

## Up a Down Escalator: National Competition Policy – A Little History and a Glance Forward

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### 1. Introduction

In the mid 1990s Australia placed competition policy at the forefront of its efforts to increase productivity and economic growth. Faced with low or negative productivity growth through much of the 1980s and responding to the findings of the Hilmer Review (Independent Committee of Inquiry, 1993), Australian governments at all levels recognised that effective policies to increase productivity were crucial if Australians were to achieve the living standards we desire. As a result, governments adopted the National Competition Policy (NCP) reform program.

Today the productivity challenge is unchanged. To maintain or enhance living standards in the face of demographic changes and the risks of environmental degradation Australia must continue to improve its productivity.

However After seeing multi factor productivity (MFP) rise from twelfth among the Organisation for Economic Cooperation and Development (OECD) to second in the 1990s, largely as a result of NCP, Australia's MFP growth has slumped towards its long term average level at little over one per cent. MFP growth at this level is simply inconsistent with Australian's desire for economic growth, sustainable development and the associated income, wealth and lifestyle effects.

If Australia is to achieve its economic desires not only must economic reform continue but the rate of reform activity must accelerate.

### 2. The NCP Program

The NCP program placed competition at the forefront as a means of securing productivity growth and a broadly defined Australian national interest. Governments agreed to NCP on the basis of experience that competition is generally – perhaps almost always – the best way in which to allocate resources and ensure higher living standards. They

considered that greater competition would enhance the performance of the economy through improved productivity, more efficient (typically lower) prices, better quality services and higher employment.

Through NCP, governments sought to remove impediments to competition and demand rational, evidence based, justification for policies and practices that maintained barriers to competition and efficiency.

At the same time, NCP recognised that competition was not always consistent with valid national interest objectives. While the NCP reforms provided for a presumption in favour of competition, this could be rebutted where it could be established that the national interest required restrictions on competition, for example where competition would not achieve efficiency or would conflict with other social objectives. The NCP principles allow governments to regulate or intervene where they can show this to be in the public interest. Governments are also free to introduce subsidies and community service obligations to meet what they consider to be desirable social goals – the only obligation within NCP is that these be open and transparent, rather than hidden behind opaque cross-subsidisation and the inevitable associated restrictions on competition.

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Through the Council of Australian Governments (COAG), all Australian governments – Commonwealth and states and territories, with reform commitments also relating to local government – agreed in 1995 to implement the NCP. The NCP reforms involved a series of commitments centred on three intergovernmental agreements<sup>1</sup> and the four related reform areas in electricity, gas, water resource policy and road transport.

The reform program spanned agreements to:

- extend the application of the Trade Practices Act to essentially all businesses and all levels of the economy;
- apply competitive neutrality between significant government businesses and their private sector competitors;
- consider the structural reform of public monopolies before the introduction of competition (with privatisation as an option but not a requirement);
- consider the creation of independent price regulation of monopolies where this did not already exist;
- undertake a comprehensive program of legislation review and reform of legislation restricting competition to ensure all restrictions were justified and anticompetitive effects were minimised;
- introduce regulation gate-keeping measures to ensure new regulatory proposals are scrutinised to ensure any restrictions on competition are justified;
- introduce measures to ensure legislatively backed third party access to essential infrastructure services; and
- undertake specific reforms in the energy, road transport and water sectors.

The NCP also created some unique institutional arrangements:

- First and foremost (from the NCC's perspective) it established the NCC as an independent assessor of the performance of all governments in meeting the reform commitments they had entered into.

- Second, the NCP created a regime of competition payments from the Commonwealth to state and territory governments as a means of sharing the dividends from NCP reforms.<sup>2</sup> These payments were additional or new money for states and territories. They were subject to the states and territories meeting their agreed reform commitments, and could be reduced if commitments were not met.

Critically, NCP encompassed a comprehensive set of reforms underpinned by principles designed to give appropriate primacy to the operation of competitive markets, reflecting the view of all governments that vigorous competition is the engine that delivers a dynamic economy and consequently improves living standards.

A 'guiding principle' of the NCP program was that legislation (including Acts, enactments, Ordinances and Regulations) should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can be achieved only by restricting competition.

Many of the elements of the agreements entered into by governments interlinked and worked together to enhance productivity. For example, consistent with exposing government businesses to competitive neutrality (CPA clause 3) or structural separation (CPA clause 4) government businesses were also made subject to the Trade Practices Act (Conduct Code Agreement). Similarly, options for structural separation of the monopoly and competitive elements of businesses provided an alternative to third party access regulation (CPA clause 6).

The evaluation of NCP was also intended to be a whole-of-program exercise, although this did not always occur with some elements being carved off for separate consideration. For example in 2004-05 responsibility for both coordinating and evaluating water reform was transferred to the National Water Commission. Perhaps not coincidentally the areas separated from the overall NCP processes are among those where reform progress was less than

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<sup>1</sup> The Competition Principles Agreement (CPA), the Conduct Code Agreement and the Agreement to Implement the National Competition Policy and Related Reforms (the Implementation Agreement).

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<sup>2</sup> The Commonwealth Government itself did not receive NCP payments.

spectacular, although it is fair to note that some of these areas were among the most challenging in which to achieve reform.

### 3. Reform Achievement 1995-2005

#### *Implementation of reforms*

The NCC's final assessment of governments' reform implementation progress (NCC, 2005) found that during the period of the NCP program (1995 to 2005) governments achieved the large majority of planned NCP reforms. For example:

- All state and territory governments had extended the Trade Practices Act prohibitions against anticompetitive behaviour such that the Competition Code applied to all persons within a jurisdiction's reach.
- Governments had generally met commitments on structural reform, in particular recognising the need to remove regulatory functions from government businesses that operate in markets with private sector competitors. Every government had also applied competitive neutrality principles to their large government businesses and had some form of complaints mechanism in place.
- Commitments relating to third party access to services provided by essential infrastructure facilities were also implemented.
- Governments had reviewed the bulk of the 1750 laws they had identified as restricting competition, and removed many restrictions found not to provide a community benefit.<sup>3</sup> Although some jurisdictions made insufficient progress, in aggregate terms governments reviewed and, where appropriate, reformed around 85 per cent of their nominated legislation.
- All governments had gatekeeping mechanisms to assess new legislation that could, in principle, operate to ensure compliance with their NCP commitments. However while governments

improved their approach to gatekeeping over the period of the NCP, most arrangements still fell short of best practice. In its final NCP assessment (NCC 2005 pp4.08-4.13) the Council identified scope for systematic improvements in gatekeeping arrangements. In particular the Council noted: the need for regulatory proposals for both primary and subordinate legislation to be rigorously assessed and for these assessments to be publicly available at least on an *ex post* basis; the utility of sunset provisions in ensuring regulation is regularly reassessed; the need for gatekeeping agencies to be independent and properly resourced; and the desirability of effective sanctions where regulatory proposals are found to be inadequate or bypass gatekeeping arrangements.

**Chart 1** shows that while the outcome overall was substantially positive, the results on a jurisdictional and sectoral basis were somewhat mixed. This is perhaps unsurprising given the scope of the NCP reforms. Also there was variability in implementing the legislation review and reform program, as shown by **Chart 2**, which summarises jurisdictions' progress over time in reviewing and reforming priority legislation.

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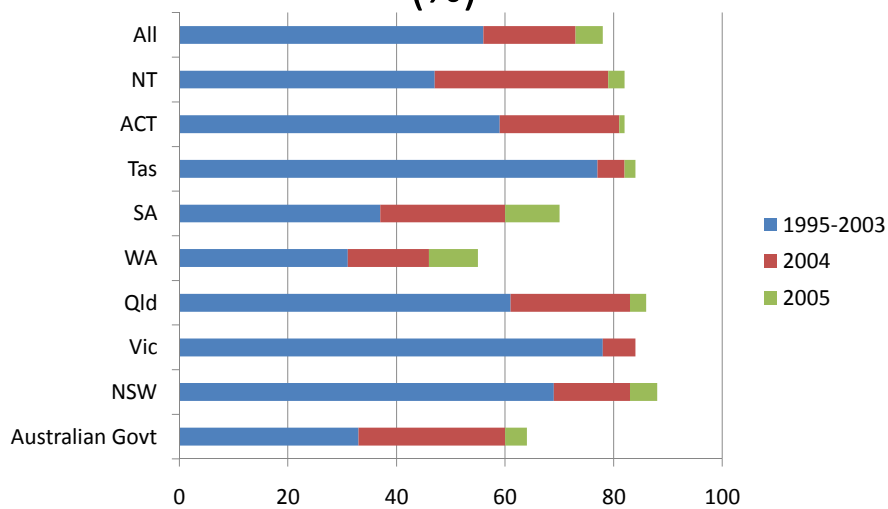
<sup>3</sup> Recognising the burden on governments conducting a large number of reviews and the need to focus reform on areas where restrictions on competition were likely to have greatest consequences, the 1750 identified legislation reform targets were divided into priority and non-priority groups. For priority legislation the overall rate compliance was 78 per cent as illustrated in Chart 1.

