



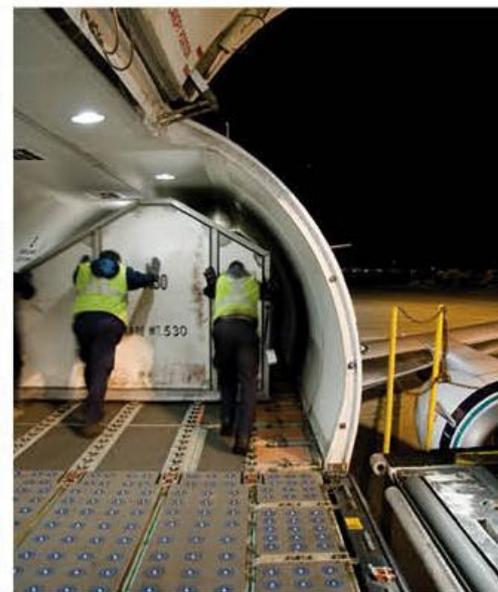
Australian
Competition &
Consumer
Commission

Issue 59

REGULATORY OBSERVER

International and Australian regulatory
developments and decisions

28 July 2014



02 EPA proposes plan to
reduce carbon pollution
from US power plants

03 International
Regulatory Round-up

04 Australian Regulatory
Round-up



EPA proposes plan to reduce carbon pollution from US power plants

In June 2014, at the direction of President Obama, the US's Environmental Protection Agency (**EPA**) released the [Clean Power Plan](#), which is a plan to reduce carbon pollution from power plants. Power plants account for roughly one-third of all domestic greenhouse gas emissions in the US. The EPA estimates that, by 2030, the proposed measures will cut carbon emissions from the power sector by 30 per cent nationwide below 2005 levels.

The Clean Power Plan will be implemented through a state-federal partnership under which states identify a path forward using either current or new electricity production and pollution control policies to meet the goals of the proposed program. The proposal provides guidelines for states to develop plans to meet state-specific goals to reduce carbon pollution and gives them the flexibility to design a program that makes the most sense for their unique situation. States can choose the right mix of generation using diverse fuels, energy efficiency and demand-side management to meet the goals and their own needs. It allows them to work alone to develop individual plans or to work together with other states to develop multi-state plans.

The proposal offers a flexible timeline for states to follow for submitting plans to the EPA—with plans due in June 2016, with the option to use a two-step process for submitting final plans if more time is needed. States that have already invested in energy efficiency programs will be able to build on these programs during the compliance period to help make progress toward meeting their goal.

Since June 2013, the EPA has directly engaged with state, tribal, and local governments, industry and labor leaders, non-profits, and others regarding the plan. The consultation confirmed that states have already begun introducing a range of their own energy efficiency and carbon reduction measures. To date, 47 states have utilities that run demand-side energy efficiency programs, 38 have renewable portfolio standards or goals, and 10 have market-based greenhouse gas emissions programs.

The June 2014 announcement marks the beginning of the second phase of the EPA's outreach efforts. The EPA will accept comment on the proposal for 120 days after publication in the Federal Register and will hold public hearings on the proposed plan. Based on this input, the EPA will finalise standards by June 2015 following the schedule laid out in a June 2013 [Presidential Memorandum](#).

International Regulatory Round-up

COMMUNICATIONS

Europe

UK: Ofcom study reveals 'essential' nature of mobile and internet services

On 23 July 2014, the Office of Communications (**Ofcom**) released a [consumer study](#) that examined which communications services UK consumers consider 'essential' in their day-to-day lives. Some 61 per cent of consumers rated voice services (mobile or landline) as essential, 59 per cent considered mobile voice or text services as essential, while 57 per cent regarded personal internet access as essential.

UK: Ofcom advertises new national radio multiplex licence

On 1 July 2014, the Ofcom [announced](#) it was advertising a licence to run a second national digital radio 'multiplex', which will expand the number of digital radio stations and provide more choice for listeners. The new multiplex, the airwaves needed to broadcast radio stations, will allow around ten new national Digital Audio Broadcasting radio services to broadcast to UK listeners.

UK: Ofcom imposes new performance standards on Openreach

On 26 June 2014, the Ofcom [announced](#) new rules to bring about faster line repairs and installations by Openreach for telephone and broadband customers from 1 July 2014. Under the changes, the majority of

phone and broadband faults will have to be repaired within two working days, while most customers requiring a new line must receive an appointment within 12 working days.

GERMANY:
Bundesnetzagentur imposes rules on Telefonica Deutschland and E-Plus merger

On 8 July 2014, the Bundesnetzagentur [published](#) its decision on frequency regulation aspects in connection with the European Commission's competition law approval of the merger between the two mobile operators, Telefónica Deutschland and E-Plus. To ensure non-discriminatory spectrum packages, the spectrum at 900 MHz and 1800 MHz must be vacated early by the merged company following upcoming award proceedings.

