

NETWORK

A Publication of the Australian Competition and Consumer Commission for the Utility Regulators Forum

*Issue 30
December 2008*

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The Regulator's Challenge: Providing Stability While Leading Change

Mark A. Jamison

It is a paradox of our time that utility regulators are confronted with two seemingly conflicting challenges. On the one hand, regulators have their traditional and central responsibility of providing a stable regulatory environment, or perhaps more appropriately, a predictable environment, in which investors, operators, and customers can make long-term decisions with confidence that short-term political goals will not trump to any significant degree the long-term goals for efficient and sufficient utility services. On the other hand, the regulator must adapt the regulatory system to economic, social, and technological realities that are changing rapidly in directions that are at present unknown. This uncertainty makes it hard for regulators to plan and put at risk benefits that stakeholders have come to expect from the regulatory process.

In this paper, this challenge of regulating in a time of rapid and uncertain change is examined. It begins with an examination of the traditional role of regulation, namely that of controlling the exercise of market and political power, which left unchecked would limit investment in services. Successfully fulfilling this role requires that the regulator maintain some form of independence from industry and political forces and that the regulator be highly competent to perform the complex, technical work that is the bread and butter of regulator work. The current context for regulation, emphasising the uncertainty that regulators, policymakers, and stakeholders face, is then examined. To be successful, regulators need to properly fulfil their technical roles while also helping the political process express the values that are to guide policy and helping the players in the policy and regulatory processes adapt to new realities as they emerge. The paper concludes with a description of the perils that regulators face in serving in these various roles.

The Central Role of Regulation

A classical view of the role of regulation is that the regulator controls industry market power and government political power (Newbery, 2001, pp. 1, 27). In this view, utilities are capital intensive, use long-lived assets that are immovable, and enjoy scale economies. These features lead to market power, which the operator can use to obtain supernormal profit. These features also provide opportunities for opportunistic behaviour: Once a utility's assets are in place and costly to redeploy, government officials face political pressures to take advantage of the situation by, for example, forcing price decreases to non-compensatory levels. This happened in Brazil with transportation utilities, in Hungary with electric tariffs, and in the United Kingdom with its windfall tax on utility profit (Wells and Gleason, 1995; Jamison, 2007). Knowing this, utility investors are sometimes reluctant to sink capital without some constraint on political discretion. Independent regulatory agencies serve as that constraint.

Another classical view of regulation is that it provides stakeholders with opportunities for rent seeking. In this view, regulation emerges from what would otherwise be a free market system because stakeholders with political power are able to entice politicians into imposing regulations that shift wealth from the less powerful to the more powerful (Newbery, 2001, p. 141). Political battles over structural and functional separation in telecommunications fit nicely into this view of regulation, as do battles over universal service subsidies. Separation policies are generally promoted by entrants that want to constrain an incumbent rival, by incumbents that want to impose limits on potential rivals, or by incumbents that want to avoid some other regulatory instrument they view as more onerous. Universal service policies often benefit operators more than they do customers.

A review of the development of independent regulatory agencies in the United States provides other reasons for regulation and adds richness to the classical views. Utilities in the United States were initially regulated either directly by political bodies or by the courts (see generally Glaeser, 1927). In some instances, city governments would negotiate contracts or concessions with entrepreneurs to provide utility services within the city. In other instances, state legislatures regulated prices directly. Regardless of the mode of direct political control, the following outcomes tended to be observed:

(1) Prices became outdated as technology and economic conditions changed, often resulting in financial distress for the operator and poor service for consumers.

(2) Politicians were out-negotiated by their utility counterparts, resulting in high prices and profits. In at least one instance, the profits were so high that the utility was embarrassed and lowered its prices below the maximum negotiated by the politicians, resulting in embarrassment on the part of the politicians.

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(3) Utility services were withheld from political opponents or given free (or nearly free) to political friends.

Regulation by courts fared no better than regulation by political bodies: Regulatory benefits were received only by stakeholders with the economic resources to pursue relief through the court system. As a result of these problems, utility service was inadequate and unreliable. To remedy this, about 100 years ago, legislative bodies began creating utility regulatory commissions with the power to regulate prices and with greater independence from operators and politics. The success of this approach by a few leading states led to its adoption by all states and by the federal government.

The goals of utility regulation came to be to ensure that utility service was efficient and sufficient for the needs of the economy and the population. More specifically, this meant that prices were not unduly discriminatory, revenue was sufficient to attract continued investment in the utility enterprise, costs were fairly apportioned, and efficient consumption was encouraged (Bonbright, Danielsen, and Kamerschen, 1988, pp. 377-384). These goals meant that regulators devoted their resources to analysing utility finances, regulating prices, and ensuring each geographic area was assigned to a service provider that had an obligation to serve all customers in that area. More recently, regulators became interested in issues of market structure, first in telecommunications but now in other sectors as well. These were highly technical issues and dealing with them adequately required regulatory agencies to hire staff members who were expert in law, economics, finance, accounting, and engineering.

But as illustrated below, getting the technical issues right only gets regulators part way to success. For sure, getting the technical issues right is a necessary condition for success – no regulator succeeds without that – but technically correct answers are not sufficient for success. To be successful, the regulator needs to recognise context and, at appropriate times, provide leadership and/or play the role of the politician.

Context

The current context for utility regulation is rapidly evolving, but in uncertain directions.

- Rapidly increasing energy costs are leading the media, politicians, and others to look for someone to blame. Regulators are sometimes convenient targets.
- Stakeholders have rapidly evolving and often conflicting expectations for environmental impacts of utility services, new applications of utility services (such as plug-in hybrid automobiles), and new technologies (such as broadband and information services). Regulation can reduce the adaptability of industry to new demands and new realities, but it can also provide a focal point for bringing new information to light and raising issues that are sometimes conveniently ignored in the political discussions.
- In that vein, political populism is leading to disconnections from realities. In one country for example, a new political party came to power, fired all of the utility commissioners, and then demanded that the new commissioners fire all of the staff and lower electricity prices below cost.
- The public has been making new demands for environmental policies, service reliability, etcetera, but resists when the costs for such policies impact utility prices.

Segmenting the Work of the Utility Regulator

These rapid economic, societal, and technological changes require regulators to go far beyond getting the technical issues right. Figure 1 illustrates this idea. The circle in the upper left – marked, *What is possible?* – represents the technical work of regulation. Here regulators deal with the constraints of engineering, economics, finance, law, and the like to ensure that, for example:

- Prices are both affordable to customers and sufficient for investors.
- Service quality is adequate for the needs of the population and the economy and affordable in terms of the costs required to make the quality possible.
- Operators are financially sound.
- Service is available.
- Utilities operate efficiently.