## Chart 1: Summary of NCP Outcomes

	Energy Reform	Road Reform	Competitive Neutrality	Structural Reform	Legislation Review	Gate-keeping (out of 5)
Australian Govt	✓	✗	✓	✗	✗	✓✓✓✓
NSW	✓	✓	✓	✓	✓	✓
Vic	✓	✓	✓	✓	✓	✓✓✓
Qld	✓	✓	✓	✓	✓	✓✓
WA	✓	✗	✗	✓	✗	✓
SA	✓	✓	✓	✓	✗	✓✓
Tas	✓	✓	✓	✓	✓	✓✓
ACT	✓	✗	✓	✓	✓	✓
NT	✓	✓	✓	✓	✓	✓✓

Source NCC 2005 page xviii

## Chart 2: Priority legislation reviewed (%)



Source NCC 2005 page xi



## **What was achieved?**

The Productivity Commission (PC) in its 2005 review of the NCP reforms (Productivity Commission 2005, XII) found that:

*NCP has delivered substantial benefits to the Australian Community which, overall, have greatly outweighed the costs.*

The PC noted in particular that the NCP had:

- contributed to the productivity surge underpinning (at 2005) Australia's 13 years of uninterrupted economic growth (Australia's productivity growth in the late 1990s was very strong by international standards, and was achieved despite a decade of economic stagnation in Japan and the 1997 Asian financial crisis);
- contributed to an increase in real per capita incomes (the rate of increase in the second half of the 1990s was as high as at any time in the twentieth century);
- contributed to reducing unemployment (at 2005 the rate of unemployment was at its lowest level in three decades while labour force participation was at its highest level since the First World War);
- directly reduced the prices of goods and services;
- stimulated business innovation, customer responsiveness and choice; and
- helped to meet some environmental goals including the more efficient use of water.

The PC undertook quantitative analysis on three occasions to illustrate the economy wide impacts of the NCP reforms.

- In 1995 the Industry Commission (as the PC was then known) modelled many of the Hilmer recommendations estimating that at the 'outer envelope' Australia's level of real GDP would be 5.5 per cent higher once the changes associated with the reforms had worked their way through the economy (Industry Commission 1995).
- In 1999 the PC undertook a similar exercise for a sub-set of reforms relevant to rural and regional Australia that projected a boost to GDP in the longer term of 2.5 per cent (Productivity Commission 1999, 298).
- In its 2005 review of the NCP reforms (Productivity Commission 2005, XVII), the PC quantified the economy-wide gains from productivity improvements and price changes in key infrastructure areas observed over the 1990s. It estimated that these had boosted Australia's GDP by 2.5 per cent or \$20 billion.

## **Critical elements in the success of the NCP**

The NCP succeeded because it incorporated a combination of general programs and sector-specific reforms, and was based on sound public policy principles and effective governance arrangements. The program also operated within an agreed all-embracing reform framework which incorporated incentives for reform implementation.

Jurisdictions were able to sequence and implement reforms according to their own priorities within agreed overall targets and timeframes that they themselves had developed. This provided flexibility, while at the same time imposing discipline and accountability. Many of the elements of the NCP program were able to be pursued on a state by state basis and were not contingent on a nationwide implementation. This meant that in at least some jurisdictions reform progress was not limited by the willingness of the least willing jurisdiction to implement necessary change. However in some cases governments agreed (often through various sectoral Ministerial Councils) that elements of the NCP reforms required coordinated national implementation. A side effect of this was to reduce individual jurisdictional accountability for reform implementation and in many cases the task of coordinating reform in such areas was assigned to the Commonwealth. Where progress on national reforms stalled there were very limited sanctions available under NCP as it was rare that responsibility for a lack of progress could be attributed to a specific jurisdiction. Not surprisingly, a significant proportion of the legislation assessed by the NCC as not having been subject to appropriate review by 2005 was subject to national reform processes.

Informed and transparent reporting itself provided an incentive to meet objectives. Direct incentives, in the form of the NCP payments to the states and territories where independent assessment showed that reform objectives were delivered, provided additional encouragement. Under NCP the Council made a recommendation to the Commonwealth treasurer on the proportion of NCP payments that should be made to State and Territory Governments, and any amounts that should be withheld or deferred.

The NCP payments provided a very high profile and powerful sanction when payments were deferred or withdrawn. NCP payments and the prospect of these been withheld also provided governments with a readily understandable incentive for proceeding with reform in face of opposition from very vocal vested interests. In this sense the payments fought well above their weight, with relatively modest financial rewards driving major

reform activities and on occasion the same payments providing encouragement for achieving a series of reform goals.

Informed independent monitoring of outcomes and transparent reporting on outcomes, including where commitments were not being delivered, was in part possible because of the independence of the NCC. Rather than being a Commonwealth agency the NCC is a creature of all governments, established by a formal intergovernmental agreement and given a statutory base. The NCP program would not have worked as well had the states and territories not seen the NCC as independent from the Commonwealth. There have also been occasions where one suspects the Commonwealth Government was grateful to be able to point to this independence.

Finally, the NCP succeeded because the collective reforms were instrumental in creating what the OECD called a deep-seated 'competition culture' among policy makers (OECD 2005, 2) and assisted as far as possible the development of greater community understanding of the benefits from a more competitive economy. This may be the most enduring benefit from the NCP reform program.

#### ***What could have been done better under the NCP?***

As outlined above, many reform objectives under the NCP program were substantially met. All governments now have appropriate price oversight mechanisms in place and the expectation among businesses that compete with government owned entities is that they are entitled to contest the market on an even footing and they can and do complain when this is not the case.

The key areas of unfinished NCP business at the end of the program were perhaps the completion of the legislation review and reform program and improving regulation gatekeeping arrangements, and water reform.

As shown in Chart 2, governments did not meet the timeframe set by COAG for completing their legislation review and reform agenda. While they delivered substantial elements of the program, and the dividend to the nation from reform is evident, some legislative reforms did not progress as fully as might have been envisaged. Furthermore, under NCP the scope of the gatekeeping assessment was focussed on restrictions on competition. This potentially enabled regulation which had no or only minimal implications on competition to escape scrutiny. More effective gatekeeping criteria should address the effectiveness of regulation in a more general way.

Ensuring the quality of new legislation through regulatory gatekeeping is fundamental to Australia's prosperity. Effective gatekeeping is a key to moving towards regulation that achieves its objectives without unwarranted efficiency and compliance costs.

Key elements of the NCP water reform program remained outstanding at the end of the NCP. COAG has subsequently endorsed a forward reform program for water beyond the 1994 water reform framework that had been incorporated in the NCP but progress has been problematic.

#### **4. Following on from the NCP: the COAG/National Reform Agenda**

COAG agreed in November 2000 that it would review the NCP reform agenda and arrangements before the end of the program in 2005. Accordingly, in 2004, the Australian Government requested the PC to inquire into the impacts of the NCP and report on future areas 'offering opportunities for significant gains to the Australian economy from removing impediments to efficiency and enhancing competition'. The PC reported in 2005 and found that continuing reform was needed to sustain and enhance Australian living standards in light of an ageing population. Significant potential gains could be achieved through further reform (COAG 2005).

COAG reviewed the NCP, drawing from, but not being limited by, the PC report. On 10 February 2006 COAG agreed to a new National Reform Agenda (NRA) and supporting institutional arrangements. The three-pronged objective of the new NRA was to enhance the nation's human capital and to continue competition reform and regulatory reform to help underpin Australia's future prosperity (COAG 2006a). On 14 July 2006, COAG reaffirmed its commitment to progress the NRA, stating that it recognised the benefits to the economy and community of progressing the three streams of reforms and the potential costs of failing to do so (COAG 2006b).

In March 2008 the NRA was redesignated as the COAG Reform Agenda (CRA) with the objectives of boosting productivity, workforce participation and geographic mobility, and supporting wider objectives of better services for the community, social inclusion, reducing Indigenous disadvantage, and environmental sustainability.

COAG also established the COAG Reform Council (CRC) to support the implementation of the CRA. In large part the CRC took over the role that had been performed by the NCC under NCP. The CRC reports directly to COAG. At the request of COAG, the CRC

also reports to the Prime Minister as the Chair of COAG, in regard to its monitoring and assessment role within the new Commonwealth-State Financial Framework. Like the NCC under the NCP, the COAG Reform Council does not set reform agendas, although it appears to be somewhat more involved in the COAG policy process than the NCC was in its day.

The CRA agenda encompasses 27 areas of reform of business regulation, aimed at enhancing productivity and workforce mobility by cutting the costs of regulation. On the broader productivity agenda, the CRA embraces long-term reforms across education – covering early childhood development, schooling and vocational education and training. The CRA also re-affirms a national commitment to microeconomic and regulatory reform and to continued implementation of the commitments agreed to as a part of the NCP. Governments continue to recognise that better regulation enhances Australia's productivity and international competitiveness, deepening the supply potential of the economy, driving its ability to adapt faster and raising the potential growth rate.

### **New Commonwealth-state funding arrangements**

With the end of NCP payments, the architecture for Commonwealth-State funding arrangements was reformed with the objective of allowing the states and territories to deploy Commonwealth specific purpose payments more effectively and to sharpen the incentives for reform through new National Partnership Agreements. The specific purpose payments are the main means through which the Commonwealth delivers funding to the states and territories to meet their service delivery obligations in areas such as healthcare and education. The National Partnership Agreements include agreements to fund specific projects in areas of joint Commonwealth/state responsibility such as transport, regulation, environment, water and early childhood and reward states and territories that deliver on reform. The National Partnership Agreements provide a framework through which the Commonwealth and a state or territory can agree on a reform and pursue it, separately from the main specific purpose payment funding framework. Broad whole-of-program incentives along the lines of the competition payments made under NCP are not part of the CRA. The COAG Reform Council has produced reports on progress under the CRA in March 2008 and April 2009 (CRC 2008, 2009).

### **5. Conclusion**

The economic reform task is somewhat like walking up a down escalator – in a globally competitive

environment reform inertia will inevitably mean declining living standards. Best practice today may tomorrow impede the nation achieving its growth potential.

With the end of the NCP reform program there was a concern that backsliding was inevitable. It was feared that forces and ideas that had been discredited during the NCP program would reassert themselves and sectoral and self-interested policies which failed to serve the Australian national interest would re-emerge. As at 2010, it is pleasing to see only isolated levels of backsliding and the 'deep seated competition culture' identified by the OECD appears to be persisting.

The recent decline in the rate of productivity growth does, however, emphasise the need to ensure economic reform remains a strong focus for governments at all levels and that progress is not tied to the least common denominator and the willingness of the least willing.

