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Is there a role for Urban Water Trading?

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ACCC

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Introduction

Most Australian jurisdictions have implemented significant reforms to establish rural water trading markets. Australia has well-functioning electricity and gas markets. These generally positive experiences – together with debate over the efficiency of current urban water supply and demand management arrangements – have led to proposals for competitive reforms for urban water markets. For example The Business Council of Australia (2006, p. 21) recently stated:

Governments should let water markets work. Water should be like other products, including other essentials like electricity and food. Let prices settle where they will once consumers decide how much they wish to consume at prices that bring forward various increments of new supply.

Recent debate has also focused on promoting trading between urban and rural areas, and increasing the scope for private-sector involvement in the water industry.

This article focuses on whether there is a role for urban water trading and what further work is needed to explore the idea.

Scope for competitive reforms

The urban water industry internationally has various models for competition *for* the market but until recently there has been little interest in the scope for competition *in* the market.

Models for competition *for* the market include: making maximum use of competitive tendering for production inputs (now adopted to a greater or lesser extent by most Australian water authorities); Build Own Operate (BOO) and PPP models for discrete facilities such as water treatment plants (adopted widely in Australia); the franchise model used in France involving participation and regulation of private operators; and competitive source procurement which seeks competitive offers for new water supply sources.

Until recently, conventional wisdom internationally and in Australia was that there would be little benefit in introducing competition *in* the market for urban water supply.¹ The United Kingdom and recently, the NSW government, have introduced Third Party access regimes. But there are no examples of trading-based water markets, similar to those that apply for electricity or gas in Australia and many other developed countries.

‘Conventional wisdom’ holds that urban water supply exhibits classic natural monopoly characteristics. Investment in conventional new supply sources such as catchments and dams are typically ‘lumpy’ investments (large and infrequent). Water is a bulky product and transport costs are relatively high compared to the value of the water commodity. For these reasons there seemed to be little value in thinking about introducing contestability for urban water supply and the retailing elements.

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A further relevant factor in Australia is the wide dispersion of major demand centres – since transport costs are high, each urban area was (until recently) supplied by its own dedicated catchment and storage systems with little or no interconnection to neighbouring urban or rural markets. Thus the size of each urban market is relatively small – in contrast to the national electricity market which covers the entire South East of Australia. A small market size may limit the feasible scope for competitive reform as it may be difficult to create enough independent supply sources to allow for meaningful supply competition.

However in recent years the Australian urban water industry has been undergoing significant changes. First there is strong evidence that the cost function for urban water supply is increasing (although there is debate about the extent of increases in the cost of supply¹). If it is assumed that there is limited (or no) potential for new dams located close to each urban market then the value of water will be set by the cost of marginal new water resources (for example desalination plants) which are significantly higher than the cost of supply for the legacy system.

Secondly some markets (Central Victoria, South East Queensland) are becoming larger and more integrated as a result of investments in interconnecting pipelines. These so-called water grids give rise to consideration of how best to optimise these larger and more diverse systems – interconnected water grids enable sharing of storage capacity, spreading of rainfall risk, better sharing of investment risk, optimisation of operating costs for desalination plants etc, and the ability to equalise restrictions policies. Optimisation of the water grid system could be achieved through traditional tools used by monopoly utilities or alternatively could be achieved through some form of decentralised market mechanism.

Thirdly ‘manufactured water’ (desalination, recycling) is now economically viable in most major urban areas. These are internationally-available technologies, similar to gas-fired power stations. It is possible to envisage such sources being developed and built by specialist firms that could enter the water supply market in competition with traditional supply sources.

Fourthly there is significant interest in the potential for smaller-scale water sources (local recycling, stormwater aquifer recovery and reuse). It is possible to envisage a competitive trading market encouraging cost-efficient sources being developed on a competitive basis.

Finally there is increasing recognition of the need to consider ‘product differentiation’ (more carefully matching the type of demand with a product of an appropriate quality). For example some manufacturing processes do not require potable water but can use lower quality ‘Class A recycled water’. It is possible to envisage a competitive urban water market creating stronger incentives for innovation and efficiency in product differentiation.

¹ See, for example, Webb and Ehrhardt (1998).

² Alan Moran (2007) argues that in Victoria there remain options for new dams.

What can we learn from the process of electricity reform?

As discussed above, some see a possible model in the competitive electricity reform model. Both electricity and water are essential services characterised by monopoly networks and by potentially competitive water supply and retail sectors. So what can be learned from the process of electricity reform?

Water is different in a number of ways from electricity and so any reform must be based on a careful understanding of the water industry itself. Nonetheless it is useful to consider what can be learnt from the electricity reform experience.

One lesson is that the process of conceptualising competitive electricity market reforms required a substantial research and the subsequent reform development and implementation took place over a long period of time. Implementation of the first competitive electricity market (in the UK in the late 1980s) occurred over fifteen years after spot electricity pricing theory was first developed by Fred Schweppe and his colleagues at MIT in the mid 1970s.¹ What are the implications of this experience for urban water trading? First, a program of basic research is needed. Second, if urban water trading markets turn out to be a good idea then the process of developing and implementing reforms is likely to take time.

Another lesson is the important role of simulation modelling. Experimental simulation trials of electricity markets were first developed by the Nobel prize-winning economist, Vernon Smith (Rassenti, Smith and Wilson, 2002) in the mid 1980s. These models played an important role in studying how a competitive electricity market could work, including in Australia. Simulation modelling of water-trading arrangements would be a valuable initial step in testing the conceptual design of an urban water market.

Finally, political and policy leadership at both the federal and state level were key – the national electricity reforms were the result of significant efforts by many people, but clearly would not have happened without the vision of politicians such as Paul Keating and Alan Stockdale, supported by advice from officials and bodies including the ACCC and the Industries Assistance Commission (now the Productivity Commission). Clearly urban water-trading reform would require a similar level of political commitment and policy leadership.

A framework for considering urban water trading

If there was interest by a particular jurisdiction in exploring urban water trading, what would the next steps be? Drawing on the early experience of electricity (and some gas reforms), consideration of introducing urban water trading could usefully be divided into the following stages:

Net Benefit Framework

Best practice regulatory reform requires analysis of net benefits. In plain language, the questions that need to be asked include: what would urban water trading achieve? what problems are we trying to address? what downside risks need to be avoided?

³ See <http://www.eecs.mit.edu/great-educators/schweppe.html>

In the early stages of studying market reform options the focus is not so much on undertaking a net benefit analysis (this might be done later) but rather it is on establishing a clear framework to think about the various benefits, costs and risk and to ensure these are systematically identified and analysed. This is discussed further below.

Feasible Market Design

The next stage would be to conceptualise and study a feasible market design(s) or 'strawman'. (This will probably not be the optimal market design as experience suggests the optimal design will only emerge over time with learning and experience). Research into market design would involve:

- Clearly specifying the objectives (e.g. productive and dynamic efficiency, the role of price signals, security of supply) and the constraints for the market (operating arrangements, technical constraints such as pressure and water quality, etc.)
- Developing a strawman market design. This would include defining: the different entities that can participate in the market; price determination and system operation processes; metering data, reconciliation and settlement arrangements, and network charging arrangements. Some of these matters are discussed further below.

Simulation Modelling

This step would involve developing and undertaking market simulation modelling based on a reasonably realistic urban water system. This would enable testing of the market design under various scenarios and assumptions. In addition a separate retail tariff model could be developed to enable modelling of access prices and retail tariffs.

