INTERNATIONAL REGULATORY ROUND-UP

Communications

Europe

BEREC Publishes Draft Report on the Special Rate Services

The Body of European Regulators for Electronic Communications (BEREC) has published a draft report on the special rate services (SRS). The main objectives of the current document are to: analyse the characteristics of SRS in general, and analyse the problems and the negative effects for consumers as they occur (in at least a number of countries); and give guidance to national regulatory authorities (NRAs) on what can be done if problems occur on a national level. The deadline for submissions is 10 February 2012.

BEREC Releases Draft Report on Competitive Effects of NGA Co-Investments

The BEREC has released a draft report on competitive effects of next-generation broadband access (NGA) co-investments. The main objectives of the current document are to: list and describe the different possible co-investment schemes to deploy fibre-access networks across Europe; suggest elements to be examined by NRAs in a co-investment scenario when conducting significant market power (SMP) analyses of markets 4 and 5; and examine specific sets of conditions and criteria considered to be suitable indicators of effective competition. The deadline for submissions is 10 March 2012.

UK: Ofcom Consults on Draft Regulations to Make the Wireless Telegraphy ( Licence Charges) (Amendment) Regulations 2012

The Ofcom has published a consultation on draft regulations to make the Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2012. The proposed regulations would amend the regulations that came into force on 3 May 2011. The proposed regulations set out changes to licence charges (fees) for some classes of wireless telegraphy licence other than those awarded by auction. In particular, the proposed regulations would implement changes that introduce 'Administered Incentive Pricing' (AIP) (whereby licence fees are set above administrative costs to reflect a range of spectrum management objectives), for certain aeronautical licence classes. In addition, they would introduce the second phased increase for some maritime licence classes. These proposed changes have been subject to prior consultation. All other licence charges would remain unchanged. The deadline for submissions is 27 February 2012.

UK: Ofcom Publishes Consultation on New Proposals for 4G Mobile Spectrum

The Ofcom has published a consultation that sets out a number of new proposals for making next generation (4G) mobile spectrum available in the UK, which includes proposals to extend coverage to at least 98 per cent of the UK population and revised plans to promote competition. The focus of this consultation is on whether it should put in place appropriate and proportionate measures in the auction to promote competition; proposals for other aspects of the auction design; and proposals for measures to promote the widespread availability
of 4G mobile broadband services. This follows the Ofcom’s consultation, published in March 2011, which set out proposals for the auction of 800 MHz and 2.6 GHz spectrum. The deadline for submissions is 22 March 2012.

Oceania

NZ: NZCC Releases Issues Paper on High-Speed Broadband Demand-Side Study

The New Zealand Commerce Commission (NZCC) has released the second of three issues papers relating to the uptake of high-speed broadband ahead of a public conference in February 2012. The paper, prepared by Ernie Newman, former Chief Executive of the Telecommunications Users Association of New Zealand, examines the potential demand for high-speed broadband from the education and health sectors. This paper follows a technical issues paper published on 19 December 2011. A final discussion paper will look at consumers’ willingness to pay for high-speed broadband, and at content and applications.

Energy

Americas

US: FERC Eliminates Duplicative Reporting Requirements for Gas Storage Providers

The Federal Energy Regulatory Commission (FERC) has published an order that approves a final rule aimed at eliminating the semi-annual reporting requirements for interstate and intrastate pipeline storage providers conducting transactions. This follows the FERC issuing a proposed rule in September 2011 on the elimination of these semi-annual reporting requirements, as part of its continuing effort to streamline and update its regulations. The FERC concluded that information from other sources overlaps with the information required in the semi-annual reports. The final rule adopts the proposed rule and determines that information in the daily website postings provides price transparency so that shippers may make informed purchasing decisions, and allows shippers and the FERC to monitor transactions for evidence of abuse of market power. The final rule is expected to save the industry an estimated $400,000 annually.

Europe

CEER Publishes 2012 Work Programme

The Council of European Energy Regulators (CEER) has published the final version of its work programme for 2012. The document provides a comprehensive overview of the activities of the European Energy Regulators for the year ahead. In addition to the deliverables of the CEER, the document also provides a short overview of the activities which the Agency for the Cooperation of Energy Regulators (ACER) will undertake during 2012. The document aims to facilitate stakeholders’ planning and input into the regulators’ work by providing a list of topics that energy regulators will be examining during 2012.

