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RPI-X Regulation: Ofgem's RPI-X@20 Review and the Scope for More Customer Involvement

Stephen Littlechild*

1. Introduction

This paper first examines why the RPI-X approach was adopted in the UK and what it is. It then explains the RPI-X@20 Review initiated by the Office of Gas and Electricity Markets (Ofgem), which began by assessing how successful that approach has been in the UK. The paper sets out the emerging themes from the RPI-X@20 review, one of which is the issue of more customer involvement. Based on the experience of alternative approaches in four overseas jurisdictions and the UK airport sector, this paper argues for exploring further the so-called 'constructive engagement' approach.

In 1983 British Telecommunications (BT) was the first UK utility to be privatised. The question was posed: how should it be regulated? US regulation emphasised the provision of a 'fair and reasonable rate of return'. But such regulation was increasingly subject to challenge by economists and others. In the UK context it was necessary not only to assure investors and customers that the regime would be fair but also to incentivise the former nationalised industry to be more efficient and innovative. I was asked to examine some alternatives, and proposed a price cap set for a fixed period of time. The cap would be inflation-adjusted but would require an annual price reduction in real terms.

In the event, the cap was reset at intervals. Variants of this approach were then used in privatising all UK regulated monopolies (gas, airports, water, electricity, rail, post as well as telecommunications). A similar approach to the regulation of network monopolies has been used ever since, and in many countries overseas.

2. Defining RPI-X

The basic proposal was that the average annual price increases (as a percentage) should be capped by RPI minus X where RPI is the Retail Price Index

(comparable to the Consumer Price Index – CPI – in Australia) and X is a number set by the Secretary of State at the time of privatisation (and subsequently reset by the regulator). BT's initial X value was 3 per cent, and its initial price control was set for three years. Subsequent price controls on network monopolies have typically been set for five years.

The RPI-X approach is similar to the CPI-X approach taken by the ACCC/AER, in that it uses a Building Block model. Using the model, the regulator assesses the company's future operating expenditure (opex), capital expenditure (capex), return on assets (cost of capital) and depreciation policy, in order to calculate an allowed revenue stream over the next regulatory period, say five years. There are nonetheless some differences between the UK and Australia. Since privatisation, the UK uses actual historical cost rather than optimised replacement cost. It typically employs the so-called Po factor (an initial price adjustment from one price control period to the next) as well as an X factor during the price control period. There are also certain differences in the regulatory framework, as discussed shortly.

Using the UK electricity distribution price controls as an example, Table 1 illustrates the levels of Po and X determined for each set of price controls, for electricity distribution companies. Table 2 summarises the economic factors leading to these values of Po and X.

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* Fellow, Judge Business School, University of Cambridge, United Kingdom. This paper is a revised version of a paper presented at the Public Seminar of the ACCC/AER (Melbourne, 28 July 2009).

Table 1: Parameters Set under the UK Electricity Distribution Price Control

<u>Period of Control</u>	<u>Po adjustment (%)</u>	<u>X factor¹ (% pa)</u>
First control 1990–1995	Some increases	Average X = -1.3 Range: [-2.5, 0]
Second control 1995–2000	Average Po = -25 Range: [-20, -28]	X = 3
Third control 2000–2005	Average Po = -26 Range: [-19, -33]	X = 3
Fourth control 2005–2010	Average Po = 1.3 Range: [-5.7, 11.9]	X = 0

Table 2: Factors Underpinning the Parameters

<u>Control period</u>	<u>Price changes</u>	<u>Economic factors</u>
1990–1995	Price increases	<ul style="list-style-type: none"> • High capex was expected; • The government wished to facilitate flotation.
1995–2000	Significant price reductions	<ul style="list-style-type: none"> • Opex reductions had been achieved and more were expected; • Actual capex was less than expected; • Regulatory value of initial assets was set below replacement value.
2000–2005	Significant price reductions	<ul style="list-style-type: none"> • There were continued opex reductions; • A significant proportion of distribution costs were found to have been misallocated, and were reallocated to supply business.
2005–2010	Slight price increases	<ul style="list-style-type: none"> • Further opex cuts were now outweighed by increasing capex programmes

¹ Note that a positive value of X in the RPI-X formula represents a real price decrease and a negative value represents a real price increase. For example, under the second price control where the value of X was set at 3 per cent, the allowed annual price change was RPI minus 3 per cent.

Such values of Po and X are perhaps higher than typically seen in Australia and the US. In consequence, network prices in the UK are often lower than elsewhere. For example, ongoing research (Mountain and Littlechild 2009) calculates that allowed distribution business revenues per customer in New South Wales (NSW) were about double comparable UK levels in 2000, were expected to be nearly three times UK levels in 2010, and are projected to be over four times UK levels in 2014.

What are the reasons for this? There seems little significant difference in the geographical and physical structure of the industry. However, there is still public ownership in NSW versus private ownership in the UK, and there are different regulatory frameworks in the two jurisdictions. Examples of the latter include:

- The UK regulator has more discretion, whereas the AER has to follow the National Electricity Rules.
- The UK has more strongly emphasised incentives – for example, to discourage over-spending on capex.
- The UK makes greater regulatory challenge to the companies including more frequent use of benchmarks. In the UK, parallel price control reviews for comparable companies aid comparison.
- The onus of proof as regards demonstrating a reasonable level of future costs lies on the companies in the UK, but on the regulator in Australia. Thus, in the absence of agreement, the regulator's view prevails in the UK, the company's view in Australia.

- In the UK a company appeal against the regulator's judgement could lead to an outcome more onerous for the company (and on some occasions has done so), whereas this is not the case in Australia.

These differences suggest that RPI-X in the UK is more than 'cost of service regulation with a regulatory lag'.

3. Ofgem's RPI-X@20 Review

Last year, after 20 years of using RPI-X in the electricity sector, Ofgem announced its RPI-X@20 review of the RPI-X mechanism. Relevant documents include Ofgem (2008, 2009a) and numerous papers on the section of Ofgem's website devoted to this review. Table 3 sets out the initial timetable for the Review.

The Working Groups are considering the following questions relating to specific issues examined:

- Investment: What are the obstacles to timely network investment?
- Innovation: What is needed to deliver a low carbon economy?
- Financing: What are alternative ways of allocating risk and return? What are the implications of any changes for financeability?
- Focusing on consumers: Is there a need for greater involvement of consumers? Should consumers have a right to appeal?

Evaluating RPI-X

Ofgem's first step was to evaluate how successful the RPI-X approach to regulation has been to date. Its initial assessment may be summarised in Table 4.

Table 3: Indicative Timeframe for the RPI-X@20 Review

Date	Action
March 2008	Review announced
November 2008	Initial stakeholder workshops
February 2009	Initial consultation <ul style="list-style-type: none"> • Visionary phase to November 2009 • Options development phase to Summer 2010 • 2009-10 Four Workstreams and Working Groups
Quarter 1 2010	Emerging Thinking
Quarter 2 2010	Workshop
Quarter 4 2010	Publication of Recommendations document

Table 4: Ofgem's Assessment of RPI-X@20

Outcomes	Illustrative evidence
Prices are down	<ul style="list-style-type: none"> • Distribution charges halved since 1990 • Opex was reduced by 7.7 per cent per annum from 1992 to 2003
Quality is up	<ul style="list-style-type: none"> • Number of power cuts was down by 11 per cent from 1990 to 2005 • Duration of interruptions was 30 per cent shorter from 1990 to 2005
Investment is up	<ul style="list-style-type: none"> • £3.8b 1986–1990 pre-privatisation • £5.2b 1990–2004 average (per 5 year period) • £7.4b 2004–2009 current period
Cost of capital is down	<ul style="list-style-type: none"> • About 8.5 per cent pre-tax WACC in 1990 • About 6 per cent pre-tax WACC in 2005
Changes in electricity demand and supply are accommodated	<ul style="list-style-type: none"> • 30 Gigawatt (GW) of combined cycle gas turbines (CCGTs) replacing 24 GW coal and nuclear generation

Source: Ofgem (2008)

Ofgem (2008) summarises that RPI-X is 'a trusty servant ... hugely successful' (p. 11) and 'a faithful and sturdy workhorse in delivering efficiency and investment' (p. 15).²

Reflecting on the UK outcomes, an Australian might wonder whether low network prices mean that firms are squeezed too hard. The answer seems to be 'No'. There is no sign of inability to raise capital or unwillingness to invest. In fact Ofgem refers to 'squeezing the fat lemon' (Ofgem, 2008, p. 11). Or do higher quality and investment mean gold plating? Again, the answer seems to be 'No'. Higher quality and investment have been actively encouraged and endorsed by the regulator, without complaint from either the regulator or customers.

Why change a winning formula?

If the RPI-X approach is so successful, why change it? Ofgem (2008) cites a number of reasons for the review of the 20-year-old approach to regulation.

² Ofgem has since published a range of papers and its thinking has moved on since then, both in terms of the scope of the project and on how to take the issues forward. The documentation is on the Ofgem website at: <http://www.ofgem.gov.uk/Networks/rpix20/Pages/RPIX20.aspx> [accessed on 24 November 2009].

- Some concerns about the present model

One company suggests that the exiting model is in danger of relapsing to a (low) rate of return model. Another suggests that the scope for opex savings is now exhausted, and there is need for utility regulation to provide a new impetus – securing the climate change agenda.

- Increasing complexity of price controls

Each control needs two years of intensive consultation.³ Some price control measures are unfathomable to outsiders. For example, menu regulation offers the company a choice between a complex set of risk/price tradeoffs.

- Financing issues

Stock markets show rising company valuations – does this indicate a paradigm shift in financing that Ofgem ought to reflect? On a different point, is there a need to change the existing regulatory tool kit (including such measures as cash lock downs and

³ I calculate that, from the first to the third distribution price control review, there was an eightfold increase in the volume of price control papers put out by Ofgem and its predecessor the Office of Electricity Regulation (Offer).

special administrations), which focuses on cure rather than prevention?

- Routine check-up

Since the method has been in use for 20 years, it is timely to review some of the detailed mechanics of the price control – for example, the handling of pension surpluses and deficits, the possibility of creating a ‘cliff-edge’ depreciation problem as a result of Ofgem’s application of accelerated depreciation, and the costing in of the shadow cost of carbon.

Furthermore, academics have been suggesting changes. For example, Littlechild (2007, 2008a) and Pollitt (2007, 2009) have proposed a greater role for customers. Holt (2005) has examined financeability and company failure, while Helm (2008) has proposed a split cost of capital for the purpose of differentiating between the return on old and new capex. In addition, Ofgem wishes to seek the views of relevant Parliamentary Select Committees, and other public bodies (e.g., regulators on safety and security costs). Ofgem also wishes to consider what other economic regulators are doing. Of particular interest is the Civil Aviation Authority (CAA) that has introduced ‘constructive engagement’, as discussed below.

