REGULATORY OBSERVER
International and Australian regulatory developments and decisions

19 March 2015

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UK Regulators Network publishes report on affordability

On 20 January 2015, the UK Regulators Network (UKRN) published a report aimed at better understanding affordability pressures across regulated sectors. Established in 2014, the UKRN consists of nine economic regulators. One of the UKRN’s key objectives is to work to understand cross-sector issues related to affordability of services, and work on consumer empowerment to ensure that consumers in regulated markets have the information and other tools necessary to engage effectively in markets.

The report focuses on the energy, communications and water sectors. On average, energy and communications expenditure in the UK is at 5 per cent and 4 per cent of total household income, respectively. Expenditure on water services equates to 1.4 per cent of household income.

The UKRN’s affordability project is organised in two phases. The January 2015 report covers phase one, which considers what affordability means in the context of these sectors, assesses the extent of affordability pressures using quantitative data from regulators and other sources, and summarises the help which is available for consumers who are struggling to afford essential services. The report proposes future work to develop a more coordinated approach among regulators to address affordability problems.

The report notes that it is difficult to present a combined picture of affordability of essential services across all sectors. Different market and regulatory approaches can have an impact. Consumers differ in their needs, circumstances, and other characteristics. Households’ affordability pressures may also differ depending on the area in which they live.

Notwithstanding these issues, available data provide a number of insights regarding the extent of affordability problems in the three sectors. The report notes that:

- energy spend was over 6 per cent of total household expenditure 30 years ago, while it was just under 5 per cent in 2012. However, the share of spend on energy by households in the lowest income decile is nearly three times as high as that of the households in the highest income decile.
- water and sewerage bills have stayed broadly the same since the start of the century, increasing by 4 per cent in real terms over that 15-year period. Between 2015-16 and 2019-20 bills will fall in real terms by 5 per cent to comply with recent regulatory determinations.
- in the communications sector, spending on internet, mobile and fixed voice has remained relatively static in recent years, at just under 4 per cent of household spend, while the quality and choice of services have generally increased.
telecoms markets. The Ofcom expects to release its initial conclusions by the end of the year.

UK: Ofcom allows new wireless technology access to 'TV white space'

On 12 February 2015, the Ofcom decided to allow a new wireless technology access to the unused parts of the radio spectrum in the 470 to 790 MHz frequency band. The new technology, known as white spaces devices, will share this band with Digital Terrestrial Television (DTT). The sharing will take place dynamically, controlled by databases which will hold information on the location of DTT users and white space devices.

UK: Ofcom consults on pay TV regulation

On 19 December 2014, the Ofcom published a consultation as part of its review of the pay TV 'wholesale must-offer' remedy. The review will determine whether regulation requiring Sky to offer its Sky Sports 1 and 2 channels to other pay TV providers remains appropriate. This regulation seeks to ensure fair and effective competition in the UK's pay TV sector. The Ofcom's assessment indicates that Premier League and Champions League football are key content likely to be capable of influencing consumers' choice of pay TV retailer.

GERMANY: Telekom applies to introduce vectoring near local exchanges

On 24 February 2015, Telekom Deutschland GmbH (Telekom) applied to the Bundesnetzagentur for changes to the regulatory framework, so as to allow the company to introduce vectoring within 550 metres of a main distribution frame at a local exchange. Currently it is only possible for technical reasons to feed in VDSL signals at a main distribution frame in a local exchange, where local loops end, and not at a nearby sub-loop distribution frame, or street cabinet. This is to prevent mutual interference between VDSL signals fed in at two points close together. Telekom states that its competitors' present options to access the local loop at the exchange need to be restricted so as to enable vectoring to be introduced at the cabinets as well.

FRANCE: ARCEP publishes market indicators for wholesale and retail fixed broadband

On 5 March 2015, the Autorité de régulation des communications électroniques et des postes (ARCEP) published market indicators for wholesale and retail fixed broadband services in France for the December 2014 quarter. At the end of 2014, there were 3.1 million superfast broadband subscriptions in use (a 50 per cent increase in a year) of which 935,000 were fibre to the home, which marks a 67 per cent increase over the year before.

Americas

US: FCC adopts Open Internet rules

On 26 February 2015, the Federal Communications Commission (FCC) adopted new Open Internet rules. The rules apply to both fixed and mobile broadband services. The 'bright line' rules dictate there will be no blocking or throttling of lawful internet traffic by internet service providers (ISPs). ISPs must also not favour some lawful internet traffic over other lawful traffic in exchange for consideration of any kind. This rule also bans ISPs from prioritising content and services of their affiliates.

US: FCC finds significant broadband divide between urban and rural America
On 29 January 2015, the FCC reported on US broadband speeds using updated benchmarking speeds of 25 megabits per second (Mbps) for downloads and 3 Mbps for uploads. The previous standard set in 2010 was 4 Mbps/1 Mbps. Using the new benchmark, the FCC found that 17 per cent of the population lacks access to advanced broadband. Moreover, a significant disparity in broadband access remains between urban and rural America. Over half of all rural Americans lack access to the benchmark service.

Oceania

NZ: Commerce Commission issues draft decisions on prices of copper lines and broadband service

On 2 December 2014, the Commerce Commission of New Zealand (CCNZ) released draft decisions for consultation setting proposed prices that Chorus can charge for use of their local copper lines and broadband service. The proposed maximum monthly rental price for Chorus's unbundled copper local loop (UCLL) is $NZ28.22, an increase on the current price of $NZ23.52 that was established by international benchmarking at the end of 2012. The additional proposed maximum monthly rental price for the unbundled bitstream access (UBA) service is $NZ10.17, a small decrease on the price of $NZ10.92 that was established by benchmarking at the end of 2013.