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## Critical Issues in Regulation – From the Journals

**‘Quo vadis efficiency analysis of water distribution? A comparative literature review’, Matthias Walter, Astrid Cullman, Christian von Hirschhausen, Robert Wand and Michael Zschille, *Utilities Policy*, Vol. 7, 2009, pp. 225-232.**

This paper is concerned with the efficiency analysis of water distribution by urban water utilities. The paper is motivated by the observation that ‘water distribution is increasingly coming under scrutiny by regulators, policymakers, business and the research community’ and the increasing use of ‘benchmarking’ in the regulation of water distribution. It takes an international perspective, reviewing literature across a large number of countries. The useful list of references contains over 50 items, most of which are less than ten years old.

An important feature is the review of empirical studies of the relationship between outputs and inputs. The literature surveyed finds that water distribution is ‘to a large extent’ characterised by economies of density. There are also economies of scale (perhaps only to a certain level of scale) and economies of scope (for example, between water and sewerage). A small number of studies of economies of scale between electricity, gas and water activities are also reviewed.

The authors alert readers to the complexity of the industry, and the fact that this sophistication is not normally reflected in the available data (‘most often very restricted’). They note that there is a ‘general lack of data on water utilities’. The use of panel data can help overcome the deficiency of data in some circumstances.

The paper also contains observations on the issue of public *versus* private ownership for the efficiency of water distribution. Here the evidence is inconclusive, with the relative merits unable to be clearly established. The authors suggest that this ‘always should be evaluated within the regulatory and institutional contexts’.

Finally, there is some consideration of regulatory approaches to water distribution, covering such mechanisms as ‘RPI-X’, revenue caps, yardstick competition and ‘sunshine’ regulation (naming and shaming). This discussion relates the selection of regulatory approach to the ability of the data and estimation techniques to assess efficiency sufficiently accurately.

**‘Economic welfare and universal service’, Gary Madden, *Telecommunications Policy*, Vol. 34, Issues 1-2, February 2010, pp. 110–116.**

This paper argues that the provision of a universal telecommunications service can be welfare enhancing. The improvement in economic welfare arises from the influence of a positive network effect on consumers’ reservation prices.

Madden observes that while there is an abundance of theoretical and applied analyses of the rationale for universal service and associated costs and distortions, there is a paucity of studies on the welfare-enhancing potential of universal service provision.

Madden develops a two-period, representative-consumer model for determining the economic welfare change when a universal service obligation is imposed on a telecommunications service provider. The theoretical model expounded by Madden is based on the compensating variation (CV) approach and a method is developed for measuring the consumer welfare change as a result of the introduction of a ‘new good’ within a network environment. Government regulation via the imposition of universal service obligation results in the provision of the ‘new’ good — where the new good is equivalent to providing an existing good to a population segment that is currently not served.

Madden assumes that, as result of a mandatory increase in network size, the network effect will influence the reservation price of consumers. The consumer welfare change is assessed by treating the prevailing subscription price as the reservation price of a marginal subscriber. The network effect arising from the universal service obligation raises the reservation price of the consumer, so that the market price falls below the consumer’s reservation price. That is, for new subscribers, the size of the network is just large enough to induce subscription at the prevailing price. Consumer welfare changes due to a unit increase in network size and there is an associated fall in the reservation price.

Madden measures the increase in welfare that is directly generated by a fall in reservation price from movement along the compensated demand curve. The magnitude of the welfare gain in Madden’s model depends on the ‘observed’ network size, the size of the network effect and the responsiveness of demand to a change in the price of subscriptions.



**‘Willingness-to-pay for quality of service: An application to efficiency analysis of the UK electricity distribution utilities’, William Yu, Tooraj Jamash and Michael Pollitt, *The Energy Journal*, Vol. 30, Issue 4, 2009, pp. 1–47.**

This paper presents an empirical approach to measure and incorporate service quality and energy losses into the analysis of technical and allocative efficiency of the electricity utilities in the UK.

The electricity distribution networks in the UK have been subject to the RPI-X incentive regulation since the first price control review of 1990–91 to 1994–95. To inform the assessment and determination of ‘X’, the Ofgem – the electricity and gas utility regulator in the UK – applied the corrected Ordinary Least Squares (COLS) method to benchmarking operating expenditure of the distribution network operators (DNOs) in subsequent five-year price-control reviews.

Quality of services and network energy loss has also been regulated under different incentive regimes, where rewards or penalties are applied for improvements/deteriorations relative to some defined performance standards.

The authors note that the benchmarking method used by the Ofgem is criticised in the economic literature for its weak theoretical robustness, there being no account of quality of services and the use of only one-year data from the DNOs. The authors specifically consider an approach to the assessment of efficiency performance that incorporates service quality into the analysis.

Using an alternative benchmarking technique – data envelopment analysis – that treats undesirable outputs as inputs, both customer minutes lost and energy losses are incorporated into a model estimating firm-level technical efficiencies for the 14 DNOs during the period 1990–91 to 2003–04. With input price data, including the Ofgem-Accent’s customer survey data on willingness-to-pay for quality of service, allocative efficiencies of the utilities are also measured. The authors also conduct a sensitivity analysis for alternative model specifications: some models only include traditional outputs (total number of customers, energy delivered, and network length) and inputs (operating expenditure versus total expenditure); while other model specifications also include quality of service measures.

The authors find that the technical and allocative efficiencies of the utilities improved during the first and second five-year price control reviews, but exhibited a slight decline during the third review. The results also show relatively low allocative efficiency performance, indicating sub-optimal allocation of

resources in achieving cost efficiency, service quality, and network efficiency. The authors attribute this to the absence of the correct price signals under the current regulatory arrangement.

The paper shows possible improvements over the UK regulatory benchmarking in a number of aspects. A future direction for research, as suggested by the authors, is the consideration of environmental factors on performance of the utilities.

**‘Efficient regulation’, Andrei Shleifer, *NBER Working Papers*, 15651, January 2010, pp. 1–27.**

This paper addresses the question of why there is so much government regulation in all rich and middle income countries, and then argues that government regulation exists to remedy market failure.

According to the Pigouvian perspective, markets fail because of externalities, asymmetric information, and a lack of competition (natural monopoly). Government regulation is used to address these market failures. The author suggests that the ubiquity of regulation is evidence of the ubiquity of market failure.

The rival perspective by Coase holds that market failures can be addressed by the market. Coase argues that competition is merciless in driving firms toward efficiency, that markets exhibit tremendous ingenuity in dealing with potential failures, that contracts enforced by courts get around most externalities; and that even when for some reason contracts prevent harmful conduct, tort law addresses most of the rest. According to Coase, contracts are a substitute for regulation.

These considerations have led many economists to accept the position that regulation is not driven by efficiency but by politics. The theoretical articulation of this position, proposed by Stigler (1971), is that industries or other groups organise and capture the regulators to raise prices, restrict entry, or otherwise benefit the incumbents. Another theory, propounded by Hart (2009), is that regulation is an outcome of a populist response to economic crisis and that potentially more efficient solutions are not necessarily considered by governments.

Shleifer argues that such theories are not persuasive, and that they do not explain the ubiquity of regulation in the richest and most democratic countries. Extensive regulation seems to be embraced by these countries and this is inconsistent with the view that regulation is inefficient. Shleifer also notes that the case against regulation – and the Coasian alternative to regulation – relies on well-functioning courts, yet the theoretical assumptions of an efficient judicial system are unrealistic as they include:

- (1) straightforward and inexpensive verification of evidence;
- (2) judges are motivated to exert effort to enforce contracts and laws;
- (3) judges are knowledgeable enough to verify the facts; and
- (4) judges are impartial.

Shleifer argues that the failure of each gives rise to a distinct argument for regulation. Contracts, in particular, which are seen to be an alternative to regulation, will accomplish less when judicial interpretation is unpredictable and enforcement is expensive.

Shleifer concludes that less developed countries that might potentially experience severe failures of all public administration, including both regulation and litigation, may lean towards a free-market approach even where market failure is pervasive. In more developed countries, in which the capacity to administer laws and regulations is higher, stronger government intervention, either through courts or regulators, becomes more attractive. [Paper](#)

**'An empirical assessment of the value of irrigation water: The case study of Murrumbidgee Catchment', Muhammed Qureshi, Ranjan Ram and Sumaira Qureshi, *The Australian Journal of Agricultural and Resource Economics*, Vol. 54, Issue 1, January 2010, pp. 99–118.**

This paper seeks to determine how much an established irrigator would pay for water in the Murrumbidgee catchment area. The aim of the analysis is to understand the nature of water demand in a region that is experiencing rapid changes in the amount of water likely to be available in the future.

The authors develop a modelling framework to estimate the net present value of both annual and perennial agricultural activities in the Murrumbidgee catchment area. From these estimates the total and marginal value of water are estimated, and an aggregate water supply curve is derived. The derivation of the supply curve enables the identification of water entitlement price levels at which irrigators would contemplate abandoning an investment.

The modelling framework includes costs (including sunk costs) and revenues that would accrue to farmers for both annual and perennial agricultural activities with varying agronomic and economic life cycles.

The authors impute a willingness to pay for a marginal unit of water for different farming activities. The perennial farming of almonds, citrus and grapes have the highest marginal value of water (for crop lives up to 15 years), while annualised farming of cereals, rice and dairy have the lowest marginal value. The imputed marginal values of water from cereals, rice and dairy are just below the price paid in temporary water markets.

The authors estimate a water supply curve for replenishing environmental flows by assuming there is symmetry between growers' marginal value of a megalitre of water and their willingness to accept to forego a megalitre of water. If water is required to replenish environmental flows, it would be more cheaply obtained from rice, cereal, dairy and citrus farmers (with 20-year old crops), because they have the lowest willingness to accept (around \$2000 per megalitre). That is, the volume of water supplied for environmental flows can be more cheaply increased by compensating rice, cereal, dairy and mature citrus farmers for the loss of their water entitlements. However, if all agricultural water was to be withdrawn for environmental purposes, the last megalitres obtained from citrus, grape and almond growers would cost approximately \$10,000 to \$12,000 per megalitre.