Americas

US: FCC issues enforcement advisory to broadband providers

On 23 July 2014, the Federal Communications Commission (**FCC**) issued an [enforcement advisory](#) noting that providers of broadband internet access services must disclose accurate information about their service offerings and make this information accessible to the public. This requirement, known as the Open Internet Transparency Rule, has been in full force and effect since 2011.

US: FCC announces Universal Service Fund 'Strike Force'

On 14 July 2014, the FCC [announced](#) the creation of a Universal Service Fund (**USF**) Strike Force—housed in the agency's Enforcement Bureau—dedicated to combatting waste,

fraud, and abuse in the FCC's funding programs. The Strike Force will investigate violations of the Communications Act, the FCC's rules, and other laws bearing on USF programs and contributions.

US: FCC investigates 'cramming' complaints against T-Mobile

On 1 July 2014, the FCC [announced](#) it is investigating complaints that T-Mobile billed its customers for millions of dollars in unauthorised third-party subscriptions and premium text messaging services—a practice known as 'cramming'. The FCC has coordinated its investigation with the Federal Trade Commission (**FTC**), which has also filed a lawsuit against T-Mobile concerning the company's practices.

US: FCC releases data on internet access services and local telephone competition

On 25 June 2014, the FCC [released](#) its latest reports on internet access service connections and local telephone services in the United States. The reports are based on data submitted by service providers every six months. A key finding was that the number of internet connections with downstream speeds of at least 10 Mbps increased by 118 per cent from June 2012 to June 2013.

CANADA: CRTC challenges communications industry to address paper bill fees

On 23 July 2014, the Canadian Radio-television and Telecommunications Commission (**CRTC**) announced that it will host a meeting with telecommunications and broadcasting distribution companies to discuss the practice of charging additional fees to customers who wish to receive

paper bills. The CRTC also [released](#) the results of its fact-finding exercise on these practices.

Oceania

NZ: Commerce Commission to investigate complaint about Chorus's proposed changes to regulated broadband

On 22 July 2014, the Commerce Commission of New Zealand (**CCNZ**) [announced](#) it will investigate a complaint that Chorus's proposed changes to the regulated unbundled bitstream access (**UBA**) service (see item below) are an enforceable breach under the Telecommunications Act. The CCNZ received a complaint from Telecom about the changes to the UBA service, as part of the company's submission on a new commercial broadband service that Chorus has developed to compete with the UBA service.

NZ: Commerce Commission consults on approach to cost modelling the UCLL and UBA services

On 9 July 2014, the CCNZ released a [consultation paper](#) seeking views on a number of decisions in relation to the cost models it will build to price the UBA service and the unbundled copper local loop (**UCLL**) service. The paper sets out the CCNZ's view on the regulatory framework, the type of hypothetical replacement network it will be modelling for the UCLL and UBA services and how the CCNZ will address a number of key modelling decisions.

NZ: Commerce Commission releases issues paper relating to its assessment of unregulated UBA services

On 7 July 2014, the CCNZ [released](#) an issues paper seeking

to clarify Chorus's proposed changes to the UBA service and to obtain views and information from industry participants for purposes of the assessment. Chorus is proposing a number of changes to the UBA service, including offering: two new unregulated UBA services, Boost HD and Boost VDSL; withdrawing the regulated VDSL service; and new bandwidth management settings for the regulated UBA service.

NZ: Commerce Commission publishes expert reports on rate of return on capital for telecommunications services

On 23 June 2014, the CCNZ [published](#) two expert reports about the rate of return on capital for the UCLL network and the UBA service. The first report is by Associate Professor Martin Lally of Victoria University of Wellington and addresses the tax-adjusted market risk premium (**TAMRP**) and the methodology for estimating the cost of debt. The second report, by Oxera Consulting Ltd, covers asset beta, leverage and an appropriate long-term credit rating.

ENERGY

Europe

UK: Ofgem empowers consumers choosing green tariffs

On 27 June 2014, the Office of Gas and Electricity Markets (**Ofgem**) [announced](#) proposed changes to the green tariffs market to ensure that consumers are empowered in making the right decisions. The Ofgem considers these changes will ensure that suppliers clearly inform their customers and provide evidence of whether or not there will be environmental benefits from a particular tariff.

UK: Ofgem refers energy market for full competition investigation

On 26 June 2014, the Ofgem [announced](#) that it had referred the energy market to the Competition and Markets Authority (**CMA**) for a full investigation. The CMA will begin its investigation immediately and will likely publish its final decisions by the end of 2015. This follows the Ofgem's recent assessment of the energy market, which showed that competition is not working as well as it should for consumers.

Oceania

NZ: Commerce Commission releases draft decision on WACC for electricity lines and gas pipeline services

On 22 July 2014, the CCNZ [released](#) its draft decision on the weighted average cost of capital (**WACC**) for electricity lines and gas pipeline services. The WACC used will be the estimate at the 67th percentile of the WACC range rather than the current 75th. Stakeholder submissions in response to the draft decision are due by 29 August 2014.

