INTERNATIONAL REGULATORY ROUND-UP

Communications

Europe

UK: Ofcom Improves the Mobile Number Transfer Process

The Ofcom has introduced a new rule that require operators to issue customers with a Porting Authorisation Code (PAC) immediately over the phone or within a maximum of two hours by text message. Mobile customers require a PAC from the operator they are leaving in order to switch their number to a new operator. Previously some operators issued PACs via post, which could take several days to arrive. This rule was implemented following an Ofcom study, which found that in 2010 eight per cent of all people with a mobile phone switched provider. The Ofcom has also issued advice to consumers on switching their mobile provider and the number transfer process.

UK: Ofcom Publishes Non-Confidential ISDN30 Models

The Ofcom has published the non-confidential version of the models used to calculate proposed charge controls on Openreach for its wholesale ISDN30 services. Wholesale ISDN30 services are supplied by Openreach to other communications providers who use them to provide retail ISDN30 services to businesses. ISDN30 is a product that provides between eight and 30 digital telephone lines for businesses.

The proposed price controls will ensure the retail market for ISDN services continues to function well.

AUSTRALIAN REGULATORY ROUND-UP

Other

PC Announces Reappointment of Full-Time Commissioner and Deputy Chairman

The Assistant Treasurer, Bill Shorten, has announced the reappointment of Mr Michael Woods as a full-time Commissioner and Deputy Chairman of the Productivity Commission (PC) for a further five-year period. Mr Woods has been a Commissioner since 1998 and Deputy Chairman since 2008. His reappointment will provide continuity and stability in the role of Deputy Chairman, and for the projects on which he is currently engaged – the Caring for Older Australians inquiry and the Education and Training Workforce study.
INTERNATIONAL REGULATORY REVIEWS UNDERWAY

Communications

Europe

UK: Ofcom Calls for Inputs on its Business Connectivity Market Review

The Ofcom has published a call for inputs on its Business Connectivity Market Review. This initial document seeks views from industry on the market for leased lines which communications companies use to provide dedicated broadband and calls, mainly to large businesses. The document also looks at the backhaul capacity market, an essential input into mobile and broadband services. The Ofcom aims to publish a further consultation by the end of 2011. The deadline for submissions on the consultation is 1 June 2011.

UK: Ofcom Consults on Framework Future UHF Spectrum Bands IV and V

The Ofcom has published a call for inputs from stakeholders on the long-term demand for spectrum in the range of 470 to 790 MHz. This should assist the Ofcom in developing a better understanding of the future demands for Ultra High Frequency (UHF) spectrum by different services. This input will be used to establish a framework for ensuring that future decisions relating to UHF spectrum will benefit consumers in the long term. The deadline for submissions on the consultation is 15 June 2011.

Oceania

NZ: High Court Imposes Record Penalty Against Telecom

The NZ High Court has imposed a $12 million penalty against Telecom for breaching section 36 of the Commerce Act, in the 'data tails' case. The penalty is the highest imposed under the Commerce Act, which was amended in 2001 to increase the fines available for anti-competitive conduct. This follows the High Court determining in October 2009 that, from 2001 to 2004, Telecom unlawfully leveraged its market power to charge downstream competitors disproportionately high prices for wholesale access to its network, preventing them from offering retail end-to-end high-speed data services on a competitive basis. Telecom has appealed the October 2009 judgment finding. The hearing in the Court of Appeal is scheduled to commence in September and will include consideration of the High Court penalty judgment, if that is appealed in the interim.

NZ: NZCC Proposes Changes to UBA Pricing Methodology

The New Zealand Commerce Commission (NZCC) has issued a draft determination on unbundled bitstream access (UBA) pricing, and is seeking submissions on the proposed changes to its methodology to calculate Telecom’s UBA price. The UBA service allows telecommunications companies to supply broadband services to retail customers without the need to replicate Telecom’s copper local loop. The NZCC’s preliminary views are that: the methodology to calculate calling discounts should be changed to more accurately reflect the discounts that Telecom customers receive when purchasing a bundle of services; and that the retail value should be used to calculate the data transmission component of the UBA price calculation rather than a cost-based value. The NZCC also proposes to update its calculation of Telecom’s internet service provider (ISP) charges. However, the approach to overage (the charge applied to some retail broadband plans where customers’ data usage goes above their data cap) and avoided cost discount remains unchanged. The deadline for submissions on the draft determination was 16 May 2011.
NZ: NZCC Releases Updated Approach for Resetting Starting Prices