Policy Analysis & Consultation

Urban water-trading markets are a new idea for the water industry and water is a sensitive issue for the community. Considerable effort and leadership would be required to ensure effective consultation with the water industry initially and, in time, other stakeholders. Therefore an important future step would be establishing appropriate governance arrangements to establish and oversee a research program, and report on, and consult on the findings.

Net Benefits

There are a number different potential benefits of competitive urban water reform which include: improving price signals to encourage more efficient production and use; system optimisation benefits; enabling competitive entry into water supply and water retailing; supporting trading with neighbouring urban and rural water markets. Another potential benefits could be depoliticising water supply decision making.

Some benefits are hard to predict or assess. In particular dynamic efficiency benefits from competitive entry could be important in practice but difficult to predict in advance.

Dynamic efficiency and gas market reform

Prior to the deregulation of gas markets in Australia, conventional thinking favoured large scale natural gas fields, based on large scale investments and financed by long term take or pay contracts. Following deregulation, Coal Seam Methane (CSM), previously seen as a risky unproven resource, has grown rapidly and is now a serious rival to traditional natural gas fields. Growth in CSM has been driven by entrepreneurial companies and the availability of new sources of risk capital. Development of the CSM industry was not predicted when proposals for deregulating gas markets were being considered.

The difficulties with quantifying some benefits, particularly dynamic efficiency benefits, highlight the limitations of quantitative modelling and analysis. Such analysis needs to be overlaid with judgement.

Market design issues

There are many market design issues and a full discussion goes beyond the scope of this article. Some key issues are outlined below.

Market scope

The scope of a water market involving urban customers will vary and depends on the configuration of the existing water supply system, new water supply sources, pipelines, and whether government policy allows trading with rural irrigation markets. In regions such as Central Victoria and South East Queensland, which are becoming interconnected water grids, it would be appropriate to consider a regional water market that comprises various urban sub markets and rural sub markets – that is not simply a standalone urban market. Since government policy (for example in relation to urban rural trading) may evolve, the process of analysis of trading arrangements may need to allow for future policy changes.

Water as a Commodity

A starting point for considering urban-trading models is to define water as a commodity that can be priced and traded. For a product to be treated as a commodity it must be of uniform quality, produced in large quantities by different producers, and must be capable of physically delivery.

Water defined as a commodity

Urban water would be defined as a volume of water over a defined period.

Example: ML water per month.

A price for the standard unit can then be determined at various physical reference points

Example: Spot price of a water (ML per month) at a hub point

Once a spot price has been defined then his price can serve as reference for forward-trading contracts at a physical 'hub point (for example the Sugarloaf Reservoir in the Melbourne system). Contracts can be for physical delivery. Alternatively financial contracts could also be agreed settled with reference to the spot price. These contracts would not require physical delivery. A final step in market evolution may be a spot price being the basis for exchange traded futures contracts.¹

Model for the Urban Water Market

One model sometimes discussed for an urban water market is to base it on the rural water entitlement¹ model. Under this approach end users would be allocated (or purchase) water entitlements. End users would need to undertake trading (or have it undertaken on their behalf) to ensure that actual use is matched by water allocations and by temporary water purchases. Disadvantages with this model are that it exposes end users to hydrological risks (which they are not in a good position to manage); and it requires end users to become actively involved in water-trading / water management decisions.

A preferable model would be to establish distinct wholesale and retail sectors (similar to the competitive electricity and gas industries). Wholesale water users would include water retailers and potentially major water users. Under this model, water retailers and other wholesale participants would manage water supply and demand risks. The majority of end users would be supplied by retailers on tariffs or contracts. Wholesale water price signals could be reflected in the retail tariff.

A possible 'strawman' market structure is set out below. This option involves a physical (spot) trading market, a wholesale forward contracting market, and retail markets. The key features of the model are:

A physical (spot) trading market. The main purpose of this market would be to allow for efficient physical balancing of injections and withdrawals of bulk water within the system over a defined period (say a month).

There would be a spot water price associated with balancing water supply and demand.

A wholesale forward contracting market. Various wholesale contracts could develop between the specialist wholesaler participants including water retailers, irrigators and other owners of bulk water entitlements, and owners of manufactured water. Contracts would be flexible and provide choice to customers in their exposure to fixed quantity / fixed price components and variable quantity / spot price related components.

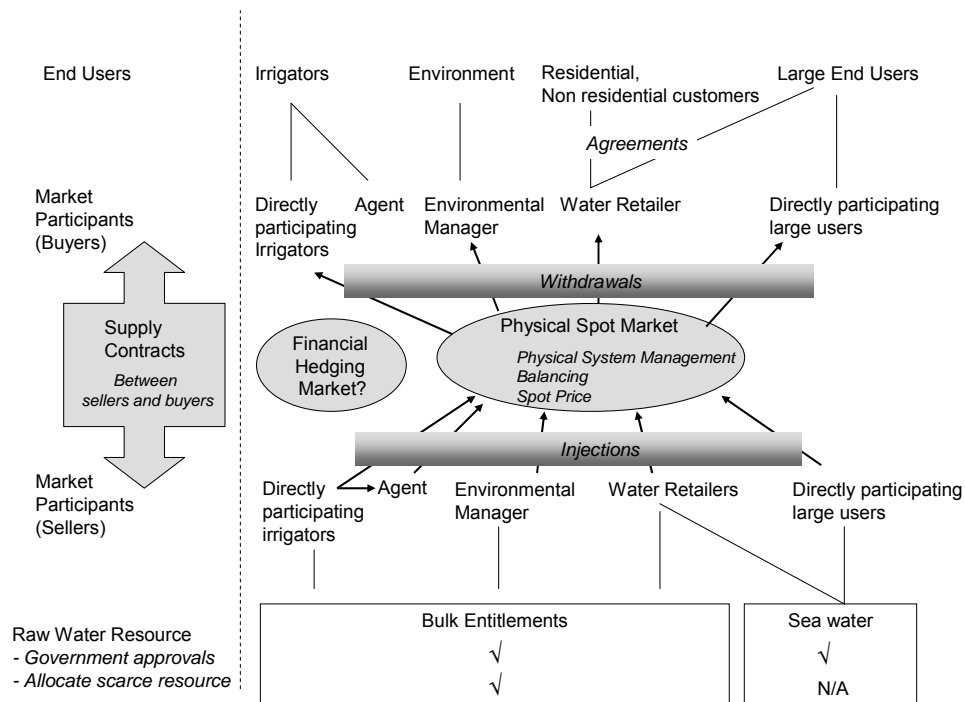
The retail market would involve contracting between water retailers and most customers. Retail contracts could be subject to regulatory oversight to the extent the market is not considered adequately competitive.

In addition, financial hedging markets could develop to facilitate wholesale trading.

⁴ The Sydney Futures Exchange has developed a system of Water Indexes based on storage levels in various storages to facilitate exchange based trading of water risks between parties operating in the rural economy including irrigators, banks, insurers, processors and suppliers. See http://www.statewater.com.au/indexes/FAQs_110705.pdf

⁵ Under the rural entitlement model, end users (irrigators, water authorities, some major users) are directly allocated tradeable water entitlements. Different types of entitlements are issued with different levels of water security (High security, general security etc). Each season, total water availability is determined and a water allocation made to each entitlement. Water allocations can also be traded.