The authors suggest several policy implications. Firstly, they contend that their analysis provides a far more realistic estimation of the value of water as it includes irrigators' fixed and sunk costs. Secondly, by ranking various annual and perennial crops on the basis of their marginal values of water, it provides a basis for allocating water from less efficient users. Thirdly, in the presence of water scarcity, farmers are likely to exit farming as water prices increase. Finally, their finding that the annualised value of water is slightly lower than the price paid in temporary water markets, signifies the role of uncertainty relating to water supply in influencing water demand.

## International Round-Up of Regulatory Decisions

### Canada: CTA Announces Revenues for National Railway Company

The Canadian Transportation Agency (CTA) announced on 31 December 2009 that the revenues of the Canadian National Railway Company (CN) for the movement of Western grain exceeded its revenue cap for crop year 2008-09. The CTA also ruled that the Canadian Pacific Railway Company's revenues from grain transportation for the same period were below its cap. CN was given 30 days to pay the amount by which it exceeded its 2008-09 revenue cap, plus a five-per cent penalty. [Link](#)

### Europe: ERGEG Announces Consultations

The European Energy Regulators (ERGEG) published three consultation papers on 10 December 2009. Firstly, the ERGEG released its position paper on smart grids. The paper aims to initiate a dialogue with all stakeholders of the European electricity power systems and markets, in order to assist regulators in understanding how smart grids can benefit network users and, assuming that cost-effective benefits can be identified, to explore ways in which the development of smart grids can be encouraged. [Link](#)

The second consultation arises from the requirement for the European Network of Transmission System Operators for Electricity (ENTSO-E) to adapt and publish a non-binding Community-wide ten-year electricity network development plan. The ERGEG published draft advice for the development of the Community-wide ten-year development plan, in accordance with the legislative requirements, as guidance for ENTSO-E's work in this area during the interim period. [Link](#)

Finally, the ERGEG commenced a public consultation in September 2009 on its draft pilot framework guideline on capacity allocation (CAM) on European gas transmission networks. The framework covers cross-border interconnection points between two or more Member States as well as interconnections between adjacent entry-exit-systems within the same Member State, insofar as the points are subject to booking procedures by users. The ERGEG published an initial impact assessment on 10 December 2009 and a further document on recommendations for guidelines on congestion management in January 2010. [Link](#)

### Europe: EC Welcomes Structural Remedies which Increase Italian Gas Market Competition

The European Commission (EC) announced on 4 February 2010 that it had welcomed structural remedies offered by the Italian energy company ENI in response to the EC's concerns that ENI's management and operation of natural gas transmission pipelines could breach the EU antitrust rules' ban on abuse of a dominant market position. ENI proposes to divest its shares in three international transport pipelines: the TAG, the TENP and the Transitgas pipeline. The EC intends to test ENI's proposal with a view to adopting a decision under Article 9 of Regulation 1/2003. This would make the commitments legally binding. [Link](#)

### France: Competition Authority Recommends Creation of Airport Regulator

The French Competition Authority released an opinion (in French) regarding the competition problems that could arise from the possible future privatisation of French airports, although the opinion notes that the French government has not released any privatisation policies to date. The opinion contains recommendations that would retain competition for provision to supply contracted works and services to privatised airports. The Authority also pointed out that the State is currently both the regulator of airport activities and a shareholder of airport operators, which can lead to conflicts of interest. It recommended that the creation of an independent airport regulatory body may also provide an opportunity to consider the establishment of a regulatory agency for intermodal transport. [Opinion \(in French\)](#)

### Germany: FNA Implements Equalisation Mechanism Ordinance

The Federal Network Agency's (FNA) Equalisation Mechanism Ordinance took effect on 27 February 2010. It sets the rules for the sale of electricity for which tariffs are payable under the Renewable Energy Sources Act. The Equalisation Mechanism Ordinance requires the transmission system operators (TSO) to sell all the electricity from renewables to the electricity exchange. The revenues obtained on the exchange are not enough, however, to cover the costs of renewables. The deficit will be passed on by the TSOs, in the form of a renewables



surcharge, to the power suppliers and thus ultimately to consumers. For 2010 the surcharge will be 2.047 cents per kilowatt-hour. The FNA's new rules create incentives for the TSOs to reduce their renewables operating costs. TSOs that handle the sale of electricity more efficiently, for instance through using more exact forecasts, will benefit from the efficiency gains achieved. [Press Release](#)

### **Germany: FNA Approves Rate Proposals for Hybrid Letter Mail**

The FNA approved, on 23 February 2010, the rates for hybrid letter mail as proposed by Deutsche Post AG (DP AG). Hybrid letters are sent electronically by customers to DP AG's online portal. The letters are then printed, enveloped and stamped, before being sorted for conveyance and delivery. The approved rate of 46 cents for standard hybrid letters covers only conveyance and delivery services. The total price payable by the customer comprises three components: the price for mailing a letter electronically, the price for mail preparation services – printing, enveloping and franking – and the price for conveyance and delivery, the latter being subject to approval. The DP AG will initially run a pilot scheme, beginning in the second half of 2010, in which hybrid letter mail services will be offered to business and personal customers. [Press release](#)

### **Ireland: ComReg Releases Decision of LLU and SLU Review**

The ComReg released, on 9 February 2010, its decision on an extensive review of the Local Loop Unbundling (LLU) and Sub-Loop Unbundling (SLU) rental charges. The decision uses bottom-up long-run average incremental cost (BU-LRAIC) to set the rental charges for the LLU and the SLU. This approach will allow for the costing of a newly built modern network while allowing for the effect of inflation on building costs. [Decision](#)

### **UK: Ofgem Consults on Results of Study into Energy Sustainability**

The Ofgem released a consultation document on 3 February 2010 that presents the conclusions of its year-long study of whether the current arrangements in the UK are adequate for delivering secure and sustainable electricity and gas supplies over the next ten to 15 years. The Ofgem identified a number of concerns with the current arrangements and concluded that significant action will be needed given the unprecedented challenges facing the electricity and gas industries. The Ofgem suggested a wide range of possible policy measures, ranging from improvements in pricing and/or obligations on suppliers to deliver specific levels of supply security,

through to models that mandate or secure specific investments in new generating capacity and gas infrastructure. Submissions on the proposals were due by 31 March 2010. [Consultation Document](#)

### **UK: Ofgem Publishes Liquidity Proposals for Wholesale Electricity Market**

The Ofgem published, on 22 February 2010, proposals for the wholesale electricity market relating to liquidity. Liquidity in the British wholesale electricity market has declined since 2001 and is low compared to that of many other countries and other commodity markets. The low level of liquidity makes it difficult to enter the market and operate as a non-vertically integrated market participant. A key concern is the impact that this has on energy supply markets since ensuring that small/independent suppliers are able to enter is important to provide competitive pressure. The Ofgem would like to see market initiatives deliver the required improvements in electricity wholesale markets but is consulting on policy options to pursue if market initiatives do not show clear signs of improving liquidity in 2010. Responses to the consultation are due 23 April 2010. [Liquidity Proposals](#)

### **UK: Ofgem Publishes Enhanced Transmission Incentives**

The Ofgem published on 19 January 2010 its Final Proposals to facilitate additional investment by the electricity transmission owners within the current price control period. The Ofgem also confirmed the funding framework it intends to adopt to fund costs up to the end of 2011-12. [Link](#)

### **UK: Ofgem Approves Scottish Hydro Cost Recovery**

The Ofgem decided on 25 January 2010 to approve a request by Scottish Hydro Electric Transmission Limited's (SHETL) to increase its revenue allowances associated with Transmission Investment for Renewable Generation (TIRG), due to additional pre-construction costs. [Link](#)

### **UK: Ofgem Publishes Impact Statement in Review of the Ring Fence Conditions in Network Operator Licences**

The licences of UK gas and electricity transmission and distribution companies include the ring fence conditions designed to secure that their assets, cash flows and other financial resources are applied to meet the needs of the regulated company. These are aimed at protecting consumers in the event of financial distress or failure in an energy network company whatever the cause. The Ofgem recently

reviewed the existing ring fence conditions and identified a number of changes that would provide greater protection for consumers. The Ofgem released, on 3 March 2010, a consultation document that sets out a proposed set of incremental changes to ensure that the arrangements are as robust as possible. Submissions from interested parties are due by 23 April 2010. [Document](#)

## **UK: Ofgem Publishes Gas and Electricity Connections Industry Review**

The 2008-09 Gas and Electricity Connections Industry Review was published by the Ofgem on 29 January 2010. The Ofgem considered the development of competition in gas and electricity markets, set out the key trends emerging and also set out how licensed companies had complied with their connections related obligations. The review found that competition has grown rapidly in the gas connections area, to the extent that more than half of all connections are now installed by new entrants rather than the former monopoly incumbent network provider. However, competition in the electricity connections market has developed much less rapidly. [Review](#)

## **UK: Ofgem Publishes Electricity and Gas Market Supply Report**

The Ofgem published its Electricity and Gas Supply Market Report on 22 February 2010. The report shows that indicators of margins from supplying energy to a typical customer continued to increase over the last three months as a result of falling wholesale energy costs. The Ofgem continued to have concerns about whether the retail energy supply market is working in the interests of all consumers and therefore announced further changes designed to increase competition and make the market work more effectively for consumers. For example, the Ofgem published proposals to make it easier for small and independent suppliers to enter the market by improving their access to the wholesale market products. In the meantime the Ofgem will continue to monitor the market closely, both in terms of the pricing behaviour of suppliers and the effectiveness of market reforms. [Report](#)

## **UK: Ofgem Publishes Monitoring Company Performance Report**

The Ofgem released on 21 January 2010, a letter monitoring company performance for the third quarter of 2009. This letter details electricity and gas suppliers' performance of their social obligations. The Ofgem is considering undertaking a short review of the data it currently collects from suppliers in order

to monitor their performance. Comments were due by 5th March 2010. [Letter](#)

## **UK: Ofgem Publishes Consultation on Future of Network Regulation**

See Notes on Interesting Decisions.