The main driver for the review is Ofgem’s perception that the world is changing, which makes it necessary to consider whether the approach that worked in the past will continue to work in the future. The main changes instanced in Ofgem (2008) include:

- Ambitious renewables targets: To meet the EU target of 20 per cent share of energy from renewable sources by 2020, the UK is required to reach its target of 15 per cent share of energy from renewables by 2020 (EU, 2009, pp. 17 and 46). This means that more than 30 per cent of electricity needs to be generated from renewables by 2020, up from about 5.5 per cent in 2009 (HM Government, 2009, p. 8).
- A challenging target of 80 per cent reduction below 1990 level in carbon emissions by 2050 (HM Government, 2009, p. 26)
- The new sustainability duty assigned to Ofgem in 2004
- Government policy to enable new nuclear connections
- Heavy promotion of distributed energy
- Government and regulatory policy to introduce smart meters and smart grids
- The introduction of a new European Agency Regulatory Body.

Changing RPI–X

Ofgem points out that the RPI–X approach has already changed over the last couple of decades, so the concept of a change in the method of regulation is not new. Examples include:

- The price control is no longer just a holistic review once every five years.
- Incentives have been introduced not to delay opex and capex saving.
- Line base opex regulation has been introduced (e.g., for particular initiatives).
- Individual capex settlements are now used (e.g., funding particular transmission lines).
- Special incentives have been introduced for promoting sustainability.
- A differential cost of capital has been used under the Transmission Investment for Renewable Generation (TIRG) schemes.

The remaining question is whether RPI–X needs to change further to meet the challenges of the changing world. To this end, Ofgem examines the emerging picture of the energy networks to see whether the energy networks are geared up to meet the challenges of the changing world. Ofgem (2009b) assesses the networks as follows:

- They have tight and efficient operating cost bases.
- They are low risk and risk averse, with high debt finance.
- They invest only with commitment from users or the regulator.
- They are focused on:
 - allowed revenue but not on the structure and impact of charges;
 - Ofgem and the regulatory contract but not on consumers;
 - their own business but not on market interactions.
- They are reactive to government policy, but not proactive.
- They are reluctant to innovate.

Ofgem’s primary concerns

In this context, Ofgem has two primary concerns with the current RPI–X approach: investment and customers. As regards investment, the challenge is how to encourage innovation and efficient network investment against a backdrop of huge uncertainty

about what future networks should look like. As regards customers, the challenges include: how to engage consumers in the regulatory process? How to improve company focus on customers? How to improve the legitimacy of the regulatory regime from customers' perspective? The key question is what consumers actually want. Ofgem is already taking steps to find out. For example, its Consumer First Initiative launched in March 2007 took the views of a panel of 100 customers. It is employing several new measures in Distribution Price Control Review 5 (DPCR5), including establishing a Consumer Challenge Group involving six consumer experts; carrying out own consumer research; and requiring companies to provide evidence of stakeholder support for their business plans. However, Ofgem asks whether this is enough.

RPI-X@20 consultation responses

Ofgem has consulted through the RPI-X@20 review. It reports that interested parties are supportive of the review, but they note the benefits of the RPI-X regime to date. There is recognition of a sustainable energy sector being key to future policy. Investment needs a clearer signal from the government, and some (particularly the electricity companies) argue that the regulatory framework should reward innovation and accept the risk of asset stranding. There is support for more consumer engagement, as a complement to rather than a substitute for the RPI-X regulation. Respondents note that suppliers' incentives are not the same as customers' incentives, and there are in fact barriers to customer engagement. The overall message is to adapt the present approach to regulation, not replace it.

Summary of RPI-X@20 Review to date

To summarise, the general view is that the RPI-X approach has been very successful at increasing efficiency in the industry. There are nonetheless various reasons to review it, the most important of which is that the world is changing. Ofgem is assessing whether the current RPI-X approach is still sufficient and appropriate to deal with the changing world ahead. It feels that future investment needs more responsiveness and innovation, and is concerned about the adequacy of customer focus.

Companies and other interested parties have welcomed the review, but have urged Ofgem to adapt and evolve rather than replace the RPI-X approach. No obvious alternative to RPI-X is emerging. However, the question remains: will it cope with the uncertain world ahead?

4. Exploring Customer Involvement

The rest of the present paper explores the second of the main thrusts of Ofgem's review – the extent of customer involvement. At present, customers are not directly involved in the price control review (though as explained the views of some customers are sought). My own concern is that the lack of direct customer involvement means that, instead of discovering and meeting customers' wishes, companies tend to respond to the regulator instead. This in turn has an adverse effect on industry-customer relationships, and encourages resort to media and political pressure. The concentration of decision making on the regulatory body also means a uniformity of approach (within each utility sector), less tailoring to local needs, less innovation, less comparison, and less learning from experience.

As part of its Review, Ofgem recently asked Nigel Cornwall and myself (Littlechild and Cornwall 2009) to look at some examples of customer involvement elsewhere, including Argentina, the US, Canada, and the UK (airport regulation by the CAA), and to report on which approach might be most usefully explored further in the context of the UK, with particular reference to the next electricity transmission price control review. For further information on the examples discussed below, see Littlechild (2008b,c,d; 2009a,b) and Doucet and Littlechild (2006, 2009).

Public contest method in Argentina

Argentina privatised its electricity industry in 1992. The Government was concerned about the undue influence on the regulatory body that private companies, particularly a national transmission company, might have. While providing for the existing transmission grid to have a conventional RPI-X price cap, the Government also provided that new investment proposals had to be proposed, voted for and paid for by transmission users. The construction and operation of any such transmission expansion then had to be put out to competitive tender.

In spite of an initial problem when an important line that had expected to be supported was at first voted down, the method in general worked well. Users were indeed able to work together to decide on investments and were willing to pay to build them.

US federal energy regulation

The US federal energy regulatory bodies – the Federal Power Commission (FPC) and its successor the Federal Energy Regulatory Commission (FERC) – have encouraged parties to settle cases. Initially this was to cope with a backlog of cases. But settlement subsequently became part of established

policy. A recent study by Wang (2004) shows that from 1994 to 2000 there were 41 gas pipeline cases, of which 34 were settled in full, five in part, and only two were litigated. The main gain was that the different process led to innovative rate freezes that the regulator could not legally impose. These provided better efficiency incentives, and more certainty for all concerned.

Consumer advocate in Florida

The Public Service Commission is the regulator in Florida, but the consumer advocate (the Office of Public Counsel) has frequently negotiated settlements with utilities. In the electricity sector this has accounted for over three quarters of the total rate reductions, worth over USD\$4 billion (Littlechild 2009a). In return, the utility companies got greater accounting flexibility, and revenue-sharing price freezes (which incentivise efficiency) instead of rate of return control. In effect, settlements in Florida adopted a version of RPI-X.

Oil and gas pipelines in Canada

Before settlements in the mid-1990s, the National Energy Board (NEB) held long hearings into rate cases. Since 1997 almost all rate cases have been settled. These settlements typically introduced multi-year incentive systems (similar to RPI-X), and also arrangements to provide information and quality of service provisions where relevant. As a result of these settlements, there are now better information exchanges and better customer relationships in the industry.

A key to these developments is that the NEB refrained from cherry-picking the items that it liked in a settlement and rejecting the ones that it did not like. It also introduced a 'generic cost of capital ruling' to aid negotiation on this potentially difficult issue. The NEB's policy was that if the process is sound, then it would accept the outcome, and not substitute its own view of the public interest.

Constructive engagement in the UK

The UK provides an example of a partial approach to settlement. The CAA had concerns about its previous price control process. It asked the airlines and airports to participate in what it called 'constructive engagement' in order to try to agree on specified elements of the next price control: that is, quality of performance standards, traffic forecasts and the investment programme. The CAA retained responsibility for price control decisions on opex, cost of capital, financing and the final RPI-X price control (CAA 2005). These aims were largely achieved at Heathrow and Gatwick. In addition, there were improved relationships and understanding between

the parties. The approach was initially perceived as unsuccessful at Stansted (although arguably the inability to reach agreement was useful in indicating the strength of airline opposition to the airport's planned second runway and terminal).

The Competition Commission (CC) was critical of some aspects of this process, particularly the limited provision of information by British Airports Authority (BAA), the growth in the capex plan during and after the constructive engagement process, and the absence of the CAA as arbiter or facilitator (CC, 2008a, para 29, pp. 9–10). Nevertheless, it supported the principle of constructive engagement. In fact, when faced with the necessity of determining a price control at Stansted, the CC restarted the constructive engagement process for Terminal 1 (subsequent events having ruled out progress with Terminal 2). This met with success. On the issue of who should represent customers, the CC said that 'airline customers are generally in a much better position than the regulator to suggest needed development' and that there was no reason to believe that the interests of future airlines and passengers would deviate from the interests of current airlines (CC, 2008b, pp. 2 and 8). The CC made several recommendations to improve the process of constructive engagement, particularly the provision of more information by BAA, and the appointment of a facilitator of the process by the CAA (CC, 2008a, pp. 114–15).

The CAA has since extended the concept of constructive engagement to the price control on air traffic control services. It is developing well there (CAA 2009).

Emerging principles

There are some emerging principles from these different examples of greater consumer involvement in regulatory decision-making. First, regulatory responsibility does not mean that the regulator has to take all the decisions. Regulation can enable rather than replace the market discovery process. Second, if the regulator removes monopoly power, market participants themselves can determine the outcome. Note, however, that there is a regulatory responsibility to parties not at the negotiating table. Third, the evidence is that parties are willing and able to participate. Transaction costs are not a problem in practice. Fourth, where it is open to the parties to decide the nature of the regulatory control, a form of RPI-X or price freeze is often chosen, but the users rather than the regulator decide the relevant outputs and parameters.

Which approach is best?

Which approach is most appropriate for each regulatory situation? This will depend on the circumstances of each case. In the context of the next electricity transmission price control in the UK, the public contest method would require changes in the UK law, and the task of specifying voting arrangements would not be straightforward. In contrast, constructive engagement is consistent with the UK law and practice. It potentially offers the benefits of negotiated settlements, provided that the regulatory specification of the issues to be engaged in reflects the preferences of the participants. It will be necessary for the parties to consider the 'bottom line' too, so as to take into account the price implications of the chosen investment programme. It will also be important to consider who represents customers, and how to incorporate consumer research evidence into the agreed regulatory settlement.

5. Conclusions

Ofgem's RPI-X@20 review confirms that the RPI-X approach to regulation is very effective at cost reduction, at least as applied in the UK. However, the world is changing, and Ofgem is concerned to assess the adequacy of the current approach in the uncertain world ahead. This paper argues that greater customer or user involvement is both possible and desirable. This could well use variants of the RPI-X approach, rather than replace it. At any rate, it is worth exploring the application of such an approach in more detail.