Physical Trading Market and Forward Trading Market



Security of Supply

A very important market design issue is how best to ensure security of supply. Mechanisms for ensuring security of supply include the use of restrictions (as used now); greater use of pricing mechanisms to signal scarcity; 'reserve trading' arrangements (similar for example, to the Reserve Trader arrangement in the national electricity market); and regulated security of supply obligations placed on retailers (similar to those placed on gas suppliers in many gas markets internationally.)

A key factor in designing security of supply arrangements is the extent to which flexible supply sources such water supply from rural water markets are available.

Spot Price

The spot market price will vary depending on the volume of water in storage. As storages fall then this will tend to bring forward the need for new augmentations. Owing to the presence of large storage capacity in most water supply systems, it can be expected that spot water would not be as volatile as wholesale electricity spot prices.

Infrastructure Requirements

There will be the need for centrally-coordinated infrastructure planning and transparency of information to facilitate efficient planning and coordination of water sources development and associated infrastructure and water trading. The electricity industry provides useful examples of such infrastructure planning processes. NEMMCO prepares annually a 10-year Statement of Opportunities and an Annual National Transmission Plan Statement identifying future investment for electricity generation and transmission requirements. A similar planning approach could be developed for the competitive water industry.

Infrastructure Access Pricing

Infrastructure access pricing arrangements would be required. It is envisaged that access prices would need to recover sufficient revenue to cover operating and maintenance costs, depreciation, provide an adequate return on existing capital invested, and allow for system expansions and augmentations. State-based economic regulation regimes for bundled water services already follow this approach.

Given the high cost of the investments to enable transport of water, a particular focus will be required on efficient infrastructure pricing structures: for example to reflect forward-looking location related costs, congestion and to provide appropriate pricing signals for augmentations of existing pipelines and new pipelines. An issue to be considered is whether the pricing system would be based on a common carriage system (as in electricity transmission); contract carriage (as for most gas pipelines) or some mix of the two approaches.

Conclusions

No jurisdiction internationally has seriously considered or implemented a competitive urban water-trading market. There is no widely-accepted body of theory and research as to how urban water markets might work – arguably, however, the development of the necessary theory and concepts is not ‘rocket science’. The market-design concepts are able to be based on well-established techniques developed in the operations research literature.

If policy makers are interested in the possibility of urban water markets, then a suggested initial step is a modest investment in basic research and modelling. While Australia drew heavily on ideas developed in the US and UK to underpin the development of its electricity reforms, a similar body of research does not exist internationally for urban water trading. Australia would therefore need to be proactive in leading the development of the necessary primary research.

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Mandatory Unbundling and Irreversible Investment in Telecom Networks

Robert Pindyck (2007), *Review of Network Economics*, 6(3), pp. 249-273

This paper addresses the investment impact of mandated access to individual services of telecommunications networks, often referred to as the unbundling of local networks. One example currently regulated by the ACCC is the unconditioned local loop service (ULLS). Pindyck argues that, because entrants to the telecommunications industry do not bear the risk of sunk costs in a network, there is an asymmetric risk not properly accounted for in the regulatory pricing of network services. Pindyck argues that this creates a significant disincentive to invest in new fixed-line telecommunications networks.

Pindyck considers situations where regulators allow entrants to utilise fixed-line networks at prices reflecting the cost of building a new, efficient, large-scale network.

It is argued that the consequential opportunities for entrants are extensive and provide substantial flexibility, as the facilities can be rented in small increments and for short durations. Pindyck views this regulatory approach to access as inherently problematic, because network investments are mainly irreversible and subject to considerable uncertainty. As a consequence, Pindyck argues that carriers incur opportunity costs beyond their actual capital expenditure.

The logic is that when a firm makes an investment, it foregoes the option to wait and see how uncertainties about the retail market, network costs and regulation are resolved. Unless bearing these uncertainties is valued when setting access prices, it is asserted that access seekers ultimately benefit from a 'real option' value associated with those investments.

The paper's central argument relies on the assumption that firms' investment decisions (in particular, whether to build or wait), are affected by the value of the real option associated with the decision. Pindyck argues that investment cannot be efficient unless network owners are compensated according to a real option framework. That is, investment will (usually) be less, than the efficient level under traditional regulation which abstracts from real options.

This paper provides an introduction to the theory of real options in access pricing under the assumed circumstances. However, the paper limits its discussion to consideration of an option to delay investment, and ignores counter-balancing options such as the option to expand or contract, which are gained only once investment is made. Further, the applicability of the paper to regulation is limited as it does not appear to take account of the balance of all the regulatory criteria, rather concentrating on only one.

Partial Regulation in Vertically Differentiated Industries

Angela S. Bergantino, Etienne Billette de Villemeur and Annalisa Vinella (2007), *IDEI Working Papers*, No. 470, Institut d'Économie Industrielle (IDEI), Toulouse.

This paper looks at the theoretical merits of price-and-quality cap regulation of recently-liberalised European utilities. The modelling considers the partial regulation of a vertically-integrated incumbent that produces services of varying quality to a consumer base exhibiting heterogeneous quality preferences. The incumbent faces competition in price and quality from unregulated entrants.

The paper presents a Stackelberg leader/follower model of competition between the partially-regulated incumbent (leader) and unregulated entrants (followers). The model was designed to represent competition within or across industries and to enable formulation of the weights in the price-and-quality cap, with the aim of isolating the optimal (partial) regulatory policy under these settings.

The paper finds a regulatory scheme that is able to decentralise the policy target, with the weights in the cap dependent on the market served by the entrant. The appropriate weights depend on quantities chosen by both the regulated incumbent and the follower, despite the follower not being directly impacted by regulation.

Overall, the authors claim two insights from the analysis. Firstly, in a partially-regulated industry, there is need for the regulatory agency to be able to utilise information on the whole industry; information about the sole regulated firm does not appear to allow for efficient regulation. Secondly, in the particular case where consumers demand only one unit of the good, the optimal policy centres around the sole regulated firm where regulators legitimately focus on the one firm and regulate as if it were a monopolist.

[The Value of Scarce Water: Measuring the Inefficiency of Municipal Regulations;](#)

Erin Mansur and Sheila Olmstead, *NBER Working Paper 13513, October 2007.*

What is the most efficient way to ration a scarce resource? Economists are virtually unanimous on the answer: Scarce resources are rationed most efficiently through competitive markets. Why, in periods of drought, do urban water utilities not allow the market price for water to increase, so that demand for water falls to a point where it equals the available supply? Why do urban water utilities insist instead on rationing water through restrictions on consumption, such as the ‘stage n’ water restrictions, with which Australians are so familiar? Why should every household be limited to watering gardens only twice a week, when some households are keen gardeners with years of investment in their garden while others have nothing but a bare patch of ground?

Mansur and Olmstead attempt to measure the welfare loss arising from restrictions on the quantity of water used (rather than allowing price to ration demand). They do this by dividing households into four groups, based on income and land area, and estimate elasticities of demand for indoor and outdoor water use. They then estimate shadow prices and market clearing prices for water among all customers under four drought policy scenarios of increasing stringency. They find that market clearing prices are on average 118 per cent higher than the actual average marginal water prices. They find welfare gains of around 25 per cent of the average annual household water bill.

