INTERNATIONAL REGULATORY ROUND-UP

Airports

Oceania

NZ: NZCC Announces Airports Information Disclosure Requirements

The New Zealand Commerce Commission (NZCC) has announced that the information disclosure requirements for specified airport services supplied at Auckland, Wellington and Christchurch airports have been determined. The information disclosed by the airports will include: historical financial information; quality measures; forecast revenue requirements; and pricing information. As a transitional measure, the airports have 11 months after the end of their 2011 financial year to complete their first disclosures. The purpose of information disclosure regulation in New Zealand is to ensure that sufficient information is readily available to assess whether outcomes in regulated markets are consistent with those produced in competitive markets.

Communications

Americas

US: FCC Releases Local Telephone Competition Report

The Federal Communications Commission (FCC) has released the third Local Telephone Competition report, based on comprehensive information about subscribership to interconnected Voice over Internet Protocol (VoIP) service as well as more traditional telephone lines. The report summarises data collected by the FCC as of 31 December 2009. It indicates that the Interconnected VoIP service represents an important and rapidly growing part of the US voice-service market.

Oceania

NZ: NZCC Releases Latest Broadband Report

The NZCC has released a report into the quality of New Zealand’s broadband services. The report, covering the period from 1 January to 30 June 2010, aims to provide a comparison of the relative performance of internet service providers in delivering broadband services in the major New Zealand cities. It finds that the overall quality of these services is continuing to improve. Specifically, there has been a continuing reduction in variability of web browsing speeds over the course of the day, an improvement in internet availability, and reduced downtime. The report also shows the benefits of local loop unbundling which continues to provide greater choice and better services for consumers.

Energy

UK: Ofgem Issues Fifth Report for the Energy Demand Research Project

The Ofgem has issued the fifth and penultimate report for the Energy Demand Research Project (EDRP). The EDRP is a suite of trials designed to investigate consumer response to improved feedback on their energy use. The trials started...
in 2007 and data collection finished in September 2011. This progress report identifies some of the practical experiences from the trials and some of the headline messages emerging from the Ofgem’s interim analysis.

Water

Europe


The Ofwat has released a report titled, Lessons from our Approach to Setting Price Limits (PR09), which considers the lessons from the 2009 price review (PR09) process. The report looks at how the Ofwat conducted and managed the price review, and how it worked and communicated with stakeholders as well as identifying the process-related lessons from the price review. Strategic issues identified in the report will be addressed by the Ofwat’s future program of work, including future price limits and regulatory compliance projects. The report, however, does not seek to review PR09 decisions on actual price limits.

INTERNATIONAL REGULATORY REVIEWS

Communications

Americas

US: FCC Acts to Preserve Internet Freedom and Openness

The FCC has released a Report and Order which aims to preserve the Internet as an open network enabling consumer choice, freedom of expression, user control, competition and the freedom to innovate. The FCC has adopted three basic rules – transparency, no blocking, and no unreasonable discrimination. This follows a public process instigated by the FCC in 2009 to determine whether and what actions might be necessary to preserve the characteristics that have allowed the Internet to grow into a valuable platform, and to foster continued investment in the physical networks that enable the Internet.

US: FCC Grants Approval of Comcast-NBCU Joint Venture

The FCC has released an Order granting, with conditions and enforceable commitments, approval of the assignment and transfer of control of broadcast, satellite, and other radio licences from General Electric Company (GE) to Comcast Corporation. The approval will allow GE and Comcast to create a joint venture involving NBC Universal, Inc. and Comcast. The FCC has determined that granting the application, with conditions and enforceable commitments, is in the public interest.

Europe

UK: Ofcom Publishes Supplementary Consultation to its Mobile Call Termination Market Review

The Ofcom has published a supplementary consultation to its Mobile Call Termination market review, following feedback from stakeholders to its April 2010 consultation. The document provides draft guidance on how the Ofcom intends to interpret fair and reasonable rates for providers not subject to charge controls, in particular for different types of smaller mobile communications providers. The Ofcom aims to publish a statement on its Mobile Call Termination market review by the end of March 2011.