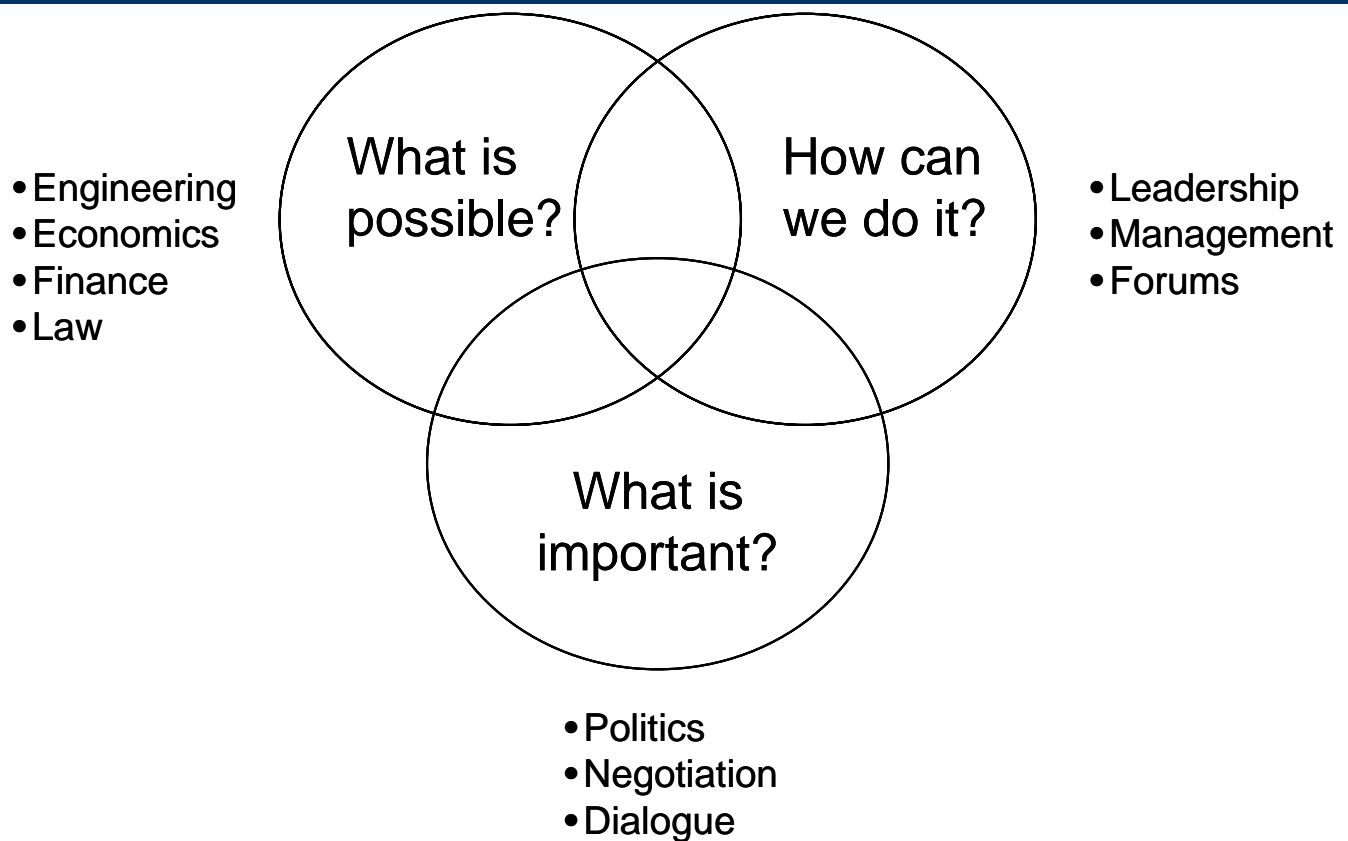


Figure 1. Areas of Work for Today's Utility Regulator

Situations arise – and there may be many such situations today – in which regulators can and should step beyond their technical work to provide political work, which is reflected in Figure 1 by the bottom circle. Here regulators help address the question: *What is important?* Answering this question is normally left to the political institutions (Vilbert, 2007, p. 2), but many of today's issues are highly technical, involve technical uncertainty, and change quickly. The value choices are unclear because policy impacts are unclear. Furthermore, value choices made today can be quickly outdated, necessitating new political dialogues and processes. But frequent updating of political choices can be at best costly, and at worst physically impossible, for traditional political institutions. Regulatory institutions may be better at making some of these decisions. A case in point would be electricity restructuring in California. The utility regulator had developed a plan that might have been workable if implemented, but the political institutions developed political compromises on some key elements of the restructuring plan, which made the plan unstable. When the flaws came to light, the political bodies were unable to generate the will to make crucial changes in a timely manner, resulting in service failures, unnecessarily high prices, and financial collapse.

A challenge for regulators who engage in the political work of making policy choices is that they have to recognise the limits of their political authority, that the limits are fluid, and that there will not be unanimity on the extent of their authority. Regulators should address this challenge by 'getting on the balcony.' Getting on the balcony is a metaphor for seeing what is really going on with yourself and others. On a dance floor, you can see only yourself and the people immediately around you. That gives you one perspective on what is happening. But if you leave the dance floor and get up on the balcony, you can see everything that is going on (i.e., who is dancing and who is not, how the music affects different dancers, where dancers are on the floor, etc.) (Heifetz and Linsky, 2002, pp. 51-74). Getting on the balcony requires stepping back from the fray and asking questions such as: Who cares about the actions I am taking? What seems to be happening beyond my vision? Why are some people engaged, and why are others not engaged? Who am I hearing from and, perhaps more importantly, who am I not hearing from? and What seems to energise particular people, and what seems to lead to resistance? One former regulator said she used to employ what she called the 'smell test,' which meant that she would reject proposals that didn't feel right even if she could not pinpoint the problem (Jamison, 2007).

Getting on the balcony is actually a tool of leadership, which takes us to the third circle in Figure 1, which addresses the question, *How can we do it?* For technical work, this is simply an issue of management providing direction, order, and protection from outside forces. But when circumstances have changed and traditional approaches are no longer adequate, then leadership is required to engage people in investigations and dialogues on what has changed, what the changes mean, and how to react to the changes. This overlaps with the political work because leadership forces stakeholders to think through and make new value tradeoffs, but it is distinct from the political work in that it is not the regulator who is making the value tradeoffs, but the stakeholders whose realities have changed (Heifetz, 1994, p. 15; Heifetz and Linsky, 2002, pp. 11-20). In a sense, this area of work not only addresses the question of, *How?* but also the question of, *What is 'it'?* because goals and aspirations are defined in this circle.

The peril in this third circle is that the regulator must be careful to maintain legitimacy when dealing with adaptive work, which in contrast to technical work is the work of learning about changed circumstances and making changes in values, traditions, attitudes, and behaviours that people hold dear. The need for adaptive work arises when fundamental changes in a group's (or an individual's) environment call for a rethinking of basic goals and strategies to thrive or even just to survive. Examples of major changes that have affected utility policy include the energy crisis in the 1970s, nuclear accidents at Three Mile Island and Chernobyl, decisions by multilateral institutions such as the World Bank to promote privatisation and competition in utilities, and the development of the Internet, but numerous more minor changes exist (Jamison, 2007).