[The Difficulty to Behave as a Natural Monopolist – The Dynamics of Electricity Network Access Charges in Germany 2002 – 2005,](#)

Thomas Wein and Heike Wetzel, *University of Lüneburg Working Paper Series in Economics, No. 62, 2007*

This paper seeks to explain the volatility in network access prices charged by electricity transmission and distribution businesses in Germany between 2002 and 2005. During this period, many electricity line businesses both raised and lowered their prices. Wein and Wetzel regard this behaviour as surprising because the grid operators are non-contestable natural monopolies and were regulated by Negotiated Third Party Access (NTPA). In addition to the NTPA, operators were subject to the threat of *ex post* regulatory intervention, particularly to secure non-discriminatory access, by the German cartel office. The authors’ study employed multivariate regressions to examine the influence of certain firm-specific factors on network access charges in Germany over the period 2000–2005. The paper makes several conclusions about the effect of the firm-specific factors. The introduction of a market comparison scheme in 2001, which permitted certain network suppliers with structural differences in their networks to levy higher access charges, generally led to increases in access prices on those networks.

A requirement to publish access charges, which gave network operators information about other operators' prices, was associated with relatively expensive firms decreasing their prices and relatively cheap firms increasing theirs. Although it was expected that large vertically-integrated firms would decrease their access charges due to greater public scrutiny, the results did not confirm this hypothesis.

Descriptive statistics also revealed that the majority of low- and medium-voltage network operators decreased their prices in the short-run, as well as in the long-run. This supports the idea that regulatory threat may have played an important role in the pricing behaviour in low- and medium-voltage sections of the networks.

In the Australian context, this paper suggests there might be mixed results from requiring regulated electricity businesses to publish pricing guidelines.

Measuring Welfare in Restructured Electricity Markets

Erin T. Mansur, *NBER Working Paper No. 13509, October 2007.*

How should we measure the economic harm caused by the exercise of market power in liberalised electricity markets? According to conventional economic theory, the harm caused by market power is the combined impact of the reduction in allocative efficiency and productive efficiency. But in wholesale electricity markets (where demand is typically very inelastic), the allocative efficiency loss is close to zero. Instead economists have focused on measuring the reduction in productive efficiency brought about by the exercise of market power. The standard way to do this is to form an estimate of the short-run marginal cost ('SRMC') of each generating unit, and then to calculate the total production cost or 'dispatch cost' of the market assuming that each generator bids at SRMC. This dispatch cost is then compared to the actual dispatch cost of the market, with the difference taken to be the welfare loss due to the exercise of market power. Mansur argues that a key flaw in this approach is that it ignores start-up costs. For many 'thermal' generators it takes many hours (and much fuel) to boil water to make sufficient steam to turn the turbines. These costs give rise to important 'non-convexities' in production decisions - it sometimes makes sense to use a higher-cost generator to supply a short-lived peak than to incur the costs of starting up a lower-cost generator. He applies the technique to estimate the welfare loss arising in the first year of operation of the 'PJM' market in the US (1998-1999). Although conventional techniques show that the harm from the exercise of market power was in the range of 13-21 per cent of the dispatch costs, Mansur claims that a more accurate figure is in the range of 3-8 per cent.

A Practical Approach to Quality-adjusted Price Cap Regulation'

Kevin Currier, *Telecommunications Policy*, 31, 2007, pp. 493-501

Although it improves the incentives for regulated firms to minimise costs, price cap regulation also presents challenges for regulators to ensure quality is not overly reduced. In so far as the provision of quality is beneficial to consumers of regulated goods and services, the efficiency of price cap regulation can be compromised if regulated firms reduce quality too far in their efforts to reduce costs.

Currier (2007) presents a model that can incorporate incentives toward quality provision within price cap regimes, by applying a service quality adjustment to the price cap. The service quality adjustment factor is designed to reflect consumers' price-quality trade-off. That is, a quality reduction must be accompanied by a compensating price fall and a quality improvement permits a price increase.

This model differs from others because the proposed quality adjustment factor is derived from forecasts of actual demand estimates and the associated tradeoffs between price and quality measures. By implication, the firm is therefore able to optimise across the true price/quality trade-off when maximising profits, thereby achieving the welfare optimum. A key benefit of the mechanism is the ability to exploit the firm's superior knowledge of its cost function.

The technique's main challenge would be in obtaining accurate forecasts of demand, which is often a source of significant uncertainty. Nevertheless, the technique is interesting because it addresses the concern that quality factors and their relationship to prices can be arbitrary. Currier suggests the modelling also provides a theoretically-sound basis for the quality-adjusted price caps utilised in the United Kingdom, Canada and some states within the US. The author suggests that as long as the regulator's attention to quality is focused toward the most important areas for customers, the benefits from consistency in approach are likely to be substantial.

Oligopoly Equilibria in Electricity Contracts Markets

Bushnell, J. *Journal of Regulatory Economics*, 32, 2007, pp. 225-245,

Bushnell considers the competitive impact on electricity markets from the existence of forward contracting or hedging markets. The paper is motivated by policy questions in the US over whether or not to continue mandatory forward contracting arrangements originally put in place on a transitional basis following deregulation and privatisation. The experience with forward contracting among states within the US, and across other countries, indicates that the existence of forward markets might have an impact on competitiveness of electricity markets. In the US in particular, the crisis in California was partly blamed on the absence of forward contracting.

Bushnell presents a theoretical model designed to examine the effect that allowing forward contracting has on oligopolistic (Cournot) competition. The model is then calibrated using parameters estimated from data on the systems in California, New England and the Pennsylvania, New Jersey and Maryland (PJM) system.

The model indicates that the existence of transparent forward contract markets brings about greater competition, given most levels of market concentration. Bushnell also finds that any given decrease in market concentration brings about a greater competitive impact when forward contracting is allowed, when compared to no forward contracting. He suggests this also indicates that the importance of firm size and concentration is magnified when forward contracting exists.

One interesting implication from the results from this modelling relates to ongoing efforts here and elsewhere to introduce real-time electricity pricing for end-users (demand-responsive pricing). Given offsetting benefits from concentration in such infrastructure industries, Bushnell suggests that demand-responsive pricing is seen as a means to offset the market power of energy producers. However if governments were reluctant to allow retailers to pass through wholesale price shocks to end-users, this model indicates the competitive impact of forward-contract markets could be equivalent, in terms of its effect on mitigating market power, to large increases in demand elasticity.

Vertical Arrangements, Market Structure, and Competition: An Analysis of Restructured US Electricity**Markets, James Bushnell, Erin Mansur, and Celeste Saravia, *NBER Working Paper No. 13507*, October 2007**

This paper compares outcomes in three US wholesale electricity markets: California, New England, and the combined Pennsylvania, New Jersey, and Maryland (PJM) market. The authors focus on the impact of vertical arrangements between generators and retailers. Vertical contracts were present in the two Eastern markets but prevented by regulators in the case of California.

The authors first compute cost functions for the important market participants. Then, with data on firm's vertical commitments and hourly demand, they simulate market outcomes under the assumptions of perfect competition, on the one hand, and Cournot competition on the other. These two cases are taken to represent the upper and lower bounds on potential market outcomes.

They find that the impact of vertical arrangements on estimated market outcomes is striking. When vertical arrangements are excluded, the simulated Cournot outcomes are less competitive than what the Eastern markets were in reality. In contrast, for the Californian market (where vertical arrangements were prevented) the assumption of Cournot competition resulted in simulated prices more consistent with actual market outcomes. After accounting for these differences in vertical arrangements, there was relatively little variation between markets left to be explained by market rules, local regulation and other factors.

The authors conclude that long-term contracts and other vertical arrangements are major sources of the differences in performance of electricity markets.

(James Bushnell presented this paper to ACCC staff in Melbourne before appearing as an invited speaker at the ACCC 2006 Annual Regulatory Conference.)

