Two recent reviews of regulators in the UK raise important questions about how economic regulators work, and the institutional and policy framework in which independent regulation operates in 2011.

The review of the English and Welsh water regulator (Ofwat) has not recommended major changes to the regulatory framework, however, it has drawn attention to the high level of regulatory activity in the sector and the complex institutional setting. Each of the two quality regulators and the economic regulator can impose obligations and take enforcement action. Companies are subject to different processes and consultation mechanisms when developing business plans, which according to the review, results in potentially confusing or conflicting messages from the different regulators. Ofwat is also found to go too far into the detail of company business plans, increasing the burden of regulation, and making companies “very Ofwat focussed and very cautious and conservative in their approach”. In addition, the review concludes that the system of incentives in the sector focuses unduly on penalties and compliance, and does not provide sufficient positive incentives to promote behavioural change.

The review of the GB energy regulator (Ofgem) – which has been published only as a summary of conclusions at this stage – is less wide-ranging. However, the summary is insightful as to the current interaction between economic regulation and broader policy/strategic goals, and the complexity this creates for independent regulation. While the fundamentals of the system of economic regulation are found to be sound, the summary notes that ‘the scale of the challenges ahead has made the world of 2011 very different from that of the 1980’s’ and in this respect highlights the contribution of the energy sector to ‘wider public policy goal[s]”. The Ministerial statement, which accompanies the summary, proposes that government “define those strategic goals to which Ofgem should contribute”, and more critically that “the Government will seek legislative provision to require Ofgem to take its independent regulatory decisions within the context of these goals”. These statements are seen to confirm perceptions in some quarters that a trigger for the review was frustration with Ofgem’s approach to the achievement of the various renewable energy targets in the sector.

A theme of both reviews is the importance of role clarity between government and the regulators. In the energy sector it is noted that the responsibilities between government and Ofgem have become blurred, eroding the regulatory certainty associated with independent regulation. In water, the government’s objectives, particularly in relation to matters such as the role of competition and social tariffs, are found to require greater clarity.

The related issue of regulatory accountability is touched on in both reviews. In energy, it is proposed that Government set the “strategic direction of the organisation” (ie: Ofgem) and hold the Board to account for its achievements against the strategic goals. In water, it is also recommended that clearer guidance from government should be provided as to how Ofwat should balance its various duties in regulatory decisions. In addition, it is recommended that Ofwat develop ‘outcome-based’ objectives and performance measures which can be used to assess its effectiveness.

* Research Director, Regulatory Policy Institute, Oxford, UK. The views in this article are those of the author.
INTERNATIONAL REGULATORY ROUND-UP

Communications

Americas


The Federal Communications Commission (FCC) has released the fifteenth Mobile Wireless Competition Report. The report updates the data and analysis presented in the fourteenth report, and analyses mobile wireless service market conditions during 2009 and 2010, including 'competitive market conditions with respect to commercial mobile services', as required by the Communications Act. The fifteenth report follows the same analytical framework used in the fourteenth report, with certain improvements based on responses to that report. Therefore, the fifteenth report makes no formal finding as to whether there is, or is not, effective competition in the industry. Rather, given the complexity of the various inter-related segments and services within the mobile wireless ecosystem, the report focuses on presenting the best data available on competition throughout this sector of the economy and highlighting several key trends in the mobile wireless industry.

Europe

EU Mobile Roaming Rates Decrease

The rates for mobile calls made in European Union (EU) countries have decreased in the Eurotariff. Since 1 July 2011, telephone calls made with a mobile phone in a EU country will cost a maximum of 35 cents per minute, and 11 cents per minute for incoming calls (in both cases plus VAT). This follows the Roaming Ordinance introduced in 2007, and it marks a four cent per minute reduction compared with the rates payable in the preceding year. The SMS rates remain unchanged at a maximum of 11 cents (plus VAT). The upper limit for the wholesale rates for Internet access via mobile radio networks in other EU countries has also dropped from 80 cents per megabyte to 50 cents per megabyte. Under the Roaming Ordinance, roaming customers are free to switch to the Eurotariff or from the Eurotariff to another rate at any time. Mobile operators must carry out the request for a change in tariff within one working day after receipt of the request, without charging any fee for the switch.

Germany: Bundesnetzagentur Publishes Proposal for New Interconnection Rates

The Bundesnetzagentur has announced the proposal for charges of Telekom Deutschland GmbH (Telekom) for new interconnection rates (known as transit rates) for the period starting on 1 July 2011. The newly determined charges are based on a comparison of the rates applied in European markets, and peak and off-peak charges for 'call originating' and 'call termination' services in zone I, II and III. In addition to this basic charge for termination and originating services, the draft also includes charges for the resulting 'optional and additional services'. These include such factors as originating value-added services, transit between different networks or terminating narrowband Internet traffic. Interconnection rates cannot take effect immediately because a national consultation and EU-wide consolidation procedure must occur. Therefore, the proposed charges have only been given provisional approval for the period beginning on 1 July 2011.

