REGULATORY OBSERVER

International and Australian regulatory developments and decisions

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UK Government Announces Sale of Royal Mail

The UK Government has announced that it intends to proceed with the sale of Royal Mail Group Ltd (Royal Mail). Royal Mail is the provider of the universal postal service in the UK. Universal postal service obligations require Royal Mail to deliver and collect letters six days a week and that prices for services that are part of the universal service must be affordable and uniform throughout the UK. It was also announced that the Post Office Ltd (the Post Office) will be retained in public ownership. The Post Office operates the network of post offices in the UK and offers postal, government and financial services.

A number of reports have identified the challenges faced by the postal sector. A 2010 report by the former deputy chairman of the Ofcom, Richard Hooper (the Hooper Report) concluded that without substantial change, Royal Mail would not survive in its current form. The Hooper Report provided three main recommendations. First, Royal Mail should have access to private-sector capital. This would finance the modernisation that the business requires. Private-sector capital will also inject private-sector disciplines into the business and will reduce the risk of political intervention in commercial decisions, thus accelerating modernisation. Second, Royal Mail's £8 billion historic pension deficit should be taken over by the public purse. Third, the way in which postal services are regulated should be changed.

The Hooper Report found that a new regulatory framework needs to be created that increases certainty for investors in the postal services sector in general and in Royal Mail in particular. The burden of regulation should be reduced by: focusing regulation on sustaining the universal postal service; introducing a new access regime which will ensure the right balance between competition and the financial sustainability of the universal postal service; and focussing regulation where there is a monopoly and removing regulation more quickly from the competitive parts of the market. The Hooper Report also found that the Government should consider whether market uncertainty would be reduced by setting an agreed date for a review of ex ante access regulation by the regulator.

The Postal Services Act 2011 (UK) (the Postal Services Act) had lifted restrictions on Royal Mail’s ownership and provided for the separation of the Post Office from Royal Mail that occurred in April 2012. During this time, historic liabilities of the Royal Mail Pension Plan were transferred to a public sector scheme.

The Postal Services Act also established a new regulatory regime for postal services. Regulatory responsibility for the postal sector was transferred from the Postcomm to the Ofcom with an objective to provide benefits of a larger regulatory authority. The Ofcom is the regulator and competition authority for the wider communications sector in the UK. The Ofcom’s principal duty under the Postal Services Act is to secure the provision of a universal postal service. This includes having regard to the need for the provision of a universal postal service: to be financially sustainable, including the need for a reasonable commercial rate of return for any universal service provider; and to become efficient within a reasonable time, and then remain so.

A 2012 report by the Ofcom (the Ofcom Report) found between 2006 and 2010-11, there was a 25 per cent decrease in the volume of mail. While Royal Mail delivered almost 16 billion letters to 28.8 million addresses in the UK in 2010-11, there was a decrease in Royal Mail’s revenues since 2006 of more than 35 per cent, and that during this time, Royal Mail’s average costs increased. The Ofcom Report found that the sustainability of the universal service remained under severe pressure.

European countries with privatised providers of a universal postal service include Germany, Austria and the Netherlands.

The UK Government has announced that the sale of Royal Mail is designed to ensure the long-term sustainability of the universal postal service. Shares in Royal Mail will be sold through an initial public offering that is expected to take place in coming weeks. Ten per cent of the company’s shares will be provided to Royal Mail employees.
International Regulatory Round-up

COMMUNICATIONS

Americas

US: FCC and Industry Canada Agree on New Spectrum Sharing Arrangements

The Federal Communications Commission (FCC) and Industry Canada have agreed on interim spectrum sharing arrangements covering a range of wireless communications operations along the US-Canada border. The arrangements will enable greater wireless broadband deployment, improved general aviation air-to-ground communications services, and more efficient use of spectrum for specialised mobile radio services.

US: NTIA Petition for Rulemaking on Unlocking of Mobile Devices

The US Commerce Department’s National Telecommunications and Information Administration (NTIA) has petitioned the FCC to require wireless carriers to unlock mobile phones, tablets, and other devices for use with other carriers upon request. Mobile device unlocking involves disabling or removing ‘locks’ placed on devices by mobile carriers that prevent them from working on another operator’s network. The proposed rule would shift the burden associated with device unlocking to the carriers.

