



Australian  
Competition &  
Consumer  
Commission

Issue 64

# REGULATORY OBSERVER

International and Australian regulatory  
developments and decisions

28 August 2015



**02** UK Government  
launches productivity  
plan

**03** International  
Regulatory Round-up

**04** Australian Regulatory  
Round-up



# UK Government launches productivity plan

On 10 July 2015, the United Kingdom (**UK**) Government published [Fixing the foundations: creating a more prosperous nation](#). The document sets out a 15-point plan aimed at boosting the UK's productivity growth, centered on two key pillars: encouraging long-term investment; and promoting a dynamic economy.

Stimulating long-term investment in economic infrastructure is one of the key areas dealt with in the plan. The plan includes the following three infrastructure aspirations:

- A modern transport system: including the creation of a new Roads Fund from 2020-21, financed from Vehicle Excise Duty, and a plan to get Network Rail and the rail investment programme performing better.
- Reliable and low-carbon energy: ensuring that the UK attracts necessary investment to guarantee secure energy supplies and a review of business energy tax policy to improve and simplify the landscape.
- World-class digital infrastructure: including ensuring that superfast broadband is available to 95 per cent of UK households and businesses by 2017 and making it easier for the market to deploy fixed and mobile infrastructure with proposals to reform planning rules on taller masts.

The plan also sets out that the Government will pursue a set of policies that are intended to support open and competitive markets, with the minimum of regulation. The Government has committed to:

- cutting a further £10 billion of red tape;
- introducing new principles for consumer switching, and legislate to support quick and easy switching in communications markets;
- champion enterprise, stimulating finance for Small and Medium-sized Enterprises; and
- publish a Digital Transformation Plan, with actions to support the adoption of digital technologies across the economy.

In response to the Government's Cutting Red Tape programme, an [energy sector review](#) has begun. This review covers the whole energy sector apart from retail markets, which is being reviewed by the Competition and Markets Authority's (**CMA**) energy market investigation. The review is asking stakeholders to identify where regulation or the implementation of regulation is causing unnecessary problems.

# International Regulatory Round-up

## COMMUNICATIONS

### Europe

#### EU: European institutions reach agreement on single telecommunications market

On 30 June 2015, the European Commission (**EC**), European Parliament and European Council reached [agreement](#) after two years of negotiations to pursue measures to support a single European telecommunications market. The agreement includes an end to roaming charges in June 2017. When travelling in the EU, mobile phone users will pay the same price as at home, with no extra charges. In addition, net neutrality rules will be implemented to protect the right of every European to access internet content, without discrimination.

#### UK: Ofcom releases Communications Market Report

On 6 August 2015, the Office of Communications (**Ofcom**) released the [2015 Communications Market Report](#). The report found that smartphones have overtaken laptops as the most popular device for accessing online services. Two thirds of people now own a smartphone, using it for nearly two hours every day to browse the internet.

#### UK: Ofcom completes first phase of digital communications review

On 16 July 2015, the Ofcom released a [discussion document](#) as part of the Strategic Review of Digital Communications,

announced in March 2015. The document summarises the main elements of the review. This is the Ofcom's first strategic assessment of the telecommunications sector in ten years.

#### UK: Ofcom proposes to open up BT fibre for business lines

On 15 May 2015, the Ofcom proposed that companies wishing to provide high-speed telecommunications lines for businesses would be granted access to BT's fibre networks. The measure is designed to promote competition and innovation in the £2 billion market for 'leased lines' – dedicated, high-speed data links used by large businesses and mobile and broadband operators to transfer data on their networks. The Ofcom expects to publish its final decisions in the first quarter of 2016, taking effect in April 2016.

#### FRANCE: ARCEP commences strategic review

On 24 June 2015, the Autorité de régulation des communications électroniques et des postes (**ARCEP**) commenced a [strategic review](#) of its priorities for future years. This process will span the second half of 2015 and conclude with a strategic roadmap, which will be submitted to consultation later in the year, with a view to adoption in 2016.

### Americas

#### US: FCC's Open Internet rules take effect

On 12 June 2015, the Federal Communications Commission's (**FCC**) [Open Internet rules](#) came into effect. The rules prohibit the blocking, throttling or paid prioritisation of lawful content. The rules apply to both fixed and mobile broadband services.

#### CANADA: CRTC invites Canadians to participate in

#### project measuring broadband performance

On 21 May 2015, the Canadian Radio-television and Telecommunications Commission (**CRTC**) [invited](#) up to 6 200 Canadians to participate in a project that will measure the performance of their home broadband internet services. The CRTC is collaborating with major internet service providers across the country and SamKnows, a company that specialises in measuring broadband services.