The NZCC has released an update outlining its views on how to set starting prices for electricity distribution businesses subject to default price-quality paths (DPP) under Part 4 of the Commerce Act. The paper continues consultation on the DPP for electricity distribution businesses for 2010-15. The NZCC initially set the 2010-15 DPP for electricity distribution businesses in December 2009, and when it set this first path (under Part 4), it rolled-over existing prices. However, the Commerce Act provides that the NZCC may reset the starting prices for the 2010-15 DPP if the application of input methodologies (set in December 2010) would have resulted in a significantly different price path being set. The NZCC has also released a model that illustrates how the starting-price adjustment process might work. The model, however, does not include the final data sets, and therefore will not provide the size of any actual starting-price adjustments for the 2010-15 regulatory period.

Energy

Americas

US: FERC Proposes Rule to Facilitate Electricity Market Transparency

The Federal Energy Regulatory Commission (FERC) has proposed to enhance electricity market transparency by requiring certain market participants that are not subject to Section 205 of the Federal Power Act to file electric quarterly reports (EQRs). The proposal would give the FERC and the public a more complete picture about how prices are established or formed by bilateral transactions in the wholesale electricity markets. It also would improve the FERC’s ability to monitor wholesale electricity markets for market power and manipulation. Currently, public utilities must file EQRs summarising contractual terms and conditions in their agreements for cost-based and market-based rate sales and transmission service, as well as transaction information for cost-based and market-based rate sales and transmission capacity reassignments. The Notice of Proposed Rulemaking (NOPR) issued by the FERC would extend those requirements to non-public utilities with annual wholesale sales of more than four million megawatt hours (MWh) and to non-public utility balancing authorities with one million MWh or more in annual wholesale sales. The deadline for submissions on the NOPR is mid-June.

Europe

Germany: Bundesnetzagentur Defines New Framework for Procurement of Electricity

The Bundesnetzagentur (‘Federal Network Agency’) has specified new terms of tender and disclosure obligations for the procurement of primary and secondary system-balancing energy. The core elements of the new
requirements involve shortening the tender period from one month to one week; and reducing the minimum tender quantity from five megawatts (MW) to one MW for primary system balancing energy, and from ten MW to five MW for secondary system balancing energy. System balancing energy is needed to offset permanent capacity fluctuations in German electricity grids at short notice. The new terms of tender and disclosure obligations are to be implemented by 27 June 2011.

Germany: Bundesnetzagentur Proposes to Require Power Plant Operators to Contribute to Power System Stability

The Bundesnetzagentur has launched a proposal which requires all operators of generating plants connected to the high-voltage grid and supergrid to take part in certain measures to ensure power system stability at the transmission system operators' request. The proposal intends to ensure that the grids will continue to cope with the more stringent requirements to which they are now subjected. This requirement was proposed following some power plant operators expressing reservations regarding their future involvement in such measures. The Bundesnetzagentur has also published a paper on the key elements (in German) of the proposal. The deadline for submissions on the consultation was mid-May.

Germany: Bundesnetzagentur Publishes Guideline on Renewable Energy Feed-In Management

The Bundesnetzagentur has published a guideline on renewable energy feed-in management. The guideline explains the order in which the various electricity producers must temporarily reduce their supply at the network operators' request when the networks are overloaded. The guideline is designed to encourage the feed-in of as much renewable energy as possible without endangering the stability of the networks. Installations generating electricity from renewable energy sources or combined heat and power may only be regulated in the event of network congestion or other system security risks when the conventional installations have been throttled to the technically-required minimum. Installation operators required to temporarily cut their feed-in from renewable energy sources or from combined heat and power, due to the renewable energy feed-in management, are compensated by the network operator. The guideline also contains explanatory notes on how to calculate such compensation payments and how such payments should be taken into account in the grid tariffs.


The Commission for Communications Regulation (ComReg) has published its proposed strategy for managing the use of the radio spectrum in Ireland over the period from 2011-2013. The proposed strategy sets out the key issues that need to be addressed during the next two years, and it also examines potential developments in the next three to five years. The ComReg's aim is to ensure that Ireland derives the maximum benefits economically, strategically and socially from the use of the radio spectrum. The deadline for submissions on the proposed strategy is 24 May 2011.

Northern Ireland: Utility Regulator Determines Electricity Licence Fee Methodology

The Northern Ireland Authority for Utility Regulation (Utility Regulator) has published a decision paper for its review of the electricity licence fee methodology. This follows a period of public consultation on the methodology used, which began on 1 October 2010. A total of ten responses were received during the consultation period, however, one is not publicly available since it was marked as confidential. The Utility
Regulator has decided that it will make a determination to apply from the 2011-12 fee year, applying the methodology used in the current interim determination.