INTERNATIONAL ROUND-UP OF REGULATORY DECISIONS

China - China Removes Preferential Power Prices for Large Users

China will no longer give preferential electricity prices to electrolytic aluminium, ferroalloy, and chloro-alkali enterprises, which the state defines as 'high energy consumers'. At present they receive a discount of about four yuan per kilowatt hour. The extra revenue received by the power grids due to the end of discounts will be used to support local government's adjustments to 'economic structure' and for investment in energy saving initiatives. **Article**

EU - Call for investigation of mail prices

The Danish Chamber of Commerce, Dansk Erhverv, has requested that the competition authority Konkurrencestyrelsen looks into Post Danmark's prices. Dansk Erhverv questions why Post Danmark has reduced the price for mail in large volumes, a business area where there is competition, and raised the price for single mail items, a business area in which the company has a monopoly. A single letter costs Dkr 5.5 (US\$ 1.04 EUR 0.74) whereas the price per letter for volumes of more than 3,000 can be as low as Dkr 3 per letter.

EU - Commissioner Piebalgs and Minister Pinho discuss future challenges ahead of the energy council

Energy Commissioner Andris Piebalgs met today the Portuguese Minister for Economic Affairs and Energy Manuel Pinho to discuss the main energy issues of the Portuguese Presidency ahead of the energy council on 3 December 2007. Their dialogue was focused on the third internal energy market package, the Strategic Energy Technology plan, scheduled by the end of November 2007 and the Renewables and Climate change package which will be adopted at the beginning of next year.

'Energy has been one of the priorities of the Portuguese Presidency, and history will praise the achievements of these six months which only through the strong commitment of all European Institutions under the leadership of the Portuguese presidency may have been possible.' said Commissioner Piebalgs after the meeting.

Minister Pinho and Commissioner Piebalgs agreed that the Internal Market Package, which was adopted by the Commission on 19 September 2007, will be given the highest priority in order to allow European consumers to benefit as quickly as possible from a truly competitive EU energy market.

Minister Pinho presented the Commissioner with a Vision Paper on the technologies that will be needed to achieve Europe's objectives on CO2 reduction, renewables and energy efficiency. Commissioner Piebalgs welcomes this input to the Strategic Technology Plan. **Article**

EU - Competition regulator chairman says energy unbundling is good but insufficient

Competition regulator chairman Abel Mateus believes the 'unbundling' of energy transport and distribution activities stimulates competition but is insufficient as 60 to 80 per cent of the final consumer price is determined by energy production, *Diario Economico* reported. Mateus said that there are several ways to boost competition, including virtual capacity auctions and asset sales, but noted also that these options have a very political nature. 'The countries in which margins and prices are lower are those which have unbundling, such as UK and the Scandinavian countries,' Mateus added. **Article**

[EU – EC deal with Distrigas opens market](#)

The European Commission has dropped antitrust action against Distrigas in a deal it anticipates will enhance competition in the Belgian gas market. Distrigas, that controls 80 per cent of the gas market in Belgium, agreed to limit the duration and volume of contracts with gas resellers and large customers in order to allow new competitors the opportunity to enter the market. [Article](#)

[EU - EU Calls for Increased Energy Competition in Germany](#)

EU officials want to increase competition in the German energy sector by separating energy production and distribution activities, amid sharply rising prices that have sparked widespread debate in Germany. The discussion in Brussels has led some in the German energy sector to call the European Union's executive commission a bigger threat to EU energy companies than Russia. 'You are always talking about Russia but the real threat is coming from the European Commission,' the chief executive of German energy giant EON Wulf Bernotat told the *Financial Times* on Monday, 12 November 2007. Many in Europe have been alarmed over what they see as Russian intentions to dominate the European energy sector through investments by groups such as the state-controlled gas monopoly Gazprom. Bernotat added, however, that he did not think commission plans to increase competition by breaking up big power groups through a process called unbundling would succeed because they were opposed by major EU members. 'I am pretty sure unbundling is not coming,' he said. 'Such processes in Brussels take time especially if important member states such as France and Germany are against it.' [Article](#)

[EU - Energy liberalisation leads to higher prices](#)

What is liberalisation of the European Union's gas and electricity markets about? This question is worth asking because the European Commission has been preoccupied with how liberalisation needs to be introduced, rather than with its purpose.

Last month, this preoccupation reached fever pitch as a long-awaited package of [proposals](#) was adopted by the Commission, including a requirement that the EU's big energy companies should unbundle their gas and electricity networks from their supply businesses, either by establishing fully independent system operators or by way of complete ownership separation.

But what is liberalisation expected to achieve? A more competitive and transparent market and thereby lower prices is the stock reply. A possible relationship between liberalised markets and security of supply has been a more recent emphasis.

Such aspirations could be dismissed on the grounds that the gas and electricity industries are inherently unsuitable industries for competition. Here, though, I would like to challenge them by drawing attention to the impact of liberalisation on the three main cost components that make up the prices paid by households, which, since July, have seen their right to switch supplier extended throughout the EU.

These costs are the wholesale cost of gas and electricity, the cost of transmission and distribution and the cost of supply (billing and marketing).

The impact of liberalisation on wholesale costs is problematic in that short-term markets increasingly price electricity or gas delivered under long-term contracts. Such indexation to short-term markets (for example to month-ahead or day-ahead prices) is wrongly seen as a virtuous indicator of liberalisation, when in fact these markets establish a volatile flexibility premium as buyers and sellers seek to balance their positions when delivery day approaches and options increasingly diminish.

To counterpose them with 'old-fashioned' long-term contracts and allow them to set a price for baseload supplies contracted for perhaps years in advance of a delivery day is therefore misplaced – such long-term supplies are more appropriately indexed to a wider basket of commodities, including alternative fuels, in order to reflect the different risk profile they offer. This is not a trivial matter: gas indexation has ruined otherwise viable businesses in the UK and made long-term investment decisions hazardous. The cost of transmission and distribution can account for as much as 30 per cent of prices to domestic customers. However, these costs are not directly affected by liberalisation: they are regulated costs.

This leaves the impact of liberalisation on domestic supply costs – which is a specific consequence of retail competition.

It can be observed with some precision using UK data. Coupling [British Gas](#)'s supply cost data* with what the UK's Department for Business, Enterprise and Regulatory Reform tells us are typical annual household consumption levels of 18,000kWh for gas and 3,300kWh for electricity, the resulting annual household supply cost should provide food for thought in the rest of the EU.

Just before full market opening, in 2001, the supply cost for household gas was £30 per customer per year. In 2002 it jumped to £56, in 2003, 2004 and 2005 it was respectively £49, £68 and £55, before dropping precipitously to £16 in 2006. The same cost for electricity was £62 in 2001, £57 in 2002, £62 in 2003, £62 in 2004, £58 in 2005 and £88 in 2006.

These supply cost movements tell us three things. First, as should be anticipated, liberalisation increases aggregate supply costs for domestic customers (increased marketing costs, duplicated billing infrastructure, switching costs etc). Second, the level of these costs can be unrelated to the actual cost of supply as energy companies defend or increase their downstream profit margins. Third, while supply costs for gas and electricity should not be too different (the billing process is the same), in 2006 they were only £16 for gas, but jumped to £88 for electricity – providing a clear indication that a squeeze on gas supply margins brought about by the rising wholesale cost of UK gas was compensated for at the expense of electricity customers.