## **UK: Ofcom Releases International Communication Market Report**

The Ofcom publishes a full International Communications Market report every two years. The next report will be published late 2010 and the Ofcom maintains a data set in the meantime. In December 2009 the Ofcom published charts to summarise data on the take-up, availability, pricing and use of broadband, landlines and mobiles, TV and radio in twelve major economies (UK, France, Italy, Germany, USA, Canada, Japan, Poland, Spain, Netherlands, Sweden and Ireland), as well as Brazil, Russia, India and China. The data cover the five years to 2008 and reveal that UK consumers are continuing to embrace digital communications services, and lead internationally as a digitally advanced nation. [Link](#)

## **UK: Ofcom Publishes Statement on Next Generation Networks**

The Ofcom published, on 28 January 2010, a Statement on Next Generation Networks (NGNs) that concludes the consultation *Next Generation Networks: Responding to Recent Developments to Protect Consumers, Promote Effective Competition and Secure Efficient Investment*. In the Statement, the Ofgem presented its response to recent NGN developments in the UK and to some related concerns from stakeholders. The Ofgem also set out its updated thinking about how consumers should be protected during migration to NGNs. Finally, the Ofgem discussed what, if anything, should be done to prepare for the longer-term, in which there could be widespread adoption of NGNs. [Statement](#)

## **UK: Ofcom Publishes Statement on Wholesale Narrowband Market Review**

The Ofcom published, on 15 September 2009, a statement setting out final decisions on a review of the fixed narrowband wholesale services. The statement identified two areas where further analysis and consultation were required. These areas were wholesale transit services and the imposition of an additional obligation for certain communications providers to publish charges for fixed geographic call termination. The Ofcom published, on 5 February 2010, its final decisions on these two areas. [Statement](#)

## UK: CAT Refuses Leave to Appeal against BAA Judgment

The UK Competition Commission (CC) announced on 10 February 2010 that it had sought leave to appeal to the UK Court of Appeal against the Competition Appeal Tribunal's (CAT) judgment of December 2009, which allowed a challenge to the CC's BAA Airports Market Investigation report. The CC decided to appeal against the CAT's judgment on the grounds that the CAT was wrong to conclude that there was a connection between Professor Moizer and Manchester Airports Group giving rise to apparent bias. [Press Release](#) Leave to appeal was refused by the CAT on 25 February 2010. [Judgement](#)

## USA: FERC Explores Efficient Integration of Renewables into Grid

The Federal Energy Regulatory Commission (FERC) announced, on 21 January 2010, it is reviewing its regulatory policies to integrate the rapidly increasing number of variable energy resources into the nation's power grid in the most efficient and non-discriminatory manner while maintaining power system reliability. The Notice of Inquiry sought public comment on whether to reform any of its rules or procedures to facilitate the integration of renewable energy resources. [Notice of Inquiry](#)

## USA: FCC Releases Monitoring Report

The Universal Service Monitoring Report by the Federal-State Joint Board on Universal Service was released by the Federal Communications Commission (FCC) on 9 December 2009. The report contains information designed to monitor the impact of various universal service support mechanisms, and the methods used to finance them. It draws on telecommunications industry information filed with the FCC through August 2009. The monitoring program reports on the effects of the FCC's regulatory policies, and also provides a complete census of all incumbent local exchange carriers (ILECs). [Report](#)

## USA: FCC National Broadband Plan

See Notes on Interesting Decisions.

## USA: FCC Proposes Rule Changes to Improve Decision Making and Promote Participation in Proceedings

The FCC issued a Notice of Proposed Rulemaking on 18 February 2010, as part of its larger effort to reform and transform the agency into a model of excellence in government. The FCC seeks public comment on revisions to rules governing Commission practice and procedure, and its *ex parte* rules dealing with communications between stakeholders and decision-makers at the agency. Comments are due by 8 May 2010. [Link \(Commission Practice\)](#); [Ex parte](#).

## USA: FCC Investigation into Wireless Early Termination Fees (look into this)

The FCC commenced, on 26 January 2010, an inquiry into wireless early termination fees. As part of the inquiry, the FCC sent letters to AT&T, Google, Sprint Nextel, TMobile and Verizon Wireless to gather facts and data on the consumer experience with such fees. [Press Release](#)

## USA: Committee Approves Update of Federal Rail Policy

In a press release on 17 December 2009, the US Senate Commerce, Science, and Transportation Committee announced the approval of legislation to update federal rail policy to better balance the needs of rail carriers and their shippers and reauthorize economic regulation power over national freight railroads for the Surface Transportation Board (STB) for five years. The STB has not been reauthorized since it was established in 1996. The new reauthorization would expand and improve the quality and expertise of the STB; create a new arbitration process for small rate complaints; streamline the rate complaint process and permanently lower the fee for filing a complaint. The Surface Transportation Board Reauthorization Bill is currently before the Senate. [Press Release](#), [Bill Progress](#)



## Regulatory Decisions in Australia and New Zealand

### New Zealand

#### Final Report on Mobile Termination Access Services Released

The New Zealand Commerce Commission (NZCC) delivered its final report on mobile termination access services to the Minister for Communications and Information Technology on 22 February 2010. The NZCC recommended that the Minister accept Telecom's and Vodafone's final undertakings as an alternative to regulation. Under the undertakings, Telecom and Vodafone will reduce mobile termination rates over time. The commencement date for mobile termination rate reductions is common to both companies, after Telecom submitted revised undertakings on 11 February 2010. [Media Release](#)

#### NZCC Commences Review of Data Price

The NZCC commenced reviewing the cost of transmission in the unbundled bitstream access standard terms determination on 19 February 2010. The NZCC released its Determination in December 2007 and indicated it would review the cost of data transmission as required. [Media Release](#)

#### Draft Decision Released by NZCC on VDSL Services

The NZCC, on 18 February 2010, released its draft decision on how the application of the unbundled bitstream access standard terms determination (UBA STD) relates to services delivered over VDSL. The draft decision follows a request last year by Telecom for clarification of how the regulations under the Telecommunications Act deal with VDSL. Submissions on the draft decision were due on 5 March 2010. [Media Release](#)

#### Commerce Commission Releases Emerging Views on Input Methodologies

The NZCC released papers on 23 December 2009 detailing its emerging views on input methodologies for electricity distribution services, gas pipeline services and specified airport services supplied by Auckland, Wellington and Christchurch International Airports. An Input Methodologies conference was held in September 2009 and further workshops were held in February 2010. [Media Release](#)

#### Telecom Releases Regulatory Financial Statements

Telecom New Zealand Limited (Telecom), on 18 December 2009, released its first set of audited

regulatory financial statements for the financial year ending 30 June 2009. The regulatory financial statements are intended to provide useful information to industry stakeholders about the operation and behaviour of Telecom under operational separation. Early in 2010 the Commission will publish a full summary and analysis report of the 2009 regulatory financial statements, and will consult on any amendments to the 2010 Requirements. [Media Release](#)

### Australian Competition and Consumer Commission (ACCC)

#### ACCC Issues Annual Report on Airport Performance

The ACCC submitted its annual airport monitoring report to the Minister for Competition Policy and Consumer Affairs on 11 March 2010. Due to concerns that they might use their monopoly position in aeronautical services to increase profits at the expense of airlines and passengers, the ACCC monitors the performance of Adelaide, Brisbane, Melbourne (Tullamarine), Perth and Sydney (Kingsford Smith) airports in delivering services to airlines. The ACCC reports on a range of indicators including quality of service, prices, costs, profits and investment levels. The report found the performance of Sydney Airport to be of greatest concern, as it appears to have increased profits by permitting service quality to fall below that which the airlines reasonably expect. [Media Release](#)

#### ACCC Issues Draft Decision on Hunter Valley Rail Network

The ACCC issued, on 5 March 2010, a draft decision not to accept the proposed access arrangements lodged by the Australian Rail Track Corporation for the Hunter Valley rail network in their current form, on the basis that they are unlikely to be appropriate under the *Trade Practices Act 1974*. In its draft decision the ACCC emphasises the need for the rail access arrangements to align with other components of the Hunter Valley coal supply chain, and thereby contribute to an efficient and effective supply chain overall. [Draft Decision](#)

#### ACCC Submits Advice under Water Infrastructure Charge Rules

On request by the Minister for Climate Change and Water, the ACCC submitted advice on 22 February 2010 regarding the accreditation of state agencies by the ACCC under the water infrastructure charge

rules. The Minister may adopt the rules, with or without variation. [Media Release](#)

### **Water Market Rules come into Force**

The transitional period for the Water Market Rules 2009 ended on 31 December 2009 and the rules are now in full effect and enforceable by the ACCC. These rules, together with the Water Charge (Termination Fees) Rules 2009, will make it easier for farmers in the Murray-Darling Basin to sell their water rights and exit the sector or restructure their business. [Media Release](#)

### **ACCC Decides on Proposed Pricing for Air Traffic Control Services at Avalon Airport**

The ACCC, on 28 January 2010, issued a final decision not to object to a proposed charge by Airservices Australia for a terminal navigation service at Avalon Airport. A price of \$5.49 (incl. GST) per tonne will apply to aircraft landing at Avalon aerodrome for an interim period, pending the ACCC's consideration of Airservices' long-term pricing proposal, expected in 2010–11. [Media Release](#)

### **ACCC Commences Review of Telstra's Retail Price Control Arrangements**

The ACCC began a review on 15 January 2010 of the retail price control arrangements that apply to Telstra. The review was initiated by a Ministerial direction. The discussion paper sought submissions on a number of issues, including the effect current retail price control arrangements have had on competition, efficiency and consumer choice. [Media Release](#)

### **ACCC Issues Report on Unleaded Petrol Prices**

The ACCC issued its second report on the prices, costs and profits of unleaded petrol in Australia on 18 December 2009. Among other things, the report concludes that in 2009 petrol prices were much more stable than in the previous year. [Media Release](#)

## **Australian Energy Regulator (AER)**

### **AER Releases Draft Decision on the Access Arrangements for Jemena's NSW Gas Networks**

The AER released its draft decision on Jemena Gas Network's access arrangement proposal for the period 1 July 2010 to 30 June 2015. The draft decision requires Jemena to revise its access arrangement proposal for its NSW Gas Networks.