UK: Ofcom Consults on Internal Processes

The Ofcom has published four consultations about the way it conducts its internal processes. These areas include: dispute resolution for the handling of regulatory disputes; procedures for handling broadcasting complaints, investigations
and sanctions; procedures for handling appeals on scope, and for imposing sanctions in relation to On-Demand Programme Services; and penalty guidelines. The deadline for submissions on the consultations is 11 February 2011.

Oceania

NZ: NZCC Recommends Deregulation of some Resale Services

The NZCC has recommended that a number of resale services that Telecom New Zealand Limited (Telecom NZ) provides to other telecommunications companies should no longer be regulated. Specifically, the NZCC has recommended that resold broadband services, data services and bundled resale services be deregulated given the current low take up of the services and the availability of alternative services. Resale services for which there are limited alternatives, and a significant take up of resale services should remain regulated. The NZCC has also recommended that the ability for wholesale customers to gain access to parts of a retail bundle offered by Telecom should be retained.

NZ: NZCC Decides Not to Regulate Telecom’s VDSL2 Service

The NZCC has decided that a new wholesale VDSL2 service offered by Telecom NZ does not need to be regulated. The NZCC considers that the VDSL2 service incorporates a number of features not included in the regulated unbundled bitstream access (UBA) service, and it is appropriate for the price of the enhanced service to be determined by the market. This decision follows an earlier decision by the NZCC which confirmed that Telecom NZ has the ability to develop and offer on a commercial basis new bitstream services which incorporate features which are not included in the regulated UBA determination.

NZ: NZCC Releases Draft Determination for Mobile Termination Access Services

The NZCC has issued its draft determination on the mobile termination access services. The NZCC’s view is that wholesale price for voice calls to a mobile network should be set at a cost-based benchmark, starting at a rate of 4.6 cents per minute. For text the NZCC has adopted a bill and keep (zero charge) approach, in recognition of the fact that the cost of terminating text is low and inter-carrier traffic is fairly balanced. The NZCC will now seek submissions and cross-submissions on the draft determinations. Following submissions, the NZCC will hold a conference with interested parties before releasing a final determination in March 2011.

Singapore: IDA Revises Telecommunications Competition Code

The Infocomm Development Authority of Singapore (IDA) has revised the Code of Practice for Competition in the Provision of Telecommunication Services (the Code) which applies to all licensees under the Telecommunications Act. The changes will take effect from 21 January 2011 and are designed to enhance consumer protection and promote competition in telecommunications. Among changes intended to protect consumers is a prohibition on telecommunications licensees from imposing automatic charges on consumers after a free trial of their service has ended, unless the consumer has expressly agreed to continue with the service. Licensees will also be prevented from ‘cross-terminating’ a consumer’s service agreement if the consumer breaches the terms and conditions of another service agreement from an affiliated operator or if the consumer is subscribed to a basic telephone service. Among changes to the Code which aim to further promote competition is an amendment which allows the IDA to apply the prohibition against abuse of a dominant position to any
licensees which have significant market power, not just those classified as Dominant Licensees.

**Energy**

**Europe**

**Germany: Bundeskartellamt Releases Final Report of Inquiry into Wholesale Electricity Market**

The Bundeskartellamt has published the final report of its inquiry into the electricity wholesale sector which it launched in March 2009. The object of the inquiry was to examine competition and pricing in the German electricity production and wholesale markets in 2007 and 2008. The inquiry revealed that competition in generation is weak and the sector is highly concentrated, with four companies representing 80 per cent share of generator sales. The Bundeskartellamt considers that the generators have the incentive and ability to withhold supply to force up prices on the electricity exchange, although it found no evidence that this had happened. Nevertheless, the Bundeskartellamt considers it is appropriate to continue to subject this sector to effective control by the German competition authorities and provides an analytical framework for detecting abuses of market power in the future. The Bundeskartellamt also strongly supports a transparency scheme proposed by the German government which would provide timely and direct access to the data necessary to support the analytical framework.