**Northern Ireland: Utility Regulator Publishes Decision Paper on Charges for ‘Clustering’ on the NI Distribution System**

The Utility Regulator has published a decision paper on the Charges for Connecting Groups of Generators (‘Clustering’) to the Northern Ireland (NI) Distribution System. The Utility Regulator has also published a consultation report and the responses to consultation, as annexes to the decision document. The review included a public consultation by Northern Ireland Electricity (NIE) on the methodology used, along with a further public consultation by the Utility Regulator as part of its Consultation on Electricity Connection Policy to the NI Distribution System.

**Northern Ireland: Utility Regulator Publishes Decision Paper on Supplier Transmission Use of System Charging**

The Utility Regulator has published a decision paper for its review into the supplier transmission use of system charging. This decision follows the Utility Regulator’s review of submissions received on the consultation paper. The resulting changes to the method of charging will be implemented by the System Operators Northern Ireland (SONI) from 1 October 2011. These changes involve: simplifying the time bands used for charging; equalising charges for all use of the transmission system (removal of a cross-subsidy inherent in the current tariffs); terminating transmission charging rebates for distribution connected generation; and using a new cost-allocation model that reflects these changes.

**UK: Ofgem Consults on New Method of RPI Indexation for Price Control Reviews**

The Ofgem has published a letter proposing to change the current method of Retail Prices Index (RPI) indexation for the forthcoming RIIO price control reviews and the TPCR4 rollover. This consultation proposes an approach that differs from that outlined in previous consultations. It follows a submission by National Grid (NG), which informed the Ofgem that its proposed approach to indexing allowed revenue in RIIO-T1, RIIO-GD1 and the TPCR4 rollover may not provide the intended protection against economy-wide inflation. The deadline for submissions on the consultation is 1 June 2011.

**UK: Ofgem Publishes EHV Distribution Charging Methodology Report**

The Ofgem has published a report on extra-high voltage distribution charging methodology (EDCM), for use of system charges to customers connected at higher voltages. This new methodology was jointly developed by the electricity Distribution Network Operators (DNOs), through the Energy Networks Association (ENA). From 1 April 2012, the EDCM will apply to customers connected at extra-high voltage (EHV), or connected at high voltage (HV) and metered at a primary substation.

**Post**

**Europe**

**UK: Government Publishes Amendments Postal Services Bill**

The UK Government has published a number of amendments to strengthen the Postal Services Bill. The changes incorporate feedback from a range of interested parties. The Bill, which has been approved by the House of Commons and is currently being considered by the House of Lords, is designed to secure the long-term future of the Royal Mail and the Post Office. The Bill will transfer regulatory responsibility for the
postal sector from the Postcomm to the Ofcom, the communications regulator. The main amendments include: new powers for the Ofcom, to allow it to better monitor any potential threats to the universal service arising from end-to-end competition; a new requirement on the Ofcom to have regard to the need for the universal service provider to earn a reasonable commercial rate of return on the provision of that service; and ensuring that Royal Mail can remain the sole provider of the universal service for at least the next ten years.

AUSTRALIAN REGULATORY REVIEWS UNDERWAY

Communications

ACCC Issues Interim Prices for Regulated Transmission Services

The Australian Competition and Consumer Commission (ACCC) has issued an interim access determination (IAD) for regulated transmission services under the new telecommunications access regime, which took effect on 1 January 2011. The IAD provides interim price and non-price terms for the declared domestic transmission capacity service. Interim prices for regulated transmission services have been determined by benchmarking current prices of competitive transmission services based on information provided by the suppliers of transmission services. The ACCC expects that prices will change as the market develops and expects further input from stakeholders during the public inquiry associated with the final access determination. However, the ACCC considers that, in the interim, the IAD will provide the required level of regulatory certainty until a final access determination is made. The IADs have been backdated to commence on 1 January 2011 and expire on 31 December 2011, or when a final access determination for the declared domestic transmission capacity service is introduced, whichever is earlier. The ACCC may vary the IAD before making a final access determination.