Ireland: ComReg Publishes Notice on EU Roaming Regulations

The Ireland Commission for Communications Regulation (ComReg) has published an information notice on the implementation of EU roaming regulations. This is the 7th information
note, regarding roaming, and it relates to the data collection period from 1 July 2010 to 31 December 2010. The collection of data for monitoring purposes by National Regulatory Authorities (NRAs) is a requirement of the EU Roaming Regulation. The regularly collection of data from the NRAs is coordinated by the Body of European Regulators for Electronic Communications (BEREC).

**UK: Ofcom Allows Mobile Operators to Trade Spectrum**

The Ofcom has published a statement announcing new regulations which allow mobile phone operators to trade the rights to the radio spectrum they hold. Specifically, the regulations cover spectrum at 900 MHz, 1800 MHz and 2100 MHz, and it aims to increase mobile network capacity and deliver faster and more reliable mobile services for consumers. This should be achieved by allowing operators with a greater need for spectrum to make offers for spectrum from those who need it less. It is envisaged that this added flexibility will help operators to respond more efficiently to demand.

**Energy**

**Europe**

**Ireland: CER and Utility Regulator Publish Consultation Paper on Treatment of Network Tariffs for Gas Storage**

The Commission for Energy Regulation (CER) and the Northern Ireland Authority for Utility Regulation (Utility Regulator) have published a consultation paper on the Treatment of Transmission Network Tariffs for Gas Storage Facilities as part of the Common Arrangements for Gas (CAG) project. The paper seeks to reduce uncertainty facing potential investors in storage with regard to transmission tariffs and connection costs that will apply to storage facilities under CAG. It outlines options with regard to how direct costs would be allocated for connection/access to the transmission system by storage facilities in both jurisdictions. These include ensuring that the storage user/operator pays for these costs; spreading these costs over the entire entry and exit transmission tariff; and a variation whereby part of the costs are levied on the storage users/operator. However, it does not address charges for the use of storage facilities. The deadline for submissions on the consultation is 1 August 2011.

**Ireland: Utility Regulator Consults on Implementation of EU Third Internal Energy Package**

The Utility Regulator has published its EU Third Internal Energy Package (IME3) implementation paper and accompanying annex for consultation, alongside a six month review of the domestic market. The paper outlines the IME3 requirements and sets out how the Utility Regulator proposes to implement these requirements through proposed licence modifications. This paper mainly deals with the consumer protection focused elements of the IME3 and does not reflect the requirements for the unbundling of the ownership of electricity and gas transmission networks. The IME3 allows Member States a further 18 months in which to implement the unbundling requirements. The Utility Regulator will seek to address this in a separate consultation exercise, once licensees have applied to be certified under a particular unbundling model. The six month review identifies areas within the emergent competitive domestic energy markets that are a cause for concern. The review also identifies specific areas where licence modifications are appropriate to update both gas and electricity supply licences. The proposed licence modifications are also aimed at providing customer protection, so this review and the provisions of the IME3 are linked by purpose and timing. The Utility Regulator therefore proposes to consult on the energy supply licence modifications proposed in the six month
review paper in the context of its consultation on IME3, to avoid duplication and confusion. The deadline for submissions on the consultation is 7 October 2011.

Ireland: Utility Regulator Consults on its Regulatory Approach to Energy Supply Competition

The Utility Regulator has published a position paper for consultation titled, *Regulatory Approach to Energy Supply Competition in Northern Ireland*. The paper outlines the Utility Regulator's proposed policy position on energy supply competition over the next three years. The proposed policy position is in the context of the current and expected development of the domestic and non-domestic energy markets. The paper also sets out the Utility Regulator's initial thinking on electricity supply market sub-sectors that need to be monitored in the future and the market-monitoring framework. The deadline for submissions on the consultation is 23 September 2011.

UK: DECC Outlines Proposed Changes to CRC Energy Efficiency Scheme

The Department of Energy and Climate Change (DECC) has *outlined* a proposal to simplify the Carbon Reduction Commitment (CRC) Energy Efficiency Scheme. The CRC scheme started in April 2010 to reduce carbon emissions in businesses through energy efficiency improvements. The government is proposing to: reduce the number of fuels covered by the scheme; move to fixed price allowance sales; simplify the organisational rules; make qualification processes easier; and reduce the overlap with other schemes.


The DECC has *constructed* a National Energy Efficiency Data (NEED) framework to enable detailed statistical analysis of energy efficiency. The data framework was set up to provide a wider understanding of energy use and energy efficiency. The *report* focuses on the domestic (household) sector and presents a wide range of results about how energy use changes as dwelling or household characteristics (such as property type or number of bedrooms) change. It also shows that energy efficiency investment in homes can reduce energy consumption and how those savings can vary by property type.

