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INTERNATIONAL REGULATORY ROUND-UP

Communications

Americas

US: FCC Proposes Reforms to Cellular Licensing Requirements

The Federal Communications Commission (FCC) has issued a notice of proposed rulemaking (NPRM) and adopted an order proposing to revise the licensing model for the Cellular Service from a site-based to a geographically-based approach. The proposal reduces regulatory requirements in the most-licensed markets while preserving the current model for a period to foster the provision of service in less-licensed markets. The reforms aim to provide licensees with greater flexibility to provide advanced communications service in areas currently unlicensed in the 800MHz Cellular Service.

Europe

UK: Ofcom Publishes Consultation for Spectrum Review

The Ofcom has initiated a review to consider changes to spectrum management policy across bands between 1.4 GHz and 86 GHz that are currently available to fixed links. A total bandwidth of 12 GHz spread across fourteen different bands is managed by the Ofcom with access available via fixed-link licence products that are subject to close technical coordination. The Ofcom welcomes initial views on the policy issues and regulatory changes which could facilitate more efficient use of these bands. The deadline for submissions is 30 April 2012.

UK: Ofcom Publishes Consultation on Consumer Switching

The Ofcom has published a consultation on proposals for switching fixed voice and broadband services delivered over the Openreach copper network. The review of consumer switching processes is focused on ensuring that an individual consumer’s experience of switching communications services is easy, and that the switching processes do not prevent providers from competing in terms of lower prices, greater choice, innovation and value for money. The review focuses on addressing current problems as well as ensuring that switching processes and systems are capable of providing good consumer and competition outcomes. Future parts of the review will consider cable technologies, next generation access (NGA) technologies, mobile and Pay TV services. The deadline for submissions is 23 April 2012.

UK: Ofcom Publishes Proposed Changes to BT and KCOM’s Regulatory and Financial Reporting

The Ofcom has published a consultation that proposes minor changes to enhance the presentation and improve the quality of BT’s regulatory financial statements (RFS). The proposed changes reflect developments over the last 12 months in the regulatory, technological and competitive environment. It also reflects the Ofcom’s ongoing analysis and use of the RFS, comments from users of the RFS and discussions with BT. The regulatory financial reporting regime is also applicable to KCOM. The deadline for submissions is 5 March 2012.
Oceania

NZ: NZCC Publishes Final Determination of Transpower’s Capital Expenditure Input Methodology

The New Zealand Commerce Commission (NZCC) has published the final determination of Transpower’s capital expenditure input methodology. The input methodology was developed after an open consultation process across the electricity industry. The input methodology replaces the former electricity governance rules for approving Transpower’s grid-upgrade expenditure. It integrates all regulation of Transpower’s capital spending with Part 4 of the Commerce Act 1986. The release of the input methodology almost completes the work programme for establishing the NZCC’s regulation of Transpower. Other elements in the regulatory framework include Transpower’s individual price-quality path, effective from 1 April 2011, and other input methodologies, released in December 2010. The new Transpower information-disclosure rules will be released in the second half of 2012.

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

The NZCC has released the last of three issues papers relating to the uptake of high-speed broadband for The Future with High Speed Broadband: Opportunities for New Zealand conference held in Auckland on 20 and 21 February 2012. This paper investigates the willingness of consumers and businesses to pay for high-speed broadband, and potential content and applications. In particular, this paper considers the level of interest in high-speed broadband services from consumers, and small and medium-sized businesses, and includes an assessment of video content delivered over high-speed broadband networks. This paper follows a technical issues paper published on 19 December 2011, and an issues paper looking at e-health and e-education published on 24 January 2012.

Energy

Americas

US: FERC Proposes to Update Standards for Business Practices for Interstate Gas Pipelines

The Federal Energy Regulatory Commission (FERC) has proposed a rule that amends its regulations to incorporate by reference, with exceptions, the latest version of business practice standards adopted by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB) applicable to natural gas pipelines. The new standards, known as version 2.0 standards, include provisions that support coordination between the natural gas and electricity industries, standards for pipeline postings of information regarding waste heat, and general revisions to the standards designed to allow more efficient processing of wholesale natural gas transactions. The deadline for submissions is mid-March 2012.