Full liberalisation in electricity and gas has either not got off the ground or has died a death elsewhere in the world. Through its impact on wholesale pricing and on supply costs and margins it is likely to result in both higher and more arbitrary prices, as well as making a lottery of investment incentives. But the European Commission presses on regardless at the expense of addressing more urgent energy problems. Somewhat ironically, its efforts are mainly sustained by the UK.

** British Gas data are used because the company is exemplary in disclosing the required information. The writer is professor of energy policy and economics at the University of Sheffield's Management School*

EU - Energy Utility Improves Transparency

The German energy utility E.ON has announced that it would make available extensive information about the operation and the output of its German power plants to anyone over the internet.

This transparency will primarily benefit power traders, purchasers, and consumers. The move follows criticism from political circles as well as consumers that the leading power producers in Germany are forcing up prices by withholding capacity.

EU - EU vows consistent regulation of mobile termination fees

European Union Telecommunications Commissioner Viviane Reding Tuesday vowed to push national telecoms regulators towards a common pan-EU method of regulating and calculating mobile termination rates in early 2008. Her comments, made at a joint press conference with two top officials from Italian telecom regulator AGCOM, follow some national regulators' efforts to force down the wholesale rates mobile phone network operators charge to connect calls from other networks.

'The work is underway on how to treat these mobile and fixed termination rates in a consistent way' across the EU, Reding said, adding that this 'does not mean in an equal way there are different markets.' Some national regulators, such as France's Arcep and Italy's AGCOM, have called for a more harmonised approach to oversee and even set such fees. 'In the first half of 2008, finding a common approach on mobile termination rates will be a priority for me,' Reding said.

The talk of harmony comes as Reding prepares to propose her plan for a single pan-EU body to work closely with the commission and to help coordinate pan-EU regulation the 27-nation bloc's telecoms markets. The call will come as part of Reding's planned 13 November 2007 proposal to overhaul EU telecommunications rules. Though Reding once pushed to replace the EU's disparate national regulators with an EU version of the US Federal Communication Commission made up of only a few decision-making officials she has since softened her vision so that the EU's national regulators will likely become a sort of board of directors for the new body.

During her talk, Reding also lauded AGCOM's efforts to gain powers in Italy to force Telecom Italia SpA (TI) to spin off its fixed-line network into a separate subsidiary. In November 2007, as part of a proposal to reform European telecom rules, Reding is set to call to empower all national regulators with this function, as she says it will better enable the regulators to ensure that dominant players and network operators are granting their rivals nondiscriminatory access to their networks. Even ahead of Reding's proposal, AGCOM is pushing to be able to break up Telecom Italia. Calling AGCOM 'a truly European regulator,' Reding said she was glad to hear of AGCOM's efforts.

EU - French Competition Authority fines France Telecom for DSL discrimination

France's competition enforcement agency has fined France Telecom Euro 45 million (approximately U.S. \$63.89 million) for allegedly 'abusing its domination position' in the local loop market by favoring its Wanadoo DSL (digital subscriber line) subsidiary over competing Internet service providers in 2001 and the first half of 2002. The Conseil de la Concurrence decision announced a negotiated settlement with France Telecom that closes a series of interim measures and decisions on the merits in which the Conseil and the European Commission penalised the company for 'practices aimed at preempting the high-speed Internet access market via ADSL, emerging at that time, for the benefit of its Wanadoo subsidiary,' the Conseil said.

Specifically, France Telecom gave competing ISPs information on the eligibility of ADSL lines that was less updated and less detailed than what was available to Wanadoo and failed to set up an online ordering system for competitors that matched the speed and quality of that used by Wanadoo, it said. France Telecom also 'invited its sales representatives to ignore the Internet access providers in competition with its Wanadoo subsidiary' and used data only it possessed to facilitate the marketing of its Wanadoo service offerings, the Conseil said.

'Notably due to the action of the competition authority and the regulator, the high-speed Internet market in France is now among the most competitive in Europe as shown by the number of operators on the market and the intense competition which exists between them on the prices and the services offered to the consumer,' it said.

EU - Germany rejects EU energy unbundling argument

Germany believes the European Commission has failed to make an adequate case for its proposals to inject more competition into power and gas markets, according to a letter sent last week to leading EU commissioners. The letter, written by senior Economy Ministry official Jochen Wuermeling, says an 'impact assessment' study on which the Commission's energy plans are based does not take into account a whole range of factors that may be influencing energy prices in the bloc.

Germany and several other EU countries are opposed to Commission plans, unveiled in September, to push through unbundling of ownership of electricity and gas assets. This would require generators and suppliers of power and gas to sell their transmission infrastructure or hand over control to an independent operator -- moves Germany, France and others say would weaken European companies.

'We don't believe this impact assessment provides a sustainable argument that would oblige all member states to introduce ownership unbundling,' the letter, sent to EU Energy Commissioner Andris Piebalgs and Competition Commissioner Neelie Kroes, reads. 'Many factors beyond network unbundling have a much bigger influence on prices and investments. The impact assessment says nothing about this.'

A copy of the letter, which is dated 19 November 2007 was provided to Reuters by the Economy Ministry. EU energy ministers are due to meet on 3 December 2007 with the Commission's energy plans high on the agenda. Piebalgs issued a statement in Brussels on Friday saying the proposals were 'more necessary than ever' to ensure competitive energy prices for EU consumers.

EU - Regulator Opens Consultations on Network Regulation Issues

The French energy regulator, Commission de Régulation de l'Énergie (CRE), has opened several public consultations on different issues related to the regulation of energy networks. The open consultations aim to identify agents' views on specific rules for the connection by wind facilities to the electricity distribution network; on the methodology for establishing gas distribution tariffs; and on the general procedures for the connection both to the electricity transmission and to the distribution networks.

EU – Single Electricity Market to be created in Ireland

Regulatory Authorities for Energy in Ireland and Northern Ireland have announced the launch of a Single Electricity Market which will combine the wholesale North and South markets into one cross-border market. The electricity grids historically were divided into two jurisdictions because of ongoing sectarian violence and the establishment of the single market is a reflection of improved relations between North and South. The Irish SEM will be the first cross-border market of this nature in Europe.

EU - Spain's Competition Authority investigates mobile fee increases

Spain's Competition Authority has commenced an investigation into mobile phone charges by the three largest operators: Movistar, Orange and Vodafone, on suspicion that the companies coordinated recent rate rises to compensate for revenue lost through a new pricing regime. The investigation was initiated following claims by Spain's Consumer and Users Organisation alleging the companies collectively raised tariffs following changes to pricing legislation preventing rounding-up of phone bills.

EU – Spanish Government challenges EU Telefonica fine

The Spanish Government is appealing the European Commission's A\$233m fine on Telefonica imposed on 4 July 2007 for operating a margin squeeze on its competitors in Spain's broadband internet market. Spain's Ministry of Industry, Tourism and Commerce is opposing the fine to protect the authority of CMT (Spain's telecommunications regulator) and their continued regulation of the local telecommunications industry.

EU – Telecoms Commissioner Reding meets Spain's Telco Chairman Rodriguez of Spanish regulator CMT

In the wake of Europe's recently proposed telecommunications reforms, EC Telecoms Commissioner Viviane Reding met with Chairman Reinaldo Rodriguez of Spain's CMT (telecommunications regulator) to discuss next generation networks, geographical markets and cooperation between national regulators and the EC. Reding praised the Spanish regulator's efforts in creating equity across the Spanish telecom market.