**UK: DECC Publishes Consultation on Electricity Market Reform**

The UK Department of Energy and Climate Change (DECC) has published a consultation on the government’s preferred electricity market framework, known as the electricity market reform (EMR) project. The EMR Project will develop and deliver a new market framework to enable the efficient and secure supply of low-carbon energy. The intention is that the White Paper setting out legislative proposals to implement the new electricity market arrangements will be released in the late UK spring 2011. The deadline for submissions on the consultation is 10 March 2011.

**UK: Utility Regulator Publishes SONI Price Control 2010-2015 Consultation Paper**

The Utility Regulator has published a consultation paper which considers the Northern Ireland transmission operator, SONI’s, allowed revenue for the 2010-2015 regulatory period. The paper seeks views on the proposed approach to the price control, the proposed duration of the price control, the proposed operating costs, the proposed capital expenditure, the regulatory asset base, depreciation, weighted average cost of capital, and incentive mechanisms. The deadline for submissions is 4 March 2011.

**UK: Ofgem Consults on Guidance on Third Party Access Charges for Licence Exempt Distribution Networks**

The Ofgem has issued a consultation document on guidance on third-party access charges for gas and electricity distribution networks that are not required to operate under a licence (licence exempt). Currently, licence-exempt gas and electricity distribution networks are not required to provide third-party access. However, they will have an obligation to provide access once the legislation implementing the EU’s Third Energy Package has come into force. The consultation document seeks views on a high-level common methodology for the setting of network tariffs by licence-exempt network owners and on a process for approving the methodologies of licence-exempt network owners for calculating network tariffs. The deadline for submissions is 31 January 2011.
UK: Ofgem Issues Consultation on Cost Recovery Approaches for Determinations

The Ofgem has issued a consultation document on its proposed approach to recovering some of the costs of its dispute determination work. It is seeking views on the circumstances in which it may be appropriate for it to recover costs from parties and the factors that should be taken into account before it seeks to do so. The document also seeks views on the most appropriate approach to cost recovery. The deadline for submissions is 31 January 2011.

UK: Ofgem Consults on Strategy for RIIO-GD1 and RIIO-T1

The Ofgem has issued a consultation paper on its strategy for the next gas distribution price control (RIIO-GD1). It has also issued a separate consultation paper on its strategy for the next gas and electricity transmission price control (RIIO-T1). These price controls will set the outputs that the eight gas distribution networks (GDNs) and the four transmission networks need to supply and the associated allowed revenues for the eight-year period from 1 April 2013 to 31 March 2021. They will be the first distribution and transmission price controls to reflect the new RIIO (Revenue = Incentives + Innovation + Outputs) model. The deadline for submissions for both consultations is 4 February 2011.

UK: Ofgem Publishes Consultation on Electricity Distribution Economic Asset Lives

The Ofgem is in the process of establishing economic asset lives for gas and electricity transmission networks and for the gas distribution network as part of the RIIO-T1 and GD1 price controls for the period 2013-2021. As part of this, the Ofgem is also examining economic asset lives in electricity distribution to apply from April 2015. However, in recognition of the importance of the issue, the Ofgem has commenced an open letter stand-alone consultation on electricity distribution asset lives. This consultation sets out: the current regulatory asset lives for electricity distribution assets, the Ofgem’s initial assessment of the average economic asset lives for the network and the most appropriate depreciation profiles to be used, and a discussion of transitional arrangements. The deadline for submissions is 25 February 2011.

UK: Ofgem Publishes Consultation on ‘Relevant Points’ of a Transmission System

The Ofgem has published a consultation letter which outlines its proposal for the classification of ‘relevant points’ of a transmission system as required by Article 18 (4) of the EC’s Gas Regulation. Certain information must be disclosed in relation to these relevant points. The Ofgem is also seeking views on any points which should not be defined as relevant points, as well as whether there are additional points which should be defined as relevant points. The deadline for submissions is 1 March 2011.

UK: Ofgem Publishes Initial Consultation on Gas Security of Supply Significant Code Review

The Ofgem has published an initial consultation for the Gas Security of Supply Significant Code Review (Gas SCR). The aim of the Gas SCR is to assess whether reforms to the current gas market arrangements are required to improve security of supply, and if so, what these reforms should be. The consultation sets out a range of options for consultation including potential changes to the emergency arrangements, compensation for disconnected customers and the case for security of supply obligations. The deadline for submissions is 22 February 2011.
UK: Ofgem Publishes Initial Findings and Consultation on Proposed Metering Industry Remedies

The Ofgem has published a consultation as part of its Review of Metering Arrangements (ROMA). This consultation presents the Ofgem’s ‘minded to’ position on metering issues faced by both industry and consumers in the coming years. The deadline for submissions on the consultation is 14 February 2011.

