International Regulatory Round-up

Communications

Americas

US: FCC Releases New Local Telephone Competition Data

The Federal Communications Commission (FCC) has released a report into local telephone competition as of 31 December 2008. This is the first time that the FCC has published information about the retail interconnected Voice over Internet Protocol (VoIP) service. The report also includes information about fixed-line services, in keeping with previous reports.

Europe

New EU Mobile Roaming Measures Begin

A number of measures specified in the European Union’s (EU) 2009 Roaming Regulation (No. 544/2009) came into effect as of 1 July 2010. Among other things, the Roaming Regulation required mobile operators to offer their customers the option of setting their own monthly price limit for data roaming via mobile phone or a computer. If customers had not chosen a limit by 1 July 2010, operators are required to impose a monthly default limit of €50 excluding VAT. Operators are also required to provide customers with information about data roaming tariffs when they enter another EU country and must warn customers when they have reached 80 per cent of their specified limit. Maximum wholesale prices for data roaming and maximum retail prices for roaming voice calls have been reduced and there will be no charge for receiving a voice mail message while roaming. The new measures are intended to reduce ‘bill shock’ that may occur when consumers download data while in another Member State but are unaware of the cost and thus incur unexpectedly high bills. The rules will apply until 30 June 2012. Member States' national telecommunications regulators must ensure that mobile phone operators comply with these new rules.

UK: ComReg Publishes Quality of Service Information Notice for Eircom

The Commission for Communications Regulation (ComReg) notified Eircom in December 2009, of its opinion that Eircom had not complied with its obligation to achieve, and fully comply with, specified quality of service performance targets in respect of its provision of the universal service for the period 1 July 2008 to 30 June 2009. Thus the ComReg reserved its rights to initiate High Court proceedings against eircom. The ComReg has now released a quality of service report for Eircom in respect of its provision of universal service. The report notes some improvements in Eircom's provision of the universal service. Thus, the ComReg has decided that it will not take enforcement action at this time, but will continue to report quarterly on Eircom’s performance of the USO and will expect to see further improvement in the provision of service areas that are highlighted in the report.
Energy

ICER Publishes Report on Energy Efficiency

The International Confederation of Energy Regulators (ICER) has published a report on current regulatory practices that promote energy efficiency. The report also presents a number of energy efficiency indicators to facilitate comparisons of energy efficiency between regions and countries. The data presented in the report have been organised by continent and cover the practices of 27 national and regional jurisdictions. The ICER notes that the report is a ‘work in progress’ and thus makes a number of recommendations for further research. This is the first report produced by the ICER since its formation in October 2009 with the purpose of facilitating cooperation between national regulators on global issues. The report fulfils a commitment made at the May 2009 meeting of G8 energy ministers.

Europe

UK: Ofgem Publishes Customer Complaints Handling Research Report

The Ofgem has published a report titled Customer Complaints Handling Research prepared by Harris Interactive. The report assesses energy suppliers’ adherence to the Ofgem’s complaints-handling standards, and seeks to identify areas of good practice in the application of the complaints-handling standards and identify weaknesses where improvements may need to be made.

UK: Ofgem Publishes Research into Switching Rates and Behaviour

The Ofgem has published the results of a survey into switching rates and behaviour of gas and electricity consumers during 2009, undertaken by Ipsos-Mori. The survey was designed to track changes, particularly among vulnerable consumers, as part of the Ofgem’s ongoing work to protect consumers’ interests. The data will help the Ofgem understand differences between customer segments and customer attitudes to switching.

Other

Americas

US: Speech on Innovation and Intellectual Property

The Assistant Attorney General, Antitrust Division, of the Department of Justice (DoJ), has delivered a speech titled Promoting Innovation through Patent and Antitrust Law and Policy to the inter-agency workshop on the Intersection of Patent Policy and Competition Policy: Implications for Promoting Innovation. The speech discusses the role of antitrust policy in promoting innovation and its complementary role to patent laws. It also draws attention to two areas where both antitrust and patent laws might work better to foster innovation: compatibility and interoperability standards, and the use of patent injunctions to enforce a patent holder’s right not to deal. In relation to standards, the speech suggests ways to ensure that the process of standard setting is not manipulated by companies to achieve anti-competitive goals. It also cautions that the threat of an injunction should not be used to enable rights holders to extract royalty payments that are well in excess of the value of the innovation.