Dangerous Work

Regulating utilities in today's environment is, in some sense, dangerous work. The truth of that statement may not be obvious to everyone, but consider the following:

- Ugandans took to the streets of Kampala in June 2003 to protest a price increase allowed by the electricity regulator.
- The Labour Party came into power in Britain in 1997 in part because Labour successfully portrayed the Conservative Party as being soft on utilities (Jamison, 2007).
- The Maryland legislature attempted to disband the Maryland Public Service Commission in 2006 after a large electricity price increase (Jamison et al., 2006).
- Members of the Florida Public Service Commission came under a cloud of suspicion in 2004 for attending a regulatory conference that the Commission had organised and that was also attended by industry representatives. The accusations escalated when the Commission approved telephone price rebalancing – the first such meaningful change in telephone prices in over ten years.

Why is regulation dangerous work? The issues are important, controversial, and political. Communications issues pit large, conflicting economic interests against each other. Energy policy involves hard tradeoffs between economic growth, consumer affordability, the environment, and international affairs, each with its distinct interest groups. Water policy is central to numerous environmental policies, but it digs into everyone's pocketbook and affects where economic growth occurs (Jamison, 2007).

Regulation is also dangerous because regulators play conflicting roles. As illustrated above, a regulator's primary job is largely technical implementation of policy – analysing utility finances and tariffs, developing and enforcing market rules, and the like – but the regulator is frequently called upon to make policy choices and balance stakeholder interests: two areas that put the regulator squarely in the political arena.

Regulation is also dangerous because regulators have conflicting needs. A regulator must have intimate knowledge of the operators regulated to be credible and effective in his or her technical work. But an arm's length distance with the operators must be kept to maintain legitimacy. The Florida situation cited above provides a case in point: Some commissioners were brought up on ethics charges and heavily criticised in the papers for spending time with utilities. However, the Commission was also put under political pressure for not regulating details of how electric utilities prepared for hurricanes.

How can regulators survive and perhaps thrive in the midst of these conflicts and pressures? The critical skill seems to be seeing the context within which controversies occur so that the regulator can fulfill the most essential role – that of a technical regulator – and supply leadership and policy direction when needed.

Conclusion

Regulation in today's context means disappointing people at a rate that they can endure.¹ Regulation has always been about addressing problems with human behaviour, not problems with technology. Certain technological and economic contexts simply gave some behaviours more opportunity than other behaviours to limit our economic and social well being. To be successful, regulators need to recognise context, changes in context, and patterns in the changes. But when changes occur, some people have to give up things that they have valued about the past, which adds peril to the regulator's job because the regulator might be blamed or scapegoated. Furthermore, the regulator might play an evolving role in policy development. But this, too, has perils because the role will be situational, and important stakeholders will disagree on the boundaries of the regulator's political authority. But in the end, even though regulation might sometimes be dangerous work, it is always interesting work.

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Note: This paper is a revised version of a paper presented at the Australian Competition and Consumer Commission's Ninth Annual Regulatory Conference, *Revisiting the Rationale for Regulation*, 24-25 July 2008. The author is responsible for all errors and omissions.

¹ This phrasing is adapted from Heifetz and Linsky (2002).

Critical Issues in Regulation – From the Journals

The Investment Effects of Price Caps under Imperfect Competition: A Note

S. Buehler, A. Burger and R. Ferstl, University of St Gallen, Discussion Paper no. 2008-07, August 2008

Buehler, Burger and Ferstl (BBF) present a theoretical model which finds that binding price caps set above long run marginal costs could result in increased aggregate capacity investment. This is because each firm endeavours to have enough capacity to occasionally earn scarcity rents during peak periods. This theoretical model may have parallels with the National Electricity Market setting, where there is a binding price cap.

The paper assumes that firms subject to price cap regulation can choose outputs and capacities in the face of varying demand. This means the firms face the classical peak load pricing problem—marginal cost is different when capacity is saturated compared to when it is not—and as a result marginal cost pricing results in peak pricing at long run marginal cost, and non-peak pricing at short run marginal cost.

Under price cap regulation three general scenarios are possible. One is a price cap set below the long run marginal cost of the most efficient firm. Such a price cap makes investment unprofitable, leading to excess demand and market breakdown in the absence of non-price rationing. The second is a non-binding price cap set above the long run marginal cost. This does not affect investment.

The third scenario is a binding price cap set above the long run marginal cost. In the BBF model, for a given fixed price level each firm's profit increases as its output increases, but total industry output is fixed. Because of this, the price cap introduces a coordination problem among the firms—aggregate output is the same but there are a variety of equilibrium output combinations that can meet the aggregate demand.

This affects each firm's capacity decision. Each firm can earn a 'scarcity rent' when its capacity is binding. So when firms choose their capacities they choose a capacity that allows them to meet their highest equilibrium output exactly. In this way, they ensure that they can make profitable sales during high demand periods. Because each firm chooses capacity so as to be able to meet their highest equilibrium output, aggregate investment must be higher under the price cap.

In effect, the modelling suggests that binding price caps set above long run marginal cost can induce firms to invest in greater aggregate capacity, because they induce firms to increase aggregate output. Note this says nothing about the efficiency of such an increase in aggregate investment.

This result might have implications for the National Electricity Market (NEM). The NEM has a binding price cap of \$10 000 per MWhr, which is probably well above long run marginal cost. An application of the BBF analysis suggests that this price cap might induce greater aggregate capacity investment. [Link](#)

Vertical Integration and Costly Demand Information in Regulated Network Industries

E. Iossa & F. Stroppolini, CEDI Working Paper No. 08-03 (2008), Centre for Economic Development & Institutions, Brunel University, United Kingdom

This paper examines the impact of demand uncertainty on the desirability of vertical integration in regulated network industries—specifically, how vertical integration affects the acquisition of socially valuable but uncertain demand information. It also assesses how acquisition of demand information in turn affects the desirable level of vertical integration or separation.

The paper notes that network industries are typically characterised by volatile demand conditions. Good demand forecasts are typically important foundations for designing good access policy, with strong corollary benefits for the development of competition in unregulated segments. Available information regarding uncertain demand can be obtained and expanded by market participants through processes of 'demand discovery' by participation in the relevant market. However, different market participants may have different abilities and incentives to acquire and transmit such information.

The model considers an industry with an upstream regulated natural monopoly, and an unregulated downstream characterised by Cournot competition. The regulator's sole instrument is the access charge. Downstream demand is uncertain, and information about demand is valuable to the regulator in setting the access charge, and to downstream competitors in making their output choices.

The paper compares the social economic welfare results of vertically integrated and separated market structures in relation to discovery and transmission of demand information.

First, it is assumed that only the upstream monopolist can acquire demand information. Where information becomes public knowledge once acquired, the authors find that either integration or separation can be socially optimal. Where information is privately acquired and the acquisition is unobservable, integration does better than

separation – this is primarily because a separated upstream monopolist does not value demand information as much as an integrated monopolist, and therefore acquires less of it. Where information is privately acquired but the acquisition is observable, separation does better than integration. Therefore, the desirability of separation in this model depends critically on whether the act of information acquisition is observable or not.

