The ARCEP Investigates Future of French TV, Telecommunication and Internet Regulation

The French postal and electronic communications authority Autorité de Régulation des Communications Électroniques et des Postes (ARCEP) has issued a media release announcing that it will assist the French Government in an investigation into the future of the regulation of television, telecommunications and the internet in France. The investigation will begin with a broad review of regulatory objectives. It will then focus on how this will affect the way in which France’s regulatory authorities are organised. The investigation will include consideration of plans to merge the ARCEP with the French media authority, the Conseil supérieur de l’audiovisuel (CSA).

The French Prime Minister Jean-Marc Ayrault, in a recent media release, said that television programmes are being delivered less and less through terrestrial broadcasting systems. The content is increasingly being delivered over wireline networks, such as ADSL, cable or optical fibre networks, and also over wireless networks. Further, content is being delivered to a growing array of devices, including computers, tablets, smartphones, and connected televisions. Television programming is being delivered in the same way as other online content such as text, images, files, and data. That is, the content is being delivered through electronic communications networks, and particularly through the internet, often using servers located outside national borders.

The ARCEP stated that an ‘overall investigation into television, telecommunications and internet regulation is therefore useful, while not losing sight of the differences in the purpose, magnitude and methods of regulation governing networks, televised programming and the regime that applies to all the other content being relayed over these networks.’

The ARCEP is an independent regulator, created in 1996, to prepare and assist in introducing the postal and telecommunications sector to competition and ensure the provision and financing of universal telecommunications services. In 2009, these markets represented approximately €60 billion.

The CSA’s responsibilities are wide-ranging and include: protecting consumers; ensuring a plurality of opinions is expressed in the media; organising radio and television electoral campaigns; and allocating frequencies to operators.

The Prime Minister has commissioned three Government Ministers to study the ARCEP and CSA’s proposals. The Ministers are expected to provide recommendations to the Prime Minister by late November 2012.
INTERNATIONAL REGULATORY ROUND-UP

Airports

Europe

Netherlands: NMa Finds No Evidence That Amsterdam Airport Schiphol Abused Dominant Position

The Netherlands Competition Authority (NMa) has announced that it has found no signs that Amsterdam airport, Schiphol, abused its dominant position as an airport by influencing national planning and zoning decisions. A complaint was filed with the NMa by land developer Chipshol. Chipshol claimed that Schiphol systematically prevented it from developing certain land. The NMa determined that Schiphol had taken steps to prevent Chipshol from developing the land and that Schiphol did try to keep land reserved for an additional runway. The NMa, however, did not find any concrete signs that Schiphol’s actions were solely meant to frustrate Chipshol as a competitor on the aviation-related real estate market.

Communications

Americas

US: FCC Approves Transfers of Spectrum

The Federal Communications Commission (FCC) has issued a media release announcing that it has concluded a review of the Verizon Wireless SpectrumCo agreement. The FCC has approved four significant spectrum transfer applications involving Verizon Wireless. The applications include: the assignment of AWS-1 licences held by Cox and SpectrumCo to Verizon Wireless; a spectrum ‘swap’ between Verizon Wireless and Leap; and Verizon Wireless’s net assignment of AWS-1 licences to T-Mobile. Verizon Wireless undertook to divest spectrum to its competitor, T-Mobile. In addition, the FCC’s Order includes enforceable commitments from Verizon Wireless to accelerate build-out of its newly acquired spectrum, as well as to offer data roaming on commercially reasonable terms and conditions.

Europe

France: Mobile Observatory for Q2 2012

In a media release, the French regulator of electronic communications and the postal sector ARCEP, has released data that show that the number of mobile subscribers in France passed 70 million in the second quarter of 2012. Net quarterly growth was about double what it was the year before, with 900,000 additional customers in the second quarter of 2012. The pay-as-you-go (PAYG) customer base grew by 1.1 million during the quarter, with PAYG now representing 26.6 per cent of all accounts. More than half of all active customers also use multimedia services. Network operators are reporting an additional 695,000 customers in total. This brings the total base in Metropolitan France to 60.1 million customers.