Europe

EU: Commission Proposes Reforms to Telecommunications Sector

The European Commission has issued a media release proposing reforms to the EU telecommunications sector. The proposals include: a single regulatory authorisation for businesses to operate in all 28 EU member states, to replace current regulations that require 28 separate authorisations; coordinated spectrum assignment throughout the EU; and the abolition of mobile phone roaming charges across Europe.

Germany: Fixed Line Interconnection Rates Approved

The Bundesnetzagentur has approved new fixed-line interconnection rates charged by Telekom Deutschland GmbH. The final approval covers the basic origination and termination rates as well as the rates for optional and special services, derived from the basic rates. These include calls to value-added services, transits between different networks and narrowband internet traffic.

Germany: Bundesnetzagentur Launches Consultation on Grid Expansion

The Bundesnetzagentur has launched a consultation on the draft Electricity Network Development Plan 2013 and the Offshore Network Development Plan 2013. The Bundesnetzagentur’s draft confirmation rulings and its draft of the Environmental Report 2013 have also been published.

Germany: Bundesnetzagentur Announces Final Mobile Termination Rates

The Bundesnetzagentur has announced the final rates for the termination of calls to the mobile networks run by German mobile network operators. A uniform rate of 1.85 cents per minute is payable retroactively from 1 December 2012. On 1 December 2013 the rate will decrease to 1.79 cents per minute.

UK: Spectrum Pricing, A Framework for Setting Cost Based Fees

The Ofcom has commenced a cost based fee review of its spectrum pricing policy. This review was planned in its Strategic Review of Spectrum Pricing in 2010, which established a framework for setting charges for licences under the Wireless Telegraphy Act 2006 (UK). A regulatory statement on cost based fees is expected to be released in early 2014.

UK: Television White Spaces and Approach to Coexistence

The Ofcom has released a proposal in relation to the identification of parameters for spectrum sharing. With the increase in the UK of the use of wireless data devices, the demand for wireless data continues to grow, requiring access to radio waves, known as spectrum. In some areas, allocated spectrum is not used. This is referred to as ‘white spaces’, and can potentially be used by other devices and services. A new way to access spectrum, known as dynamic spectrum access, provides a means to use this spectrum. White space devices can change their spectrum use in response. The Ofcom will finalise the proposed parameters in mid-2014.
UK: Review of the Spectrum Management Approach

The Ofcom has commenced a consultation that proposes changes to the management and authorisation approach to the 71 - 76 GHz and 81 - 86 GHz (70 / 80GHz) bands. At present, a self-coordinated licensing approach is employed to authorise use in these bands. Feedback is required by 14 October 2013, and a statement will be released in December 2013.

UK: Consultation on the Authorisation of Earth Stations on Mobile Platforms

The Ofcom has commenced a consultation on the use of Earth Stations on Mobile Platforms (ESOMPs) for providing broadband connectivity to passengers on board moving vehicles, including aircraft, ships and trains. Several satellite operators are planning to launch commercial satellite networks in 2013-2014 that support the use of ESOMPs. The Ofcom seeks to facilitate the take-up of these new services by introducing a regulatory framework to allow their use. The Ofcom will release a statement in December 2013.

UK: The Future Role of Spectrum Sharing for Mobile and Wireless Data Services

The Ofcom has commenced a consultation on the future role of spectrum sharing for mobile and wireless data services. The aim of the consultation is to develop a better understanding of the role that spectrum accessed on a shared basis could play in the mobile broadband and machine-to-machine sectors alongside cleared spectrum bands. The Ofcom is seeking to understand the role that spectrum shared on licensed, licence exempt and a dynamic spectrum access basis could play in providing access to more spectrum. Feedback is required by 7 November 2013.

UK: Ofcom Issues Switching Statement

Following consultation in February 2012, the Ofcom has released a statement and commenced consultation on the processes for switching fixed voice and broadband providers on the Openreach copper network.