UK: Government Publishes Energy National Policy Statements

The UK Government has *published* its finalised Energy National Policy Statements (NPSs) in order for them to be debated in Parliament. This follows an extensive public consultation earlier this year which received over two and a half thousand responses. The Energy NPSs provide a clear framework for decision making and set out the need for a surge of investment in new energy sources, including 33GW of new renewable energy capacity. The Nuclear NPS lists eight sites across the country as suitable for new nuclear power stations by 2025.

UK: Ofgem Changes Methodology of RPI Indexation Method

The Ofgem has published a *letter* which implements a change in the methodology of Retail Price Index (RPI) indexation for the forthcoming RIIO price controls and the Transmission Price Control) rollover. The new approach removes the lag present in the current methodology, and it requires using a forecast of RPI growth to inflate allowed revenues in each charging year. An annual true-up adjustment, with a two year lag, then protects network companies and consumers against any differences between forecast RPI and actual RPI.
UK: Ofgem Consults on Smart Metering Consumer Protections Package

The Ofgem has launched a statutory consultation on a number of proposed modifications to the gas and electricity supply licences. These modifications are designed to bolster existing protections for all domestic consumers - particularly vulnerable consumers - in light of early moves by suppliers to install smart meters. These modifications relate primarily to: prepayment and remote disconnection for domestic and non-domestic consumers, data privacy, and commercial interoperability. The deadline for submissions on the consultation is 12 August 2011.

UK: Ofgem Issues Draft Renewable Heat Incentive Guidance Consultation

The Ofgem has issued a draft Guidance document for the Renewable Heat Incentive (RHI), a new Government scheme designed to promote the uptake of renewable heat. The Guidance is aimed at prospective RHI participants in the non-domestic sector and sets out how the Ofgem intends to administer the scheme. Volume One of the Guidance describes the eligibility requirements of the RHI and how prospective participants can become accredited or registered as applicable. Volume Two describes the ongoing requirements for RHI participants, information on how periodic support payments are calculated and paid, and the Ofgem’s compliance and enforcement powers. The deadline for submissions on the guidance is 5 August 2011.

UK: Ofgem Publishes Energy Demand Research Project Final Analysis

The Ofgem has published a report on the final analysis of the Energy Demand Research Project (EDRP) trials. The EDRP was a major project in Great Britain to test consumers’ responses to different forms of information about their energy use. It was launched in July 2007 and has been managed by the Ofgem on behalf of the DECC. The final analysis collates and builds on suppliers’ findings and additional analysis of the data on energy consumption and consumer feedback, together with a review of the wider literature to identify the interventions that have proved most effective in reducing consumption. The findings of the report are particularly useful given the forthcoming national roll-out of smart meters.

Oceania

NZ: NZCC Releases Draft Capital Expenditure Input Methodology for Transpower

The New Zealand Commerce Commission (NZCC) has released its draft determination and reasons paper on an input methodology for approving Transpower New Zealand Limited’s capital expenditure proposals. Input methodologies promote certainty for the suppliers of regulated services about the effect of regulation on them by providing an approval process for investments in the national grid. Transpower anticipates capital expenditure of up to $3 billion over the next five years. The NZCC must publish its final determination and reasons paper before 1 February 2012. The deadline for submissions on the draft is 12 August 2011.
Communications

ACCC Publishes Information Paper on Fibre and Cable Broadband Speeds

The Australian Competition and Consumer Commission (ACCC) has published an information paper to assist providers of hybrid fibre-coaxial (HFC) and fibre-to-the-premises (FTTP) broadband internet services in complying with the Competition and Consumer Act 2010. The information paper provides guidance to ISPs on the factors to consider when making representations regarding the data transfer rates – or ‘speeds’ – available to customers acquiring HFC or FTTP internet services. The paper relates to services provided over the National Broadband Network (NBN), as well as services being provided over pre-existing HFC and FTTP networks.

ACCC Reviews Exemptions in Final Access Determinations for Fixed-Line Services

The ACCC will review whether geographic exemptions from regulation should be included in final access determinations (FADs) for the declared fixed-line services. This follows the ACCC noting in its April 2011 Discussion Paper on FADs for fixed-line services, that it would consider the future operation of the exemptions in respect of wholesale line rental, PSTN terminating access and the local carriage service. The ACCC’s preliminary view was to incorporate the effect of the previous ordinary and class geographic exemptions made by the Australian Competition Tribunal and the ACCC for these services. However, the ACCC is concerned that competitive pressures on Telstra in the exempt exchanges may not be meeting the expectations made at the time of the original exemption decision. The ACCC is also concerned that wholesale service offers in the exempt exchanges may be on substantially less favourable terms than those available in regulated exchanges. Submissions have also raised a wide range of issues, including the implications of the National Broadband Network on investment in, and deployment of, equipment to produce services subject to the geographic exemption and the creation of a competitive market for services such as wholesale line rental. The ACCC therefore considers the complex issues raised concerning the operation and impact of the exemptions on markets require further investigation.

