraints into trading rules; carryover rules; and tagged trade rules. The ACCC is seeking submissions by 1 May 2009. [Issues Paper](#)

2009 ESCOSA rail access regime inquiry issues paper

The Essential Services Commission of South Australia (ESCOSA) is conducting an inquiry into the access regime that applies to the major intrastate railways in South Australia, on the direction of the Acting Treasurer. The purpose of the inquiry is to consider the extent to which the existing access regime, which is set out in the *Railways (Operations and Access) Act 1997*, is consistent with certain principles under the Council of Australian Government’s Competition and Infrastructure Reform Agreement (CIRA). The ESCOSA is also considering whether or not the access regime could otherwise be generally improved. The ESCOSA released an issue paper on 20 February 2009 for the purpose of engaging stakeholders in the identification of key issues that should be considered by the Commission as part of the Inquiry. Submissions in response to the issues paper were due on 27 March 2009. [Issues Paper](#)