NZ: Commerce Commission releases draft price-quality paths for electricity distributors

On 4 July 2014, the CCNZ began [consultation](#) on its proposed average price limits and quality targets for 16 electricity distributors. The draft default price-quality paths cover the period 2015-2020, and will take effect from 1 April 2015. Stakeholder submissions are due by 15 August 2014.

NZ: Commerce Commission warns electricity distributors about service quality

On 27 June 2014, the CCNZ [issued](#) a warning to Eastland Network Limited, Aurora Energy Limited and Electricity Invercargill Limited after they each failed to comply with the quality standards for electricity distributors in 2012. The CCNZ investigated the electricity distributors' failures to meet the quality standards and found that there was no serious fault on the part of the distributors.

TRANSPORT

FRANCE: ARCEP sets price-cap for universal postal service tariffs for 2015 to 2018

On 2 July 2014, La Poste submitted a proposal to the Autorité de Régulation des Communications Électroniques et des Postes (**ARCEP**) on the characteristics of a multi-year framework for universal postal service tariffs. The ARCEP used this input when establishing a new price-cap for postal tariffs for 2015 to 2018. This new scheme sets a price-cap that is equal to the consumer price index increased by 3.5 per cent a year.

Australian Regulatory Round-up

GENERAL

Productivity Commission issues report on public infrastructure

On 14 July 2014, the Productivity Commission (**PC**) released a [report](#) on the findings of its inquiry into public infrastructure. The

Australian Government asked the PC to undertake a six-month public inquiry into ways to encourage private financing and funding for major infrastructure projects, including issues relating to the high cost and the long lead times associated with these projects. The report notes it is essential to reform governance and institutional arrangements for public infrastructure to promote better decision making in project selection, funding, financing and the delivery of services from new and existing infrastructure.

COMMUNICATIONS

ACCC begins consultation on setting access prices for Telstra's fixed line services and transmission services

On 24 July 2014, the ACCC [released](#) a discussion paper seeking views on setting primary prices for the regulated fixed line services supplied using Telstra's copper network. This consultation is part of the ACCC's inquiry into making final access determinations (**FADs**) for the seven regulated fixed line services. The ACCC has also commenced consultation on the primary price terms for the Domestic Transmission Capacity Service (**DTCS**) to be included in the DTCS FAD.

ACCC ceases arbitrations following court decision

On 2 July 2014, the Full Federal Court handed down its [decision](#) on a judicial review application commenced by Telstra. Telstra sought review of the ACCC's jurisdiction to arbitrate three disputes that were notified to the ACCC by Vocus Fibre Pty Ltd, Adam Internet Pty Ltd and Chime Communications Pty Ltd. The Full Federal Court has decided that the parties did have agreed terms and conditions in relation to charges and the disputes related to the

implementation of those agreed terms and conditions. Therefore the court found that the ACCC cannot hear or determine these disputes.

ENERGY

Tribunal grants conditional authorisation to AGL for proposed acquisition of Macquarie Generation

On 25 June 2014, the Australian Competition Tribunal (**the Tribunal**) decided to grant [conditional authorisation](#) to AGL Energy Limited's (**AGL**) proposed acquisition of Macquarie Generation. The Tribunal decided to impose conditions of authorisation, placing an obligation on AGL to offer not less than 500 MW of electricity hedge contracts to smaller retailers in NSW per year for a period of seven years. The ACCC had previously opposed the proposed acquisition by AGL because the ACCC considered that it was likely to have the effect of substantially lessening competition in the NSW retail electricity market.

WATER

ACCC releases final decision on bulk water supplied by State Water Corporation

On 26 June 2014, the ACCC released its [final decision](#) on pricing for bulk water supplied by the State Water Corporation in the New South Wales Murray-Darling Basin in the 2014-17 period. The final decision incorporates the increased charges that the NSW Government intends to recover from irrigators through State Water, to fund the NSW Government's contribution to the joint programs managed by the Murray Darling Basin Authority.

TRANSPORT

ACCC does not object to price increases by Airservices Australia

On 26 June 2014, the ACCC [decided](#) to not object to a proposal by Airservices Australia to increase prices for its monopoly services, from 1 July 2014. Airservices Australia provides air traffic control and aviation fire-fighting and rescue services to airports and airlines. These proposed charges are consistent with those approved by the ACCC in 2011 as part of a five-year price plan.

ACCC issues draft decision to approve CBH long term arrangements

On 26 June 2014, the ACCC issued a [draft decision](#) to accept Co-Operative Bulk Handling Limited's (**CBH**) proposed 2014 Port Terminal Services Access Undertaking, subject to drafting amendments. The undertaking would govern access by third-party exporters to CBH's port terminal services for bulk wheat export at CBH's four port terminals in Western Australia.

Regulatory Observer is a regular publication of the Australian Competition and Consumer Commission. For editorial enquiries and mailing list enquiries please contact Simon Haslock (simon.haslock@acc.gov.au).