Postscript

Since the presentation of this paper at the end of July, Ofgem (2009c, p. 1) has indicated its preliminary thinking on customer involvement.

Our initial view is that, at least in the near future, the focus should be on engaging effectively with consumers to inform Ofgem decision-making. We therefore intend to focus on working up how the enhanced engagement model [where Ofgem makes decisions but these are informed by engagement with consumer representatives, network users and network companies] would work in practice. Details that we will explore through the course of the review include: determining appropriate ways to engage with consumers; identifying core issues that we should engage consumers on; and considering appropriate timing for engagement. We think that there may be a greater role for consumers in decision-making in the future, particularly if the role of networks changes and they have more interaction with consumers, which allows them to better understand consumer needs and preferences. The experience of using the enhanced

engagement approach may also help us to understand the potential for consumers to take a greater role in regulatory decision-making.

Of course, engagement with customers by a regulatory body, while commendable, is different from companies and customers engaging with each other with a view to reaching agreement. The CAA (2005, p. 6) explicitly envisaged that its constructive engagement process would mean that 'some of the work usually carried out by the regulator will instead be taken forward by the airports and their airline customers'. Nevertheless, Ofgem may be taking a small step in the direction successfully pioneered by the CAA. In due course customers may secure the greater involvement that has been achieved in certain other jurisdictions.

More recently, I have examined Australian 'light-handed' regulation of airports (Littlechild 2009c). This approach has strong similarities with the various policies described in this paper, which have greater customer involvement than conventional RPI-X regulation. I have argued on the Ofgem RPI-X@20 forum (Littlechild 2009d) that Australian airport policy deserves serious consideration for application in the UK and elsewhere.

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Critical Issues in Regulation – From the Journals

'Is a combination of Nodal Pricing and Average Participation Tariff the best solution to coordinate the location of power plants with lumpy transmission investments?' Vincent Rious, Philippe Dessante and Yannick Perez, EUI Working Papers, Robert Schuman Centre for Advanced Studies, RSCAS 2009/14. [Paper](#)

In a liberalised electricity market such as the NEM, price signals play a key role in incentivising efficient short-term operational decisions and longer-term investment decisions. It is generally accepted that nodal pricing (also known as locational marginal pricing) sends the right short-term signals to electricity producers and consumers regarding operational decisions in the presence of congestion on the electricity transmission network. But, due to various market imperfections, such as the presence of lumpiness in transmission investment, several authors have argued that nodal pricing does not send the right longer-term signals for generation location and investment decisions. In other words, we cannot rely on nodal pricing alone to efficiently coordinate generation and transmission investment decisions. The standard solution is to introduce an additional fixed charge for the use of the transmission network. If that charge were locationally differentiated, in principle it would be possible to induce generators to locate in the most efficient location on the network.

This paper focuses on a particular approach to setting the fixed transmission charges – referred to as the 'average participation tariff' or APT. The APT is a particular, ad hoc, methodology for allocating the total costs of the network to generators. In effect, the APT is a methodology for calculating what is referred to in Australia as the generation transmission use-of-system (G-TUoS) charge. The methodology is based on tracing the power flows from generation to load and allocating a share of the costs on each route to the corresponding generator. The APT corresponds to what is known as the 'Shapley Value' in co-operative game theory. The Shapley Value has certain, 'desirable' properties, as it may be seen as a fair, symmetric, stable and acceptable allocation.

The paper models a very simple two-node one-link network over a twenty year period with load increasing each year. As is common in transmission modelling, demand is inelastic and the generators have no market power. Due to the simple network,

calculating the transmission tariff is easy (all of the charges are imposed on the generators at the 'remote' node). The complexity in this modelling is the interaction of the decision of the transmission planner, on the one hand, and generation investment decisions, on the other. The transmission planner minimises the sum of congestion and network upgrade costs (network upgrades are lumpy and can only be carried out one at a time). The generator decision problem minimises the cost of production to serve load, taking into account the possibility of lumpy capacity expansions at different times and different locations, and taking into account the network charge, which may vary across locations. These two problems interact with each other and cannot be easily solved with standard tools. The authors use a standard heuristic technique known as a 'genetic algorithm'.

The results are very interesting. The authors consider a number of cases with and without nodal pricing and the APT. Focusing on nodal pricing alone, the authors confirm that nodal pricing alone does a poor job of coordinating lumpy generation and transmission investment decisions. However when they combine nodal pricing and the APT, they find that the combination of signals yields the first best efficient outcome of both transmission and generation investment. The authors also provide an example to show that under a different set of parameters the first best efficient outcome is not necessarily reached, but the outcome is still better than without either of the price signals. In fact, the authors conclude that, when coordinating generation and transmission investment is the objective, implementing locational price signals in transmission charges should be a higher priority than implementing nodal pricing alone.

The significance of these conclusions may be limited by the highly simplified model used. In this model, the APT reduces to a very simple network charge. We could hypothesise that in a more sophisticated network model, a more complicated tariff calculation would be required. But that will have to wait for further research. This paper is a useful and timely contribution to the debate on transmission charges in Australia.

‘Do S&P Corporate Credit Ratings Reflect Credit Shocks?’, Ralf Elsas and Sabind Mielert, Munich School of Management Discussion Paper 2009-13. [Paper](#)

This article addresses the question of whether corporate ratings by the credit agency Standard & Poor’s (S&P) reflect fundamental and publicly observable shocks to the credit quality of companies. This issue has become topical given developments in credit markets as a result of the global financial crisis (GFC). The evidence compiled in this article from a large sample of European companies from 2000-2008 indicates that external ratings frequently do not reflect fundamental changes in the credit quality of companies. On selecting viable companies to include in the sample, large companies were preferred. The companies that comprised the sample were a constituent of the STOXX index since 2000.

To examine the relationship between a credit shock to a firm and the timing of a subsequent credit downgrade, instantaneous shocks, financial weakness and financial distress of companies were analysed. In these situations, the authors found that 50 per cent of the time S&P did not adjust its corporate rating at all. When corporate ratings did change, the authors found this happened typically at a lag of more than half a year.

The conclusions of the paper were not as general as to imply external ratings never reflect information on borrower default risk. However this study shows that they are at best very slow in doing so.

Possible explanations for the conclusions of the article were presented. One such plausible explanation was that during the GFC, S&P would have been unlikely to have had any better information on distressed banks’ bailout probabilities than other investors in the capital market. Another explanation presented was reputation effects that could have prevented S&P from re-rating a company given that this could have the potential to harm S&P’s reputation by diminishing the information content of ratings if they were altered more frequently than usual. Another point made in the article was that rating agencies could have been subject to political pressure during the GFC to not downgrade bank ratings to avoid further destabilisation of financial systems.

Finally, the authors argue that regulatory intervention may be needed to address the apparent flaws in credit rating practices. Such intervention could entail promoting the natural state of credit ratings reflecting actual probabilities of default and addressing the agency and other issues that have contributed to the

apparent divergence of the current system in achieving this objective.

‘Public and Private Investments in Regulated Network Industries: Coordination and Competition Issues’, Bruno Jullien, Jerome Pouyet, and Wilfried Sand-Zantman, IDEI Working Paper No. 562, July 2009. [Paper](#)

This paper examines the three-way relationship between a national regulator, an incumbent and a local authority where investment in a new infrastructure must be undertaken. This relationship comes about because private investors will take into account the actions of regulators and public investment in determining whether to make a new investment. The authors consider this is relevant for the analysis of investment in NGN in telecommunication.

The paper examines this three-way interaction in the context where both the private sector and the local authority may invest. The paper while acknowledging there may be valid reasons to allow local authorities to build their own infrastructure, considers there may be problems with this and seeks to explore some of these problems.

The authors claim that under perfect information, and even more general situations where the incumbent and the local authority share the same information, and where the regulator and the local authority share the same objective, the regulator should always allow the local authority to invest. This is because, in these situations, there will not be any inefficient duplication and the regulator can set a tariff which leaves the incumbent with no extra profit. Here, delegation of the investment decision has no social cost. However, the authors argue that, where one of these conditions is not met, then the regulator may want to constrain the local authority’s intervention. For example, where a regulator does not know the local authority’s cost of investment, the authors argue that systematic allowance of duplication leads to excessive duplication by the local authority, which does not internalise the incumbent’s foregone profits, and this deters some efficient investment by the incumbent.

Next, the authors look at the situation where neither the national regulator nor the incumbent are informed about the local authority’s cost of intervention. As such, the incumbent cannot perfectly foresee when it will be duplicated and is exposed to risk. Here, duplication is not always efficient. The regulator can either ban duplication to remove the risk of duplication at the cost of not allowing the benefits of a reduced access tariff when the local authority

invests, or increase the regulated tariff to compensate the incumbent for the risk of duplication. The authors claim to show that, in this situation, if there is private investment, a ban on duplication is socially optimal.

In concluding, the authors claim several key dimensions must be considered when designing rules governing intervention by local authorities including the risk borne by investors and the differences between the motives of local authorities and the social welfare. They consider that public policy should guard itself from crowding out efficient private investment, which may occur when public investment is not restricted to areas where private investment is sufficient.

International Round-Up of Regulatory Decisions

This section contains a sample of recent regulatory decisions in leading OECD countries and the European Union, with emphasis on energy, telecommunications, posts, water and wastewater, rail, airports and ports.

Outcomes of World Forum on Energy Regulation

See Notes on Interesting Decisions

Europe: EC Approves Acquisition of Gatwick Airport

The European Commission (EC) has [cleared](#) under the European Union (EU) Merger Regulation the proposed acquisition by Global Infrastructure Partners of Gatwick Airport Limited from its current owner, BAA. This transaction was initiated following the outcome of the UK Competition Commission's (CC) investigation into the UK airport services market. The EC's investigation, however, is not connected with that investigation, since, after examining the proposal the EC concluded that the transaction would not significantly impede effective competition in the European Economic Area.

Europe: EC Raises Doubts about Austrian Broadband Market Definition

In EU Member States, firms with significant market power in a broadband market that are found to be not effectively competitive are subject to ex ante regulation by the relevant national regulatory authority (NRA). Prior to implementation, a NRA is required to notify its regulatory proposals to the European Commission (EC) and other national regulators under the consultation mechanism of the Electronic Communications Framework Directive (the so-called Article 7 procedure). The EC may make comments on notified draft measures and, after further investigation, require a regulator to withdraw a proposed measure due to incompatibility with EU law.

