INTERNATIONAL REGULATORY ROUND-UP

Communications

Americas

US: FCC Releases New Data on Internet Access Services, Local Telephone Competition

The Federal Communications Commission (FCC) has released its latest reports on Internet access service connections and telephone subscribership in the US. Titled Internet Access Services and Local Telephone Competition, the two reports are based on data submitted by carriers every six months. The reports track changes at the state and national level in the number of subscribers to Internet access service in 72 different combinations of speed tiers, and the number of wireline, mobile and interconnected Voice over Internet Protocol (VoIP) telephone subscribers. Both reports include data collected by the FCC until 30 June 2010.

Europe

UK: Ofcom Announces New Specialist Advisor

The Ofcom has announced that David Hendon, the Director for Information Economy at the Department for Business Innovation and Skills (BIS), will join the Ofcom as a part-time specialist advisor. Mr Hendon will join the Ofcom in September 2011 after nine years leading the BIS policy work in the communications, broadcasting, internet and IT sectors. He has worked across the communications sector for successive Governments, covering a wide range of domestic and international issues. Before the BIS he was Chief Executive of the Radiocommunications Agency which managed the UK’s radio spectrum before the establishment of the Ofcom.

Energy

Europe

Germany: Bundesnetzagentur Publishes New Photovoltaic Plants Figures and EEG Statistical Report 2009

The Bundesnetzagentur ('Federal Network Agency') has published its Statistical Report on the Final Annual Account under the Renewable Energy Sources Act (Erneuerbare-Energien-Gesetz) (EEG) for 2009. For the first time, the report contains figures on direct sales, the green electricity privilege and on own consumption of solar power. The Bundesnetzagentur has also published preliminary figures for newly-installed photovoltaic (PV) plants in 2010. The report finds that the capacity of solar PV installations has increased annually by approximately 75 per cent to around 17,300 MW in 2010.


The Northern Ireland Authority for Utility Regulation (Utility Regulator) has published the
Annual Report for the Energy Efficiency Levy (now NISEP) 2009-10. The report examines the performance under the Energy Efficiency Levy Programme (EEL) of schemes undertaken during 2009-10, outlining the financial benefits to customers and the benefits to the environment, in terms of carbon savings.

UK: DECC Publishes Energy Statistics
The UK Department of Energy and Climate Change (DECC) has issued the Energy Trends and Quarterly Energy Prices publications. Energy Trends covers statistics on energy production and consumption, in total and by fuel, and provides an analysis of the year-on-year changes, while Quarterly Energy Prices covers prices to domestic and industrial consumers, prices of oil products and comparisons of international fuel prices.

UK: Ofgem Publishes Gas and Electricity Connections Industry Review 2009-10
The Ofgem has published a report titled, Gas and Electricity Connections Industry Review 2009-10. The report sets out how the gas and electricity connections market has developed in 2009-10 and the emerging trends. It also sets out how licensed companies have complied with their connections-related obligations and standards, including data on the number of connections, charges levied and performance against standards.

Rail

Europe

UK: National Audit Office Assesses ORR’s Regulation of Network Rail
The UK National Audit Office has released a report assessing the efficacy of the Office of Rail Regulation (ORR) regulating Network Rail. The report finds that limitations in Network Rail’s information on its own costs are hampering the ability of the ORR to judge the genuineness of the efficiency savings reported by Network Rail. The report also acknowledges that the ORR has significantly developed the methods it uses to judge efficiency, and that its targets have demanded substantial improvements from Network Rail. The ORR has determined that substantial scope remains for Network Rail to improve its efficiency, estimating that maintenance and renewal activities were 34 per cent to 40 per cent less efficient than the most efficient European rail infrastructure managers in 2008. The ORR estimates that Network Rail can achieve further efficiency savings of 21 per cent in the five years to March 2014 – equivalent to spending £940 million less in 2013-14 than the forecast for that year without efficiency gains.