The paper then relaxes this assumption, so that demand information can also be acquired by downstream competitors. The authors obtain two key results. Firstly, incentives for the acquisition of demand information are stronger under integration, because the value of information for a downstream firm under separation is lower than for an integrated regulated firm. Secondly, information acquisition by a downstream firm is less socially valuable than information acquisition by an upstream monopolist – principally because information acquired upstream is transmitted downstream via the regulatory access price, whereas information collected downstream remains private because the downstream firm is unregulated. [Link](#)

Ownership Unbundling in Electricity Distribution: Empirical Evidence from New Zealand

Paul Nillesen and Michael Pollitt, University of Cambridge, Electricity Policy Research Group, EPRG Working Paper 0820, Cambridge Working Paper in Economics 0836, August 2008

This paper draws on the New Zealand experience to examine the economic consequences of compulsory ownership unbundling in electricity distribution.

Ownership unbundling is the most extreme form of unbundling, under which cross-shareholding is prohibited (or capped) between the owners/operators of transmission or distribution businesses and that of the generation or retail businesses. Other forms of unbundling are more common, such as management, accounting or legal unbundling. For example, all Member States of the EU require only legal unbundling for transmission and distribution of electricity from generation and retail. New Zealand is the only country that has implemented compulsory ownership unbundling of distribution from other stages of the production chains in supplying electricity.

Historically New Zealand has adopted a light-handed approach to regulation and therefore relied on competitive market forces rather than a regulatory agency in checking utilities industries. In order to increase competition in the electricity market, the Government introduced the ownership unbundling requirement for distribution network under the *Electricity Industry Reform Act 1998*. As a consequence all the 36 previously integrated electricity companies completed ownership separation by 1 July 1999, with a majority of them opting to sell off their retail/generation businesses.

The authors consider specifically three theoretical arguments for ownership unbundling – the respective likely positive effects on competition, quality and costs – which lack clear supporting empirical evidence. Using data on 28 electricity distribution network companies in New Zealand from 1995 to 2007, the authors show that:

- Competition had only temporarily increased before a new form of vertical integration between generation and retailing was formed.
- Quality of the distribution network has improved substantially.
- One-off transaction costs occurred, followed by significant decreases in operational costs.

Reflecting on the New Zealand experience, the authors consider that ownership unbundling may not be effective in achieving a competitive energy market. They call for policy makers to exercise caution in adopting ownership unbundling as it may have unforeseen and irreversible consequences like retail-generation integration. [Link](#)

Network Competition and Entry Deterrence

J. Calzada and T. M. Valletti, *The Economic Journal*, Vol. 118 (531), 2008, pp. 1223 – 1244

Calzada and Valletti examine the potential for interconnecting networks to use reciprocal access charges to deter new entry. The particular focus is on the termination charges paid from one telecommunications network to another, when a subscriber on the first network calls another subscriber on the second. These charges are known as ‘two-way’ access charges, because payments are made over time in both directions between interconnecting networks. The ACCC has the responsibility for setting such charges whenever negotiations fail between interconnecting networks, which has occurred mainly in the mobile phone market.

The paper is motivated by events in the Turkish mobile telecommunications market between 2001 and 2003. Over this period, the two incumbents increased the termination rates they had reciprocally agreed from 1.5 eurocents/min to 20 eurocents/min at the same time that another two operating licences were issued. Regulatory intervention followed when only one licensee effectively entered the market.

The modelling indicates that incumbents can find it worthwhile to deter entry by distorting upwards the mark-up on termination charges. Calzada and Valletti also find that the otherwise innocuous requirement of uniformity of access charges (non-discriminatory charges), can allow incumbents to determine the number of entering firms, at a given fixed cost of entry. The latter suggests an explanation for the staggered levels of stable concentration observed in other industries beyond telecommunications.

The paper poses some theoretical explanations for the regulatory concern that termination fees may be set too high. The literature has so far offered ambiguous results about how networks would negotiate charges in the absence of regulation, with theory often not reconciling well with practice. This paper suggests that a real possibility for higher termination charges to be agreed is to reduce entry.

Tariff-mediated Network Externalities: Is Regulatory Intervention Any Good?

S. Hoernig, Centre for Economic Policy Research, *CEPR Discussion Paper No. 6866, 2008*

This paper addresses some of the issues surrounding on/off-net differentials in mobile telecommunications pricing. At issue is the potential for such differentials to contribute to an inefficient under-provision of calls and to potentially disadvantage smaller networks. This paper considers some of the regulatory measures that have been proposed, including limiting the differential, limiting the termination fees (paid to the network to terminate a call) and applying a termination fee limit to only the largest network (asymmetric termination fees). No such measures currently apply in Australia, however the implications of differential prices have been debated.

The article concludes that each of the measures do not lead to unambiguously positive welfare benefits, with a trade-off between total welfare and consumer surplus at least in the short run. This is due to the finding that on/off-net differentials affect welfare, profits and consumer surplus, in contrasting ways. On the one hand, a differential in prices leads to lower off-net call minutes, potentially reducing calls to inefficiently low levels. At the same time, the differential can also serve to increase competitive intensity and thereby increase consumer surplus.

In the face of this ambiguity, Hoernig (2008) is able to make some observations about each of the proposed interventions which seek to reduce on/off-net differentials. The first is that direct intervention to cap the size of the differential (achieved through regulating retail prices), would reduce off-net charges, possibly improving efficiency. However this would also lead to possibly higher, possibly inefficient, on-net charges. The net effect depends on demand parameters, so that this type of intervention depends on the particular circumstances. The same efficiency trade-off exists if the limit is applied only to the largest network.

If instead a cap is applied to the off-net margin of only the larger network, the on-net prices do not increase. However, the efficiency results are qualitatively the same: profits increase and consumer surplus decreases, due to a reduction in competitive intensity. Applying either restriction to only the larger network helps the smaller network, however both networks' profits rise (at the expense of consumer surplus). Hoernig (2008) contrasts this with the well-known result that a reduction in wholesale termination fees also increases welfare and network profits, but reduces consumer surplus. This result is largely unchanged if the limit is applied only to the larger network.

The paper suggests some broader conclusions may be made. There tends to be conflict between increasing total welfare and increasing consumer surplus, because interventions that reduce the potential misallocation due to on/off-net pricing differentials tend to also reduce competitive intensity between networks. The same result tends to occur if the limits are targeted only toward the larger networks. If there are longer-term benefits to aiding smaller networks, the modelling indicates that there are shorter-term costs to consumers. [Link](#)

Access Regulation and the Adoption of VoIP

P. de Bilj and M. Peitz, Netherlands Bureau for Economic Policy Analysis, *CPB Discussion Paper No. 109, July 2008*

This paper is about competition and regulation for 'telephony' (voice telecommunications), where the incumbent owner of a fixed-line network (the public switched telephone network or 'PSTN') competes with rivals offering Voice over Internet Protocol (VoIP). These rivals need to pay the incumbent when their calls are terminated on the PSTN. Competition is imperfect because there are costs of shifting from PSTN to VoIP and the outcome of competition depends on the regulatory settings. Regulation of the PSTN retail price affects competition in the VoIP segment as a consequence of what the authors describe as the 'endogenous' nature of consumers' technology adoption decisions.