AUSTRALIAN REGULATORY ROUND-UP

Communications

Mildura/Sunraysia Switches to Digital-Only Television

The Australian Minister for Broadband, Communications and the Digital Economy, has announced that on 30 June 2010, analog
broadcasting ceased in the Mildura/Sunraysia region. Thus the region is the first in Australia to switch to digital-only television broadcasting under the Government’s Digital Switchover timetable. The timetable envisages a nationwide transition to digital television by 31 December 2013.

INTERNATIONAL REGULATORY REVIEWS

Communications

Americas

US: FCC to Review Data Practices

The FCC’s Media Bureau has initiated a review of its data practices to improve the way it collects, uses and disseminates data. A notice has been released that seeks stakeholder input on how the FCC may improve collection and analysis processes for existing collections, how it can reduce the cost of information provision by better use of technology or improved practices, and how it may improve dissemination of its reports and analyses. The deadline for submissions is 13 August 2010.

US: FCC Seeks Comment on the State of Mobile Wireless Competition

The FCC is required to submit annual reports to Congress that assess competitive conditions in the provision of commercial mobile communications services. It has thus released a notice which seeks input and data on mobile wireless competition for use in its next (the fifteenth) annual report on the State of Competition in Mobile Wireless, including commercial mobile radio services. The deadline for submissions is 30 July 2010.

Europe

Ireland: ComReg Releases Decision Notice Relating to the Provision of Telephony Services

The ComReg is responsible for determining the scope of the Universal Service Obligations (USO) for the Irish market and to decide which undertaking(s) should be designated as the Universal Service Provider(s). In this context, the ComReg has released its Response to Consultation on the Provision of Telephone Services under Universal Service Obligations. The ComReg notes that the European Commission is currently consulting on the future universal service in a digital era and is considering the role of universal service in meeting the stated ‘broadband for all’ policy objective at the European and national level. Thus the ComReg will carefully consider and apply future EC decisions regarding universal service. However, in the interim, the ComReg’s approach and designation refers to narrowband connections only. The new USO designation will apply until 30 June 2012.

Energy

Europe

UK: Ofgem Approves Entry Capacity Transfer and Trade Methodology

The Ofgem has published a letter which approves the 2010 Entry Capacity Transfer and Trade (ECTT) methodology statement submitted by National Grid Gas. The objectives of the methodology are to ensure that entry capacity transfer/trade makes effective use of the pipeline system, is compatible with the physical capabilities of the pipeline, avoids material increases in costs as a result of facilitating entry capacity transfer/trade and facilitates effective competition between shippers and suppliers. The Ofgem considers that the ECTT methodology will continue to provide efficiency
benefits and should result in greater capacity being made available than would otherwise be the case.

**UK: Ofgem Issues Preliminary Conclusions Paper in its Electricity System Operator Review**

In recent years, the Ofgem has expressed its intention to improve the approach to the setting of incentives for National Grid Electricity Transmission (NGET) in its role as System Operator (SO) for the electricity system in Great Britain. The Ofgem established a SO review as part of it implementation of the current year's incentive scheme. The aim of the review is to develop a more effective multi-year electricity SO incentive scheme. This review consists of three phases. The Ofgem has now issued its preliminary conclusions paper following phase 1 of the review. The paper sets out the Ofgem’s view on a methodology for establishing a multi-year SO incentive scheme. Under phase 2 of the review, NGET will consider how best to develop proposals for an incentive scheme covering two or more relevant years on the basis of these preliminary conclusions. The Ofgem will review, in phase 3, the methodology put forward by NGET in phase 2, and set out its conclusions of the review.

**UK: Ofgem Publishes Scope of its Review of Metering Arrangements**

The Ofgem has published a letter setting out the scope of the review of metering arrangements and the proposed next steps in the review. The review will enable the Ofgem to consider the current metering landscape, in particular, the developments since the review of gas metering arrangements in 2004, and the impact of lifting the obligations and price controls since March 2007 for new and replacement electricity meters.

**UK: Ofgem Releases TPCR 4 Roll-over Scope Decision and Consultation Paper**

The current UK gas and electricity transmission price controls expire on 31 March 2012. The Ofgem has previously announced that implementation of the next full price control will be delayed until 1 April 2013 to enable the next price review to reflect fully the conclusions of its RPI-X@20 project. The RPI-X@20 project is a detailed review of the future regulatory framework for energy distribution and transmission networks. In the interim, the Ofgem will implement a one-year rollover of the current price control to operate from 1 April 2012 to 31 March 2013. The Ofgem has now released its final decision document on the scope of the roll-over in a number of areas, including its approach to cost allowances, incentives and the cost of capital. It is seeking further input from stakeholders in other areas.