Germany: The Bundesnetzagentur Publishes Guidelines on Optical Fibre Cable Installation

The Bundesnetzagentur has published guidelines in relation to the laying of optical fibre cables or ducts with work performed on the electricity network grid. Laying the cables together reduces the cost of underground engineering works for both the electricity network operator and the telecommunications provider. The guidelines identify whether the costs incurred by the electricity network operators will be considered in the context of incentive regulation. A number of options for the simultaneous installation of infrastructure
exist. Telecommunications providers could share the costs of the underground engineering work with electricity network operators on a pro rata basis. A second option would involve electricity network operators laying optical fibre cables at their own expense and selling the capacity they do not use for their own network operations. The revenues would then reduce the electricity network operator’s costs.

Germany: New rules on Free Call Queues

The Bundesnetzagentur has issued a media release highlighting that the nine-month transitional arrangement for telephone call queues came into effect on 1 September 2012. Chargeable call queues for special services are now permitted only if a fixed price applies to the call, or if at least the first two minutes of the connection are free of charge for the caller. A queue is present when a call is taken or a call is placed in line without the caller’s business being attended to. From 1 June 2013, call queues may only be used if a fixed price applies for the call or the call queue is free for callers. Subsequent queues, for example when a call is being passed on, must also be free of charge.

UK: Decision to Vary Everything Everywhere’s 1800 Mhz Spectrum Licences to Allow Use Of 4G Technologies

The Ofcom has released a decision allowing Everything Everywhere (EE) to launch the UK’s first 4G services in 16 cities throughout the country. EE sought permission from the Ofcom to run the high-speed data services over part of the radio spectrum it already uses for earlier generation technologies. It has been reported that other networks do not have spare spectrum to use for 4G services, however all operators will have an opportunity to buy spectrum to support 4G next year. That is, in 2013 the Ofcom will conduct an auction of radio frequencies that have been reserved for 4G services.

Energy

Europe

France: Ten-year Network Development Plan by RTE submitted in 2012

The French Energy Regulation Commission (CRE) has released a deliberation in relation to the ten-year network development plan proposed by Réseau de Transport d’Électricité (RTE), the French transmission system operator. The CRE found that the development plan addresses requirements concerning investment and is consistent with the European ten-year plan as published by ENTSO-E. The RTE outlined an initial ten-year network development plan, which it submitted to the CRE on 31st January 2012. The CRE then undertook a public consultation. In this deliberation, the CRE has published a summary of the consultation and its analysis of the ten-year grid development plan.

Germany: Report Suggests Electricity Supply Reliable

The Bundesnetzagentur has released a report suggesting that electricity supply in Germany had a high level of reliability in 2011. This has been measured using a SAIDI (System Average Interruption Duration Index) value of 15.31 minutes. SAIDI reflects the average interruption in supply per connection end consumer over the past year. In 2010, SAIDI was 14.90 minutes. Between 2006 and 2010, the average SAIDI was 17.44 minutes. The report provides the time, duration, extent and cause of supply interruptions for 864 network operators which reported 206,673 interruptions in supply for 928 networks in 2011.
Germany: The Bundesnetzagentur receives modified Electricity Network Development Plan 2012 from transmission system operators

The Bundesnetzagentur has released a public consultation in relation to the modified Electricity Network Development Plan 2012 prepared by the four German transmission system operators (TSOs) 50Hertz, Amprion, TenneT and TransnetBW. The Development Plan sets out the nationwide expansion measures for the grid up to 2022 that are needed to secure future electricity supplies. Following a consultation and assessment of responses, the Bundesnetzagentur will review the proposed Network Development Plan and environmental report and submit these to the federal government as a draft for a Federal Requirements Plan. The public consultation closes on 2 November 2012.

Italy: Antitrust Authority Fines Gas Distributors for Competition-Restricting Agreement

In a media release, the Italian Antitrust Authority, Autorità Garante della Concorrenza e del Mercato (Agcm) has announced that it has found that 2iGas (previously E.ON Rete), and Linea Distribuzione (LD), had formed a competition-restricting agreement. 2iGas carries out natural gas distribution in about 300 Italian municipalities. LD operates distribution services in 72 municipalities. The Agcm found that by forming a Temporary Consortium to take part in the tender called by the Municipality of Casalmaggiore, the two companies restricted competition in the natural gas distribution market. The companies have been fined a total of €1,334,983. According to the Agcm, the Temporary Consortium was used to divide up roles according to the status quo ante, where both companies would continue to manage the gas distribution service independently and in the same Municipalities in which each had previously operated.