Europe

CEER Publishes Evaluation of Responses to Work Programme 2012 Consultation

The Council of European Energy Regulators (CEER) has published its Work Programme 2012: Evaluation of Responses document together with the responses to the public consultation on the work programme.

Ireland and Northern Ireland: CER and Utility Regulator Publish CAG Industry Update

The Commission for Energy Regulation (CER) and the Northern Ireland Authority for Utility Regulation (Utility Regulator) have published an update on the Common Arrangements for Gas (CAG) project. The update advises stakeholders
of the next steps in the CAG project. The CER and the Utility Regulator have been working together, and with government departments and the industry, to progress the CAG project since 2008. The CER and the Utility Regulator will keep stakeholders updated on CAG developments and expect to issue the next update in the second quarter of 2012.

Northern Ireland: Utility Regulator Issues Statement on Phoenix Natural Gas Price Control

The Utility Regulator has issued a statement confirming that Phoenix Natural Gas Limited (PNGL) has rejected the Utility Regulator’s price-control determination and proposed licence modification. The Utility Regulator’s price-control decision aims to strike a balance between the interests of consumers and PNGL, and is expected to lead to lower business and domestic consumer prices. The price control will result in a £10 per annum saving on gas bills for the average domestic consumer. Compared to the PNGL proposals, the Utility Regulator’s price control will lead to domestic consumer bills that will be £25 lower per annum. The Utility Regulator now has until mid-April to decide whether to make a reference to the Competition Commission for determination.

UK: Ofgem Issues Consultation on Electricity Distribution Price Control Review (RIIO-ED1)

The Ofgem has issued a consultation for the upcoming electricity distribution price-control review (RIIO-ED1), which is due to start on 1 April 2015. The consultation outlines the Ofgem’s plans for the price-control review (RIIO-ED1) and identifies key issues for the review. In particular, the consultation considers the impact of low-carbon technologies, smart grids, smart meters, the length of the price control, business plans and proportionate treatment, and how to enhance stakeholder engagement. The deadline for submissions is 2 April 2012.

UK: Ofgem Issues Consultation on Proposed Licence Changes to Facilitate Open Governance of the CCCM

The Ofgem has issued a consultation on the drafting of proposed changes to the electricity distribution licence. The proposed changes are designed to facilitate open governance of the common section of the distribution network operators’ (DNOs) connection charging methodologies, referred to as common connection charging methodologies (CCCM). The changes will allow third parties to propose changes to key parts of charging methodologies. The deadline for submissions is 30 March 2012.

UK: Ofgem Proposes Environmental Discretionary Reward

The Ofgem has issued a consultation on the form of an environmental discretionary reward (EDR) to complement the existing RIIO-T1 price-control package. The EDR aims to facilitate electricity transmission’s role in the transition to a low-carbon energy sector. This follows the release of the March RIIO strategy document, where the Ofgem committed to adding a reputational incentive and to consult on the introduction of a financial incentive for this purpose. This has been implemented by the Ofgem to satisfy the RIIO requirement for transmission operators to promote the sustainable development of the energy sector. The deadline for submissions is 3 April 2012.

UK: Ofgem Publishes Consultation and Impact Assessment on National Grid Proposal on Enduring User Commitment

The Ofgem has published an impact assessment and consultation on the Connection and Use of System Code (CUSC) Modification Proposal 192 (CMP 192), which relates to user commitment arrangements. CMP 192 was proposed by National Grid in response to concerns about the inconsistencies and interim nature of the existing user commitment arrangements. Existing arrangements for
generators already connected to the transmission system differ significantly from those generators that are awaiting connection. Arrangements for connected generators were only introduced on a temporary basis and are due to expire on 1 April 2012. This document presents the Ofgem’s assessment of the impacts of CMP 192, which builds on the methodology developed during the industry process. The Ofgem intends to make a final decision on whether to accept CMP 192 or any of its alternatives in April 2012, following a review of the responses. The deadline for submissions is 12 March 2012.