The authors suggest that the links between different telephony networks are crucial and should not be ignored by regulators. This is because in the context of access price regulation such linkages between different market segments mean that regulation within one segment may have spill-over effects to other segments.

Although their analysis is quite technical, the authors' three more intuitive results are as follows:

First, access regulation on the PSTN network affects the VoIP market. For instance, a higher access price for call termination on the PSTN network leads to a smaller customer base for VoIP telephony.

Second, as long as the PSTN access price is positive, a higher retail price for PSTN telephony leads to lower prices for VoIP telephony. Only when the access price is equal to zero, does the retail price level of PSTN telephony not affect retail prices for VoIP telephony.

Third, in markets in which the PSTN retail price is not regulated and in which an incumbent enjoys market power, a higher access price leads to higher VoIP retail prices (as in the regulated case) but tends to lead to lower retail prices in the PSTN segment. This suggests that access regulation has winners (consumers of the 'old' technology) and losers (consumers of the 'new' technology). [Link](#)

Competition vs. Regulation in Mobile Telecommunications

J. Stennek and P. Tangeras, *NET Institute Working Paper 08-09, October 2008*

This paper questions whether competition can replace sector-specific regulation of mobile telecommunications. It finds that a light-handed regulatory regime can induce effective competition, under the assumption that networks bilaterally negotiate termination fees. The authors consider a model of competition under a regime requiring only structural rules, rather than direct regulation. Specifically, the structural rules considered are (i) mandatory interconnection, (ii) banning on/off-net price differentials (charging a different retail price for calls to users on the same network), (iii) reciprocal access prices (same in each direction), and (iv) a ceiling applied to termination fees.

The key result is that more intense competition from greater numbers of networks leads to lower equilibrium prices under these rules. The price decline is greater as the retail services become closer substitutes or less differentiated, including when switching costs decline. The result derives mainly from the authors' extension of previously modelling of bilateral termination fee negotiations, to include the effect of the presence of additional networks beyond those negotiating (a more general oligopoly setting). They find that as long as call demand is not too elastic, the competitive equilibrium prices are brought closer to marginal cost by the imposition of the termination fee ceiling.

In finding that at least some form of regulation might be required in the long run, the paper questions the rationale that sectoral regulation in this industry should be transitional. However, the paper also finds that longer-term regulation might only need to be structural, rather than cost-based regulation which requires large volumes of information, including about demand. [Link](#)

Incentives to Invest and Give Access to Non-Regulated Next Generation Networks

D. Brito, P. Pereira and J. Vareda, *NET Institute Working Paper 08-10, October 2008*

This paper analyses the incentives for a telecommunications incumbent to, (a) invest in a next generation network (NGN), and (b) grant access to a downstream entrant. The industry is modelled as a duopoly, where a vertically integrated incumbent owns a legacy access network and operates in the retail market with product differentiation. A downstream entrant also operates in the retail market, requiring access to the incumbent's network. Access to the old network is regulated by way of an access price, but access to the NGN is not regulated. The NGN deployment increases quality, and the incumbent can choose whether the quality improvement is large ('drastic innovation') or small ('non-drastic innovation').

In the authors' model, if the incumbent grants the entrant access to the NGN, this allows the entrant to increase the quality of its product, and has two opposing effects on the incumbent's profit: a reduction in the retail profits of the incumbent; and an increase in wholesale profits. The wholesale effect occurs because the entrant's use of the NGN allows it to increase its product quality and thereby its profits, which allows the incumbent to charge a higher access price, which increases wholesale profits.

As formulated, the model suggests that if the innovation is drastic, the incumbent always invests in the NGN, but does not give access to the entrant, which is forced out of the market. If, on the other hand, the innovation is non-drastic, the regulator can control (through its continued regulation of the access price on the legacy network) whether the incumbent invests in an NGN and whether the incumbent grants the entrant access to the NGN. With a low access price, the incumbent voluntarily gives access to the NGN. If the legacy access price is high, the entrant is induced to exit the market. [Link](#)

Quantifying the Benefits of Entry into Local Phone Service

N. Economides, K. Seim, K and V. B. Viard, *RAND Journal of Economics*, Vol. 39 (3), Autumn 2008

This paper quantifies the consumer welfare effects of entry into local phone service in New York State, one of the first states with new service providers, including, AT&T and MCI, which entered the market following the 1996 Telecommunications Act. The Act mandates interconnection and unbundling of incumbent's networks and the resale of services by local exchange carriers, facilitating competition in the local telecommunications market. Competitive service providers typically offer a menu of non-linear tariffs with fixed monthly fees and per-unit usage charges. Consumers, through their individual choices of phone service plan and usage, may benefit not only from lower prices, but from greater variation in service offerings.

Using a discrete/continuous demand model that allows for multiple services bundling under one plan and firm differentials, this paper estimates the welfare effects of entry and its sources. These effects are categorised into a pure price effect, a product variety effect and firm differentiation effects. Consumers are found to save, on average, by approximately \$0.828 (or 2.5 per cent of the household's average monthly bill) purely from the entry of new service providers. In addition, consumers benefit further from bundled local and regional plans (\$0.211), new flat-rate plans (\$0.681) and service differentiation (\$0.256). This paper also considers whether consumer benefit from local telecommunication competition varies with household characteristics. Larger and high-usage households were found to gain more than others, which suggests that competition intensifies primarily for high-valuation consumers.

A Retail Benchmarking Approach to Efficient Two-Way Access Pricing: Termination-Based Price Discrimination with Elastic Subscription Demand

S. Hurkens and D. S. Jeon, *NET Institute Working Paper No. 08-14*, 2008

The interconnection of competing networks involves each charging the other to terminate calls terminating on their networks. This 'two-way access charge' has a competitive dimension because it represents a means by which networks can raise each others' costs. This is at the centre of some debate about the need for regulatory intervention and the levels at which the charges should be set, with the literature suggesting that charges can be set either too high or too low, reducing social welfare. Jeon and Hurkens extend the analysis of this complex issue in the literature, by considering the more realistic setting (at least for Australia) in which networks may charge different on- and off-net retail prices and in which retail demand is elastic.

Jeon and Hurkens focus on the effects on social welfare from direct regulation of the termination fees, as well as those resulting from linking the termination charge to retail prices.

In the case of direct regulation, the authors find that both regulators and networks might prefer to reduce termination charges below cost, depending on the trade-off between two effects created by such a reduction. A competition-softening effect is brought about because when termination charges are below termination costs, retail on-net prices are higher than off-net prices. This reduces networks' incentives to steal customers, who prefer to belong to the smallest network, all else being equal. On the other hand, lower termination charges can increase off-net calling by existing subscribers, as well as encouraging greater subscription numbers on all networks, through better internalising the externalities created for receivers of calls. If the latter effect dominates, increased consumer surplus and higher subscriptions mean that the interests of regulator and networks are aligned with respect to termination charges set below cost.