Jemena has until 19 March 2010 to submit a revised proposal. [Media Release](#)

### **AER Consults on Victorian Electricity Distribution Regulatory Proposals**

The AER commenced formal consultation on the regulatory proposals for the Victorian electricity distribution network service providers on 24 December 2009. The proposals are for the period 2011-15. Submissions closed on 11 February 2010 and the AER will make a draft determination in mid 2010. [Link](#)

### **EnergyAustralia's Public Lighting Services Proposal**

The AER published its draft decision on EnergyAustralia's public lighting services on 23 February 2010. Submissions on the draft decision were due on 11 March 2010. [Link](#)

## **Australian Energy Markets Commission (AEMC)**

### **Consultant Report Released for the Review into the Role of Hedging Contracts in the Existing NEM Prudential Framework**

The AEMC is preparing a draft report on the review into the role of hedging contracts in the existing NEM prudential framework. On 5 March 2010, the Commission published the final risk assessment report by consultants PricewaterhouseCoopers. [Link](#)

### **MCE Requests Advice from the AEMC on the Effectiveness of Competition in the Electricity Retail Market in the ACT**

The Ministerial Council on Energy (MCE) formally requested the AEMC to assess the effectiveness of retail competition in the electricity retail market in the ACT on 16 December 2010. Under the Australian Energy Market Agreement, the AEMC is required to assess the effectiveness of retail competition in electricity and gas retail markets in each jurisdiction (except Western Australia). Reviews of the Victorian and South Australian retails markets were completed in 2007 and 2008 respectively. The ACT review will only cover the electricity market, as natural gas is not currently subject to retail price regulation. The AEMC has released an issues paper and submissions are due 9 April 2010. [Media Release](#)

### **Review of the Effectiveness of NEM Security in Extreme Weather Events**

The AEMC published a Consultation Paper on 2 March 2010 outlining the key issues relevant to the

Final Report for the Review of the Effectiveness of NEM Security and Reliability Arrangements in light of Extreme Weather Events. Written submissions were due by 31 March 2010. The AEMC also published the Second Interim Report for the review on 25 February 2010. [Link](#)

### **Review into the Use of Total Factor Productivity for the Determination of Prices and Revenues**

The AEMC held a public forum with respect to the preliminary findings for Review into the Use of Total Factor Productivity for the Determination of Prices and Revenues on 1 February 2010. Presentations made at this forum are available online. [Link](#)

### **Consultation on Timing for Intervention Compensation Determinations**

The AEMC, on 11 February 2010, gave notice to commence consultation on a Rule change proposal to extend the period of time available for AEMO to complete its obligations to determine claims for additional compensation following AEMO's interventions in the market where an independent expert is required to be appointed. The Rule change proposal was treated as non-controversial and submissions were due 11 March 2010. [Media Release](#)

### **Review of the Reliability Standard and Settings**

The Reliability Panel published a Draft Report for the Review of the Reliability Standard and Settings and a related ROAM Consulting report on 23 December 2009. A revised version of the ROAM Consulting report was published on 15 January 2010 after a calculation error was found in the modelling. A public forum to discuss the Draft Report was held on 12 February 2010 in Melbourne. [Link](#)

### **MCE Announces New AEMC Commissioners**

The Chairman of the Ministerial Council on Energy announced, on 11 February 2010, the appointment of Mr. John Pierce as the new AEMC Chairman and Dr. Brian Spalding as the Commonwealth nominated part time Commissioner. [Media Release](#)

### **AEMC Joins International Confederation of Energy Regulators (ICER)**

The AEMC announced, on 14 January 2010, acceptance of an invitation to join the International Confederation of Energy Regulators (ICER), an international body representing over 200 regulatory authorities. [Media Release](#)

## **National Competition Council (NCC)**

### **NCC Receives Application for 15 Year No-coverage Determination**

The NCC received an application under the National Gas Law for a 15 year no-coverage determination for the proposed QCLNG Pipeline in Queensland on 19 January 2010. Under the NGL, the proponent of a proposed new gas pipeline can apply for a determination which exempts the pipeline from coverage and regulation for a period of 15 years. No-coverage determinations are intended to promote regulatory certainty for investors in new pipeline projects and to encourage efficient investment in new pipeline infrastructure. This is the first no-coverage application under the NGL the NCC has received. Submissions on the application were due 15 February 2010. [Link](#)

### **NCC Approves Application for Light Regulation of the Central West Pipeline**

The NCC made a final determination to approve an application by APT Pipelines for the light regulation of the covered Central West Pipeline on 19 January 2010. The pipeline transports gas from Marsden on the Moomba Sydney Pipeline mainline to Forbes, Parkes, Narromine and Dubbo in the central west of New South Wales. [Link](#)

## **Australian Capital Territory**

## **Independent Competition and Regulatory Commission (ICRC)**

### **Release of Second Issues Paper on Review of Retail Tariffs for Non-contestable Electricity Customers 2010-12.**

The ICRC, on 1 March 2010, published an issues paper identifying issues relevant to the determination of regulated retail electricity prices in the ACT for 2010-12. A final technical paper describing the modelling to be used by the IPRC was also released on 5 March 2010. The IPRC expects to release a draft report by 16 April 2010. [Issues Paper](#)

### **Electricity Feed-in Premium Rate Determination**

The ICRC, on 15 March 2010, released its final report on the electricity feed-in tariff premium rate to be paid in 2010-11. The ICRC recommended that the premium rate for 2010-11 be set at 45.7 cents per kilowatt hour of electricity generated. The ICRC also



recommended that the premium rate payable to generating systems of 10kW capacity and above be increased from 80 per cent of the premium rate to 100 per cent. The report has been forwarded to the Minister for Energy, who has ultimate responsibility for determining the premium rate for 2010-11. [Final Report](#)

### **ACT Electricity Feed-in Scheme – December Quarter Summary Report**

The Electricity Feed-in Scheme for feed-in from renewable energy generators to the electricity network commenced on 1 March 2009. Under the Electricity Feed-in Code, licensed electricity suppliers and ActewAGL Distribution, the ACT's only licensed electricity distributor, are required to report quarterly to the ICRC on a number of key indicators. A summary report on Scheme activity for the period 1 March 2009 to 31 December 2009 was published in February 2010. [Summary Report](#)

## **New South Wales**

### **Independent Pricing and Regulatory Tribunal (IPART)**

#### **IPART Releases Draft Bulk Water Prices for State Water**

IPART released on 15 March 2010 its draft determination of bulk water prices that State Water will be able to charge from 1 July 2010 to 30 June 2014. Prices are set for each regulated river valley and reflect the costs of providing water to high and general security entitlement holders. Under the draft determination, increases in water bills for high security customers will vary from 4 per cent in the Murrumbidgee to 85 per cent in the Gwydir valley in total over the four years. For general security water users, bills will increase from 1 per cent in the Murrumbidgee to 65 per cent in the Lachlan valley over the same period. IPART has also changed the way it forecasts future water extractions from 100 years of modelled extractions to modelled and actual extractions over a twenty year time horizon. IPART has also introduced an allowance to compensate State Water for potential volatility in future revenue collections. The IPART draft report and determination are open for comment until 16 April 2010. IPART intends to publish its final report and determination in June 2010. [Media Release](#)

#### **IPART Releases Draft Water and Sewerage Prices to apply in Broken Hill**

IPART released on 15 March 2010 a draft determination of water and sewerage charges that Country Energy can charge the residents of Broken

Hill from 1 July 2010 to 30 June 2013. This determination represents the first occasion that IPART has regulated water and sewerage prices that can be charged by Country Energy in the Broken Hill area. Under the draft determination the annual water and sewerage bills for both pensioners and non-pensioners who use 300 kilolitres of treated water each year will increase by \$233.23 in total (plus inflation) over the 3 years of the price path. This represents an average increase of 7.7 per cent a year (before inflation) for non-pensioners and 9.5 per cent for pensioners. During the course of the review IPART found that there was considerable scope for Country Energy to reduce its costs and reduced the allowed operating costs by 12 per cent below Country Energy's proposal. Capital expenditures were also trimmed and reflected a finding that overhead allocations were much higher than typically found in the water industry. The IPART draft report and determination are open for comment until 16 April 2010. IPART intends to publish its final report and determination in June 2010. [Media Release](#)

#### **IPART Releases Final Determination on Regulated Retail Electricity Prices Until 2013**

See Notes on Interesting Decisions.