UK: Ofgem Publishes Consultation on System Operator Incentive Scheme

The Ofgem has published a consultation on proposed objectives, policy and principles for the regulation of the gas and electricity system operators (SO) from April 2013. This document contains the Ofgem’s views on the SO regulatory framework, including preliminary SO outputs and cost incentive schemes. The proposals are based on the RIIO principles for regulating monopoly energy companies, which encourages long-term thinking through a clear, transparent and stable regulatory framework. The Ofgem intends to fix the central SO regulatory framework (objectives, principles and the overall policy) for a period of eight years, albeit acknowledging that changes to the SO’s role may require development of the regulatory framework. The deadline for submissions is 27 March 2012.

UK: Ofgem Publishes Consultation on the Standardised Element of Standard Tariffs under the Retail Market Review

The Ofgem has published a consultation outlining a proposed methodology for setting the standardised element of a standard tariff under the Ofgem’s retail market review (RMR). The document outlines the Ofgem’s proposed approach to setting each element that may be included in a fixed charge. It also presents two options for the treatment of regional cost differences in standard tariffs under the RMR. The RMR aims to make it easier for consumers to choose a tariff. If adopted, these proposals should help to enhance engagement and competition in the energy market as part of the wider RMR package of remedies. The deadline for submissions is 2 April 2012.

UK: Ofgem Publishes Initial Assessment of RIIO-GD1 Business Plans

The Ofgem has published a consultation letter assessing the four gas distribution networks' business plans for the next price control period (RIIO-GD1). The letter sets out a proposed level of regulatory scrutiny for each of the companies' plans, and provides reasons for the Ofgem’s earlier decision not to retain any gas distribution network within the RIIO-GD1 fast-track process. The deadline for submissions is 30 March 2012.

Rail

Europe

UK: ORR Publishes Latest Network Rail Monitor

The Office of Rail Regulation (ORR) has published its analysis of Network Rail’s performance from 16 October 2011 to 7 January 2012, highlighting key areas where substantial improvements need to be made as well as illustrating positive developments. The ORR’s analysis finds that Network Rail achieved mixed results during this period. There have been significant underperformance issues in the long-distance and freight sectors, a slight decline in overall customer satisfaction among train operators, and the ORR has concerns with some aspects of asset management. However, there has also been progress in relation to enhancing the network over the Christmas holiday period, alliancing plans are developing,
and some work has been done regarding winter-weather preparedness.

AUSTRALIAN REGULATORY ROUND-UP

Communications

ACCC Declares Wholesale ADSL

The Australian Competition and Consumer Commission (ACCC) has published its decision to declare the wholesale ADSL service under section 152AL of the Competition and Consumer Act 2010. The ACCC considers that the declaration will promote the long-term interests of end-users of fixed-line broadband internet services throughout Australia. Telstra currently retains a dominant position in the markets for both retail and wholesale fixed-line broadband services. Despite the deployment of competitive broadband infrastructure in some areas over the past decade, the ACCC has determined that competition in the supply of ADSL services is not effective. The declaration is aimed at removing impediments to competitive internet service providers gaining access to Telstra’s national ADSL network on efficient terms in order to supply retail services, including to around 11 per cent of premises where Telstra’s network architecture has prevented competitors from using their own infrastructure.

ACCC Accepts Telstra’s Structural Separation Undertaking Access Determination

The ACCC has accepted Telstra’s structural separation undertaking (SSU) and approved its draft migration plan. Telstra submitted its SSU to the ACCC as a result of the legislative framework established in the package of telecommunications reforms introduced by the Federal Government in 2009. The undertaking implements structural separation through migration to the national broadband network. Telstra's structural separation responds to long-standing competition concerns arising from Telstra's involvement in both wholesale and retail markets. The SSU has been the subject of extensive consultation and public discussion.

ACCC Invites Further Comments on NBN Co Special Access Undertaking

The ACCC has released a supplementary consultation paper inviting further comments on the special access undertaking (SAU) lodged by NBN Co on 5 December 2011. The SAU sets out a range of regulatory commitments that NBN Co proposes shall apply until 30 June 2040. This supplementary paper continues the ACCC’s public consultation on the SAU that commenced in December 2011. Interested parties provided submissions to that paper and the ACCC has had regard to these submissions in preparing the supplementary paper. Key issues include: the scope for independent review throughout the SAU’s proposed term (including of price related matters), the interaction between the SAU and NBN Co’s wholesale broadband agreement, particularly with respect to the non-price commitments, and the proposed mechanisms for establishing service levels, setting prices for new products and ensuring efficient investment. The ACCC intends to hold an industry forum in mid-April 2012 to discuss key issues associated with the SAU. The deadline for submissions is 30 March 2012.