Jeon and Hurkens consider a retail benchmarking approach to setting the termination fees, which suggests call volume distortions could be avoided, but still allow the regulator to increase subscription. Under a 'family' of rules placed on networks which link the termination charge to the retail prices chosen by competing networks, the model predicts that networks would set on- and off-net retail prices equal to their respective costs. This implies an important result, which is that the regulator can use the rule to maintain or expand consumer subscription without distorting call prices or volumes.

Jeon and Hurkens suggest in this paper that there might be an 'information-lite' means for achieving efficient pricing. The broader debate in the literature about the regulation of termination charges exists because European telecommunications policy requires national regulators to judge the efficiency or otherwise of termination fees before regulating. The approach adopted by the ACCC however, as embodied in its mobile termination access service pricing principles, has argued that cost-based termination charges are efficient. [Link](#)

The Impact of Hinterland Access Conditions on Rivalry between Ports

Anming Zhang, Sauder School of Business, University of British Columbia, Vancouver, Canada, Discussion Paper No. 2008-08, February 2008

This paper examines the interaction between hinterland access conditions, which are systems of transportation in place to provide access to and from the port, and how these facilities affect competition between ports.

In constructing the competitive setting, ports are modelled as alternate inter-modal transportation chains, reflecting the fact that the product offered is a wider transportation network, rather than just the port itself. The hinterland access conditions are a level higher in the broader supply chain, connecting the rest of the geographical market to the inter-modal transportation chain and ultimately to the port.

In analysing the game setting, the hinterland access conditions are represented by corridor facilities and inland roads, with each having a distinct effect on competition between ports. The modelling indicates that, in a Cournot game, where ports compete in quantities, increasing corridor capacity will increase a port's own profits and output and diminish the rival port's profit and output.

However increasing inland road capacity had more ambiguous effects on a port's profits and output. Increased road capacity reduces local delays, but at the same time also increases local commuter traffic. Ultimately the impact of increasing inland road capacity on the port's profits and output will depend on the degree to which the increase in local commuter traffic will impede production at the port. [Link](#)

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 the energy, telecommunications, postal, water, rail, airports and ports sectors.

Canada: CTA Issues Final Ruling on Complaints for an Order Requiring the Canadian National Railway Company to Fulfil its Level of Service Obligations

Between September 5 and 10, 2007, the Canadian Wheat Board, North East Terminal Ltd., North West Terminal Ltd., Paterson Grain, Parrish and Heimbecker, Limited, and Providence Grain Group Inc. (the Complainants) filed level of service complaints with the Canadian Transportation Agency (the CTA). The CTA ordered Canadian National Railway Company on 25 September 2008, effective immediately, to provide a level of service as set out in the established service performance benchmark for crop year 2008-2009 and beyond. [Link](#)

European Commission (EC): EC Publishes Report on Main Developments in the Postal Sector

On 30 September 2008, the European Commission published a report which reviews the main developments in the postal sector in each of the member states between 2006 and 2008. The study identifies, quantifies and assesses the main developments of the postal sector in relation to the application of the Postal Directive, in particular with regard to regulatory, competition, market, economic, social, consumer and employment aspects, as well as quality of service and technology developments. [Report](#)

EC: Slovakia Requested to Re-open Competition in the Hybrid Mail Sector

The EC has decided on 7 October 2008 that recent amendments to Slovakia's postal legislation infringe EC Treaty rules on dominant market positions (Article 82) in conjunction with Article 86. These rules require Member States to ensure that measures concerning public companies or companies to which Member States confer special or exclusive rights comply with all Treaty rules, including the antitrust rules. The Commission's decision is legally binding on Slovakia. [Press Release](#)

EC: EC adopts New Air Services Regulation

The EC has announced that the Council and European Parliament have adopted Regulation 1008/08, which modernises the current single market rules relating to the liberalisation of air services.

Among other things, the new regulation provides for non-discriminatory pricing of air services on the basis of place of residence or nationality of the customer or location of travel agency. In addition price transparency is improved by clarifying that the final price should include all applicable fares, charges, taxes and fees. The breakdown between air fare or rate, the taxes, the airport charges and the other charges, surcharges or fees shall also be specified. [Media Release](#)

European Union (EU): European Parliament Votes on Telecoms package

The European Parliament voted on 24 September 2008 on a range of telecommunications reforms aimed at giving consumers better rights and boosting competition among operators. The Parliament agreed to establish a new telecoms authority, the Body of European Regulators in Telecommunications (BERT), rather than the European Electronic Communications Authority proposed by the EC. [Link](#)

EU: Energy Ministers Reach Agreement on Bill to Reform Energy Markets

On 10 October 2008, EU Energy ministers reached agreement on draft law that would require utilities to separate – or unbundle – the distribution of electricity and gas from production. The goal is to encourage competition and more energy exchanges between EU countries. The agreement would give companies three options, including one that involves splitting up the ownership of supply and distribution businesses. The ministers also agreed to set up an agency to help regulate the market, another key feature of the legal proposal. [Link](#)

Europe: European Regulator Group Release Series of Documents

The European Regulators Group (ERG) has published a series of documents dealing with next generation access and networks, the geographic aspects of market analysis and regulatory accounting. It has also published an updated snapshot table of mobile termination rates. [Link](#)

Europe: ERGEG and CESR Publish Joint Advice to Commission on Market Abuse Issues Relating to Energy Trading

On 1 October 2008, the European Regulators Group for Gas and Electricity (ERGEG) and the Committee of European Securities Regulators (CESR) published their final joint advice to the European Commission on market abuse issues relating to energy trading. The Commission sought this advice as part of a request for technical advice on the third energy reform package to enable it to determine whether further measures are necessary on transparency in energy trading. [Link](#)

Europe: ERG Publishes Report on Methodology for Comparing Broadband Retail Prices

The European Regulators Group (ERG) has published a report on the methodology for conducting comparisons of broadband retail prices. The ERG has reviewed the various criteria used to conduct comparisons of broadband retail prices (including their strengths and weaknesses) and the problems faced in developing an appropriate comparative methodology. On the basis of this analysis, the ERG has developed certain principles on which an ERG methodology should be based. [Link](#)

Europe: ERGEG Issues Second Implementation Report of Transmission Transparency Project

The European Regulators Group for Electricity and Gas (ERGEG) launched its Electricity and Gas Regional Initiatives (ERI and GRI) in spring 2006. The Regional Initiatives framework created seven electricity regions and three gas regions in Europe. The overall aim of the Regional Initiatives is to facilitate the development of regional gas and electricity markets, working in cooperation with stakeholders, to remove barriers to trade and competition. The Gas Regional Initiative North-West (GRI NW) comprises nine countries and is the largest of the three Gas Regional Initiatives in terms of market size and geographic scope. There is a consensus among stakeholders that the main priorities for GRI NW are transparency, capacity and investment. Other areas identified as a lower priority were gas balancing, gas quality, the creation of trading hubs and storage. This report focuses on the progress in transparency. [Link](#)

France: Arcep publishes Preliminary Recommendations for Fibre-optic Rollout

The French telecommunications regulator Arcep published guidelines on 10 October 2008 aimed at ensuring 'satisfactory competition conditions' that give initial recommendations on how operators should roll out next-generation fibre-optic networks. The guidelines follow the passage of legislation in August that introduced the principle of 'shared access' to the last part of the fibre network. [Link](#)

Germany: National Gas Transmission Grids to be Regulated

Germany's network regulator, the Bundesnetzagentur, decided to regulate the three largest natural gas transmission grid operators from 2010 because of inadequate competition as a result of the grid operators' dominant positions in the market. The operators will be subject to cost-based incentive regulation under which the most efficient operator will set the benchmark for the remaining competitors.