CEER Publishes Highlights of Energy Conference in Brussels

The CEER has published a summary of its recent energy conference in Brussels. The conference had two core themes – energy infrastructure and energy efficiency. The highlights of the conference were a panel discussion (chaired by Philip Lowe, Director General, DG ENER), which looked towards the goal of an internal energy market by 2014, and a session dedicated to changing customer behaviour in favour of energy efficiency. The CEER also launched both its 2011 Annual Report and 2012 Work Programme, and announced that, from 1 February 2012, the Swiss energy regulator (Elcom) will join the CEER as a non-voting Observer.
Northern Ireland: Power NI Consents to Price Control Licence Modification

The Northern Ireland Authority for Utility Regulation (Utility Regulator) has announced that Power NI has consented to the Utility Regulator’s licence modifications without amendment. The licence modifications give effect to the Power NI price control, following the publication of the Utility Regulator’s decision paper on 25 October 2011. The main decision of the price control will be savings, based on the Power NI proposals/cost submissions, on the allowed operating costs and profit of Power NI of £20 million over two years. The price control runs from 1 April 2012 to 31 March 2014.

Northern Ireland: Utility Regulator Publishes Phoenix Natural Gas Price Control Determination and Proposed Licence Modifications

The Utility Regulator has published its price control determination for Phoenix Natural Gas Ltd (PNGL), the owner and operator of the gas distribution network in Greater Belfast and Larne. The price control sets an efficient level of revenue to allow PNGL to finance the ongoing build and operation of its gas network, following scrutiny by the Utility Regulator, for the period 2012-13. The price control decision will lead to lower business and domestic consumer prices, from 2013. For the average domestic consumer, there will be around a £10 per annum saving on gas bills. Compared to the PNGL proposals, the price control will lead to consumer bills that will be around £25 lower per annum. The publication of the price control follows a period of public consultation on a draft version.

UK: DECC Responds to Court of Appeal’s Verdict on Feed-in Tariff Scheme

The Department of Energy and Climate Change (DECC) has issued a response following the Court of Appeal’s verdict on feed-in tariff scheme (FITs). The Court of Appeal upheld the High Court ruling on FITs. The DECC is now seeking permission to appeal to the Supreme Court. The DECC has already laid before Parliament draft licence modifications which make provision for a reduced tariff rate (from 1 April 2012 onwards) for new solar PV installations with an eligibility date on or after 3 March 2012 under the FITs. This contingency plan was proposed before the Court of Appeal’s verdict.

UK: Ofgem Consults on Changes to Licensing Policy for Gas Traders

The Ofgem has published a consultation letter that sets out a proposal to remove the requirement to hold a gas-shipper licence for gas traders who are not shipping gas on the GB network but only trading gas as a commodity. The Ofgem’s initial view is that, as gas traders’ activities do not fall into the prohibition of unlicensed activities contained in the Gas Act 1986, it should no longer issue a gas-shipper licence to these parties. Requiring a gas trader to have a gas-shipper licence represents an inappropriate barrier to entry. The deadline for submissions is 15 March 2012.

UK: Ofgem Decides to Fast-Track Initial Proposals for SP Transmission and Scottish Hydro Electric Transmission

The Ofgem has published a letter declaring that the business plans of SP Transmission Ltd (SPTL) and Scottish Hydro Electric Transmission Ltd (SHETL) are of sufficient quality to be consulted upon through fast-tracking Initial Proposals with a view to reaching early settlement of their price controls. The letter provides a high-level summary of the Ofgem’s assessment of the companies’ business plans and sets out the key components of their plans. The decision to fast-track SPTL’s and SHETL’s plans, subject to consultation, reflects the significant improvement in the plans since their initial submission in July 2011.
**UK: Ofgem Publishes Electricity Capacity Assessment Decision Document**

The Ofgem has published a decision document that sets out its views on measuring and modelling the risks of electricity supply shortfalls in Great Britain (GB). These modelling decisions take into account and reflect responses to the October 2011 consultation which closed on 7 December 2011. The model methodology was generally well-received by industry and other stakeholders.

**Rail**

**Europe**

**UK: ORR Consults on Reform of Access Arrangements**

The Office of Rail Regulation (ORR) has launched a consultation aimed at streamlining the process for gaining access to operate rail services on Great Britain’s rail network. The aim is to provide a more robust, less complex legal and contractual framework that adds value, facilitates a public interest outcome, results in improved and closer working relationships, ensures that the right balance of incentives are in place and provides a reduced cost to the industry as a whole. The consultation is seeking views on what changes can be made to the existing track access process to reduce timescales, simplify and clarify contractual processes and procedures, and improve accessibly of information. The responses to the document will inform an upcoming action plan. The consultation closes for some parts of the document on 7 March 2012 and on 18 April 2012 for other parts.