Water

Europe

UK: Ofwat Publishes Forward Programme for 2011-12 to 2013-14
The Ofwat has published its forward programme of work for the next financial year. The programme reflects changes made following the Ofwat’s consultation on the draft forward programme, which was held between 24 November 2010 and 25 January 2011. The Ofwat’s responsibilities are also currently being reviewed by the UK and Welsh Assembly Governments, and the outcome of these reviews will be incorporated into the Forward Programme. The main focus of the programme is the strategic projects rather than routine activities. It also provides indicative information on the work the Ofwat will be carrying out in the following two years.
Other

Europe

UK: CC and OFT Publish Quick Guide on Merger Assessment

The UK Competition Commission (CC) and the Office of Fair Trading (OFT) have jointly published a quick guide to help businesses understand what to expect from the competition authorities when they investigate a merger. The publication complements the detailed joint Merger Assessment Guidelines, which were published by the CC and the OFT in September 2010. The quick guide outlines what merging companies can expect, from the earliest stages of the process onwards, and it covers issues such as whether to notify the authorities; the different roles of the OFT and the CC; which mergers are reviewed and when they might be referred for a full investigation by the CC; the merger assessment process; and possible use of remedies later on.

AUSTRALIAN REGULATORY ROUND-UP

Post

ACCC Issues Cross-Subsidy Report for Australia Post for 2009-10

The Australian Competition and Consumer Commission (ACCC) has issued its sixth report assessing cross-subsidy between the services provided by Australia Post. The report analyses Australia Post's 2009-10 regulatory accounts to establish whether its competitive services were being cross-subsidised with revenue from its monopoly services. The report concludes that the regulatory accounts do not provide evidence that Australia Post is cross-subsidising its competitive services with revenue from its monopoly services. Australia Post's logistics services continue to be subsidised, however, the source of that subsidy appears to be Australia Post's other competitive services, rather than its monopoly services.

Energy

AER Issues Response to Professor Garnaut’s Climate Change Review Update

The Australian Energy Regulator (AER) has issued a response noting the concerns expressed in Professor Garnaut's Climate Change Review Update that weaknesses in the regulatory framework may have contributed to overinvestment in networks and unnecessarily high prices for consumers. The AER has almost completed its first round of price decisions for electricity networks in the National Electricity Market, and it is now examining the Rules it is required to apply when considering investment proposals from network businesses. Proposals for changes to the regulatory framework will be made to the Australian Energy Market Commission (AEMC), the body responsible for the National Electricity Rules.

AEMC Publishes Version 42 of the National Electricity Rules

The AEMC has published Version 42 of the National Electricity Rules to incorporate the following Rule made by the Commission: National Electricity Amendment (DNSP Recovery of Transmission-related Charges) Rule 2011 No. 1. Version 42 of the Rules is available on the AEMC's website and at the AEMC's office.
INTERNATIONAL REGULATORY REVIEWS UNDERWAY

Airports

Oceania

NZ: High Court Imposes Penalties in Air Cargo Cartel Case

The High Court in Auckland has imposed penalties against two of the international airlines charged in a major cartel proceeding brought by the New Zealand Commerce Commission (NZCC). Cargolux International Airlines S.A. has been ordered to pay $6 million in penalties and $25,000 in costs, while British Airways will pay $1.6 million and $100,000 in costs. This follows the NZCC reaching settlements with Cargolux and BA, as well as Qantas, in which those airlines admitted entering into and giving effect to price-fixing arrangements and agreed to the imposition of penalties. The Court is yet to impose a penalty against Qantas.

Communications

Americas

US: FCC Reforms Pole Attachment Rules

The FCC has released a Pole Attachments Order aimed at reforming pole attachment rules to improve the efficiency and reduce the potentially excessive costs of deploying telecommunications, cable, and broadband networks. The Order is primarily based on successful models already implemented in a number of states, and intends to accelerate broadband expansion across the US. The FCC has released a Notice of Inquiry (NOI) seeking submissions on the reforms. The FCC has also opened an inquiry into how it can work with other government entities and the private sector to improve policies for access to other physical spaces where wired and wireless broadband can be deployed, including roadways and other rights of way, and locations for wireless facilities. The deadline for submissions on the Order is early June 2011.