Germany: FNA Issues Decision to Tighten Gas Grid Competition

The Federal Network Agency (FNA) has issued the seven remaining decisions on so-called pipe-to-pipe competition in the long-distance gas grid sector. In agreement with the Federal Cartel Office, the decisions determine that these undertakings are not exposed to pipe-to-pipe competition but instead have a dominant market position. [Press Release](#)

Switzerland: Regulator Determines Swisscom's Unbundling Charges

The Swiss Communications Regulator (ComCom) for the first time determined the allowable prices charged by incumbent Swisscom in relation to unbundling services that it provides to competitors. The determination was made in response to competitors' complaints about the prices proposed by Swisscom. [Press Release](#)

United Kingdom (UK): BERR and Ofcom Disagree with EC on Termination Rates

The UK Department of Business, Enterprise and Regulatory Reform (BERR) and Ofcom made a joint submission to the EC regarding the EC's draft recommendation on the regulatory treatment of fixed and mobile termination rates in the EU. The EC's draft recommendation aims to facilitate the realisation of a single European telecommunications market. It follows the EC's observation of major differences in the regulation of European wholesale call termination rates both within and across Member States. The joint submission disagrees with aspects of the EC's draft recommendation. [Link to joint submission](#)

UK: Ofgem Releases Decision on Methodology and Governance Arrangements for Electricity Distribution UoS Charges across GB from April 2010.

This document sets out Ofgem's decision on the common methodology and governance arrangements to apply to electricity distribution use of system (UoS) charges across Great Britain. Ofgem has also published a statutory notice of the licence modifications needed to implement the new arrangements. Electricity distribution licence holders now have 28 days to decide whether to implement these changes. [Link](#)

UK: Ofwat Releases Report on Performance of the Water Companies in England and Wales 2007-08

As part of its regulatory role in the water sector, Ofwat monitors the performance of water companies to ensure that they are delivering the services customers are paying for and to compare aspects of their performance to drive improvements. The report released on 22 October 2008 sets out how the companies performed in 2007-08 in delivering services to consumers. [Link](#)

UK: Ofcom Releases The International Communications Market 2008 report

This is Ofcom's third report on developments in international communications markets. The report sets out the availability, take-up and use of communications services among seven main comparator countries (the UK, France, Germany, Italy, the US, Canada and Japan). Where data are available, Poland, Spain, the Netherlands, Sweden and the Republic of Ireland, have also been included. The development of communications markets in the large emerging economies of Brazil, Russia, India and China are considered separately. [Link](#)

United States (US): Keynote Remarks of FCC Chairman at the 'Network Neutrality Conference-Implications for Innovation and Business Online' Copenhagen, Denmark, September 30, 2008

The speech outlines how the FCC is pursuing the sometimes competing goals of promoting and preserving the vibrant and open character of the Internet while maintaining infrastructure companies' incentives to invest in the infrastructure needed to provide faster broadband. [Link to speech](#)

US: FCC Releases Second Annual Report on Status of Competition in the Markets for Satellite Communications Services

This is the second annual report by the Federal Communications Commission to the United States Congress on the status of competition in the markets for domestic and international satellite communications services as required by Section 703 of the Communications Satellite Act 1962. The report on the calendar year 2007 finds that markets for commercial communications satellite services are subject to effective competition. [Report](#)

US: FERC Finalises Rule to Strengthen and Improve Organised Wholesale Market Operations

The Federal Energy Regulatory Commission (FERC) finalised regulations on 16 October 2008 that will strengthen the operation and improve the competitiveness of organised wholesale electric markets through the use of demand response and by encouraging long-term power contracts. The final rule generally tracks the proposals outlined in the February 2008 Notice of Proposed Rulemaking. [Link](#)

US: Justice Department Issues Report on Telecommunications Symposium

On 17 November 2008, the Department of Justice issued a report on competitive developments in the telecommunications industry. The report, *Voice, Video and Broadband: The Changing Competitive Landscape and Its Impact on Consumers*, is the result of a Telecommunications Symposium hosted by the Department on Nov. 29, 2007. The report addresses a number of issues that may affect consumers of telecommunications services and antitrust analysis in this industry, with the focus of report is telecommunications services provided to residential consumers, rather than business users. [Link](#)

US: FERC Issues Posting Rule and Announces Inquiry Seeking Market Transparency for Natural Gas Pipelines

The Federal Energy Regulatory Commission (FERC) has issued a final rule requiring the posting of important market information that will improve price transparency in the interstate natural gas markets by providing information about the supply and demand fundamentals that underlie those markets. The Rule requires interstate and certain major non-interstate pipelines to post on their public websites daily operational information, such as scheduled volume information and design capacity for certain receipt and delivery points. [Link](#)

Regulatory Decisions in Australia and New Zealand

New Zealand

Commerce Commission Releases Draft Telecom TSO Cost Calculation for 2006-07

The Commerce Commission released on 24 November 2008 a telecommunication service obligation (TSO) determination for the Local Residential Telephone Service covering the 2006-07 year. 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 draft cost is NZ\$62.8 million. [Link](#)

Draft TSO Determinations Released by Commerce Commission

On 14 November 2008, the Commerce Commission released its 2007-08 draft determinations on the cost of the Telecommunications Relay Service (TRS) for the hearing impaired the costs to be met by each party liable to contribute to the cost of the TRS and the local residential telephone service obligation. Each Telecommunications Service Obligation (TSO) draft determination covers the period 1 July 2007 to 30 June 2008. [Media Release](#)

Commerce Commission Decides to Investigate Mobile Termination

The Commerce Commission announced on 6 November 2008 it is commencing an investigation, under Schedule 3 of the *Telecommunications Act 2001*, into whether mobile termination access services (MTAS) (incorporating mobile-to-mobile voice termination, fixed-to-mobile voice termination and short-message-service termination) should become regulated services under Schedule 1 of the Act. [Link](#)

Gas Authorisation Will Further Reduce Prices

The Commerce Commission released on 31 October 2008 the Authorisation for the Control of Supply of Natural Gas Distribution Services by Vector Ltd and Powerco Ltd, which will result in further reductions in prices for gas distribution services. In the previous Inquiry undertaken, the Commission found that Powerco and Vector had been earning significant excess profits and that control would be likely to result in significant reductions in gas distribution prices (on average) to consumers. [Link](#)