**UK: ORR Orders Network Rail to Improve Performance**

The ORR has published orders for Network Rail to work with other operators to develop new plans to recover long-distance passenger and freight-train performance. Following an extensive investigation into declining punctuality on key parts of Britain’s railways, the ORR found Network Rail in breach of its licence and proposed two enforcement orders requiring the company to develop plans to help recover performance. The long-distance enforcement order requires Network Rail to work with the relevant passenger train operators to produce, by the end of March 2012, robust plans showing that it is doing everything reasonably practicable to deliver the performance commitments it has made for long distance services in 2012-13. The freight enforcement order requires Network Rail to establish a 'recovery board' for freight performance at which its freight customers can call on the company to take specific measures to tackle performance for freight services. The ORR will monitor Network Rail’s compliance with these orders and will consider further enforcement action if necessary.

**UK: ORR Publishes Rail Industry Financial Information 2010-11**

The ORR has published its analysis of the latest financial data from train operators, Network Rail and governments, titled GB Rail Industry Financial Information 2010-11. The total rail industry costs in 2010-11 were £11 billion – 52.5 per cent of costs were incurred for operating and maintaining the rail network and 47.5 per cent in operating trains. The majority of these costs were covered by income from passenger fares (£6.6 billion) and government funding (£4 billion). There was also significant variation in industry income and expenditure across GB’s nine regional operating routes, and the average government funding across all rail regions was 7.5 pence per passenger kilometre travelled.
Water

Europe

UK: Ofwat Publishes Notice on Regulatory Accounts Reporting Requirements

The Ofwat has published a notice on regulatory accounts reporting requirements for 2011-12 and onwards. The notice considers the way in which licensed monopoly water and sewerage companies in England and Wales demonstrate how they are complying with their obligations and meeting their customers’ expectations. This follows the Ofwat’s publication of the regulatory compliance document in October 2011 titled, Regulatory Compliance – A Proportionate and Targeted Approach. As part of the proposed changes, the Ofwat no longer requires companies to submit June returns. The Ofwat is also reviewing what it expects the companies to include in their regulatory accounts and the guidance that supports this. The Ofwat aims to consult on the proposed changes in the first half of 2012.

AUSTRALIAN REGULATORY ROUND-UP

Energy

Tribunal Announces Decision on AER Gas Distribution Access Arrangements for SA and Qld

The Australian Competition Tribunal (Tribunal) has made a decision on the review of the July 2011 gas access arrangement decisions for the South Australian (SA) and Queensland (Qld) gas distribution network operators, Envestra and APT Allgas, by the Australian Energy Regulator (AER). Envestra and APT Allgas both applied for a review of the AER’s decision on the cost of debt, while Envestra also applied for a review of the return on equity and aspects of the AER’s decision in relation to its operating expenditure allowance for its SA network. The Tribunal's decision allows APT Allgas to recover an additional $11 million for its Qld network, an Envestra and extra $10 million for its Qld network and $71 million for its SA network. The Tribunal rejected the AER’s approach to calculating the allowance for the cost of debt, and it overturned the AER’s decision to disallow Envestra to recover the costs of a ‘network management fee’ margin included in the charges paid to APA – a related party which provides network services to Envestra. The tribunal also affirmed the AER’s decisions on the allowance for a return on equity and the allowance for the cost of gas losses in the network, and clarified the scope of matters which may be subject to review.

Tribunal Announces Preliminary Decisions on AER Electricity Distribution for Victoria

The Tribunal has announced its decision in the review of the distribution determinations for the Victorian electricity distribution businesses (CitiPower, Powercor, Jemena Electricity Networks, SP AusNet and United Energy). The Tribunal has allowed the businesses to recover additional revenues above those allowed by the AER, which will result in further increases to electricity distribution tariffs in 2013. All five businesses applied for a review on a number of aspects of the AER’s October 2010 distribution determinations. Some aspects reviewed were specific to each business while some were common to all (for example, the calculation of the cost of debt and the value of dividend imputation credits). The Tribunal’s current decisions will increase allowed revenue across all of the businesses by approximately $300 million, or over three per cent of total allowed revenue of $8.8 billion over the 2011-15 regulatory period. The Tribunal will make its final determination by 5 April 2012.
Electricity Transmission Performance Report

On 8 February 2012 the AER issued the 2009-10 electricity performance report for transmission network service providers (TNSPs) in the National Electricity Market (NEM). TNSPs manage the high-voltage lines that transmit electricity within the five interconnected jurisdictions of the NEM. Large users of electricity, such as aluminium smelters, typically connect directly into the transmission network. Transmission network charges generally make up about ten per cent of a household customer’s bill, but a much bigger proportion of a larger customer’s electricity costs. As electricity transmission networks are natural monopolies, the AER controls the TNSPs’ maximum allowed yearly revenues.