US: FCC Modifies Compulsory Data-Roaming Arrangements

The Federal Communications Commission (FCC) has adopted an Order that requires facilities-based providers of commercial mobile data services to offer data-roaming arrangements to other such providers on commercially reasonable terms and conditions, subject to certain limitations. The rule promotes investment in, and deployment of, mobile broadband networks, consistent with the recommendations of the National Broadband Plan. The FCC has also released a NOI, and the deadline for submissions on the Order is 7 July 2011.

Europe

Germany: Bundesnetzagentur Proposes New Rates for the Last Mile

The Bundesnetzagentur (‘Federal Network Agency’) has published its rate proposal for the local loop (LL), also known as the ‘last mile’, under which Telekom Deutschland GmbH (Telekom) must make its LL available to competitors for a monthly rental of €10.08 from 1 April 2011. This review follows Telekom applying to the Bundesnetzagentur in mid-January 2011 for an increase of the rate from €10.20 to €12.90 per month. As for access to the LL at a feeder distribution interface (FDI), under the current rate proposal Telekom may only levy €7.17 rather than the previous rate of €7.21. The final decisions came into effect on 1 April 2011, replacing the provisional decisions.
Germany: Bundesnetzagentur Publishes Expert Report on Frequency Allotment Study

The Bundesnetzagentur has published a scientific report on frequency allotment viewed from a technical and economic perspective. This follows the European Commission (EC) asking the Bundesnetzagentur to study frequency allotments in December 2009, after the spring 2010 frequency auction. The report was compiled by the Institute of Telecommunications at Vienna University of Technology and SBR Juconomy Consulting AG/SBR Attorneys-at-Law under the guidance of Professor Christoph Mecklenbräuker.

UK: Ofcom Announces Plans for 4G Mobile Auction

The Ofcom has announced plans to auction additional spectrum for mobile services. The new spectrum will provide much needed capacity for the fourth generation (4G) of mobile technology, set to deliver significantly faster mobile broadband services – approaching today’s ADSL home broadband speeds. The auction will be the largest ever single auction of additional spectrum for mobile services in the UK, equivalent to three quarters of the mobile spectrum in use today and 80 per cent more than the 3G auction which took place in 2000. This spectrum is essential to meet the UK’s rapid increase in mobile traffic, fuelled by the growth of smartphones and mobile broadband data services such as video streaming, email, messenger services, mapping services and social networking sites.

UK: Ofcom Proposes New Wholesale Prices for Openreach

The Ofgem has announced plans that Openreach, BT’s wholesale access division, can charge communications providers for access to some of its main wholesale telecoms services. The prices are regulated by the Ofcom because Openreach has been found to have significant market power in the delivery of these services. The Ofcom expects its proposed prices to lead to price reductions for consumers, as communications providers pass on savings to their broadband customers. The deadline for submissions on the consultation is 9 June 2011.

Oceania

NZ: NZCC Announces Lack of Competitive Services for UBA Backhaul Links

The NZCC has announced that no competitive services have developed for unbundled bitstream access (UBA) backhaul links. This means all UBA links will remain subject to the terms of the UBA backhaul Standard Terms Determination (STD). The decision is a result of a review by the NZCC into whether Telecom faces competition for providing these services. Where the NZCC finds that there is competition on a link, the terms of the UBA backhaul STD will not apply. By contrast, where Telecom is found to face limited competition on a link, the terms of the UBA backhaul STD will apply. The NZCC intends to complete a review of all UBA backhaul links annually.

NZ: NZCC Consults on Demand-Side Study Draft Terms of Reference

The NZCC has released draft terms of reference for a study on demand-side issues. The study will contribute to the identification of any issues that may impede the uptake of ultra-fast broadband (UFB) in New Zealand. The NZCC intends to consult with interested parties and to hold a public conference in the latter part of the year, before producing a final report in December 2011. The deadline for submissions on the draft terms of reference is 19 April 2011.
Energy

Americas

US: FERC Reviews of Organised Market Performance Measures

The Federal Energy Regulatory Commission (FERC) has issued its initial review of a series of performance measures that track operations of organised regional electricity markets. The report provides initial analysis of 57 performance measures of how the organised markets operated during 2005-09. It was issued in response to recommendations from the Government Accountability Office and as the first step in a multi-year effort to develop performance metrics that will allow for comparisons of various market structures, as outlined in the FERC’s 2009-14 Strategic Plan.