**UK: Ofgem Releases Update on Probe Monitoring: Tariff Differentials and Consumer Switching**

The Ofgem has released a report that assesses the impact of measures it introduced, following the Energy Supply Probe in 2008, to address unjustified tariff differentials between customer groups and consumers’ reluctance to switch suppliers. The report finds that the new measures have delivered substantial reductions in the tariff differentials identified during the Probe, and that most of the remaining differentials are now consistent with differences in costs. However, the report also shows that some individual areas of concern remain and some new issues have emerged which will require further consideration. The report suggests that switching levels remain high, but have fallen slightly since 2008.
Oceania

NZ: NZCC Releases Draft Decisions on Individual Price-Quality Path for Transpower

The New Zealand Commerce Commission (NZCC) has released its draft decisions and reasons on the application of individual price-quality regulation to Transpower. As the NZCC has not yet received the Minister's decision in respect of the type of regulation that will be applied to Transpower (whether default/customised or individual price-quality regulation), the NZCC has necessarily published its draft decisions on the basis of the NZCC's recommendation to the Minister that individual price-quality regulation apply to Transpower. The deadline for submissions on the draft decisions is 6 August 2010.

NZ: NZCC Releases Draft Decisions on Input Methodologies for Transpower

The NZCC has published the fourth in a series of papers on the development of input methodologies for regulated industries under Part 4 of the Commerce Act. The purpose of input methodologies is to promote certainty for suppliers and consumers in relation to the rules, requirements and processes applying to the regulation, or proposed regulation, of goods or services under Part 4. The latest paper sets out its draft decisions and reasons on the input methodologies to be applied to Transpower. The deadline for submissions is 6 August 2010.

Water

Europe

UK: Competition Commission Makes Provisional Decision on Bristol Water Appeal

The Ofwat referred an appeal from Bristol Water plc to the Competition Commission (CC) in February 2010, following Bristol Water’s decision to reject the Ofwat’s final determination on price limits for the period 2010–2015, broadly on the grounds that they were too low. The Competition Commission (CC) has provisionally decided that Bristol Water can charge slightly higher prices to its customers than the five-year price limits previously set by the Ofwat. The CC’s provisional decision is that Bristol Water should be permitted to raise its bills by an average of 2.3 per cent a year after inflation – in comparison to Ofwat’s original determination of an average 1.7 per cent rise a year after inflation.

Other

Americas

Canada: CTA Reviews Air Transportation Regulations

The Canadian Transportation Agency (CTA) has launched a review of the Air Transportation...
Regulations (ATR) and is soliciting the comments of all interested parties. The ATR set out details for the implementation and enforcement of the Canada Transportation Act. It covers such responsibilities as the classification of aircraft and air services, domestic and international licensing (including the financial requirements for licences and the conditions governing the provision of aircraft with flight crew). The deadline for submissions is 26 July 2010.

Europe

Norway: NCA Continues to Monitor the Grocery Sector

The Norwegian Competition Authority (NCA) has decided to extend grocery chains’ obligation to notify the NCA of their annual contracts with market-leading suppliers so that the NCA can assess whether the contracts have adverse competitive effects. Notification is also intended to be a disciplining device on market participants.

AUSTRALIAN REGULATORY REVIEWS

Energy

AEMC Releases TFP Model

The Australian Energy Market Commission (AEMC) has released a Total Factor Productivity (TFP) model prepared by consultants, Economic Insights, as part of its review of the use of TFP for the determination of prices and revenues. The model is accompanied by an analysis of various scenarios and a technical report. It is anticipated that the draft report of the review will be released for comment in September 2010.

AER Publishes Consultation paper on CitiPower’s and Powercor’s Proposed Security Fee Scheme

The Australian Energy Regulator (AER) has released a consultation paper on CitiPower and Powercor’s proposed security-fee scheme for charging certain groups of new customers a security-fee, and the terms and conditions for such charges. A Distribution Network Service Provider may require a security fee where it fairly and reasonably considers there to be a risk that it will not recover the incremental revenue in relation to a connection offer. The deadline for submissions is 26 July 2010.