Oceania

NZ: New Zealand Commerce Commission Seeks Further Feedback for UBA Price Review

The New Zealand Commerce Commission (NZCC) has released an update paper in relation to its price review of the unbundled bitstream access (UBA) service. The UBA price review started in 2012 and the NZCC expects to make a final decision in late October. The price will apply from 1 December 2014.

ENRGINY

Europe

Czech Republic: Next steps in the Czech-Slovak-Hungarian-Polish-Romanian Market

The representatives of national regulatory authorities, transmission system operators and power exchanges from the Czech Republic, Slovakia, Hungary, Poland and Romania, have announced that they have met to discuss the next steps in market integration of the day-ahead electricity markets in the five countries. This includes the coupling of the Polish market area that is expected to be implemented as part of the Central East Europe Flow-Based Market Coupling initiative.

UK: Competition Commission Requests Extension for RP5 inquiry

The Utility Regulator has granted an extension to the Competition Commission (CC) in relation to the deadline for completing its inquiry into the price control conditions (RP5) for Northern Ireland Electricity Limited. The report is now due by 29 April 2014. The CC is expected to publish the provisional findings by the end of October 2013 and the final determination by the end of December 2013.

UK: Decision Published on the 2013-16 SEMO Price Control

The Utility Regulator and the Commission for Energy Regulation have published their decision relating to the Single Electricity Market Operator (SEMO) price control. The price control determines SEMO’s revenue requirement which is recovered through the annual all-island Market Operator tariffs.

Oceania

NZ: New Zealand Commerce Commission Releases Draft Decision on Orion’s Customised Electricity Price-Quality Path Proposal

The NZCC has released its draft decision on Orion’s customised price-quality path proposal. The draft decision takes into account the extraordinary circumstances following the Canterbury earthquakes in 2010 and 2011. The NZCC has considered how the long-term benefit of consumers can be best met by assessing service reliability and costs. The draft decision sets a customised price-quality path that is lower than Orion sought. The final determination is due by 29 November 2013 and would then take effect for Orion’s pricing for the year commencing 1 April 2014.
Europe

Ireland: Report on Net Cost Unfair Burden Assessment

A report has been released by the ComReg that provides recommendations for the criteria that should be followed to assess whether there is a net cost in providing Ireland’s universal postal service. An Post, the designated ‘universal service provider’, may seek funding for the net costs of providing the service. The ComReg must determine whether the provision of a universal postal service: represents a net cost, taking into account any market benefits which accrue to the USP; and is an unfair burden to the USP. The ComReg may apportion the net cost among providers of postal services.

Rail

Americas

US: Correction to 2012 Cost-of-Capital Finding

The Surface Transportation Board has issued a correction to its 2 August 2013 decision in relation to the railroad industry’s cost of capital for 2012. The revised figure for 2012 is 11.12 per cent. The Board also extended the effective date of the decision to 28 September 2013.

Water

UK: Thames Water’s Application to Increase Bills

The Ofwat has issued a media release announcing that it is considering an application by Thames Water to increase the limits on its prices in the last 12 months of the current period from April 2014. A draft decision will be published in October 2013 and a final decision in November 2013.

UK: Ofwat Appoints Price Review Delivery Partner

The Ofwat has announced the appointment of PwC as its ‘delivery partner’ for its 2014 price review. PwC will provide advice, analysis and assurance through the price control process. The appointment follows changes to the way prices are set. It has been estimated that these changes could generate more than £2 billion of benefits by setting separate retail controls and encouraging more water trading. The Ofwat is due to carry out a risk-based review of each regulated business, and set final limits on prices, by January 2015.

Australian Regulatory Round-up

Communications

ACCC Invites Comment on Broadband Monitoring and Reporting Program

The Australian Competition and Consumer Commission (ACCC) has released a consultation paper on a proposed program for monitoring and reporting broadband performance in Australia. The program would test data transfer rates and other indicators of broadband service quality experienced by a sample of consumers in real world conditions. The results of the testing would be made available to consumers and service providers. The consultation closed on 13 September 2013.