EU – Telecoms reforms propose single European market

On 13 November 2007, the European Commission presented the new "Telecoms Reform Package" to the European Parliament proposing wide-ranging amendments to the EU Telecoms Rules of 2002. The reform package will enter into force by the end of 2009. The key theme of the reform package is the creation of a pan-European regulatory body called the 'European Telecom Market Authority' which will include 27 national regulators on its board and be managed by an Executive Director. The reform package is intended to create a single market for telecommunications throughout Europe and includes provision for functional separation of wholesale and retail networks, auction of radio spectrum for use in broadband services, and the reduction of 18 telecom sectors to 6.

Mexico – Federal Competition Commission investigates Carlos Slim's companies

Mexico's Federal Competition Commission has commenced a formal investigation of market dominance in the country's mobile telecommunications industry. The probe will look at termination rates and possible anticompetitive practices following complaints from Spanish company, Telefonica.

REGULATORY DECISIONS IN AUSTRALIA & NEW ZEALAND

ACCC / AER

AER Incentive scheme to reduce electricity transmission congestion

On November 20, 2007 the AER issued a proposed scheme which is designed to improve service standard incentives for electricity transmission companies.

ACCC - Interim determinations in telecommunications access disputes

The ACCC has published interim determinations in four telecommunications access disputes regarding the supply of the PSTN Originating and Terminating Access services from Telstra Corporation Ltd to Optus Networks Pty Limited and Optus Mobile Pty Limited.

ACCC issues DDAS and ISDN declaration review discussion paper

On 16 November 2007, the ACCC announced a review of the digital data access service (DDAS) and the integrated services digital network (ISDN) declarations in regional areas.

AER issues report on its investigation into the events of 16 January 2007

The Australian Energy Regulator issued a report on its investigation into the events of 16 January when bushfires caused the main transmission links into Victoria to fail.

ACCC seeks submissions on Draft ULLS Pricing Principles

The ACCC has sought further comment on the appropriate pricing principles for the Unconditioned Local Loop Service (ULLS).

ACCC begins public consultation on Telstra's Transmission Capacity service

The ACCC has issued a discussion paper on Telstra's application for exemption from standard access obligations in respect to the domestic transmission capacity service on specified routes.

TO ACCESS AER NEWS RELEASES – <http://www.aer.gov.au/content/index.phtml/tag/AerNewsReleases>

TO ACCESS ACCC NEWS RELEASES – <http://www.accc.gov.au/content/index.phtml/itemId/2332>

New Zealand

Commerce Commission

NZ – Commerce Commission issues final determinations on unbundling local loop

The Commerce Commission has released its final determination on price and non-price terms for Telecom to make available its copper (local loop) infrastructure to other telecommunication providers. The UCLL determinations will allow competitors (Telstra Corp and Vodafone) to directly acquire access to Telecom's infrastructure to sell telecommunications services to their customers.

NZ - Transpower May Retain Pricing Control after Regulator Decision

Transpower New Zealand Ltd., the government-owned operator of the national electricity grid, will probably retain control of its prices after the antitrust regulator indicated it will settle a dispute with the company. The Wellington-based company may be allowed to increase prices by 8.1 percent this fiscal year and be able to determine prices from 2009 to 2011 using a method specified in its settlement offer, the Commerce Commission said in an e-mailed statement.

National Competition Council

Application for declaration of the service provided by the Hamersley Rail Network

On November 16, 2007 the NCC received an application under Part IIIA of the Trade Practices Act 1974 from The Pilbara Infrastructure Pty Ltd for declaration of a service provided through use of a facility.

New South Wales

Independent Pricing and Regulatory Tribunal

Reforming Port Botany's links with inland transport

The Independent Pricing and Regulatory Tribunal (IPART) is assisting the NSW Government with a review of the interface between the land transport industries and the stevedores at Port Botany, under Section 9 of the Independent Pricing and Regulatory Tribunal Act 1992. As part of the review, the Tribunal has released a Draft Report.

Review of the CityRail regulatory framework

In response to this concern, the NSW Government has asked IPART to undertake a review and recommend a regulatory framework that will provide CityRail with better incentives to provide passenger rail services at efficient cost levels.

Queensland

Queensland Competition Authority

Coal System Maintenance Costs

On 22 November 2007, the Authority released its [final decision to not approve QR's maintenance cost DAAU](#). In it, the Authority accepted QR's proposal to increase its maintenance costs, but did not accept all of QR's claims, particularly those in respect of ballast cleaning. In arriving at its decision, the Authority noted that, while there is significant benefit in providing for stable and certain arrangements over the term of the access undertaking, in this case this is outweighed by the adverse impacts from maintaining current arrangements.

South Australia

Essential Services Commission of South Australia

2008 Gas Standing Contract Price Path Inquiry

On 20 November 2007 the Commission commenced an Inquiry into Gas Standing Contract Prices it should fix to apply from 1 July 2008 to any small gas customers that have not entered into a market contract with a retailer.

Victoria

Essential Services Commission

Water Tariff Structure review

In October 2007, the Essential Services Commission formally commenced reviewing the prices to apply to water and sewerage services provided by Victoria's water businesses for the second regulatory period.

Western Australia

Economic Regulation Authority

Inquiry into Competition in Western Australia's Water and Wastewater Services Sector

The Economic Regulation Authority has published a Draft Report on its inquiry into competition in Western Australia's water and wastewater services sector. The Draft Report presents the Authority's preliminary views, with the major finding being a recommendation to establish a new body to identify, rank and procure new water sources that could be set up, owned and operated by the private sector.

NOTES ON INTERESTING DECISIONS

EU Commission Releases its Proposal for Reform of the Current Regulatory Regime of the Telecommunications Sector

Following a two-year consultation process, on 13 November 2007 the EU Commission has adopted a comprehensive proposal to reform the regulatory framework for electronic communications which has been guiding national regulation in 18 telecommunication markets since 2003.¹ [Simon – place this at the end of the article as the link.] If adopted by the European Parliament and the Council (relevant Ministers from EU member states), the reform package is expected to take effect in 2010 with a marked shift of regulatory powers from the member states to the EU and an increased set of potential remedies such as functional separation and aspects of net-neutrality.

The key elements of the proposal are:

Establishment of a European Telecom Market Authority replacing the European Group of Regulators (ERG): The Authority will encompass the heads of national regulators supported by 130 staff and, in contrast to the ERG, will adopt majority voting. The Authority's task includes ensuring regulatory consistency across the member states. It will also conduct market reviews and propose remedies in newly-identified transnational markets on behalf of the EU Commission.

Additional powers for the EU Commission: The EU Commission will gain veto rights regarding the adoption of remedies by the National Regulatory Authorities (NRA). Currently its veto rights are limited to market definitions and market power analyses adopted by the NRA. Moreover, the EU Commission will have the right to issue recommendations on the application of procedures where it is concerned that diverging national approaches will create a barrier to the Internal Market. In particular, the EU Commission is expected to release its guidance on NGA access by mid 2008. The EU Commission will also assume the right to take over market analyses required under the regulatory framework in instances where an NRA is 'significantly late'.

Functional separation is introduced as a regulatory remedy (at the discretion of NRA, with approval by the EU Commission) in cases 'where other remedies have failed'.

Coordinated approach to spectrum management: The proposal requires spectrum assignments (which will remain in national management) to be neutral with respect to technology and service applications. In addition, within a frequency band that will be identified for the enablement of EU wide services, spectrum rights must be tradable.

Independence of national regulators: The proposal includes minimum standards regarding the independence of the NRA from other national institutions.