### Oceania

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

On 2 July 2015, the Commerce Commission of New Zealand (**CCNZ**) released [draft decisions](#) for consultation setting proposed wholesale prices that Chorus can charge for use of its local copper lines and broadband service over the next five years. The proposed maximum monthly rental prices that Chorus can charge for its unbundled copper local loop (**UCLL**) and unbundled bitstream access (**UBA**) service change slightly over the five years, but average \$NZ 27.59 and \$NZ 10.84 per month respectively. The total price Chorus can charge for its wholesale broadband service averages \$NZ 38.43 per month.

#### NZ: Commerce Commission releases annual telecommunications monitoring report

On 8 June 2015, the CCNZ released its annual [telecommunications monitoring report](#) analysing the state of New Zealand's telecommunications markets. The report found that competition among fixed-line retailers remains strong. Average broadband speeds are increasing and the average data consumed

per connection per month has grown from 26 gigabytes (**GB**) in the previous year to 32GB.

## ENERGY

### Europe

UK: CMA publishes provisional findings after investigation into the energy market

On 7 July 2015, the CMA published its [provisional findings](#) after a year-long investigation into the UK energy market. The CMA has highlighted a range of problems hindering competition in the market, including the extent to which consumers are engaged in the market and shortcomings in regulation and the ability to deliver change across the market. It also points to the need for a coherent and transparent approach to responsibilities and policy implementation by those overseeing the industry.

### Oceania

NZ: Commerce Commission confirms North Island Grid Upgrade Project decision

On 6 August 2015, the CCNZ released its [final decision](#) increasing the amount Transpower can recover for the North Island Grid Upgrade (**NIGU**) Project by \$NZ 52.3 million. The NIGU Project was part of a suite of initiatives aimed at improving security of electricity supply to Auckland and Northland. Transpower applied to the CCNZ to recover \$NZ 70 million more than the amount of \$NZ 824 million approved by the Electricity Commission in 2007.

## OTHER INFRASTRUCTURE

### Europe

UK: Ofcom to review the regulation of Royal Mail

On 16 June 2015, the Ofcom announced a [fundamental review](#) of the regulation of Royal Mail. The review seeks to ensure that regulation remains appropriate and sufficient to secure the universal postal service. This follows the recent withdrawal by Whistl from the 'direct delivery' letters market, which resulted in Royal Mail no longer being subject to national competition. The review is expected to be completed, and a revised regulatory framework put in place, during 2016.

### Oceania

NZ: Commerce Commission releases final report on Wellington Airport's revised pricing

On 30 June 2015, the CCNZ released its [final report](#) confirming Wellington International Airport Limited (**WIAL**) is targeting returns for the period from 1 June 2014 to 31 March 2019 that fall within the estimated range of acceptable returns. WIAL revised its landing fees after the CCNZ reviewed its performance and found the airport was targeting excessive profits. The CCNZ's analysis estimates WIAL has set its prices targeting a return of 8.4 per cent, which is just within the upper limit of an acceptable range of 7.4 per cent to 8.4 per cent.

## Australian Regulatory Round-up

## COMMUNICATIONS

ACCC releases final decision on mobile call and SMS terminating charges

On 24 August 2015, the ACCC released its [final decision](#) on the price that mobile network operators should charge each other and fixed-line network operators for receiving calls on their mobile network. For the first time, the ACCC has also decided on a price for mobile network operators to charge to receive SMS messages. The ACCC has decided that the wholesale price of terminating calls on an Australian mobile network should be 1.7 cents per minute, reduced from the current rate of 3.6 cents per minute. The ACCC has decided to set the price mobile network operators charge to receive SMS messages at 0.03 cents per SMS.

ACCC to not oppose acquisition of iiNet by TPG

On 20 August 2015, the ACCC [announced](#) that it will not oppose TPG Telecom Limited's (**TPG**) proposed acquisition of iiNet Limited (**iiNet**). The ACCC found that the combined competitive constraint from the other major retail fixed broadband suppliers, Telstra, Optus, and M2 (which operates brands including Dodo and iPrimus) would be likely sufficient to limit the harm to competition from this merger.

ACCC proposes to approve revised NBN arrangements with Optus

On 23 July 2015, the ACCC released a [draft decision](#)

proposing to grant authorisation to specific provisions within revised agreements between NBN Co and Optus. These arrangements involve the progressive migration of Optus's hybrid fibre coaxial (HFC) subscribers to the new multi-technology National Broadband Network (NBN), while parts of Optus's HFC network are integrated into the NBN. The revised agreements form part of a broader transaction between the parties which involves the acquisition of Optus's HFC assets.