Europe

Ireland: Utility Regulator and CER Publish CAG Briefing Note

The Northern Ireland Authority for Utility Regulation (Utility Regulator) and the Commission for Energy Regulation (CER) have published the Common Arrangements for Gas (CAG) Briefing Note on the High Level Work Plan. The purpose of this briefing note is for the Utility Regulator and the CER to give an update on the status of the CAG project.

UK: DECC Publishes Plans for Smart Meters Rollout

The UK Department of Energy and Climate Change (DECC) has published the Government’s plans for the national deployment of smart meters. Alongside the Government’s response to the Smart Meters Prospectus consultation, the DECC has set out the overall strategy and timetable for the installation of 53 million smart meters in 30 million homes and businesses across the UK, estimated to have a net benefit to the nation of £7.3 billion over the next twenty years.

UK: Ofgem Consults on Proposed Modifications to the Ring Fence Conditions in Network Operator Licences

The Ofgem has published a consultation document setting out proposals for updating the ring-fence conditions in network operator licences. This follows the impact assessment and initial consultation document published in March 2010. The document covers the impacts, costs and benefits of the proposed measures and seeks responses from stakeholders. The deadline for submissions on the consultation is 30 June 2011.

UK: Ofgem Issues Decision Letter on Regulatory Asset Lives for Electricity Distribution Assets

The Ofgem has issued a decision letter on the regulatory asset lives for electricity distribution assets. Following consultation in January 2011, the Gas and Electricity Markets Authority has decided that a new asset life (45 years) will apply to new investment from the start of RIIO-ED1, on 1 April 2015. Existing assets will continue to use the existing 20-year asset life.

UK: Ofgem Modifies SLC 23 of the Gas and Electricity Supply Licence

The Ofgem has published a decision which requires energy suppliers to give consumers at least 30 days advance notice before putting up their prices. Instead of the 65 working days notification period currently required under SLC 23, customers are now required to have at least a 30 calendar day notification period in advance of the effective date of any price increase or variation. The changes come into effect on 28 April 2011.
UK: Ofgem Publishes Decision on Strategy for the Next Gas Distribution Price Control (RIIO-GD1)

The Ofgem has published its decision on strategy for the next gas distribution price control (RIIO-GD1), which sets out the key elements of the regulatory framework for RIIO-GD1. The price control will be set for an eight-year period from 1 April 2013. Two supplementary annexes were also published alongside the decision document. The first sets out the Ofgem’s decision on the outputs that the gas distribution companies need to deliver and the associated incentive mechanisms to address uncertainty during the price control. The second sets out the Ofgem’s decision on the tools that it will use for cost assessment. The decision document also sets out how the Ofgem will approach assessing network companies’ business plans, including the role of proportionate treatment, and the greater role for innovation. Gas distribution companies must now develop well-justified business plans which must be submitted to the Ofgem by 31 July 2011.

UK: Ofgem Publishes Decision on Strategy for the Next Transmission Price Control (RIIO-T1)

The Ofgem has published its decision on strategy for the next gas and electricity transmission price control (RIIO-T1), which sets out the key elements of the regulatory framework for RIIO-T1. The price control will be set for an eight-year period from 1 April 2013. Two supplementary annexes were also published alongside the decision document. The first sets out the Ofgem’s decision on the outputs, and the associated incentives. The second sets out the Ofgem’s decision on the tools that it will use for cost assessment. The document also sets out respondents’ views to the December consultation on RIIO strategy and highlights the changes to the Ofgem’s proposals being made in light of these views.