Italy: The Agcm Authorises Acquisition of Gas Distributor

The Agcm has issued a media release announcing that it has approved the acquisition by Cassa Depositi e Prestiti (CDP) of 30 per cent minus one share of the share capital of gas distributor, SNAM. An amended governance structure proposed by CDP alleviated potential competition concerns in relation to the market for gas distribution tenders. Gas distribution tenders will take place in Italy on a staggered basis until 2016 and cover the distribution service of 177 supramunicipal areas for a period of 12 years.

Northern Ireland: Approval Criteria and Incentive Mechanisms RP5 Capex Fund 3 (Investments for Renewable Electricity)

The Utility Regulator has published a consultation paper explaining how it proposes to assess requests for capital expenditure (capex) funding made by NIE T&D. The paper addresses capex requests to be made under RP5 Fund 3 (renewables and interconnection). The paper covers the regulatory principles the Utility Regulator intends to apply and the process it proposes to follow. Information is also provided about how the Utility Regulator intends to incentivise NIE T&D to construct the assets in an efficient manner. The consultation closes on 27 September 2012.

Northern Ireland: Consultation on BGE (NI) Cost Of Debt Commences

The Utility Regulator has launched a consultation on proposals on the cost of debt for the period of the next BGE(NI) price control, beginning 1 October 2012. This is the third consultation on elements of the BGE(NI) price control. The Utility Regulator has previously
consulted on operating and capital cost allowances in December 2011 and April 2012. The final price control will be published by the end of the September 2012. The consultation closes on 21 September 2012.

Oceania

New Zealand: Commerce Commission Issues Draft Decision on Electricity Distribution Default Price-Quality Path

The New Zealand Commerce Commission has released a draft decision in relation to the reset of the default price-quality path for 16 electricity distributors. The proposed reset will adjust the prices electricity distributors are able to charge for their services from next year. The proposed adjustments for individual suppliers in the 2013-14 year vary in size and include a reduction in price of 8 per cent to an increase in price of 11 per cent before inflation. Larger changes are capped at 15 per cent per year. The average change across the industry over the next two years is an increase of 1 per cent before inflation. The consultation closes on 1 October 2012. Cross-submissions close on 12 October 2012.

Post

Europe

Ireland: Draft Postal Strategy Statement 2012-2014

The ComReg is undertaking a public consultation on its draft Postal Strategy Statement for the period 2012 - 2014. The Postal Strategy Statement is supplemented by annual Action Plans, which set out detailed steps to be undertaken, along with timeframes. A new regulatory framework for the postal industry was mandated by the Communications Regulation (Postal Services) Act 2011 and the ComReg has begun to put that framework into operation. The consultation closes on 3 October 2012.

Portugal: Postal Traffic and Revenues Decline

The Portuguese electronic and postal communications sector regulator, Autoridade Nacional de Comunicações (ANACOM) has released a report on the performance of the postal industry. During the second quarter of 2012, total postal service traffic was 243.7 million items. This is a decline of 8.1 per cent over the same quarter last year. There were 7.4 million express mail items, corresponding to 3 per cent of total traffic. This represents a decline of 3.1 per cent compared to the same time last year. Grupo CTT had a 96.6 per cent share of total postal traffic. In the express segment, Grupo CTT's share was 34.8 per cent. Total revenues derived from postal services were €176.8 million, a decline of 4.5 per cent for the same time last year. There were 15,300 people employed in the postal industry, 700 fewer than the last year.

Rail

Europe

UK: Data Highlights Government Financial Support to the Rail Industry

The Office of Rail Regulation (ORR) has published statistics highlighting levels of government financial support to the rail industry from 1985-86 to 2011-12. In 2011-12, the rail industry received a £3.9 billion government subsidy. This is less than the amount of government support in 2006-07, which was just under £6.31 billion. The data also highlight that 2011-12 is the second year that the government received money from train operating companies as part of their franchise agreement. In 2011-12, the government received £133 million. The
previous year the government received £51 million.

**UK: Network Rail Failing To Deliver Plan to Recover Long Distance Rail Performance**

The Office of Rail Regulation (ORR) has published its quarterly report that indicates that Network Rail is not improving punctuality on some long-distance rail services. Network Rail’s plans to ensure improvements in punctuality were accepted by the ORR three months ago. The ORR’s analysis of Network Rail’s performance between 1 April and 21 July 2012 suggests serious problems that are affecting some services. If Network Rail fails to deliver the 2013-14 targets, the ORR has said that it may face large financial penalties. The magnitude of the financial penalties will reflect the extent of Network Rail’s failure to meet its commitments, increasing by £1.5 million per 0.1 percentage point it drops below a 92 per cent punctuality target.