## ENERGY

### Draft report released on governance arrangements for Australian energy markets

In July 2015, the Expert Panel for the Review of Governance Arrangements for Australian Energy Markets released its [Draft Report](#). The Draft Report makes observations about the current governance arrangements of the Australian energy market and provides preliminary recommendations on how these may be improved. Submissions in response to the draft report were due on 24 August 2015.

### AER releases June 2015 Quarterly compliance report

On 17 August 2015, the AER published its latest [Quarterly compliance report: National Electricity and Gas Laws](#). The report summarises the AER's compliance monitoring and enforcement activities in the wholesale electricity and gas markets during the April-June 2015 period. It provides an overview of the results of investigations, compliance audits and projects undertaken during the quarter.

### AER publishes access arrangement proposal for the Amadeus Gas Pipeline

On 5 August 2015, the AER published a [gas access arrangement proposal](#) from APT Pipelines (NT) Pty Ltd for the Amadeus Gas Pipeline. The AER is required under the National Gas Rules (NGR) to determine the revenue allowance for this pipeline. The proposal covers the access arrangement period 1 July 2016 to 30 June 2021.

### AER commences review of cost thresholds for the regulatory investment test

On 31 July 2015, the AER commenced a [review](#) of the cost thresholds associated with the Regulatory Investment Test for Transmission (RIT-T) and the Regulatory Investment Test for Distribution (RIT-D). The RIT-T and RIT-D are cost-benefit tests that network businesses must apply to identify the most efficient option to address a need on its network. The test applies for only transmission and distribution investments above certain cost thresholds set out in the National Electricity Rules. Stakeholders will be invited to provide written submissions on the draft determination.

## OTHER INFRASTRUCTURE

### ACCC releases June quarter 2015 petrol report

On 10 August 2015, the ACCC released the third [quarterly report](#) into the Australian petroleum industry for 2015. The report shows that in the June quarter 2015 the average retail petrol price in the five largest cities (Sydney, Melbourne, Brisbane, Adelaide and Perth) was 135.8 cents per litre (cpl). This was 16.9 cpl higher than in the March quarter (118.9 cpl). The increase was influenced

by rising international crude oil and refined petrol prices and a marginally weaker AUD-USD exchange rate.

### ACCC announces third regional petrol market study in Armidale

On 3 August 2015, the ACCC announced that Armidale will be the third regional location to be studied as part of the petrol monitoring arrangements launched by the Minister for Small Business, the Hon Bruce Billson MP, in December 2014. These detailed regional market studies aim to explain each component of the prices paid at the bowser to understand why prices are higher in some regional locations. The ACCC commenced its first regional market study in Darwin in March 2015 and its second in Launceston in May 2015. The ACCC expects to report on these market studies by the end of this year.

### ACCC exempts Newcastle Agri Terminal and Qube from the Wheat Code at the Port of Newcastle

On 30 July 2015, the ACCC released [determinations](#) to exempt Newcastle Agri Terminal's (NAT) and Qube Holdings Limited's (Qube) bulk wheat terminals at the Port of Newcastle from certain parts of the Port Terminal Access (Bulk Wheat) Code of Conduct. The ACCC believes that there is sufficient competition in the market for bulk wheat terminal services at the Port of Newcastle to warrant granting the exemptions to NAT and Qube.

### ACCC draft decision proposes to exempt two Port Kembla wheat ports

On 30 July 2015, the ACCC released [draft decisions](#) proposing to exempt GrainCorp and Quattro from having to comply with certain parts of the Port Terminal Access

(Bulk Wheat) Code of Conduct when providing port-terminal services at Port Kembla. The draft decisions propose to exempt both facilities once Quattro's facility, which is in the final stages of development, is completed. The ACCC's draft view is that there will be a sufficient level of competition at Port Kembla once Quattro becomes operational, and that at that time it will be appropriate to apply the same level of regulation to those two competitors.

### ACCC draft decision to not accept Viterra's long-term agreements

On 16 July 2015, the ACCC released a [draft decision](#) under the Port Terminal Access (Bulk Wheat) Code of Conduct not to approve Viterra Operations Limited's (**Viterra**) application to introduce long-term agreements for the allocation of port capacity at its six South Australian wheat ports. The ACCC is concerned that under the current proposal Viterra has considerable discretion in relation to the allocation of long-term capacity in the event of oversubscription. Viterra would have the ability and incentive to favour its own trading arm, Glencore, in any such allocation.

---

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