ENERGY

Europe

UK: Ofgem proposes approving three new electricity interconnectors

On 6 March 2015, the Office of Gas and Electricity Markets (Ofgem) began consulting on proposals to approve the need for three new electricity interconnectors. These could be built by 2020 and provide around 3.4GW of electricity capacity. Two of the interconnectors (FAB Link and IFA2) will connect Great Britain’s electricity system with France and one (Viking Link) with Denmark.

UK: Ofgem sets out final proposals for regulating suppliers who sell energy using white labels

On 20 February 2015, the Ofgem set out final proposals for regulating suppliers who sell energy using white labels in the domestic energy market. From July 2015, suppliers will have to be more transparent and tell customers what their cheapest tariff is regardless of the brand they use. White labels are organisations that do not hold a supply licence, but instead work in partnership with a licensed supplier to offer gas and electricity using their own brands.

Oceania

NZ: Commerce Commission releases final decision on Transpower’s reliability project amendment application

On 26 February 2015, the CCNZ released its final decision approving Transpower’s application for an amendment to the Stage 1 Upper South Island reliability project. It increases Transpower’s major capex allowance from $NZ4.99 million to $NZ7.99 million for the project, and makes changes to the list of approved major capex project outputs that Transpower must deliver as part of the project.

Australian Regulatory Round-up

GENERAL

ACCC/AER publish paper exploring Better Economic Regulation of Infrastructure

On 13 March 2015, the Australian Competition and Consumer Commission (ACCC) and Australian Energy Regulator
COMMUNICATIONS

ACCC releases draft prices access seekers will pay to use Telstra’s copper network

On 11 March 2015, the ACCC issued its draft decision on the prices that other operators pay Telstra to use its copper network to provide telecommunications services to consumers. The draft decision covering 1 July 2015 to 30 June 2019 is for a one-off uniform fall in access prices of 0.7 per cent for the seven access services.

ACCC report confirms consumers continue to benefit from falling prices for telecommunications services

On 6 March 2015, the ACCC released its annual telecommunications reports, which show that the prices paid by consumers for telecommunications services fell by 2.7 per cent in real terms in 2013-14. The reports reveal that the average real prices of landline and mobile voice calls have now fallen by around 50 per cent since 1997-98. Broadband customers are also benefiting from larger data allowances, faster speeds and lower prices.

iiNet Limited pays penalties following ACCC infringement notices for Naked Broadband Plan advertisements

On 3 March 2015, iiNet Limited (iiNet) paid penalties of $204,000 following the issuing of two infringement notices by the ACCC in relation to recent advertisements for iiNet’s Naked Broadband 250GB Plan. The infringement notices were issued because the ACCC had reasonable grounds to believe that iiNet’s advertisements contravened the Australian Consumer Law (ACL) by failing to prominently state the total minimum price of the service.

ACCC issues draft determination on NBN Co’s LTRCM

On 19 February 2015, the ACCC issued a draft determination on NBN Co’s Long Term Revenue Constraint Methodology (LTRCM). NBN Co’s LTRCM proposal sets out the values and calculations required to determine the amount of revenue NBN Co is allowed to earn each financial year to recover its costs of providing services. The ACCC’s draft view is that NBN Co’s proposal meets the expenditure criteria set out in its Special Access Undertaking.

ENERGY

Snowy Hydro ordered to pay penalties for failure to comply with AEMO dispatch instructions

On 12 February 2015, the Federal Court of Australia ordered by consent that Snowy Hydro Limited (Snowy Hydro) pay total penalties of $400,000 for failing to comply with the Australian Energy Market Operator (AEMO) dispatch instructions in contravention of the National Electricity Rules, in proceedings brought by the AER. The Court declared by consent that Snowy Hydro had breached the National Electricity Rules on nine occasions in 2012 and 2013, by failing to comply with dispatch instructions issued by the AEMO. On each occasion, Snowy Hydro generated more power than the dispatch instruction required.

Origin Companies ordered to pay penalties for misleading consumers about discounts under energy plans

On 10 February 2015, the Federal Court of Australia ordered by consent that Origin Energy Limited and two of its subsidiaries (Origin) pay penalties totalling $325,000 for contravening the Australian Consumer Law (ACL) by making false or misleading representations concerning the level of discount that residential consumers in South Australia would receive under a DailySaver energy plan. These proceedings were brought by the ACCC.

AER releases new electricity post-tax revenue models

On 29 January 2015, the AER published new versions of the post-tax revenue models (PTRMs) that apply to future electricity distribution and transmission determinations. The main change is that the new PTRMs allow the rate of return on debt to vary each year within the regulatory control period.

AER releases review of energy retailers’ hardship policies and practices

On 28 January 2015, the AER released a report on its targeted review of energy retailers’ hardship policies and practices. The review suggested many community concerns about hardship assistance and payment plan affordability are linked to broader issues of energy affordability and a lack of consumer awareness about the assistance available to them. The concerns do not indicate widespread failure by the retailers to meet their hardship obligations.
ACCC announces first regional petrol market study in Darwin

On 10 March 2015, the ACCC announced Darwin as the first regional location being studied under the new petrol monitoring arrangements launched by the Minister for Small Business, the Hon Bruce Billson MP, in December 2014. The aims of the regional-market studies are to identify why prices are higher in certain regional locations and to identify and explain each component of the prices paid by consumers. The ACCC is seeking information from interested parties by 31 May 2015.

ACCC releases its first quarterly petrol report

On 26 February 2015, the ACCC released the first quarterly report into the Australian petroleum industry. The report covers the period from June to December 2014 with some additional information to end January 2015. This report follows Minister Bruce Billson’s direction in December 2014 to monitor and analyse fuel markets and report at least quarterly for a period of three years.

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