Oceania

NZ: NZCC Finalises Input Methodologies

The NZCC has set input methodologies that will apply to electricity distribution businesses, Transpower, gas pipeline businesses and specified airport services under Part 4 of the Commerce Act. Input methodologies are the rules, processes and requirements applying to regulation under Part 4 of the Act. The release of the final determinations is the culmination of a major consultation which began in December 2008. Following the publication of the determinations, interested parties are able to lodge a merits review appeal of the determinations in the High Court.

NZ: NZCC Releases Final Individual Price Quality Path Determination for Transpower

The NZCC has released the final individual price-quality path determination for electricity lines services supplied by Transpower. The individual price-quality determination sets out the approach for calculating Transpower’s annual revenues, and operates in conjunction with the applicable input methodology determinations (see above). The determination also includes requirements for Transpower to report against certain quality measures, targets and standards in relation to the electricity lines services it provides.

Other

UK: Utility Regulator Publishes Discussion Paper on the Financing of Regulated Networks

The Northern Ireland Authority for Utility Regulation (Utility Regulator) began a major project in 2009 to identify synergies and price control best practice across the utility areas that it regulates. An area of particular interest is the financing of regulated networks given the degree of infrastructure investment which will be required in Northern Ireland over the next two decades. It has now released a commissioned report by First Economics which assesses previous project financing and principles applied by other regulators, outlines a range of options available for the financing of regulated networks; and assesses the pros and cons of each option. The deadline for submissions on the discussion paper is 18 February 2011.

Americas

Canada: CTA Publishes Determination of Western Grain Revenue Caps

The Canadian Transportation Agency (CTA) has published determinations of the Western Grain Revenue Caps, and revenue, for the movement of western grain by prescribed railway companies for crop-year 2009-2010. The CTA declared that the revenues of the Canadian National Railway Company (CN) and the Canadian Pacific Railway Company (CPR) for the movement of Western grain had not exceeded their respective revenue caps for crop-year 2009-10. Crop-year 2009-10 is the first year since 2002-03 that both railways have been under their respective caps.
Europe

UK: ORR Consults on Regulation of Borders Railway

The Office of Rail Regulation (ORR) has launched a consultation on its approach to the regulation of Borders Railway, the proposed new rail line between Edinburgh and Tweedbank which will connect with Network Rail’s main network at a point south of the existing Newcraighall station, near Millerhill. The ORR expects to regulate Borders Railway in broadly the same way as the national network, whilst acknowledging the differences between it and the national network. When the new line opens in 2014, the ORR will take responsibility for a number of key functions, including: regulating the network through a network licence; licensing operators of railway assets; and establishing the charging framework and the specific charging rules that govern how access charges are to be determined. The deadline for submissions on the consultation is 21 February 2011.

Other

Europe

UK: BIS Calls for Submissions on the Principles of Economic Regulation

The UK Department of Business Innovation and Skills (BIS) has released a report and called for submissions on its proposed cross-sector principles of economic regulation. The principles focus on the infrastructure areas overseen by the Ofcom, the Ofgem, the Civil Aviation Authority and the Office of Rail Regulation. The consultation is in the context of the UK Government’s Growth Review and National Infrastructure Plan and the need for substantial investment in economic infrastructure to meet the challenges of continuing growth, the maintenance of the UK’s international competitiveness and climate change. The National Infrastructure Plan identified a number of issues with the current economic regulation, including a lack of clarity in the roles of economic regulators and around the long-term strategy for regulation, and weak dialogue between regulators on common issues including aspects of price control, competition and consumer affordability. Thus, the UK Government considers it is important to revisit the current regulatory regime to ensure it provides the right degree of clarity, certainty and consistency. The deadline for submissions on the principles is 18 February 2011.