#### **IPART Releases Determinations on Transport Fares**

In December 2009, the IPART released final determinations on bus fares for rural and regional areas, bus fares for metropolitan and outer-metropolitan bus services, and fares for Newcastle bus and ferry services. [Link](#)

#### **Consultant Report on IPART's Approach to Incentive Regulation**

The IPART released a consultant report, 'Review of IPART's Approach to Incentive Regulation', by Cambridge Economic Policy Associates on 9 November 2009. See Notes on Interesting Decisions

## **Victoria**

### **Essential Services Commission (ESC)**

#### **Victorian Ports Monitoring Regime**

The ESC published its annual Ports Monitoring Report on 22 March 2010. The report covers information for the 2006-07 and 2007-08 financial years. It is expected to be the last regulatory monitoring report since the scope of the monitoring

regime will reduce from 1 July 2010 to include only the Port of Melbourne Corporation. [Link](#)

The ESC published a draft decision on 11 March 2010, regarding the implementation of the new ports monitoring regime to apply from July 2010 to June 2015. Submissions close on 1 April 2010. [Link](#)

### **Victorian Rail Access Regime Review Final Report**

The Minister for Finance, on 26 June 2009, directed the ESC to undertake an independent review of the Victorian Rail Access Regime (VRAR). The inquiry examined the effectiveness of the VRAR and whether a Victorian rail access regime is still required given the current and likely future structure of the industry. The ESC published its final report on 18 March 2010. The main recommendations were: the access regime should be maintained, but scaled back to a lighter-handed regime; a negotiate/arbitrate framework should be applied, but access providers should retain the ability to submit an access undertaking voluntarily; and the access regime should be supplemented by monitoring of certain other rail terminals. [Link](#)

### **ESC Releases Compliance Report on Energy Businesses**

The ESC monitors the compliance of Victorian regulated energy businesses with their licence obligations. On 12 February 2010 the ESC released its *Compliance Report 2008-09*. [Link](#)

### **Smart Meters Regulatory Review**

The ESC, on 12 February 2010, announced it is reviewing its customer protection and energy market regulations to ensure they are appropriate for the commencement of the operation of smart meters in Victoria. [Open Letter](#)

### **Goulburn-Murray Water Rural Tariff Review 2010-2013**

Goulburn-Murray Water submitted an application to the ESC for revenue required for the period 2010-11 to 2012-13 on 18 February 2010. Goulburn-Murray Water was to make a further application detailing its proposed tariffs for the period in March 2010. [Link](#)

## **Queensland**

### **Queensland Competition Authority (QCA)**

#### **QCA Receives DBCT Draft Access Undertaking**

The QCA received a draft access undertaking (2010 DAU) for the coal handling services at the Dalrymple Bay Coal Terminal from DBCT Management on 19 March 2010. The 2010 DAU sets out the new terms and conditions under which DBCT Management proposes to provide access to the coal handling services at the Dalrymple Bay Coal Terminal covered by the undertaking once the current access undertaking expires on 31 December 2010. The QCA is consulting on the 2010 DAU and submissions are due 29 April 2010. [Link](#)

#### **Final Decision on Review of Code Reporting Requirements**

The Electricity Industry Code (Electricity Code) and Gas Industry Code (Gas Code) require retailers and distributors to report periodically a range of information to the QCA. In February 2010, the QCA decided to amend the reporting requirements under the Electricity and Gas Codes in a number of respects. [Link](#)

#### **Notified Electricity Prices 2010-11**

The QCA is responsible for calculating the Benchmark Retail Cost Index (BRCI) which is used to adjust notified (regulated) electricity prices annually. On 18 December 2009, the QCA released its draft decision on the 2010-11 BRCI. QCA expects to release its final decision by 31 May 2010. [Link](#)

#### **QR 2009 Draft Access Undertaking**

See Notes on Interesting Decisions.

## **South Australia**

### **Essential Services Commission of South Australia (ESCOSA)**

#### **Disconnections for Non-payment on Extreme Hot Weather Days**

Following a period of public consultation the ESCOSA made a determination, on 24 December 2009, to vary the Electricity Distribution Code and the Energy Retail Code. From 1 January 2010, electricity retailers and distributors are prohibited from disconnecting supply to electricity customers for non-payment during periods for which an 'extreme heat

watch' or 'extreme heat warning' has been issued. [Link](#)

### **2009 South Australian Rail Access Regime Inquiry**

The ESCOSA released its final report into the Access Regime that applies to the major interstate railways in South Australia on 8 December 2009. The ESCOSA concluded that the Access Regime is generally consistent with the requirements of the Competition and Infrastructure Reform Agreement (CIRA) entered into by COAG in February 2006. However, the ESCOSA did recommend some amendments to the Access Regime. [Link](#)

## **Tasmania**

### **Office of the Tasmanian Energy Regulator (OTTER)**

#### **2009 Reliability Review Report Published**

The OTTER published the 2009 Reliability Review Report on 18 December 2009. The Report provides an evaluation of power system reliability performance in 2008-09 and assesses the outlook for reliability in the medium term (the next three to five years). [Report](#)

#### **2008-09 Energy Supply Industry Performance Report Published**

The OTTER published its Annual Energy Supply Industry Performance Report for 2008-09 in December 2009. The report provides a comprehensive overview of the industry's performance in Tasmania for the year and compares performance with that of other jurisdictions. [Report](#)

#### **Proposed Amendments to Tasmanian Electricity Code**

The OTTER published a consultation paper on a number of proposed changes to the Tasmanian Electricity Code in March 2010. Submissions were due 26 March 2010. [Consultation Paper](#)

#### **Declaration of Services Supplied by Hydro-Tasmania**

See Notes on Interesting Decisions.

## **Western Australia**

### **Economic Regulation Authority (ERA)**

#### **ERA Publishes 2008/09 Electricity and Gas Distributors Annual Performance Reports**

The ERA approved the publication of the *2008/09 Annual Performance Report - Electricity Distributors* and the *2008/09 Annual Performance Report - Gas Distributors* on 12 March 2010 and 10 March respectively. The reports summarise performance data provided by Western Australian electricity and gas distributors in accordance with the performance reporting obligations set out in the compliance reporting manuals. The performance data for electricity distributors include the establishment of customer connections, network reliability, streetlight repairs, customer service (complaints handling and contact centre performance) and compensation payments. The performance data for gas distributors include gas consumption, unaccounted for gas, leaks, network reliability, compensation payments and customer service (complaints handling and contact centre performance). [Notice \(electricity\)](#); [Notice \(gas\)](#)

#### **Proposed Revised Access Arrangement for Gas Distribution Systems**

The ERA released an issues paper on the proposed revised access arrangement for the Mid-West and South West Gas Distribution Systems on 26 February 2010. The proposed revisions were submitted by WA Gas Networks Pty Ltd (WAGN) on 29 January 2010. Submissions are due 12 April 2010. [Media Release](#)

#### **ERA Approves Pilbara Infrastructure (TPI)'s Proposals**

The ERA approved TPI's Train Management Guidelines and Train Path Policy on 23 February 2010. These apply to all rail users with access agreements negotiated under the *Railways (Access) Code 2000*. [Media Release](#)

The ERA also published its final determination of the TPI's proposed Costing Principles on 11 March 2010. The final determination was to approve the proposal subject to seventeen amendments. [Media Release](#)

#### **Draft Determination on TPI's Over-payment Rules**

The ERA published, on 15 January 2010, its draft determination approving Over-payment Rules proposed by The Pilbara Infrastructure (TPI) for its Pilbara rail network, subject to 15 amendments. Over-payment Rules establish a basis for the railway



owner to reimburse Operators in the event that total revenue earned on a particular route section exceeds total costs attributable to that route section. Submissions were due on 25 February 2010. [Draft determination](#)

### **2009 Annual Wholesale Electricity Market Report Submitted to the Minster for Energy**

The ERA submitted, on 18 February 2010, the 2009 Annual Wholesale Electricity Market Report to the Minster for Energy. The report is an assessment of the market's effectiveness. The ERA anticipates a public version of the report (with confidential or sensitive data aggregated or removed) will be published before the end of March 2010. [Media Release](#)

### **Approval of Maximum Reserve Capacity Price for 2012/13 Reserve Capacity Year**

The ERA approved, on 29 January 2010, the proposed Maximum Reserve Capacity Price as recommended by the Independent Market Operator in its MRCP review for the 2012/13 capacity year final report, received by the ERA on 19 January 2010. The approved revised MRCP will be effective from 1 October 2012 to 1 October 2013. [Media Release](#)

### **ERA Releases Further Final Decision on Western Power's Access Arrangement Revisions**

The ERA, on 19 January 2010, accepted Western Power's amended proposed access arrangement revisions for its interconnected electricity network in the south west of the State. A total of 45 amendments were required by the ERA when it announced its final decision in December 2009 not to approve Western Power's proposed revised terms and prices for third parties seeking access to the network. Western Power submitted new revisions to its access arrangement on 24 December 2009, which the ERA approved in its further final decision. [Media Release](#)

### **Gas Access Arrangement Guideline**

See Notes on Interesting Decisions.

### **Determination of the IMO's and System Management's Allowable Revenue**

The Independent Market Operator (IMO) and System Management are required to seek the ERA's approval of their allowable revenue for the period from 1 July 2010 to 30 June 2013 for each of the services they provide. The Market Rules also require the ERA to make a determination on the Ancillary Service Margin Peak and Margin Off-Peak, and Cost

LR parameters proposed by the IMO and System Management, respectively. Having received proposals from both the IMO and System Management, the ERA published two issues papers on 24 December 2009. Submissions were due 27 January 2010. [Notice](#)

## **Northern Territory**

### **Utilities Commission**

#### **Full Retail Contestability Review**

The Utilities Commission commenced, in August 2009, a review to generate and assess options for the implementation of Full Retail Contestability (FRC) in the Northern Territory electricity market on 1 April 2010. The Utilities Commission released its final report on 5 February 2010. The classes of options considered relate to timing and preparation for FRC, together with consideration of systems that might be appropriate for each option. [Final Report](#)

#### **Retail Price Monitoring Regime for Contestable Electricity Customers**

The Utilities Commission published, on 20 February 2010, an issues paper to review options for the development of a retail price monitoring regime for contestable electricity customers in the Northern Territory. The review covers the effective retail price oversight framework for contestable customers and the associated reporting and disclosure arrangements. Submissions on the issues paper are due 2 April 2010. [Issues Paper](#)

## Notes on Interesting Decisions

### IPART Releases Final Determination on Regulated Retail Electricity Prices Until 2013

The IPART released, on 18 March 2010, its final determination of electricity regulated retail prices for the three years to June 2013. This determination will apply to the majority of small NSW customers who have not entered into a negotiated tariff.