UK: Ofgem Publishes Retail Market Review Findings and Initial Proposals

The Ofgem has published a document presenting the findings from its Retail Market Review and puts forward a range of initial proposals for consultation. The review has demonstrated that further action is needed to make sure energy retail markets in the UK work in the interests of consumers. Of particular concern is the growing complexity of pricing information and the high number of ‘sticky’ consumers that choose not to switch, cannot switch due to their circumstances, or are put off switching due to other features of the market such as tariff complexity. The document outlines a range of initial proposals for consultation designed to make it much easier for consumers to identify who is offering the cheapest tariff. Other changes to make it easier for new suppliers to enter the market; to enforce and strengthen Energy Supply Probe remedies in both the domestic and non-domestic market; and to increase the transparency of company accounting practices are proposed. The deadline for submission is 1 June 2011.

Post

Europe

UK: Postcomm Consults on a New Regulatory Framework for 2012

The Postcomm has published the latest in its series of consultations on initial proposals for the scope and form of regulation of postal services for 2012 and beyond. The publication focuses on the question of whether there is a need for ex ante regulation of Royal Mail’s prices beyond 2012 and, if so, what that regulatory framework might look like. This consultation takes place in a context of unprecedented volume decline in the postal sector. The volume of mail processed by Royal Mail has fallen by 20 per cent since the current price control was implemented in 2006, and this trend is expected to continue. As a
result Royal Mail's finances are weak. In that context, there is a fundamental question over the role of regulation and whether the type of controls the Postcomm has employed remain suitable. This deadline for submissions on the consultation is 1 June 2011.

**Rail**

**Americas**

**Canada: CTA Calls for Responses to Submissions on the Railway Cost of Capital Methodology Consultation**

The Canadian Transportation Agency (CTA) has called for responses to submissions made during the Review of Railway Cost of Capital Methodology consultation. Any party that made a submission to the consultation has until 29 April 2011 to file a response to the submissions made by the other parties.

**Europe**

**UK: ORR Consults on Proposal to Improve Passenger Information**

The Office of Rail Regulation (ORR) has issued a consultation letter which proposes new regulatory powers intended to clarify and consolidate accountability for passenger information between train operators and Network Rail, with standards subject to independent regulation. The new obligations would come into force in the northern autumn 2011. This consultation phase concludes on 20 June 2011.

**Water**

**Europe**

**UK: Ofwat Consults on Preliminary Model for Future Price Limits**

The Ofwat has issued an informal consultation setting out a view of how it may set price limits in 2015 and beyond, and how this will address long-term challenges facing the water and sewerage sectors in England and Wales. The consultation sets out the Ofwat’s initial views as the basis for discussion. This work by the Ofwat intends to build on the strategic lessons learned in the 2009 price review (PR09) with stakeholders. The deadline for submissions on the informal consultation is 28 June 2011.

**AUSTRALIAN REGULATORY REVIEWS UNDERWAY**

**ACCC Reviews Proposed Price Increases for Air Services**

The Australian Competition and Consumer Commission (ACCC) has released an issues paper seeking public comment on a pricing proposal by Airservices Australia. Airservices is the monopoly provider of air traffic control services, including both en route air navigation and terminal navigation (TN), and aviation rescue and fire-fighting (ARFF) services at airports in Australia. These services are declared under section 95X of the Competition and Consumer Act 2010, which means that Airservices must notify the ACCC when it wishes to increase prices. Airservices is proposing a long-term pricing arrangement that will apply during the next five years and will cover all of its regulated services. The pricing proposal involves increases in charges for TN and ARFF services, while charges for en route services are to remain unchanged. The proposed rates of price change vary by location and year. Airservices is proposing to increase TN and ARFF prices annually by 0.6 per cent and 6.1 per cent respectively, on average. The deadline for submissions on the proposal is 10 May 2011.
AEMC Assesses STTM Data Validation and Price Setting Process Rule Change Request

The Australian Energy Market Commission (AEMC) has published a notice in accordance with sections 303 and 304 of the National Gas Law (NGL) to initiate and assess a Rule change request, which was submitted by the Australian Energy Market Operator (AEMO), under an expedited (urgent) Rule making process. In response to two high price events in the Short Term Trading Market (STTM) towards the end of 2010, this Rule change request proposes to introduce a STTM pipeline facility data validation process for the setting of schedules and prices in the STTM. Written objections against the expedition of the Rule making process must be received by 7 April 2011. The deadline for submissions on the content of the Rule change request is 21 April 2011.