ACCC Publishes Wholesale ADSL Interim Access Determination

The ACCC has published its Wholesale ADSL (WDSL) interim access determination, which sets out terms and conditions of access for the next 12 months. The interim access determination sets the following key price terms for the monthly per-user access charge and the monthly charge for data aggregation (which relates to data usage): a monthly charge per end-user in Zone 1 (predominantly CBD and
metropolitan areas) of $25.40; a monthly charge per end-user in Zone 2/3 (predominantly regional and rural areas) of $30.80; and a monthly charge per Aggregating Virtual Circuit or Virtual LAN acquired in connection with wholesale ADSL of $45.50 per Mbps (to 30 June 2012) and $33.65 per Mbps (from 1 July 2012). These prices will lower the costs of supply for a majority of access seekers currently acquiring WDSL services from Telstra. The ACCC has adopted Telstra’s current wholesale pricing construct for the interim access determination, and has set prices using a methodology which calculates wholesale rates based on Telstra’s retail prices minus the costs that it incurs in transforming network access into retail services. The ACCC has also commenced an inquiry into the making of a final access determination for the wholesale ADSL service. The deadline for submissions is 30 March 2012.

Energy

AEMC Consults on Cost Pass-through Rule Change Request from Grid Australia

The Australian Energy Market Commission (AEMC) has issued a consultation paper in response to Grid Australia’s rule-change request relating to cost pass-throughs. The paper aims to assist stakeholders to prepare submissions.

AEMC Publishes Consultant Paper on Australian and International Approaches to Electricity Distribution Reliability

The AEMC has published a paper by the Brattle Group on approaches to delivering electricity distribution reliability outcomes across Australia and internationally. The paper sets out key findings from its analysis of the alternative approaches to distribution reliability, as well as a comparison of the approaches used in Australia compared to other jurisdictions overseas. In addition, the report sets out best-practice recommendations for distribution reliability in Australia.

AEMC Issues Consultation on Payments to AEMO Rule Change Request

The AEMC has issued a consultation on a rule-change request from the Australian Energy Market Operator (AEMO). The requested rule change involves changing the payment arrangements for when transmission network service providers (TNSPs) owe AEMO one type of settlements residue payment. The AEMC is asking stakeholders whether they object to the AEMC assessing the rule change under its expedited process.

AER Publishes Electricity Transmission Sector Performance Report

The Australian Energy Regulator (AER) has issued the 2009-10 electricity performance report for TNSPs in the national electricity market (NEM). The performance report provides information on the financial performance and reliability of transmission networks managed by the TNSPs and how they are performing in comparison to performance targets. The TNSPs covered in the report are ElectraNet, Ausgrid, Powerlink, SP AusNet, Transend, TransGrid, Directlink, and Murraylink. The TNSPs manage the high-voltage lines that transmit electricity to cities, towns and across state borders within the five interconnected jurisdictions of the NEM – South Australia, Victoria, Tasmania, New South Wales and Queensland. The AER controls the TNSPs' maximum allowed yearly revenues.

Ports

ACCC Consults on Auctions for SA Wheat Ports

The ACCC has issued a Consultation Paper seeking submissions from stakeholders on Viterra’s proposed auction system for the use of its port services for bulk wheat export. Under the Access Undertaking accepted by the ACCC
in September 2011, Viterra must replace its first-come-first-served capacity allocation system with an auction. Viterra has proposed an auction system which is set out in its Auction Variation Notice. The ACCC oversees port access arrangements for wheat exporters as part of the deregulation of the wheat industry.

Access undertakings are intended to ensure that third-party exporters are able to access the port terminals operated by vertically integrated port terminal operators, ensuring competition in the market for the export of bulk wheat.