As a result of the determination, these electricity prices will increase substantially. From 1 July 2010, average annual prices will increase by seven per cent for Integral Energy customers, ten per cent for EnergyAustralia customers, 13 per cent for Country Energy customers. Over the three years to June 2013, if the Federal Government's Carbon Pollution Reduction Scheme (CPRS) is **not** introduced, average prices will increase by a cumulative total of 20 per cent for Integral Energy, 36 per cent for EnergyAustralia and 42 per cent for Country Energy. Regulated electricity prices in NSW will increase further if the CPRS **is** introduced from 2011/12 as planned. If implemented, average prices will increase by a cumulative total of 46 per cent for Integral Energy, 60 per cent for EnergyAustralia and 64 per cent for Country Energy. These increases are slightly higher than the ones that IPART proposed in its draft report, released in December 2009. The main reason for the increases is the introduction of the CPRS together with higher network price recently determined by the Australian Energy Regulator.

Upon release of the report, IPART's Acting Chairman and CEO, Mr James Cox, said that IPART recognised that the price increases are large and will be felt by customers, particularly low-income households. He noted that the NSW Government has introduced a \$272 million customer assistance package, and the Federal Government has indicated it will provide assistance packages for households as part of the CPRS package. He also noted that the State and Federal Governments provide incentives for households to reduce their energy consumption and the Standard Retailers offer advice on reducing consumption. Further, IPART has recommended to the NSW Government that they should extend the NSW energy rebate to all Commonwealth Card Holders and should consider further increasing the level of the NSW energy rebate. IPART is also recommending further information disclosure requirements to help customers compare market offers. [Media Release](#)

### Consultant Report on IPART's Approach to Incentive Regulation

The IPART released a consultant report, 'Review of IPART's Approach to Incentive Regulation', by Cambridge Economic Policy Associates (CEPA) on 9 November 2009. The IPART commissioned this study by Cambridge Economic Policy Associates (CEPA) as part of its commitment to ensuring that the IPART's approach to regulation remains consistent with good practice and is informed by the developments in regulation in Australia and overseas

The study follows on from a similar study CEPA undertook for the UK electricity and gas regulator, the Ofgem, but with a wider range of case studies drawn from a larger number of jurisdictions and sectors. It reviews how the IPART's approach to regulation compares with those of other regulators, having regard to the differences in the legal framework and industry structures within which the regulators operate. The study broadly endorses the IPART's approach to regulation and cautions against rapid changes in approach that could increase risk and uncertainty. However, it offers a number of interesting ideas for the IPART to consider, particularly in regard to customer engagement, capex incentives, linkages to output measures and service performance, and alternative inflation indices. [Report](#)

### QCA Rejects QR 2009 Draft Access Undertaking

The Queensland Competition Authority (QCA) published its draft decision not to approve QR Network's 2009 voluntary draft access undertaking (DAU) on 18 December 2009. The DAU sets out the new terms and conditions under which QR Network proposes to provide access to rail infrastructure on the central Queensland and Western coal systems.

The QCA proposed to accept many of QR Network's proposals including measures to reduce QR Network's asset-stranding risk and to reduce QR Network's cash flow volatility. The QCA also proposed to accept QR Network's proposal to amalgamate a number of clusters in the Goonyella and Blackwater systems into a single cluster for each system. However, the QCA did not accept the proposal that QR Network increase its rate of return at the same time as reducing its risk. The QCA decided to reduce the asset beta from that proposed by QR Network (and from that adopted in the 2006

undertaking) given the risk mitigation measures proposed.

The draft decision sets out what QR Network is required to do resolve the issues identified by the QCA. The QCA expects QR Network will submit a new undertaking addressing these issues. [Link](#)

### Declaration of Services Supplied by Hydro Tasmania

The Office of the Tasmanian Energy Regulator (OTTER) published on 4 January 2010 a statement of reasons for the decision to declare supply of raise contingency frequency control ancillary services (FCAS) supplied by Hydro Tasmania. The OTTER is of the opinion that Hydro Tasmania has substantial market power in the supply of raise contingency FCAS in the Tasmanian region and that the promotion of competition, efficiency and the public interest requires that these services be declared as declared electrical services. Raise contingency FCAS services (fast, slow and delayed) are required to meet local requirements and can frequently only be sourced from Hydro Tasmania. Hydro Tasmania is therefore always the 'marginal cost producer' as it can bid into the market the highest priced megawatt of the services that must be enabled to meet Tasmania's requirement. The OTTER's decision reflects a concern over Hydro-Tasmania's pricing of raise contingency FCAS services and its bidding behaviour in the NEM. The declaration took effect on 3 February 2010. Accordingly, the OTTER commenced investigation into the pricing policies of Hydro Tasmania in providing FCAS. Submissions on the pricing investigation are due 21 May 2010. [Link](#)

### New Gas Access Arrangement Guideline (WA)

The National Gas Access (WA) Act 2009 (NGA) came into effect on 1 January 2010, and amends and implements the National Gas Law (NGL) in Western Australia. The NGA also gives effect to the National Gas Rules (NGR). A key objective of the new national gas access legislation is to implement a uniform national regime. However, there are differences between the NGL as administered by the Australian Energy Regulator (AER) in other jurisdictions and the NGA and amended NGL as applied in Western Australia. On 15 January 2010, the Economic Regulation Authority (ERA) published a guideline outlining these differences. One key difference between the two sets of legislation is that the Natural Gas Services Bulletin Board does not currently apply in Western Australia. In addition, a number of provisions in the NGA are specific to Western Australia. [Notice and Guideline](#)

### USA: FCC Reports National Broadband Plan

The American Recovery and Reinvestment Act of 2009 (Recovery Act) was enacted on 17 February 2009. Under the Recovery Act the FCC is tasked with creating a National Broadband Plan, which is to establish benchmarks to meet the goal of ensuring all people in the USA have access to broadband capability.

In relation to mobile broadband, the FCC Chairman spoke at the New America Foundation on 24 February 2010 about the opportunity presented by mobile broadband for economic growth and job creation. The speech also highlighted the existing problems with mobile broadband such as lack of spectrum and the inability to reach all Americans. [Speech](#)

The National Broadband Plan was formally delivered by the Federal Communications Commission (FCC) to Congress on 17 March 2010. The plan aims to accelerate the broad deployment of broadband by recovering and reallocating spectrum; updating spectrum policies to reflect new technologies and opportunities; removing barriers to broadband buildout, lowering the cost of deployment, and promoting competition; and creating incentives for universal availability and deployment of broadband. It sets out six broad long-term goals:

- (1) At least 100 million US homes should have affordable access to actual download speeds of at least 100 megabits per second and actual upload speeds of at least 50 megabits per second.
- (2) The US should lead the world in mobile innovation, with the fastest and most extensive wireless networks of any nation.
- (3) Every American should have affordable access to robust broadband service, and the means and skills to subscribe if they so choose.
- (4) Every American community should have affordable access to at least 1 gigabit per second broadband service to anchor institutions such as schools, hospitals and government buildings.
- (5) To ensure the safety of the American people, every first responder should have access to a nationwide, wireless, interoperable broadband public safety network.
- (6) To ensure that America leads in the clean energy economy, every American should be able to use broadband to track and manage their real-time energy consumption.



The plan also sets out a number of more specific policies. In relation to broadband infrastructure, for example, the FCC aims to establish lower and more uniform infrastructure rental rates and to establish 'dig-once' policies that would make federal financing of highway, road and bridge projects contingent on states and localities allowing joint deployment of broadband infrastructure. The plan also recommends that 500 megahertz of new spectrum be made available for broadband within ten years, with 300 megahertz of this to be made available for mobile use within five years. The FCC will shortly publish a timetable for implementation of those recommendations that are within its authority. [Link](#)

## UK: Ofgem Publishes Consultation on Future of Network Regulation

*Regulating Energy Networks for the Future: RPI-X@20* is the Ofgem's detailed review of energy network regulation. The Ofgem is considering how best to regulate energy network companies to enable them to meet the challenges and opportunities of delivering a sustainable, low-carbon energy sector whilst continuing to facilitate competition in energy supply. The Ofgem published a document on 20 January 2010 to consult on its emerging thinking on a new regulatory framework. The new framework will seek to focus on sustainability and the delivery of outcomes and outputs related to safe, secure and high quality network services at value for money.

The anticipated regulatory framework would seek to encourage the network companies to change by:

- Putting much greater focus on the delivery of outcomes and outputs related to safe, secure, high quality and sustainable network services at value for money;
- Retaining and, where appropriate, strengthening incentives on companies to constrain costs but with much greater focus on the long-term cost of delivery and considering different (and new) approaches;
- Extending at least part of the regulatory package to more than five years;
- Providing a separate time-limited innovation stimulus common to all the energy networks and open to a range of parties, including non-networks;

- Taking a proportionate approach to the regulatory process, with the depth of our scrutiny of each company's plans depending on their track record for delivering; Aligning incentives between industry participants focused on delivering a low carbon energy sector; and
- Setting clear principles for ensuring network companies earn appropriate returns (on a defined regulatory asset value) for their performance and the level of risk they face, but not bailing out inefficient companies.

The next step of the review will involve the development of a detailed new regulatory framework. Any new framework would begin to be applied in the 2013 round of price control reviews. Comments on the consultation paper are due by 9 April 2010. [Consultation Document](#)

*Network* is a quarterly publication of the Australian Competition and Consumer Commission for the Utility Regulators Forum. For editorial enquiries please contact Rob Albon ([Robert.Albon@acc.gov.au](mailto:Robert.Albon@acc.gov.au)) and for mailing list enquiries please contact Katrina Huntington ([Katrina.Huntington@acc.gov.au](mailto:Katrina.Huntington@acc.gov.au)).