AEMC Extends Inter-Regional Transmission Charging Final Rule Determination Publication Date

The AEMC has given notice under section 107 of the National Electricity Law (NEL) to extend the period of time for the making of the ‘Inter-regional Transmission Charging’ final Rule determination to 23 February 2012. The AEMC has therefore decided to proceed to develop a uniform national approach to inter-regional transmission charging. Further consultation with stakeholders on these issues will be undertaken through a discussion paper, which is intended to be published by July 2011 with the final Rule to be made before 23 February 2012.

AEMC Launches Debate on Energy Market Priorities

The Chairman of the AEMC, John Pierce, has launched the 2011 Strategic Priorities Discussion Paper, which explains the most important challenges and opportunities for energy market development in Australia. Mr Pierce has called for a well-informed public debate on market development and outcomes, and he has invited comments on the AEMC’s proposed priorities. Once the AEMC has considered the comments on this discussion paper, it will publish a short confirmation of priorities and an associated work programme. The deadline for submissions is 13 May 2011.

AEMC Publishes Draft Rule Determination for Reliability Settings from 2012

The AEMC has given notice under section 99 of the National Electricity Law (NEL) of the publication of the draft Rule determination, including a draft Rule, for the Reliability Settings from 1 July 2012 Rule change. The deadline for submission is 5 May 2011.

AEMC Publishes Final Rule Determination for DNSP Recovery of Transmission-Related Charges

The AEMC has given notice under sections 102 and 103 of the National Electricity Law (NEL) to make the Distribution Network Service Provider (DNSP) Recovery of Transmission-related Charges final Rule determination and Rule as Made. The Rule commences operation on 24 March 2011.

AEMC Publishes Final Rule Determination for Network Support and Control Ancillary Services

The AEMC has given notice under sections 102 and 103 of the National Electricity Law (NEL) to make the Network Support and Control Ancillary Services (NSCAS) final Rule determination and Rule as Made. The new arrangements will commence on 5 April 2012.

AEMO Submits Rule Change Proposal on Application and Operation of Administered Price Periods Rule

The AEMO has submitted a Rule change proposal to the AEMC titled ‘Application and
operation of Administered Price Periods’. The AEMO submitted this Rule change proposal to address a perceived ambiguity in the NER with respect to the application and operation of Administered Price Periods (APPs) triggered by high ancillary service prices. Furthermore, the Rule change proposal seeks to: remove or amend AEMO’s discretion to continue an Administered Price Period (APP) into the next trading day; extend the timeframe for the settlement of compensation arising from the imposition of price caps and price floors; and make some non-material amendments to achieve consistency in the NER. The deadline for submissions on the Rule change proposal and Consultation Paper is 12 May 2011.

Ports

ACCC Issues Draft Decision on GrainCorp’s Proposed Wheat Port Access Arrangements

The Australian Competition and Consumer Commission (ACCC) has issued a draft decision on GrainCorp's proposed wheat port access arrangements for October 2011 to September 2014. The proposed arrangements would replace GrainCorp’s current undertaking, which was accepted by the ACCC on 29 September 2009. GrainCorp's proposed undertaking relates to the provision of access to services for the export of bulk wheat at seven grain terminals operated by GrainCorp in Queensland, New South Wales and Victoria. GrainCorp must have access arrangements in place by 1 October 2011 in order to retain accreditation to export bulk wheat under the Wheat Export Marketing Act 2008. The ACCC considers that it is appropriate for GrainCorp's current access arrangements to continue largely unchanged, however, the ACCC has identified some areas where the existing arrangements can improve. The ACCC is also seeking comments concerning capacity-management arrangements and whether improved capacity management outcomes may be achieved if shipping slots are transferable between wheat exporters. The deadline for submissions on the draft decision is 22 April 2011.

Regulatory Observer is a regular publication of the Australian Competition and Consumer Commission. For editorial enquiries please contact David Lander (david.lander@accc.gov.au), and for mailing list enquiries please contact Genevieve Pound (genevieve.pound@accc.gov.au).