In this context, the EC has [asked](#) the Austrian telecommunications regulator, Rundfunk und Telekom Regulierungs GmbH (RTR), to delay the adoption of proposed regulatory measures in the Austrian broadband access market (bitstream access market) until after the EC has conducted further investigation. The EC has indicated that it has 'serious doubts as to the compatibility of the provisions defining the Austrian wholesale broadband access market with EU law'. In particular, the EC considers that the RTR has not provided sufficient

evidence to support its finding that fixed line DSL and cable connections are substitutes for mobile broadband connections, and thus regulation of the broadband access market at the residential retail level is no longer required. The EC also has doubts regarding the scope of the RTR's wholesale market definition for bitstream access.

Europe: ERG to Consult on Charging Mechanism for Termination Services on NGN Networks

The European Regulators Group (ERG) was created to act as an advisory group to help the EC develop the internal market for electronic communications and services and ensure the consistent application of the EU's regulatory Framework. The ERG consists of the European National Regulatory Authorities. The ERG has released the [outcomes](#) of its 30th Plenary session held at Lucerne in early October 2009. These include a decision to [consult on a draft common position](#) on future charging mechanisms for termination services on Next Generation Networks. The draft common position is that bill and keep is more promising in the long term than a regulatory regime that has calling policy networks paying for termination. The consultation period closed on 10 December 2009.

Europe: EC Urges Ofcom to take Stronger Action on Fixed Termination Rates

The EC has written a letter to the Ofcom calling on it to impose appropriate price control and non-discrimination obligations on fixed termination rates offered by all communication providers (CPs). Following its Review of Fixed Narrowband Services Wholesale Markets, the Ofcom does not intend to impose a non-discrimination obligation on, or to price regulate the termination services of, CPs other than British Telecom and Kingston Communications. However, the EC highlighted the fact that all CPs are monopolists for the termination of calls on their networks and normally have the ability and incentive to raise termination rates above costs and/or to set differentiated charges, thereby placing competitors at a disadvantage. Commercial agreements cannot normally address this potential market failure in the termination markets. Therefore, regulatory authorities in the EU generally also impose a non-discrimination obligation on alternative CPs and the EC considers that price control obligations are the most appropriate intervention to address the competition problems in

these markets. The EC's letter therefore urges the Ofcom to impose an adequate *ex ante* cost-based price control and a non-discrimination obligation on all CPs.

Europe: Danish Regulator Asked to Reconsider Regulation of Termination Calls

In a letter, the EC has asked the Danish telecommunications regulator, NITA, to reconsider its regulatory approach for terminating calls to non-geographic numbers operated by service providers that offer premium rate services to end-users. Unlike national regulators in other EU Member States, NITA regulates the price of these services, setting them at the same level as for 'ordinary' termination services. However, as recognised by the EC's Recommendation on Termination Rates (IP/09/710), terminating calls to service providers are generally characterised by different competitive conditions than terminating calls to end-users and therefore not necessarily subject to regulation. Against this background, the EC invited NITA to re-assess whether the obligations imposed on TDC, the Danish incumbent operator, in particular concerning price control, were proportionate and justified.

Europe: EC Tests Commitments by EDF to Increase Competition in French Electricity Retail Market

The European Commission (EC) is inviting comments from interested parties on commitments offered by the French energy company EDF which seek to address the EC's concerns that EDF may be abusing its dominant position in France and therefore infringing Article 82 of the EC Treaty. The EC is concerned that EDF may hinder through its contracting practices the entry and expansion of competitors in the market for retail supplies of electricity to large industrial users. EDF's contracts also contain provisions which may constitute illegal resale restrictions.

Under the proposed commitments, EDF would ensure that competitors could compete during the period of the commitments for on average 65 per cent of the electricity it contracts with large industrial users in France each year. Should EDF's market share fall, this percentage would be reduced but the volumes which EDF could contract for more than one year would be capped. In addition, the duration of any new contract concluded with large industrial users would not exceed five years.

France: Autorité Examines Issues Raised by Rail Liberalisation

Building on the lessons and actions from other sectors recently opened to competition, the Autorité de la concurrence tried to determine if competition restriction would have an effect on the public transport sector in May 2009. As part of the introduction of competition, the SNCF (incumbent train operator) will have to allow new rail operators to access train stations to provide services. The new operators would also be provided with a certain number of services. The pricing for this access and these services will be a decisive element for the new operators, as will the allocation of space within the stations. In view of these competition risks, the Autorité has several recommendations. ([English Summary](#))

France: CRE Announces New LNG Tariffs from 1 January 2010.

In a [Deliberation](#), the French energy regulator, CRE, has proposed new tariffs to apply for three years at LNG terminals at Fos Tonkin and Montoir from 1 January 2010 and from the date of commissioning of the terminal at Fos Cavaou. The proposed tariffs are intended to encourage new shippers to use the French LNG terminals, by offering users greater flexibility and keeping the quantity charge for spot cargoes lower than that for regular cargoes. It is also hoped that the proposed tariffs will encourage the development of new regasification capacity in France by giving LNG terminal operators certainty in relation to return on assets over the long term and introducing a subsidy for investments that create new capacity.

France: CRE Deliberation on Allocation of Link Capacity between North and South Balancing Zones

Since 1 January 2009, access to French natural gas transmission networks has been divided into three balancing zones managed by two transmission system operators, TIGF in the South-West and GRTgaz for the rest of France. The CRE has now deliberated on the definition of the firm and interruptible annual capacity allocation rules for the period from 1 April 2010 to 31 March 2011 on the North-South link of the GRTgaz balancing zones. Following consultation and analysis, the CRE has decided to accept the allocation rule proposed by GRTgaz.

Germany: FNA Publishes Draft of Bitstream Access Report

The FNA has [published](#) the draft of its market analysis and regulatory order on broadband access for large customers (bitstream access) for national consultation. The FNA has reached the draft conclusion that Deutsche Telekom AG (DT) has significant market power and is obliged to provide unbundled broadband access to competitors upon request. Parties who have bitstream access are able to supply their end customers with DSL lines and broadband services in competition with the DT.

Germany: FNA Publishes Framework Conditions for National Infrastructure Atlas

The national infrastructure atlas is part of the German Government's broadband strategy, which aims to significantly expedite the provision of broadband connections for German consumers. The atlas contains information about the location and ownership of fibre optic lines, ducts, network nodes, radio links and transmitter sites in a region. The Federal Network Agency (FNA) has [published](#) the framework conditions for the use of the national infrastructure atlas. These framework conditions specify how the data for the infrastructure atlas will be transmitted and who will be authorised to use the data.

Germany: FNA Publishes Key Elements Paper on Renewable Energy

The Federal Network Agency (FNA) has published for consultation a [key elements paper](#) that addresses issues arising from the sale of electricity from renewable energy sources that are regulated under the Renewable Energy Sources Act (EEG), in particular, the apportionment and allocation of EEG-related costs. Comments were due by 15 October 2009.

Germany: FNA Reports On Competition in Energy Sector

The FNA has [announced](#) the publication of its annual [Monitoring Report](#) (in German) on the development of the German electricity and gas markets. According to the FNA's media release, the report shows that the markets experienced far-reaching changes in 2008 and that, consequently, competition is intensifying. The FNA attributes this to the reduction in the number of gas market areas as well as increased access to gas.

Germany: FNA Reports on Stability of German Gas Supply

The FNA has issued a [statement](#) on the stability of gas supply in Germany in 2008. Operator of German gas supply networks are obliged to submit a report to the FNA each year on any supply interruptions that have occurred in their grid that seriously affected end consumers. The FNA has reported that the average interruption in gas supply in Germany for 2008 was one minute per end consumer which, according to the FNA, confirms the high degree of reliability in German gas supply.

Ireland: ComReg Consults on Draft Accounting Direction to Eircom

The ComReg is [consulting](#) on a set of proposed measures which are intended to improve and refine the current accounting separation and cost accounting obligations on Eircom Limited (Eircom). A key objective of this consultation is to increase the level of transparency of the current separated accounts of Eircom, by improving the availability of information on the profitability and costs of the various parts of Eircom's regulated business. The consultation closed on 4 December 2009.

Ireland: ComReg Publishes Dispute Resolution Procedures

In the event of an undertaking-related dispute arising from the legislative framework providing for electronic communications networks or services, ComReg can issue a binding decision on the parties. Since the [publication](#) of the dispute resolution procedures in 2003, ComReg has received a number of disputes and, based on the experience of these disputes, this [consultation paper](#) outlines ComReg's proposals for revising the existing dispute procedures to ensure legal and practical developments are encompassed to better enable the efficient and timely resolution of disputes. The consultation closed on 11 December 2009 and a Response to Consultation and Final Decision will be issued in due course.

Ireland: ComReg Publishes Findings on Digital Dividend Consultation

The ComReg has published its [Response](#) to the Consultation on *Digital Dividend in Ireland: A New Approach to Spectrum Use in the Ultra High Frequency*. The consultation sought views on six high-level issues including the value and use of spectrum for non-broadcasting services and the reservation of spectrum for experimental purposes. The ComReg proposes to consider these views when devising its next strategic consultation on Ireland's potential digital dividend spectrum.

Ireland: ComReg Releases Information Notice on Next Generation Broadband

On 9 July 2009, the ComReg, issued a discussion document titled [Next Generation Broadband in Ireland](#) (the document) and invited comment on a series of questions set out in the document. The aim of the document was to promote the timely and efficient development of high speed broadband infrastructure and services in order to increase the availability of Next Generation Broadband (NGB) services in the market. The ComReg has summarised the submissions received in response to the document in an [information notice](#). The overwhelming view of respondents is that, in the absence of concentrated efforts by key stakeholders, the widespread geographic deployment of NGB in Ireland within the next three to five years is unlikely.

Ireland: ComReg Releases Quarterly and Annual USO Performance Data to June 2009

Eircom has been designated as the Irish telecommunications Universal Service provider until 30 June 2010. Under the Universal Service Regulations, Eircom is required to publish quarterly information on its performance in relation to the provision of the USO, including legally binding performance targets which are to be achieved and fully complied with by 30 June 2009. The ComReg simultaneously publishes this data and monitors Eircom's compliance with the Regulations. The ComReg has now published an [information notice](#) that contains Eircom's quarterly performance data for the second quarter 2009 and the annual data for the 2008-09 financial year. The notice also contains performance data in relation to other elements of the USO that are not subject to the legally binding targets.

Ireland: ComReg Releases Residential and Business Internet Connectivity Report

The ComReg has released a [report](#) that shows the results from a survey designed to gain insight into the attitudes and perceptions of consumers in relation to internet products. A secondary aim of the report is to provide insight into reasons why some consumers and businesses do not access the internet at all.