Energy

AEMC Publishes New Versions of the National Gas and Electricity Rules

The AEMC has published Version 44 of the National Electricity Rules. The new version incorporates a number of amendments to rules, which includes: Application of Dual Marginal Loss Factors; Cost Recovery for Other Services Directions; Scale Efficient Network Extensions; Minor Changes; and Reliability Settings. The AEMC has also published Version 10 of the National Gas Rules. The new version incorporates an amendment on Short Term Trading Market (STTM) Data Validation and Price Setting Process, which commenced operation on 16 June 2011.

Federal Court Upholds AER Electricity Distribution Determination

The Federal Court has delivered its judgment dismissing ActewAGL’s application to review the AER’s 2009 electricity distribution determination for the Australian Capital Territory. ActewAGL did not appeal the AER's determination to the Australian Competition Tribunal, but did seek to have the determination reviewed by the Federal Court. In particular, ActewAGL’s claim was that the AER’s decision relating to the risk-free rate
used to calculate the rate of return was incorrect. In its judgment, the Federal Court stated that the AER’s decision was based on reasonable grounds and was justified with reference to its reasons.

**Ports**

**ACCC Accepts GrainCorp Wheat Port Access Arrangements**

The ACCC has accepted GrainCorp’s wheat port access undertaking for October 2011 to September 2014. The 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. These terminals are: Queensland: Fisherman Islands, Gladstone and Mackay; New South Wales: Carrington and Port Kembla, and Victoria: Geelong and Portland. The access arrangements are a publish-negotiate-arbitrate approach to access provision with capacity allocated between users on a first-come, first-served basis. The arrangements replace GrainCorp’s current undertaking, which was accepted by the ACCC on 29 September 2009. The ACCC identified some areas of the existing arrangements for improvement. The main changes from the current arrangements are that the ACCC will have the ability to intervene if there is a material change to GrainCorp’s port loading protocols that raises concern under the terms of the undertaking. Other changes include the information gathering powers for the ACCC and a requirement for GrainCorp to provide to the ACCC a copy of the access provision terms to its own trading division. GrainCorp has also included measures to encourage the return of unwanted capacity at peak times and to increase transparency regarding its system of capacity allocation.

**Post**

**ACCC Issues Final Decision on Australia Post’s Business Mail Prices**

The ACCC has issued its final decision on a proposal from Australia Post to increase prices across a number of its monopoly business mail letter services. The ACCC has confirmed its earlier preliminary view that it should not object to Australia Post’s revised proposal. Australia Post is proposing to increase the prices of business mail services, including PreSort services which provide discounts to wholesale bulk mail customers who sort and barcode mail prior to lodgement. Australia Post is also proposing to change its Off-Peak PreSort letter services to make them more attractive to its bulk mail customers, by reducing the current delivery window of four business days to two. The increased gap between Off-Peak and Peak prices could further encourage more efficient use of the postal network. In addition, Australia Post had revised its initial proposal so that it now includes smaller increases to Off-Peak business mail services than originally proposed, in some cases less than half as much. Following that revision, some of the increases proposed by Australia Post include: small (PreSort) Regular letter (delivered in the state of lodgement) prices increase from 42.7 cents to 45.7 cents, small (PreSort) Off-Peak letter (delivered in the state of lodgement) prices increase from 41.6 cents to 41.9 cents.

**Rail**

**ACCC Accepts ARTC Access Undertaking for Hunter Valley Rail Network**

The ACCC has accepted an access undertaking from the Australian Rail Track Corporation (ARTC) for the Hunter Valley rail network. The undertaking aims to promote efficiency and investment in the Hunter Valley rail network and export coal chain. The Hunter Valley rail
network transports coal from the region's mines to the Port of Newcastle for export. It is one of the largest and most complex coal export operations in the world, since it transports around 100 million tonnes of coal for exported every year, worth about $9 billion per year in export earnings to Australia. The rail network is also used by passenger trains, grain trains, north-south freight trains crossing the network, and coal trains supplying domestic users such as power stations. An extensive consultation and development process involved the coal industry, non-coal users of the network, rail operators, port operators, the Hunter Valley Coal Chain Coordinator and the ARTC. The ACCC approved arrangements which include: the negotiation of long term access contracts between users of the rail network and the ARTC, processes for new investment in the rail network, in consultation with stakeholders, and incentives to promote alignment of all coal chain contracts and efficient use of the Hunter Valley infrastructure.