ENERGY

Review on a Framework for Open Access and Common Communication Standards

The Standing Council on Energy and Resources has published terms of reference for the Australian Energy Market Commission (AEMC) to provide advice on open access and common communication standards to support contestability in demand side participation end user services enabled by smart meters. The AEMC is required to provide its final advice by March 2014 and will publicly consult on a draft report before finalising its advice.

Final Determination Made on Changes to Cost Allocation Method

The AEMC has published a final rule determination in relation to a rule change request from Trans Tasman Energy Group on the cost allocation method and negotiated service pricing principles. The AEMC determined not to make a rule and found that existing rules provide sufficient opportunities for customer engagement and access to relevant cost information for negotiated services.

AER Releases New Guideline to Prevent Excessive Electricity Network Upgrades

The Australian Energy Regulator (AER) has published new consultation arrangements that apply when electricity distribution network businesses consider building new infrastructure. The Regulatory Investment Test for Distribution requires network businesses to publish the options considered when there is a need to fund an expansion to existing network capacity.
AER Issues Draft Decision on Victorian Electricity Transmission Revenue

The AER has issued its draft decision on SP AusNet’s revenue proposal for the three-year regulatory period commencing 1 April 2014. SP AusNet is the principal electricity transmission network service provider in Victoria. The AER’s draft decision sets the maximum revenue that SP AusNet can recover from its customers from the transmission network component of an electricity bill.

AER Releases Draft Expenditure Assessment, Expenditure Incentives and Confidentiality Guidelines

The AER has released three further draft guidelines as part of the Better Regulation reform program: expenditure forecast assessment; expenditure incentives; and confidentiality guidelines.

AER Releases Amended SP AusNet Distribution Determination

The AER has announced that it has amended SP AusNet’s Victoria distribution determination for 2011-15 by adjusting the regulatory asset base in accordance with Federal Court orders made on 20 December 2012. This results in an increase to SP AusNet’s revenues. Customers on a single rate tariff will experience approximately a $1 increase in their charges in 2014 and 2015.

AER Publishes Draft Decision on the Early Application of the Electricity Transmission Service Target Performance Incentive Scheme

The AER has published a draft decision on the early application of version 4 of the service target performance incentive scheme (STPIS) for transmission network service providers (TNSPs). The draft decision also sets out a preliminary position on the application of the STPIS to TransGrid and Transend during their transitional year. Feedback was required by 25 September 2013.

AER Publishes Draft Decision to Reject Increases in SP AusNet’s Smart Meter Prices

The Australian Competition Tribunal has dismissed a challenge by SP AusNet to increase smart meter prices for the 2012-15 period. It affirmed the AER’s decision in February this year to reject significant price increases sought by SP AusNet due to its choice of communications technology.

ACCC to Not Oppose Proposed Acquisition by AGL of Australian Power and Gas

The ACCC will not oppose the proposed acquisition by AGL Energy Limited (AGL) of Australian Power and Gas Company Limited (APG). The ACCC considered the impact of the proposed acquisition primarily in state-based retail markets for the supply of electricity and gas in Victoria, New South Wales and Queensland. It found that, while APG’s customer base is predominantly based in Victoria, the collective presence of a number of second tier retailers in that state would continue to drive competition.

ACCC Proposes to Allow Electricity Generators to Start Joint Negotiations

The ACCC is proposing to allow Queensland power generators CS Energy, Callide Energy, InterGen and Callide Power Management to jointly renegotiate existing coal supply arrangements with Anglo Coal.

NCC: Final Decision for the Wagga Wagga Natural Gas Distribution Network

The National Competition Council (NCC) has released its final decision recommending that the Minister should not revoke coverage of the Wagga Wagga Gas Distribution Network. The NCC is satisfied that all of the four relevant pipeline coverage criteria are satisfied.

PORTS

ACCC Issues Final Decision on Emergld Wheat Port Access Undertaking

The ACCC has issued a draft decision proposing to not accept Emergld Logistic Services Pty Ltd’s (Emerald) proposed wheat port access undertaking. The undertaking relates to access to port terminal services for bulk wheat export at Emergld’s bulk-grain port terminal in Melbourne. Submissions on the draft decision closed on 28 August 2013.

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