Ireland: Review of Urban Areas for Regulation of Leased Line Markets

The Irish telecommunications regulator, the ComReg, published its most recent review of the market for Wholesale Terminating Segments of Leased Lines in December 2008. Among other things, the ComReg

found that Eircom had significant market power (SMP) in the market for Wholesale Terminating Segments of Leased Lines, but found that Eircom no longer had SMP in the market for Wholesale Trunk Segments of Leased Lines, or the market for the Minimum Set of Retail Leased Lines (up to 2Mb/s). The market for wholesale terminating segments is that segment of a leased line that goes from an end-user to the trunk segment (high capacity connections between major population centres).

In order to provide maximum certainty to the market, ComReg identified a list of urban centres which met the criteria established in defining the market for wholesale trunk segments, and by extension, the scope of the market for wholesale terminating segments. It also published an annex (Annex 1) which contained a list of urban areas that were excluded from the market definition and thus not regulated by the ComReg. The ComReg is now [consulting](#) on whether an amendment to the annex is warranted following a request from Eircom to expand the list of urban centres set out in the annex. The consultation closed on 11 December 2009.

Italy: Investigation into Possible Misuse of Market Power by Poste Italiane

The Italian antitrust authority, the Autorità Garante della Concorrenza e del Mercato (AGCM), has started an [investigation](#) into whether Poste Italiane (Italian Postal Service) had abused its dominant position by obstructing competitors. The investigation is in response to complaints from TNT Post Italia that Post Italiane has used its market power in the universal service sector (where it is not subject to competition) to impede TNT Post Italia's provision of the competitively supplied Formula Certa service (certified postal delivery within a guaranteed time and date). TNT Post Italia also alleges that Poste Italiane has engaged in predatory pricing during 2009. The investigation must be concluded by November 2010.

Switzerland: Weko Imposes CHF 220 Million Fine on Swisscom

The Swiss Competition Commission, WEKO, has [found](#) that Swisscom's pricing policy in the supply of ADSL services up to 31 December 2007 unduly obstructed competitors and that Swisscom has abused a dominant market position. Consequently, Swisscom has been fined CHF220m. Swisscom reduced its input prices from 1 January 2008.

UK: BIS Publishes Latest Code of Practice on Guidance on Regulation

The latest [Code of Practice on Guidance on Regulation](#) was published by the UK Department of Business, Innovation and Skills (BIS) in October 2009. It replaces the version first published in

July 2008. The Code sets out rules which government agencies should follow when publishing guidance to organisations on how to comply with the law. The revisions follow views expressed during a formal consultation process by businesses, the third sector and other organisations.

UK: BIS Releases Consultation on Spectrum Proposals

The UK Government is keen to see the deployment of next generation wireless mobile services across the country. The deployment of these services requires the release of, and access to, additional spectrum. However the release of suitable spectrum by the Ofcom has faced considerable challenges and as a result, the Government appointed an Independent Spectrum Broker to explore the possibility of an alternative solution. The UK Government has released a [consultation document](#) containing the Independent Spectrum Broker's proposals including a proposal to issue additional direction to the Ofcom under the *Wireless Telegraphy Act 2006* to support the carrying out of its radio spectrum functions.

UK: CC Accepts Purchaser Undertakings from Global Infrastructure

The CC published its report titled *BAA airports market investigation: a Report on the supply of airport services by BAA in the UK* on 19 March 2009. In the report, the CC concluded that there were a number of features of the market for airport services supplied by BAA, which prevent, restrict or distort competition. The report concluded that BAA must sell Gatwick, Stansted and Edinburgh or Glasgow Airports to Approved Purchasers, according to the criteria identified in the Report, in order to mitigate the detrimental effects identified in the Report. The CC [published](#) a notice of proposal to accept Purchaser Undertakings on 21 October 2009 for Global Infrastructure LP. No representations were received, and the CC has decided to accept Purchaser Undertakings in the form consulted on.

UK: Government Responds to New Duties of the Ofcom

The [Digital Britain White Paper](#) set out proposals to expand the Ofcom's general duties to give it additional duties in relation to the promotion of investment in communications infrastructure and regular reporting on the state of the UK's communications infrastructure. The BIS has released the UK Government's [response](#) to these proposals following an initial [consultation](#) during which 39 responses were received. The response requires the Ofcom to have regard in all cases to the need to

promote appropriate investment in infrastructure when performing its principal duties.

UK: Ofcom Confirms Measures to Improve Current PRS Regulation

In light of increasing convergence, the wide diversity of services provided and the growth of Premium Rate Services (PRS) as a micro payment mechanism, the Ofcom has reviewed the way in which PRS is regulated in order to ensure the current PRS-specific regulatory regime meets the needs of consumers, affords an appropriate level of consumer protection, and at the same time supports an innovative and changing PRS industry. The Ofcom has concluded that the characteristics of PRS are sufficiently unique that a PRS-specific regulatory regime is still justified in order to protect consumers from harm. Thus the Ofcom has released a Statement that establishes an analytical framework that will help inform future considerations by the Ofcom on whether the scope of PRS regulation should be widened or narrowed. This framework will help determine whether a particular service or service category carries sufficient risks of consumer harm to require inclusion in the regulatory regime. This Statement also recommends a number of initiatives, including a mandatory registration scheme for the PRS industry, consultation on ways to strengthen PRS advertising requirements and possible creation of minimum standards for complaints handling across the PRS industry.

UK: Ofcom Launches Consortium to Promote Digital Participation

The Ofcom has [announced](#) the launch of a new Consortium to promote Digital Participation in the UK. The Consortium aims to increase the reach, breadth and depth of digital technology use. It also aims to maximise digital participation and promote its economic and social benefits. The Consortium will encourage people to take up digital communication technologies by providing information, motivation and support.

UK: Ofcom Outlines Steps to Ensure Availability of Communication Services

The Ofcom has set out the next steps it will take to ensure availability, take-up and effective use of communications services, following analysis which shows that there are impediments to widespread access and inclusion across the UK. The Ofcom's next steps, following its recent [consultation](#), include reviewing services for disabled consumers, addressing mobile phone 'not spots', encouraging broadband take-up and digital participation and reviewing the Universal Service Obligation. The Ofcom has also confirmed that mobile phone users will be able to call the emergency service numbers

(999 and 112) from another network if their own network is unavailable and an alternative provider has coverage.

UK: Ofcom Publishes Charge Controls for Wholesale Line Rental

The Ofcom has published a [statement](#) on the prices that Openreach can charge Communications Providers to enable them to rent access to telephone lines on a wholesale basis. This follows the Ofcom's statement on [charge controls](#) for Local Loop Unbundling (for telephone and broadband services) which was published on 22 May 2009.

UK: Ofcom Publishes Proposal to Vary BT's Undertaking

The Ofcom has published a [consultation](#) on a proposal to vary BT's Undertakings under the *Enterprise Act 2002*. The proposed variation relates to BT's intention to invest in fibre-to-the-premises technology as part of its investment in super-fast broadband. If agreed, the variation would allow Openreach to control and operate the electronics in BT's access network required for FTTP.

The consultation also seeks views on a proposed exemption from the application of BT's Undertakings. The proposed exemption would allow Openreach to control and operate a system known as Fibre Integrated Reception System in Ebbsfleet. The system is used by BT in its pilot deployment of FTTP in Ebbsfleet for distribution of broadcast signals. Comments on the proposal closed on 20 November 2009.

UK: Ofgem Consults on Energy Market Scenarios under Project Discovery

See Notes on Interesting Decisions

UK: Ofgem Decides on Licence Modifications

On 7 August 2009, the Ofgem issued a consultation on a package of licence modifications to promote competition and protect consumers in the retail energy supply market. These measures had been developed in the course of the Energy Supply Probe, a study of the state of the retail energy supply markets in Great Britain. After considering the submissions to this consultation, the Ofgem [decided](#) to implement the modifications.

UK: Ofgem Implements Consumer Reforms

Last year the Ofgem completed a major investigation into Britain's retail energy market. The Ofgem has now put in place a [package](#) of reforms which should make it easier for consumers to shop around,

negotiate and choose the best energy deal. Reforms include tougher rules on governing door-step sales and requirements for suppliers to disclose key information on bills.

UK: Ofgem Issues Standard of Conduct for Suppliers in Retail Market

As a result of the Ofgem's investigation into the operation of the British retail energy markets (the Probe), the Ofgem has consulted on, and introduced, a number of new licence requirements on suppliers designed to improve the quality and accessibility of the information available to consumers and to empower them to engage effectively in the market. To complement these new rules, the Ofgem has also introduced a set of overarching standards of conduct that we expect suppliers to take all reasonable steps to adhere to in the domestic and small business retail markets. These standards are set out in this [letter](#).

UK: Ofgem Proposes New Connection Standards for Electricity Distribution

As part of the Distribution Price Control Review process (DPCR5), the Ofgem has been working with industry and other stakeholders to develop new connections standards of performance that will apply to the metered and unmetered connections services provided by all licensed Electricity Distributors. The Ofgem proposes to introduce these new standards via a new Statutory Instrument called The Electricity (Connection Standards of Performance) Regulations 2010 (the New Connections Standards). The Ofgem has released a [letter](#) to consult on the New Connections Standards. Responses were due by 26 November 2009.

UK: Ofgem Proposes New Funding Arrangements for Grid Investment

The Ofgem has [proposed](#) funding arrangements of up to £1 billion over the next two years for electricity transmission grid projects that are vital in Britain's bid to combat climate change. The proposed arrangements, could amount to a 20 per cent down payment on the investment needed over the next ten years if all projects meet planning and other criteria. The remaining 80 per cent of the ten year investment programme will fall into a period of new regulatory controls which come into play when the current controls run out in 2012. The Ofgem will decide on arrangements for that investment once the new regime is in place.

UK: Ofgem Provides Guidance on Deemed Contract Relationships

The Ofgem has released a [guidance note](#) that is intended to provide both domestic and non-domestic

customers with a greater degree of clarity on whether a deemed contract relationship is likely to exist with a gas and/or electricity supplier. It has come to the Ofgem's attention that some customers may be making incorrect assumptions about when they will be subject to a deemed contract relationship in circumstances where an existing contract has come to an end (and therefore when the Ofgem is able to investigate unduly onerous terms). For this reason, the Ofgem has decided to issue guidance to help clarify the position. A deemed contract relationship will normally exist in circumstances where any type of customer moves in to new premises, and starts to consume gas and/or electricity, without agreeing a contract with a supplier. A deemed contract relationship may also arise in some circumstances where an existing contract comes to an end and the customer continues to consume gas and/or electricity. Where a customer is supplied on the basis of a deemed contract relationship, the supplier is required by its licence to take all reasonable steps to ensure that the terms of its deemed contracts are not unduly onerous and the Ofgem has the power to investigate whether suppliers' terms are unduly onerous.