ACCC Proposes Five-Year Regulatory Pricing Period in Final Access Determinations for Fixed-Line Services

The ACCC has commenced a public inquiry and issued a discussion paper on making final access determinations (FADs) for the six declared fixed-line telecommunications services. The discussion paper follows the interim access determinations (IAD) made by the ACCC on 2 March 2011. As a result of legislative changes to the telecommunications access regime made in late-2010, the ACCC must hold a public inquiry to make FADs for each declared service. The discussion paper sets out proposed price and non-price terms for each of the declared services for a proposed five-year regulatory period from 1 July 2011 to 30 June 2016. Prices for the five-year regulatory period have been calculated using the same Building Block pricing framework as in the IADs, carried forward over five years. After considering submissions received on the discussion paper and draft FADs, the ACCC plans to publish a final report and make five-year FADs for the declared fixed-line services. The deadline for submissions on the discussion paper is 3 June 2011.

Energy

AEMC Consults on Potential Generator Market Power Rule Change Request

The Australian Energy Market Commission (AEMC) has commenced consultation on a Rule change request from Major Energy Users Inc. (MEU) in relation to the potential exercise of market power by generators in the National Electricity Market (NEM). The MEU has proposed that the Australian Energy Regulator (AER) should assess which generators have market power and declare them to be ‘dominant
generators', and that new restrictions would apply to the wholesale market dispatch offers submitted by a 'dominant generator'. The deadline for submissions on the consultation is 26 May 2011.

**AEMC Publishes Directions Paper for Transmission Frameworks Review**

The AEMC has published a directions paper for the Transmission Frameworks Review. This review aims to ensure transmission frameworks are robust and deliver efficient and timely outcomes. The paper considers the broad range of issues raised by stakeholders earlier in the review and provides a framework for how the AEMC will consider these issues. The paper identifies five key themes that will be progressed, including: the nature of access; network charging; congestion; transmission planning; and connections. The AEMC is seeking comment from stakeholders on the way it has framed the issues, and whether this represents an appropriate structure for resolving them. The deadline for submissions on the directions paper is 26 May 2011.

**AEMC Publishes Draft Rule Determination for the Application of Dual MLFs Rule Change**

The AEMC has published a draft rule determination and draft rule for the application of dual marginal loss factors rule change. The AEMC's draft rule adopts the rule proposed by the Australian Energy Market Operator (AEMO), with some minor amendments. The draft rule allows the AEMO to apply two marginal loss factors (MLFs), at those connection points where application of a single MLF would not accurately reflect losses for energy generation and consumption at that connection point. This occurs primarily at connection points where annual levels of generation and consumption approach parity, including connection points with pump storage facilities. The deadline for submissions on the draft rule determination and draft rule is 26 May 2011.

**MCE Directs AEMC to Review Demand Side Participation**

The Ministerial Council on Energy (MCE) has directed the AEMC to undertake a further review regarding Demand Side Participation (DSP) in the National Electricity Market (Stage 3 DSP Review). This review will have a broad focus that extends beyond the National Electricity Rules (NER), since it will consider all arrangements that impact on the electricity supply chain. The purpose of the review is to identify market and regulatory arrangements that would enable the participation of both supply and demand side options in achieving an economically efficient demand/supply balance in the electricity market.

**Ports**

**ACCC Seeks Comment on CBH’s Proposed Wheat Port Access Arrangements**

The ACCC is calling for submissions on Co-operative Bulk Handling Limited’s (CBH) proposed wheat port access arrangements. CBH’s proposed undertaking relates to the provision of access to services for the export of bulk wheat at four grain terminals operated by CBH in Western Australia. These terminals are Albany, Esperance, Geraldton, and Kwinana. CBH is required to have access arrangements in place by 1 October 2011 to retain accreditation to export bulk wheat under the Wheat Export Marketing Act 2008 (Cth). The ACCC accepted an access undertaking from CBH on 29 September 2009 for the two-year period until 30 September 2011. CBH has now submitted a proposed access undertaking for the period from 1 October 2011 to 30 September 2014. CBH’s proposed undertaking provides for, amongst other matters: publication of price and non-price terms for standard services; non-discriminatory access; negotiation of access in good faith;
arbitration of access disputes, and publication of key port information. CBH is proposing a number of changes to its existing access undertaking, particularly in relation to its port terminal capacity allocation system and the mechanism by which CBH is able to vary its Port Terminal Rules. The deadline for submissions on the proposed access arrangements is 20 May 2011.

Water

PC Releases Report into Urban Water Sector

The Productivity Commission (PC) has released a draft report as part of its investigation into the Urban Water Sector. This follows the Australian Government, with the agreement of the Council of Australian Governments (COAG), asking the PC to examine the case for microeconomic reform in the urban water sector and to identify pathways to achieving improved resource allocation and efficiency. The final report will be prepared after submissions have been received and public hearings held. The final report will be forwarded to the Government by 31 August 2011. The deadline for submissions on the draft report was 18 May 2011.