AER Publishes Retail Exemptions Issues Paper

The AER has published an issues paper on its proposed approach to retail exemptions under the National Energy Retail Law and Rules, including proposed determinations of class exemptions. Under the proposed Retail Law, a person wishing to sell energy must hold a retailer authorisation or have an exemption from that requirement. The AER will be required to develop a guideline about retail exemptions, and develop classes of exemptions. The deadline for submissions on the issues paper is 2 August 2010.

AER Publishes Final Regulatory Investment Test for Transmission and Application Guidelines

The AER has published its final Regulatory investment test for transmission (RIT-T), application guidelines and a final decision setting out its reasons for decision and responses to submissions received on the AER’s draft RIT-T and application guidelines. The RIT-T has replaced the existing regulatory test for transmission investments and will commence on 1 August 2010. The purpose of the RIT-T is to identify the transmission investment option which maximises net economic benefits and, where applicable, meets
the relevant jurisdictional or Electricity Rule based reliability standards. The RIT-T provides a single framework for all transmission investments and removes the distinction in the regulatory test between reliability-driven projects and projects motivated by the delivery of market benefits.

**AER Releases Access Arrangement Decision for Jemena NSW Gas Distribution Network**

The AER has released its decision to approve the access arrangement (including the reference-services agreement and access-arrangement information) drafted by the AER for the Jemena Gas Networks’ NSW gas distribution network for the period 1 July 2010 to 30 June 2015. The decision makes revisions to the access-arrangement proposal, reference-services agreement and access arrangement information drafted by the AER and released with its 11 June 2010 final decision on the service provider’s access arrangement proposal. The access-arrangement will take effect on 1 July 2010.

**ERA Issues Discussion Paper on 2010 Annual Wholesale Electricity Market Report**

The Economic Regulation Authority (ERA) has issued a notice and discussion paper inviting public comment on any strategic, policy or high-level issues that are impacting on the effectiveness of Western Australia's wholesale electricity market in meeting its objectives. The deadline for submissions is 23 July 2010.

**ESCOSA Determines Electricity Reselling Prices**

The ESCOSA has determined that from 1 July 2010 the maximum price a network operator may charge small transitional inset customers (who consume less than 160 Megawatt-hours per year) is the applicable AGL SA’s standing contract price. It has also determined that the maximum energy prices (peak and off-peak) that an inset-network operator can charge large transitional inset customers should be no higher than the energy price paid by the operator under its own electricity contract with an energy retailer. The ESCOSA noted that this price-setting methodology shall continue in effect for subsequent periods unless otherwise notified.

**ESCOSA Publishes Final Decision for SA Electricity Distribution Service Standards 2010-2015 – Review of Regulatory Instruments**

The ESCOSA has released its final decision on the implementation of the jurisdictional service standards to apply to ETSA Utilities from 1 July 2010 and on the outcome of its associated review of various regulatory instruments. Concurrently with the release of this final decision, the ESCOSA also released the following amended regulatory instruments: Electricity Distribution Code, and the Electricity Industry Guideline Number 1: Electricity Regulatory Information Requirements - Distribution, both of which come into effect from 1 July 2010.

**ESCOSA Publishes Issues Paper for 2010-11 Potable Water and Sewerage Pricing Processes Inquiry**

The ESCOSA has published an issues paper for its inquiry into the processes followed by the State Government in setting the 2010-11 potable water and sewerage prices for SA Water. The ESCOSA has also issued the 2010-11 Transparency Statement Part A (which outlines the factors considered by the Government in setting the prices), and the 2010-11 Transparency Statement Part A (SA Water’s Annual Efficiency Report). The deadline for submissions is 28 July 2010.
IPART Releases Report and Guideline into Electricity and Gas Retail Price Disclosure and Comparison

Following a recommendation from the Independent Pricing and Regulatory Tribunal (IPART), on 18 March 2010, the NSW Government announced that it will establish a price disclosure and comparison scheme for the supply of gas and electricity to small retail customers in NSW. The IPART has released its final report and guideline for electricity and gas retail price disclosure and comparison. The guideline specifies the time, manner and form in which pricing information is to be provided, as well as the definition of what constitutes pricing information.

Other


The Productivity Commission (PC) has released the draft report of its Annual Review of Regulatory Burdens on Business: Business and Consumer Services. The PC is required to review cyclically all Australian Government regulation every five years, and to report on those areas in which the regulatory burden on business should be removed or significantly reduced, as a matter of priority, and provide options for doing so. The deadline for submissions on the current report is 30 July 2010.