**Water**

**Europe**

**UK: Consultation on Wholesale Incentives for the 2014 Price Review**

The Ofwat has released a consultation on proposed wholesale incentives for the 2014 price review. The Ofwat intends to set separate price controls for retail and wholesale services. Concerns have been raised about the implementation of the separate price controls. This consultation identifies key issues associated with new incentives for the wholesale controls, and invites views on how the incentives might be addressed. The issues include: incentivising the delivery of outcomes; incentivising value for money; incentivising better water resource use; incentivising better network use and development; and developing packages of incentives. The consultation closes on 28 September 2012.

**AUSTRALIAN REGULATORY ROUND-UP**

**Communications**

**NBN Co Withdraws Special Access Undertaking**

The ACCC has issued a media release announcing that NBN Co has withdrawn the Special Access Undertaking that it lodged with the ACCC last year. The ACCC would otherwise have had to make a decision on the undertaking by 17 September 2012. The ACCC has been working with NBN Co to progress preparation of a revised undertaking. If accepted, the Special Access Undertaking would form part of the regulatory framework for access to the National Broadband Network.

**Energy**

**Draft Report for Consumers to Drive Electricity Savings**

The AEMC has called for comments on a draft report proposing new ways for consumers to control their use of electricity and manage their bills. The draft report includes proposals for change to every part of the electricity supply chain, enabling greater demand-side participation in the National Electricity Market to help minimise costs of supply. The draft report also suggests ways to provide consumers with the information, education, incentives and tools needed to manage electricity use. Submissions are due by 11 October 2012.
Trading-off Electricity Investment and Reliability in NSW

The AEMC has published its final advice to the NSW Government on the costs and benefits of changes to the State's future level of distribution reliability. The AEMC modelling shows that over 15 years from 2014-15 to 2028-29, reductions in distribution investment in NSW could range from $275 million to $1.3 billion in today's dollars, depending on the extent of changes in reliability standards. By 2028-29, this reduction in distribution investment could lead to an increase in outages by two to fifteen minutes a year and savings of $3 to $15 a year for the average NSW residential electricity customer. Current reliability standards in NSW were established in 2005. Investment to meet those standards has been approved and committed out to 30 June 2014. This limits the potential reduction in customer bills that could occur from reducing reliability outcomes in the short term.

Draft Determination and Draft Rules Released for Public Comment

The AEMC has published a media release in relation to a draft determination proposing new rules for the regulation of network prices of electricity and gas. The draft determination would: allow the Australian Energy Regulator (AER) to benchmark network businesses; require the AER to publish annual benchmarking reports on network business performance; allow the AER to consider past efficiency when determining future spending allowances for network businesses. Public submissions on the AEMC’s proposed changes to the rules are due on 4 October 2012 before a final determination is expected in November 2012.

AER Request for Submissions on the Electricity Transmission Draft Service Target Performance Incentive Scheme

The AER has issued a media release requesting submissions for its new electricity transmission draft service target performance incentive scheme (STPIS). The draft STPIS proposes changes to the existing version 3 of the STPIS based on the AER’s findings contained within the STPIS review. The STPIS is a scheme which is designed to provide incentives for each TNSP to maintain or improve reliability of transmission network services at times most valued by customers, and in relation to those elements of the network most important to determining wholesale electricity prices. Submissions close on 16 October 2012.

Electricity Distribution Ring-Fencing Guidelines – Request for Submissions

On 1 December 2011, the AER released a discussion paper regarding the electricity distribution ring-fencing guidelines. The AER considered submissions on the discussion paper and has now released a position paper setting out its view on whether a nationally consistent Distribution Ring-Fencing Guideline should be developed. The AER’s preferred position is to develop a national ring-fencing guideline to apply to electricity distributors in the NEM. Submissions close on 28 September 2012.
ACCC Issues Draft Guide to Resolving Potential Disputes Between Australia Post and Bulk Mail Users

The ACCC has issued a draft guide on how it would inquire into potential disputes between Australia Post and users of its bulk letter interconnection service. Australia Post’s bulk interconnection service is offered to businesses that send bulk quantities of letters for delivery within Australia. Australia Post provides bulk interconnection services at lower rates than for its standard mail service. The ACCC is seeking public comment on the draft guide. Submissions close on 21 September 2012.