UK: Ofgem Publishes Approach and Timetable Options for Transmission Price Control Review

The current UK transmission price controls expire on 31 March 2012. Work on the next transmission price control review (TPCR5) is planned to start imminently. In preparation for TPCR5, the Ofgem has issued a [consultation](#) that sets out options and seeks opinions on the approach and timetable to enable TPCR5 to reflect fully the conclusions of the RPI-X@20 project. The Ofgem has previously indicated that TPCR5 would be the first price control review directly impacted by the RPI-X@20 project. The Ofgem considers it is important that the conclusions from RPI-X@20 are introduced during TPCR5. However, the timing of the completion of the RPI-X@20 and the current timetable for TPCR5 projects are not perfectly aligned. The consultation sets out two options to improve the alignment of these two timetables.

UK: Ofgem Releases Codes Governance Review Initial Proposals

In July 2009, as part of its Code Governance Review, the Ofgem published consultation documents in relation to the initial proposals for Major Policy Reviews and Self Governance and on the Role of Code Administrators and small participant/consumer initiatives. These consultations were followed in August by a consultation document relating to the Ofgem's initial proposals for the Governance of Charging Methodologies. The Ofgem is still

considering responses to those consultations. However, in order to further assist stakeholders' understanding of the initial proposals set out in the consultation documents, the Ofgem has prepared [illustrative licence drafting](#) for consultation. Comments were due by 8 December 2009.

UK: Ofgem Releases Guidance Document on Responses to Network Companies with Deteriorating Financial Health

In May 2009, the Ofgem published a draft guidance document and an associated consultation paper that set out the arrangements in place to respond to the deteriorating financial health of a network company, and tested those arrangements by running a simulation or 'War Games' exercise. The Ofgem has now published [version 1 of the guidance document](#), reflecting changes to the draft guidance document following consultation. A [decision document](#) has also been released.

UK: Ofgem Releases Proposals for Enhanced Transmission Investment Incentives

This [consultation](#) sets out the Ofgem's Initial Proposals for enhancements to the current funding arrangements, to facilitate additional investment within the current transmission price control period (TPCR4). Taking into account the need to support the delivery of critical investments, current financial market conditions, developments since the Ofgem's previous consultation, and interactions with related work including the Ofgem's ongoing review of regulatory arrangements, the Ofgem proposes to adopt a simple, pragmatic funding approach at this stage. For specific projects, the Ofgem proposes to fund the costs up to the end of TPCR4.

UK: Ofgem Releases Research Findings from Third Round of Consumer First Panel Events

The *Consumer First* initiative is a programme that includes a range of primary market and social research to help the Ofgem ensure that policy development is consumer focused. As part of this programme, the Ofgem has established the Consumer First Panel (CFP). The CFP consists of a diverse group of 100 domestic energy consumers who have been recruited to take part in a series of research events and surveys and be 'the voice of the consumer' for the Ofgem. The Ofgem has now [published](#) the finding from the third round of CFP events which were held in June 2009. The findings

discuss the panel's view on tariff structures, price control and billing components.

UK: Ofgem Responds to Renewable Electricity Financial Incentive Consultation

In its [response](#) to the UK Government's *Renewable Electricity Financial Incentive Consultation*, the Ofgem has recommended that urgent action be taken to ensure the right incentives are in place to accommodate the development of take up of renewable energy. The Ofgem urges the government to deliver a simpler, more efficient mechanism to provide investors with certainty, reduces complexity and encourages low-carbon technologies.

UK: RPI-X@20: Ofgem Releases Working Paper on Adaptability of Future Energy Regulatory Framework

As part of its RPI-X@20 review, the Ofgem has released a [working paper](#) that considers adaptability and the treatment of uncertainty in the context of the RPI-X regimes applied to energy networks. The Ofgem considers that these issues are likely to be relevant to any modified versions of those regimes that may be developed further as the RPI-X@20 review progresses.

The main focus of the working paper is adaptability during a price control period (currently five years). Currently, the Ofgem is able to 're-open' a price control during the regulatory period in certain circumstances. However, the Ofgem is considering whether it is appropriate to include within a price control settlement, specific tools or mechanisms to reduce networks exposure to uncertainty and to govern the re-opening process. The Ofgem has indicated that it welcomes views on the working paper, but it is not subject to formal consultation processes and deadlines. The Ofgem expects to present an update of its views in an *Emerging Thinking* paper to be published in the UK Winter prior to making recommendations in the UK Summer 2010.

UK: Ofwat Finalises Price Review

See Notes on Interesting Decisions

UK: Ofwat Publishes Guidance on Water Access Codes

The *Water Industry Act 1991* will allow a company that has a Water Supply Licence to access a water supply system (the physical infrastructure) to enable the licensee to supply water to eligible premises in competition with the operator of the water supply system. The Act sets out a third party access

regime for the water supply system and requires access prices to be cost-based. Each water undertaker (the owner of a water supply system in a geographic area) is required to publish an access code which sets out the terms and conditions on which it will provide third party access to its system. The access codes must be made in accordance with guidance provided by the Ofwat. The Ofwat has now published this [guidance](#) which sets out the standard provisions that the Ofwat expects a water undertaker to include in its access code and access agreements. Provided that access codes and agreements comply with this guidance and the rest of the statutory framework, water undertakers and licensees will have discretion to negotiate their own access arrangements.

UK: Ofwat Publishes Service and Delivery Report of England and Wales

The Ofwat has released its service and delivery [report](#) which sets out how water companies performed in 2008-09 in delivering services to consumers. It includes the Ofwat's analysis of companies' performance and where the Ofwat is taking action – if necessary – on behalf of consumers.

UK: Ofwat Releases Annual Performance Reports

Under the UK's statutory guaranteed standards scheme, water companies must provide certain minimum standards of service to their customers. If a company fails to meet a standard then it must make a specified payment to the affected consumer(s). Each year, the Ofwat publishes a service and delivery report that sets out how water companies performed in that year in delivering services to consumers. The report also includes details of any action the Ofwat has taken on behalf consumers. The Ofwat has now released its [service and performance report for 2008-09](#). It shows that in general, the water companies are offering a good level of service and reliability to consumers. Customers who were previously affected by poor performance by companies are now receiving better service. Consequently, the level of complaints has fallen. The Ofwat has also released its [annual financial performance and expenditure report](#) for 2008-09. This report examines the operating profits, cash flows and balance sheets of the regulated water and sewerage companies and water only companies in England and Wales.

USA: FCC Publishes Study on Broadband

On July 14 2009, the FCC announced that Harvard University's Berkman Center for Internet and Society would conduct an expert review of existing literature

and studies about broadband deployment and usage throughout the world to inform the FCC's development of a *National Broadband Plan*. A [draft](#) of the study has now been completed and released for public comment. Comments were due by 16 November 2009.

USA: FCC Releases Report on Barriers to Broadband Adoption

The Federal Communications Commission (FCC) has released a [report](#) by the Advanced Communications Law & Policy Institute at New York Law School that identifies major barriers to broadband adoption among senior citizens and people with disabilities, and across the telemedicine, energy, education, and government sectors. This report was prepared in conjunction with staff of the Omnibus Broadband Initiative for use in the development of the FCC's National Broadband Plan.

USA: FCC Releases Study on National Broadband Plan

In order to inform its development of a National Broadband Plan, the Federal Communications Commission (FCC) asked the Columbia Institute for Tele-Information to analyse the public statements of companies as to their future plans to deploy and upgrade broadband networks, as well as evaluate the relationship between previous such announcements and actual deployment. A [draft](#) of the study has now been completed. The FCC sought public comment on the study until 4 December 2009.

USA: FCC Seeks Public Input on Draft Rules to Preserve the Free and Open Internet

The FCC is seeking public input on [draft rules](#) that would codify and supplement existing Internet openness principles that are set out in *The Internet Policy Statement*. The FCC has also proposed new draft principles of non-discrimination (subject to reasonable network management including management of network congestion) and transparency. It also includes a discussion of 'managed' or 'specialized' services that are intended to provide flexibility to develop and deploy new technologies. Comments are due by 14 January 2010.

USA: FERC Confirms Reliability Jurisdiction Over Federal Agencies

The Federal Energy Regulatory Commission (FERC) has [confirmed](#) its jurisdiction to enforce reliability standards over federal entities that use, own or operate the bulk power system. This decision followed an application from the Army Corps which

argued that, as a governmental entity, it is not required to comply with federal electricity reliability rules.

USA: FERC Launches Investigation into Pipeline Rates

The FERC has launched [investigations](#) into the rates charged by three interstate natural gas pipelines – Northern Natural Gas Company, Great Lakes Gas Transmission LP, and Natural Gas Pipeline Company of America LLC – to determine whether the companies are over-recovering costs, causing rates to be unjust and unreasonable. The investigation resulted from staff's review of pipeline cost of service and revenue information provided by the regulated firms.

Regulatory Decisions in Australia and New Zealand

New Zealand

Commerce Commission to Investigate whether Resale Services should be deregulated

The New Zealand Commerce Commission (NZCC) has [announced](#) that it will investigate whether the four resale services Telecom New Zealand provides to other telecommunications companies should be deregulated. The investigation will examine whether regulation should be removed, or amended to streamline the number of services covered. The NZCC will give public notice at the commencement of the investigation.

High Court Finds Telecom NZ Blocked Competition in High Speed Data Transmission Markets

See Notes on Interesting Decisions

NZCC Issues Proceedings against Telecom over Loyalty Offers

The NZCC has [issued](#) proceedings alleging that three separate loyalty offers made by Telecom Corporation of New Zealand's wholesale business unit between December 2008 and July 2009 are likely to have breached its obligation not to discriminate between service providers under the Telecom Separation Undertakings. As the proceeding will be before the courts, there will be no further comment at this time.

NZCC Releases Decision for Electricity Distribution Price Quality Path

The NZCC has released its determination and decisions [paper](#) for the default price-quality path which will apply to electricity distribution businesses from 1 April 2010. This is the first determination published by the NZCC under the Commerce Act's new Part 4 regime. Under that regime, default price-quality regulation, in the form of price-quality paths, applies to all electricity distribution businesses other than those exempt on the basis of consumer ownership. The NZCC is required to reset the current default price-quality path to specify prices and quality standards that will apply from 1 April 2010. The determination confirms the NZCC's earlier draft decisions to allow real prices to remain constant and to set annual reliability limits based on historic reliability performance. This will allow businesses to increase prices by the rate of inflation whilst ensuring

the quality of supply to consumers is at least maintained.

NZCC Releases Draft TSO Determinations

The NZCC has released two Telecommunications Service Obligation (TSO) draft decisions. The [Draft Cost Calculation Determination for TSO Instrument for Telecommunications Relay Services for the Period Between 1 July 2008 and 30 June 2009](#) and the [Draft TSO Cost Allocation Determination for the period 1 July 2008 to 30 June 2009](#) identify which parties will bear the costs and the proportion of the cost they will bear once the NZCC finalises its calculation of the TSO costs.