¹ http://ec.europa.eu/information_society/newsroom/cf/itemlongdetail.cfm?item_id=3701

Reduction in the number of markets included in the review: The EU Commission proposes deregulation in a number of the 18 service markets identified for review under the current regulatory framework. The seven markets in which the EU Commission presumes that barriers to entry will continue to exist and that *ex post* competition law will be insufficient are: fixed retail access, fixed wholesale originating access, fixed wholesale terminating access, wholesale access to the local loop for broadband and voice services, wholesale broadband access (e.g. bitstream), mobile termination and wholesale leased lines. In addition, the EU Commission proposes to simplify the reassessment of markets where competition has not significantly changed.

Strengthened consumer rights, including increased pricing transparency, faster number portability, cross-border access to emergency and service numbers, improved access for the disabled and greater responsibility for operators in the event of security breaches.

Adoption of elements of net-neutrality: Providers will be obliged to inform consumers about restrictions they impose on the accessibility of content and will not be allowed to restrict content for which there is 'no viable alternative'. In addition, NRA will be able to set minimum quality levels for network transmission services.

Where a remedy is appealed, the burden of proof for suspending the remedy will be reversed: the applicant will have to show that not suspending the remedy will cause serious and irreparable harm.

The current regulatory framework shifted the focus of regulation away from the liberalisation of former telecommunication monopolies to applying *ex ante* regulatory measures based on an economic assessment of market boundaries and market power in these markets. It has been in effect since 2003. The ensuing process of 27 national market reviews in 18 markets each commented on by the EU Commission has proven to be a protracted endeavour, with several instances of disputes between the EU Commission and national regulators (e.g. in the case of access to new fibre networks). As a motivation to its reform proposal the EU Commission expressed its concern regarding the delays in adopting measures, the divergence of measures adopted throughout the EU, failed cooperation in the ERG, the divergence of broadband penetration across member states and barriers to the provision of transnational services implied by current national spectrum management which the EU Commission seeks to overcome ahead of the completion of the analogue-digital transition of broadcasting expected in 2012.

The proposals will now be considered by the EU Parliament and the Council before several of its elements will have to be transposed into national laws in the member states. The EU Commission expressed its hope that the reform could take effect by 2010.

EU - Energy Commission presses ahead with proposals to split energy giants

The European Union (EU) Energy Commissioner Andris Piebalgs said on 3 December that he would press ahead with the controversial proposals to split energy giants as more member states have shown their support. Piebalgs said "a significant number" of member states agreed that ownership unbundling is necessary, whereas only "some" remain to be convinced.

In its proposals to reform the EU energy sector, the European Commission called in September for separation of production and supply from transmission networks in a bid to boost competition. But several member states including France and Germany wanted to find a third option, which they were expected to present early next year. [\[Article\]](#)

Mobile Termination Access Service (MTAS) Charges to Continue Falling

The ACCC has issued the *MTAS Pricing Principles Determination* relevant for 1 July 2007 to 31 December 2008, with an indicative price of 9 cents per minute. The previous Determination expired on 30 June 2007. The current public consultation process has been part of an extensive consultation process which began with the Mobile Services Review in 2003, when prices were over 22 cents per minute. That consultation process informed the *MTAS Pricing Principles Determination* for the period 1 July 2004 to 30 June 2007, which expired on 30 June 2007.

To support the future pricing principles determination for MTAS, in March 2006 the ACCC issued a request for tender seeking the services of a consultant to construct a bottom-up cost model with specific economic and engineering parameters for mobile termination access services in Australia. A leading international consultancy, WIK Consult, was engaged in June 2006 and has worked with the ACCC to develop a bottom-up cost model that estimates the efficient cost of supply of the MTAS in Australia using a total service long run incremental cost (TSLRIC) conceptual framework. The ACCC commenced a public consultation process on the *WIK Mobile Network and Cost Model* on 1 February 2007 which concluded on 16 March 2007. The *Draft MTAS Pricing Principles Determination* was released on 21 June 2007 with submissions being due by 6 August 2007. Submissions received during the public consultation process have informed the indicative prices outlined in the Determination. [\[Article\]](#)

NZ – Commerce Commission closes in on mobile duopoly

Consumers could have three mobile networks to choose from by July 2008, after the Commerce Commission brushed aside a threat by Vodafone that it would halt investment if new entrant NZ Communications was given too much of a helping hand breaking Vodafone and Telecom's duopoly. Vodafone regulatory affairs manager Heyden Glass told a Commerce Commission hearing that it understood that NZ Communications planned to begin delivering a 3G mobile service by July, initially covering 40 per cent of the population.

NZ Communications project director Tex Edwards said a July launch date was 'speculation' and much would depend on whether the commission forced Vodafone and Telecom to let it mount equipment on their cellphone towers. Vodafone expressed 'grave concerns' over giving new entrants the immediate right to roam on its 3G network, but appeared to fail to persuade the commission this would stifle investment. Corporate affairs manager Tom Chignell said Vodafone had decided to suspend the network roll out, once it fulfilled an earlier promise to roll out the network to 19 provincial centres, till the regulatory outlook became clear. This meant its 3G network would cover 60 per cent of the population. It had intended to upgrade more cellsites so that another 29 per cent of the population could access 3G services by 2012.

Telecommunications commissioner Ross Patterson dismissed the threat at Thursday's hearing, suggesting Vodafone would not be able to stand back once NZ Communications' and Telecom's W-CDMA networks were built. 'A boycott on investment seems to be a fairly standard reaction from every incumbent facing regulation. Competition surely drives your behaviour?', he said. Telecom mobile development head Shane Ohlin said Telecom would want network operators to roam on its W-CDMA network once it was built in November 2008. But Telecom proposed that they should not be able to access new services that were launched on the two incumbents' networks for a period of three years, such as location-based services, so they could earn a return on their investments.

IPART's review of the interface between the land transport industries and stevedores at Port Botany

Whilst significant waterfront reform occurred on Australia's docks in the late 1990s, the efficiency of the land side of the terminals' operations – the receipt and delivery of containers by road and rail - has had little attention. Road transporters at Port Botany report significant congestion during peak periods despite booking access slots in advance via web-based Vehicle Booking Systems (VBS) operated by each stevedore, and rail transport is generally considered inferior due to tardiness. Significant growth in volumes of containerised freight handled at Port Botany has occurred and is likely to continue, which will exacerbate current problems. The Premier requested IPART to recommend options for improving the efficiency of the stevedores' links with inland transport.

IPART's draft report, released on 30 October 2007, made a number of recommendations to encourage better communication between the stevedores and the road and rail operators. Further, on the basis that price should be used to allocate scarce resources (such as road access to the stevedores' terminals), IPART's major recommendation was for the stevedores to offer an additional style of access slot to road transporters, with service guaranteed within set times, and allocated by Dutch auction. Drawing on terminology from the energy industry, the stevedores would offer a mix of priced 'firm' (guaranteed) and very cheap 'interruptible' (as currently offered) slots through their VBSs. The stevedores would receive some of the auction proceeds to encourage them to offer firm slots. Road transporters would be able to choose between certainty (at a price) and flexibility. It is expected the proposal would lead to shifts in mode (to rail, a NSW Government goal) and time (to cheaper off-peak' times) in land side access, and would make the stevedores more accountable to land transporters.

Submissions to the draft report are due on 24 December 2007, and the final report is due for release by 20 March 2008.

http://www.ipart.nsw.gov.au/investigation_content.asp?industry=5§or=current&inquiry=116