AUSTRALIAN REGULATORY REVIEWS

Communications

ACCC to Issue Interim Access Determinations for Telecommunications Fixed Line Pricing in Early 2011

The Australian Competition and Consumer Commission (ACCC) has advised that it will issue Interim Access Determinations in early 2011 covering price and non-price terms for the fixed-line services using the new powers conferred on it by the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010. Following consultation on new pricing principles to apply from January 2011, the ACCC proposed a shift from its previous pricing methodologies (TSLRIC+ and RMRC) to a new building-block model pricing methodology in draft pricing principles and prices which were released in September 2010.

Government Releases ACCC’s Advice on Points of Interconnect to the National Broadband Network

The Government has released the ACCC’s advice on the number and location of initial Points of Interconnect (POI) to the National Broadband Network (NBN). The government
had requested the ACCC and NBN Co to conduct a public consultation and provide advice on the competition implications of alternative options for locating POIs, which are the locations where access seekers will connect to the NBN. The ACCC’s advice recommended a 'semi-distributed' approach to initial POI locations. Under this approach, POIs would be located in areas serviced by two or more transmission operators or where a transmission route is likely to become competitive. The ACCC’s advice also recommends a process for reviewing POI locations should competitive outcomes not eventuate on particular transmission routes, and for adding POIs to enable competitive transmission to develop where market conditions change to make new entry feasible.

**Government Releases Interim Anti-Siphoning List**

The Minister for Broadband, Communications and the Digital Economy has announced that an interim anti-siphoning list has been made to ensure the continued operation of the anti-siphoning scheme. The Government is also continuing to work with stakeholders in finalising elements of the reform model that will maintain the quality of sports on free-to-air television. In early 2011, details on these quality guarantees for free-to-air coverage of AFL and NRL matches will be announced, and legislation to amend the anti-siphoning scheme will be introduced into the Parliament.

**Energy**

**AEMC Publishes Draft Report for the Review of the Reliability and Emergency Reserve Trader (RERT)**

The Reliability Panel of the Australian Energy Market Commission (AEMC) has published the draft report for the Review of the Reliability and Emergency Reserve Trader (RERT). The Panel’s draft recommendation is that the RERT should be extended for one year, until 30 June 2013.

**AEMC Publishes Final Report on Request for Advice on Cost Recovery for Mandated Smart Metering Infrastructure**

The AEMC has published its final report in response to the Ministerial Council on Energy’s request for advice on whether Chapter 6 of the National Electricity Rules (Rules) efficiently accommodates cost recovery for smart-metering infrastructure mandated by a Ministerial determination. The AEMC has found that the existing Chapter 6 framework would adequately accommodate the recovery of the efficient costs of mandated smart-metering infrastructure, subject to some incremental amendments to the Rules being made. A draft Rule change proposal and draft Rules have been prepared by the AEMC to implement its proposed changes.

**AEMC Publishes the Final Report for the Annual Market Performance Review 2010**

The AEMC has published the final report for the Annual Market Performance Review 2010 in accordance with the National Electricity Rules.

**Rail**

**ACCC Issues Position on Hunter Valley Rail Network**

The ACCC has issued its position on the access arrangements proposed by the Australian Rail Track Corporation (ARTC) for the Hunter Valley rail network. The ARTC submitted revised rail access arrangements in September 2010. The ACCC’s view is that the revised arrangements would have significant benefits for the efficient operation and use of the Hunter Valley coal chain. The ACCC will now consider any amendments made by the ARTC to finalise the matters raised in the Position Paper, before deciding whether to accept the proposed access arrangements.
Other

PC Releases Framework Paper for its COAG Reform Study

The Productivity Commission (PC) has been requested to report every two to three years to the Council of Australian Governments (COAG) on the economic 'impacts and benefits' of COAG reforms. The PC is also required to consider the extent to which Australia's reform potential is being achieved and opportunities for improvement. In preparation for its first report, the PC has been requested to provide a framework report outlining its proposed approach. In response, the PC has released a report titled, *Impacts and Benefits of COAG Reforms: Reporting and Framework*, which outlines its proposed approach to assessing the efficacy of COAG reforms.