NZCC Releases Final Telecom TSO Cost Calculation

The NZCC has released its TSO [final determination](#) covering the 2007-08 year for Telecom's local residential telephone service. The final TSO cost is \$72.1 million. Under the TSO, Telecom is obliged to provide certain local residential telephone services to residential customers who may not otherwise be provided with those services at an affordable price. The NZCC calculates the net cost of those services, which are met by the telecommunications industry.

NZCC Releases Market Monitoring Report

The NZCC has released a [report](#) on competition in telecommunications markets in New Zealand in the first six months of 2009. The report also provides more recent information about prices of mobile services in New Zealand following the launch of the 2degrees mobile network in August 2009.

NZCC Warns Energy Companies over Alleged Anti-Competitive Conduct

The NZCC has issued a formal warning to two energy companies alleged to have attempted to engage in anti-competitive conduct during the purchase by tender of a power station near Nelson in 2002. The warning, issued to Contact Energy Limited and TrustPower Limited, follows an investigation into possible bid-rigging behaviour under section 30 of the *Commerce Act 1986*. Although the behaviour of the parties would have provided sufficient evidence of a likely contravention of the Commerce Act, the NZCC considered that a warning to the parties was more appropriate given the limited nature of the discussions and that the negotiations were principally aimed at achieving normal hedging arrangements.

Australian Competition and Consumer Commission (ACCC)

ACCC Commences Review to Vary DTSC Service Description

The ACCC has commenced a public inquiry into a variation of the service description for the domestic transmission capacity service (DTCS). The DTCS is a generic service for the carriage of voice, data or other communications using wideband or broadband carriage. The ACCC has issued a discussion [paper](#) seeking submissions on whether the DTCS service description should specifically include Ethernet interface protocols. Submissions close on 31 December 2009.

ACCC Invites Comments on Water Infrastructure Charge Rules

The ACCC issued its draft advice and draft rules for accreditation as part of the water infrastructure charge rules. The release of this [draft advice](#) and [draft rules](#) represents the main phase of consultation by the ACCC on accreditation provisions under the water infrastructure charge rules. The ACCC invites submissions until 18 December 2009.

ACCC Objects to Australia Post's Draft Pricing Proposal

The ACCC has issued its [view](#) objecting to Australia Post's draft proposal to increase the price of the letter services over which it has a statutory monopoly in 2010. Australia Post provided the ACCC with its draft pricing proposal on 24 July 2009, which sought increases in the prices of a number of its Small, Large and PreSort letter services. Australia Post also sought to increase the basic postal rate from 55 to 60 cents.

ACCC Proposes to Approve Long Term Port Solution

The ACCC has issued a [draft decision](#) proposing to approve the Capacity Framework Arrangements which form part of the integrated long term solution to the ongoing capacity constraints in the Hunter Valley coal chain.

ACCC Publishes Data on Broadband Access Services

The ACCC has [published](#) information about the number and distribution of services supplied over Telstra's copper network. This data aids the ACCC in determining the level of competition in fixed line telephony.

ACCC Reinstates Interim Authorisation for Coal Ports

The ACCC has [reinstated](#) the interim authorisation to Port Waratah Coal Services, the Newcastle Coal Infrastructure Group and the Newcastle Port Corporation following the execution of Capacity Framework Documents. The interim authorisation allows the parties to undertake phased implementation of arrangements for a long term solution to Hunter Valley capacity constraints. Interim authorisation was revoked following the failure of one party to execute the Capacity Framework Documents by the 31 August 2009 deadline.

ACCC Releases Monitoring Report for Container Stevedoring

The ACCC has noted encouraging signs of growing opportunity for new entry in the larger Australian container ports in its eleventh annual monitoring [report](#) on container stevedoring. The ACCC monitors stevedoring services under instruction from the Treasurer pursuant to part VIIA of the *Trade Practices Act 1974*.

ACCC Seeks Comment on Proposal at Port Terminals

The ACCC has issued a [draft decision](#) proposing to grant conditional authorisation to Australian Amalgamated Terminals Pty Ltd to allow it to operate motor vehicle and general cargo handling facilities, known as terminals, at five ports around Australia. Submissions on the draft determination were to be made by 3 November 2009.

Australian Energy Regulator (AER)

AER Issues Draft Decision on Gas Distributions

The Australian Energy Regulator (AER) has issued two [draft decisions](#). One for Country Energy's Wagga Wagga gas distribution network for the period 1 July 2010 to 30 June 2015, and the [other](#) for ActewAGL's ACT, Queanbeyan and Palerang gas distribution network for the period 1 July 2010 to 30 June 2015.

AER Makes Final Determination on Victorian Smart Meter Charges

The AER has issued its final determination on the Victorian distribution network service providers' Advanced Metering Infrastructure (AMI) budgets for 2009 to 2011 and metering charges for 2010 and 2011.

AER Releases TNSP Electricity Service Report for 2007-2008

The AER has released the [Transmission Network Service Providers Electricity Performance Report for 2007-08](#). The report provides revenue, profit, expenditure and service standards information for each of the nine regulated transmission businesses for the 2007-08 reporting year.

Speech on Challenges to a Truly National Energy Market

In a [speech](#) to the Financial Review Energy Conference, AER Chairman Steve Edwell has spoken about how the energy network sector currently faces a number of challenges. These challenges are associated with climate change policies and the introduction of smart meters and grids.

Tribunal Decides on AER Electricity Determinations for Tasmania and NSW

See Notes on Interesting Decisions

Australian Energy Markets Commission (AEMC)

AEMC Publishes Final Report on the National Framework for Electricity Distribution Network Planning and Expansion

See Notes on Interesting Decisions

AEMC Reliability Panel Publishes Draft Report on Review of Operational Arrangements

On 30 October 2009, the AEMC's Reliability Panel published its [Draft Report](#) on the *Review of the Operational Arrangements for the Reliability Standards*. Interested stakeholders were invited to submit comments by 27 November 2009.

Review of Energy Market Frameworks in light of Climate Change Policy – Release of Final Report

The AEMC has released the [final report](#) of the Review of Energy Market Frameworks in light of Climate Change Policy. The report found that, subject to implementation of the report's recommendations, the energy market framework is generally capable of accommodating the impacts of climate change policies efficiently and reliably.

National Competition Council (NCC)

NCC Releases Accessible Issue Three

The NCC has released the October [issue](#) of *Accessible*. This edition includes updates on the NSW Water Infrastructure Third Party Access Regime and an outline of the NCC's role with regard to declaration and certification matters.

New South Wales

Independent Pricing and Regulatory Tribunal (IPART)

IPART Releases CityRail Prices and Services Report

The IPART is responsible for setting maximum fares for CityRail services, as well as monitoring the costs incurred by CityRail and the level of service it delivers. The IPART released the first annual [CityRail Prices and Services report](#), which sets out CityRail's fares for 2010, and assesses the level of service and costs incurred during 2008-09. The report states that CityRail's fares will increase by an average of 4.7 percent in 2010, that costs and revenues for 2008-09 are broadly in line with expectations and that service performance has improved.

IPART Releases Review of Regulated Retail Tariffs and Charges for Gas 2010-2013

Since the current arrangements for setting regulated retail gas tariffs and charges are due to expire on 30 June 2010, the NSW Minister for Energy has asked the IPART to put new arrangements in place for the period 1 July 2010 to 30 June 2013. The IPART has invited written comment on this [Issues Paper](#) seeking to implement these new arrangements. Submissions were due on 18 December 2009.

IPART Releases Statement of Reasons for New South Wales Rail Undertaking

The IPART have released a [statement](#) of reasons on why it has decided to accept the Australian Rail Track Corporation (ARTC) Regulatory Asset Base (RAB) value. In making this decision, the IPART undertook an extensive consultative process to ensure that the ARTC and relevant access seekers had reasonable opportunities to make submissions to the IPART on relevant matters.

Victoria

Essential Services Commission (ESC)

ESC Releases Draft Report on Victorian Rail Access Regime

The ESC is undertaking the present Review of the Victorian Rail Access Regime at the direction of the Minister for Finance. The purpose of the Review is to advise the Minister as to whether the rail access regime needs to be retained and if so what form it should take and what objectives should govern the regulator when carrying out its obligations. Comments on the [draft report](#) were due by 4 December 2009.

ESC Releases Findings and Recommendations on State Based Water and Sewerage Access Regime

The Victorian Government announced in July 2008 that it would develop an access regime for water and sewerage infrastructure services. In November 2008, the ESC was directed to conduct an inquiry into developing an access regime and to present its final report to the Minister for Finance by 28 September 2009. The ESC has now released its [findings and final recommendations](#) on developing a state-based access regime for water and sewerage infrastructure services.

ESC Releases New Customers Contributions Guidelines

As part of the 2008 water price review, the ESC approved a common set of scheduled new customer contributions (developer charges), which apply on a 'per lot' basis for all new properties connecting to water or sewerage, for all urban water businesses in Victoria. It also approved pricing principles for how the cost of new water and infrastructure is to be funded by water businesses and developers. The ESC is currently developing a new customer contribution guideline to provide more clarity to stakeholders on how the pricing principles are to be applied. The ESC also proposes to establish, through the guideline, an alternative approach for determining non-scheduled charges for out-of-sequence developments. As the first step in the guideline development process, the Commission has released a new customer contributions issues paper. The paper discusses the current issues in applying the current pricing principles for new customer contributions and matters to be considered in developing the guideline.

Queensland

Queensland Competition Authority (QCA)

QCA Releases Final Report on Stage 2 of the Review of Electricity Pricing and Tariff Structures

The QCA has been asked to examine alternative retail tariff structures which may assist in the long term management of peak demand and provide an incentive for customers to use electricity more efficiently. In the [Final Report](#) on Stage 2, the QCA concluded that retail tariffs should be made as cost reflective as possible, network and retail tariffs should be aligned, voluntary time-of-use tariffs should be introduced for residential customers with interval meters and that adding a seasonal component to some tariffs could be warranted. The QCA recommends that a new set of cost reflective tariffs be developed to achieve these aims, rather than amend the existing tariff schedule.

South Australia

Essential Services Commission of South Australia (ESCOSA)

ESCOSA Releases Draft Decision on Regulatory Arrangements for Reticulated LNG Networks

The ESCOSA has issued a [Draft Decision](#) on the regulatory arrangements to apply to reticulated LPG networks in South Australia. Comments on the draft decision are due by 20 November 2009. The Final Decision is expected in December 2009.

ESCOSA Releases Performance Reports

The ESCOSA has released the [2008-09 Annual Performance Report](#) for the South Australian regulated electricity and gas supply industries. The report's release coincides with the tenth anniversary of ESCOSA's establishment. Thus the ESCOSA has also released a separate [report](#) which reflects on its developing regulatory role and achievements over the past decade.

ESCOSA Releases Price Monitoring Reports

Under the current South Australian ports price regulatory regime, a port operator is allowed to adjust its prices for regulated services as it sees fit, subject to the requirement to inform the ESCOSA and publish a revised price list. The ESCOSA may then publish annual ports price monitoring reports to provide information on prices, and commentary on factors underpinning price movements. The ESCOSA

has released its [2009 Ports Price Monitoring Report](#) to provide South Australian port customers and the community with information regarding changes in certain port charges at South Australian ports.

ESCOSA Releases Pricing Process Final Report

The ESCOSA has [finalised](#) its inquiry into the process that led to Cabinet's decision on SA Water's water and wastewater charges to apply in 2009-10. The Cabinet decision led to an average increase in water charges of 17.9 per cent in real terms. Metropolitan wastewater charges remained constant in real terms, with regional wastewater charges increasing by 0.5 per cent in real terms. The ESCOSA's inquiry was required to have regard to the application of certain nationally agreed pricing principles, which are intended to improve the efficiency of the provision and use of water services, for the benefit of the wider community.

ESCOSA Reviews Regulatory Instruments for Electricity Distribution Service Standards

The ESCOSA has prepared an [Issues Paper](#) discussing the key issues it has identified in relation to the implementation of its earlier Final Decision made in November 2008. This decision was in relation to the South Australian jurisdictional service standards for the electricity distribution network price determination to apply to ETSA Utilities for the 2010-2015 regulatory period. In addition, the Commission has identified other areas of the regulatory regime applying to ETSA Utilities which also require amendment prior to the commencement of the new regulatory period on 1 July 2010. Comments on this Issues Paper were due by 14 December 2009.

ESCOSA Seeks Comments on Methodology Review for Energy Standing Contract Price

The ESCOSA is responsible for fixing the regulated standing contract prices charged under electricity and gas retail contracts to domestic and small business customers. The ESCOSA is currently reviewing its energy retail pricing methodology and is seeking public comment on the appropriate form of regulation for setting standing contract electricity and gas retail prices after 2010. Comments to this [discussion paper](#) were due by 4 December 2009.

Western Australia

Economic Regulation Authority (ERA)

ERA Approves 2009 Energy Price Limits

The ERA has approved the [energy price limits](#) proposed by the Independent Market Operator (IMO) in its final report on the Review of Energy Price Limits for the Wholesale Electricity Market in the South-West Interconnected System. The approved limits were \$276/MWh for the Maximum STEM Price and \$469/MWh for the Alternative Maximum STEM Price.

ERA Issues Draft Decision on GGP Access Arrangement

The ERA has issued its [draft decision](#) not to approve the proposed revisions to the Goldfields Gas Pipeline (GGP) access arrangement. The ERA has set out 45 required amendments to the proposed GGP access arrangement revisions that would be necessary in order for it to approve the arrangements.

ERA Issues Notice on Draft Determination

The ERA has published its [Draft Determination](#) on the Pilbara Rail Network. Interested parties are invited to make submissions by 12 January 2010.

ERA Releases Proposed Revisions of GGP Access Arrangements

The ERA has released a non-redacted version of its [draft decision](#) (with [appendix](#)) on the proposed revisions to the GGP access arrangement. Submissions on the draft decision were due by 11 December 2009.

ERA Releases Western Power's Service Standard Performance

The ERA has published Western Power's access arrangement [service standard performance](#) data for the year ending 30 June 2009. Under the *Electricity Networks Access Code 2004*, service providers must supply reference services at a standard at least equivalent to the benchmarks set out in their access arrangements. The ERA must monitor and publish, at least once a year, the utility's actual service standard performance against its benchmarks.

ERA Review of Railways Access Code

The ERA has published an [issues paper](#) covering the second review of the Railways (Access) Code 2000. The ERA is required to conduct a review of the Code after the third anniversary of its commencement then after the expiry of each five yearly interval after that anniversary. Interested parties are invited to make submissions until 29 January 2010.

Notes on Interesting Decisions

Outcome of World Forum on Energy Regulation

The World Forum on Energy Regulation is a triennial conference of leading energy regulators. The fourth World Forum (WFER IV) was held in Greece in October 2009. The major outcome of the WFER IV was that [The World Energy Regulators' Statement on Climate Change](#) was agreed upon, and issued, by energy regulators worldwide. The statement contains the following eight key commitments:

- (1) Supporting the delivery of energy to all customers in developing markets.
- (2) Creating a new International Confederation of Energy Regulators (ICER) in order to take forward energy regulators' international cooperation and dialogue on global issues such as climate change.
- (3) Promoting energy efficiency as a tool to mitigate climate change. Regulators will prepare a report, for the Energy Minister of the G8 countries, on best regulatory practices regarding the promotion of energy efficiency.
- (4) Conducting a review on renewable energy and distributed generation.
- (5) Sharing best practice which may be used worldwide in meeting GreenHouse Gas emission targets, in particular exploring ways of maintaining a climate of timely, well targeted and efficient investments in grid infrastructure and energy efficiency.
- (6) Working in close cooperation with our nearest neighbours, to foster stronger interconnection and facilitate compatibility of regulatory frameworks to create more efficient energy systems and provide clarity and certainty to the market.
- (7) Reinforcing regulators' engagement in the international climate change process by participating as observers to the sessions of the United Nations Framework Convention on Climate Change.
- (8) Promoting reliable energy supplies and reasonable energy costs to all customers.

UK: Ofgem Consults on Energy Market Scenarios under Project Discovery

The Ofgem commenced *Project Discovery* earlier this year to consider whether current market arrangements are capable of delivering secure and sustainable energy supplies over the next 10 to 15 years, and what the costs to customers will be. In order to make this assessment, the Ofgem has drawn up four scenarios which situate the UK energy

markets in the wider global and environmental context. The scenarios reflect the pace of both economic recovery and environmental action (either rapid or slow) as the Ofgem considers that these are the two global drivers that are most likely to shape energy outcomes over the next decade or so.

The Ofgem released a [consultation](#) on the findings of its analysis to subject its scenarios, assumptions, methodology and modelling results to public scrutiny. The Ofgem's analysis indicates that energy supplies can be maintained under each scenario, but there are real risks to supplies, potential price rises and varying carbon impacts. Given these findings, the Ofgem considers that existing market and regulatory arrangements may be 'seriously tested'. It is thus assessing these arrangements and considering whether policy responses may be required.

AER: Tribunal Decides on AER Electricity Determinations for Tasmania and NSW

The Australian Competition Tribunal has handed down its [decision](#) on an appeal by the NSW electricity distribution network operators and the NSW and Tasmanian electricity transmission network operators against the AER's April 2009 distribution and transmission revenue determinations for these networks.

The Tribunal found that the AER made an error in setting the period to be used to calculate the reference Commonwealth government bond rate for determining the cost of capital for these networks. The Tribunal determined that the averaging period to be applied should be one ending on 5 September 2008 as proposed by the businesses rather than the February/March 2009 period determined by the AER. The Tribunal's decision increases the networks' allowed cost of capital to around 10 per cent from around 8.8 per cent. The allowed revenues of TransGrid and Transend will increase by \$381 million and \$80 million respectively.

AEMC Publishes Final Report on the National Framework for Electricity Distribution Network Planning and Expansion

The AEMC has provided its [Final Report](#) to the Ministerial Council on Energy (MCE) on the review into the current electricity distribution network planning and expansion arrangements in the National Electricity Market (NEM). The Final Report provides the AEMC's recommendations and supporting reasoning for the establishment of the national

framework, consistent with the direction provided by the MCE. The AEMC's set of recommendations was developed having regard to the National Electricity Objective and to pursue a set of principles, which include economic efficiency, transparency, proportionality, technology neutrality and consistency across the NEM.

The proposed design of the national framework will result in a clearly defined and efficient planning process for distribution network investment and support the efficient development of distribution networks. Appropriate transparency and information regarding distribution network service providers' planning and investment activities would be provided to allow market participants to make efficient investment decisions and to enable non-network providers to raise credible alternatives.

The planning arrangements for the national framework consist of the annual reporting process, the Demand Side Engagement Strategy and the Regulatory Investment Test for Distribution (RIT-D) process. It is through the interaction of these three components that the intended purpose and objectives of the national framework is best achieved. The effective utilisation of the proposed planning framework should minimise costs in the long run by providing a clear process to ensure all feasible solutions are considered effectively at the appropriate time.

High Court Finds Telecom NZ Blocked Competition in High Speed Data Transmission Markets

The New Zealand High Court has [determined](#) that the Telecom Corporation of New Zealand and Telecom New Zealand Limited (Telecom) used its substantial market power to prevent and deter competition in markets involving high-speed data transmission. The NZCC claimed that Telecom contravened section 36 of the *Commerce Act*, which prohibits firms with a substantial degree of market power from taking advantage of that power for an anti-competitive purpose.

The High Court determined that from 2001 to 2004 Telecom leveraged its position to charge downstream competitors disproportionately high prices for

wholesale access to its network, preventing them from offering retail end-to-end high-speed data services on a competitive basis. The High Court found that Telecom's wholesale prices for access often exceeded its retail prices for the service, and that Telecom's pricing was also directed to deterring existing or potential competition in the national wholesale market for backbone transmission services.

UK: Ofwat Finalises Price Review

The Ofwat has released the [Final Determination](#) in its *Future Water and Sewerage Charges 2010 to 2015* review. The determination will allow for £22 billion of capital expenditure over the next five years to improve assets and services while maintaining real prices close to 2009 levels. A number of supporting documents were also released in conjunction with the final determination:

- A [note](#) describing the impact of the final determination on household water and sewerage bills.
- A [web page](#) detailing the Overall Performance Assessment of water and sewerage companies used by the Ofwat for the final determination.
- Final Determination [letters](#) to water companies
- Change in Protocol [document](#) which outlines the framework for dealing with financial implications regarding the changes in improvements companies are meant to deliver in 2015.
- Europe Economics' [response](#) to NERA's report regarding the financial assumptions used by the Ofwat in the Final Determination.
- Europe Economics' [response](#) to NERA's report regarding the 'Small Company Premium'

Regulated firms have until 26 January 2010 to decide whether they wish to refer any aspects of the determination to the UK Competition Commission.

Network is a quarterly publication of the Australian Competition and Consumer Commission for the Utility Regulators Forum. For editorial enquiries please contact Rob Albon (Robert.Albon@acc.gov.au) and for mailing list enquiries please contact Katrina Huntington (Katrina.Huntington@acc.gov.au).