Electricity Lines Businesses: Commerce Commission Releases Information Disclosure Requirements

The Commerce Commission issued on 31 October 2008 revised information disclosure requirements for electricity distribution businesses. The original disclosure requirements, issued in March 2004 and which largely replicated and replaced the earlier information disclosure regime under the Electricity (Information Disclosure) Regulations 1999, have been amended so that they apply mainly to Transpower. [Media Release](#)

Commerce Commission Releases Draft Requirements Paper on Regulatory Financial Reporting by Telecom

The Commerce Commission issued on 23 October 2008 a draft paper on the regulatory reporting requirements for the accounting separation of Telecom. The draft paper outlines the financial information that Telecom must provide and the conditions it must follow when preparing this information. Under these requirements, Telecom will be required to prepare financial and other information about its retail, wholesale, access, corporate and international business activities for public availability. [Draft Paper](#)

Commerce Commission Releases Second Report on Broadband Quality

The second quarterly report on broadband quality was released by the Commerce Commission on 20 October 2008. Commissioned from broadband measurement consultancy Epiro and ICT analysts IDC, the report examines the quality of broadband service provided by New Zealand's internet service providers (ISPs). The report indicates that there was an overall improvement in the June quarter 2008 in the performance of the five largest ISPs. [Report](#)

Australian Competition and Consumer Commission (ACCC)

ACCC Grants Telstra Domestic Transmission Capacity Service Exemptions and Commences DTCS Declaration Review

The Australian Competition and Consumer Commission on 25 November 2008 issued a final decision granting Telstra exemptions from its obligations to supply the declared domestic transmission capacity service (DTCS) for capital-regional transmission and inter-exchange transmission on nine capital-regional routes, sixteen CBD exchange service areas, and in seventy-two metropolitan exchange service areas. The final decision rejects Telstra's exemption applications for the supply of DTCS for tail-end transmission in metropolitan and CBD areas.

[Media Release](#)

ACCC Issues Draft MTAS Pricing Principles Determination and Indicative Prices for 2009–2011

On 14 November 2008, the Australian Competition and Consumer Commission issued draft pricing principles and indicative prices for the mobile terminating access service (MTAS) from 1 January 2009 to 31 December 2011. The draft pricing principles continue to adopt a cost-based pricing approach informed by the total service long run incremental cost (TSLRIC+) framework, but have added considerations of international cost benchmarking, developments in other markets and data captured under the Regulatory Accounting Framework (RAF). [Link](#)

ACCC Draft Decision to Reject Telstra's ULLS Undertaking

The Australian Competition and Consumer Commission issued on 13 November 2008 a draft decision proposing to reject Telstra's Undertaking application for a \$30 ULLS monthly charge for metropolitan areas. The ULLS monthly charge relates to the rent which Telstra charges competitors to access the copper wire from the telephone exchange to a house or office. The proposed price was significantly above estimates derived from international benchmarking. [Draft Decision](#)

ACCC Rejects Telstra's 'Optus HFC Exemption' Application

The Australian Competition and Consumer Commission issued on 11 November 2008 a final decision to reject Telstra's application for exemption from its obligations to supply regulated fixed line services to Optus within Optus' HFC cable network footprint. The ACCC is not satisfied that granting the 'Optus HFC exemption' would promote the long term interests of end users. [Final Decision](#)

ACCC Grants Telstra Further Wholesale Voice Exemptions

On 29 October 2008, the Australian Competition and Consumer Commission decided to grant Telstra an exemption from its obligations to supply a "declared service" in parts of metropolitan Australia, subject to a number of conditions. The service is the public switched telephone network originating access (PSTN OA) service. The exemption is consistent with the ACCC's recent decision to grant Telstra conditional exemptions in respect of the supply of two other inputs into wholesale line rental and the local carriage service; however the exemption is not as broad as that requested by Telstra. [Media Release](#)

ACCC Releases Issues Paper for Water Planning and Management Charge Rules

The Australian Competition and Consumer Commission released on 10 October 2008 its Issues Paper seeking submissions on the development of water charge rules for water planning and management, an important component of the Water Act 2007. Water planning and management charge rules will apply to charges which recover the costs of, or relate to, water planning and management activities. The rules aim to facilitate pricing transparency. [Media Release](#)

ACCC Issues Draft Water Market Rules and Draft Advice to the Minister

The Australian Competition and Consumer Commission issued on 10 October 2008 its draft water market rules and draft advice to the Minister for Climate Change and Water on the water market rules for public consultation. In developing the draft rules, the ACCC considered the stakeholder submissions in response to the water market rules issues paper and position paper, and the Murray-Darling Basin water market and trading objectives contained in Schedule 3 of the Water Act 2007. [Media Release](#)

Telecommunications Access Dispute

The Australian Competition and Consumer Commission recently received notification of a telecommunications access dispute under Part XIC of the Trade Practices Act 1974. The dispute was notified by Primus Telecommunications Pty Ltd concerning the supply of the Unconditioned Local Loop Service by Telstra Corporation Limited. The dispute relates to charges payable for ULLS connections and ULLS call diversions made during 2004-05. On 7 October 2008, the ACCC commenced the arbitration process for this access dispute. [Media Release](#)

Australian Energy Regulator (AER)

AER Draft Decision Approves Increased Investment in ACT Electricity Distribution Network

The Australian Energy Regulator issued on 28 November 2008 its draft decision on the distribution determination to apply to ActewAGL's electricity distribution network for the regulatory control period 1 July 2009 to 30 June 2014. This is the first draft distribution determination for ActewAGL to be made by the AER. ActewAGL is the sole electricity distribution network service provider in the ACT and supplies electricity to around 156,000 customers.

[Draft Decision](#)

Regulator's Draft Decision Approves Increased Investment in NSW Electricity Distribution Network

The Australian Energy Regulator issued on 28 November 2008 its draft decision on determinations to apply to the electricity distribution networks in NSW, owned and operated by Country Energy, EnergyAustralia and Integral Energy, for the period 1 July 2009 to 30 June 2014. These are the first draft distribution determinations made by the AER in respect of these networks. The draft decision provided for \$15 billion worth of investment across three NSW electricity distribution networks over the next five years, which represents an increase of around 90 per cent from the current level. [Draft Decision](#)

AER Draft Decision Approves Increased Investment in the Tasmanian Electricity Transmission Network

The Australian Energy Regulator issued on 27 November 2008 its draft decision on the transmission determination to apply to Transend's electricity transmission network for the regulatory control period 1 July 2009 to 30 June 2014. Transend is the principal electricity transmission network service provider in the Tasmanian region of the National Electricity Market. [Draft Decision](#)

AER Issues New Energy Market Report

The Australian Energy Regulator released on 27 November 2008 its second report on the state of Australia's energy market. The report provides a comprehensive overview of Australia's electricity and natural gas markets. The State of the energy market supplements the more technical reports the AER publishes and is written for a wide audience including government, industry and the broader community. [Report](#)

AER Imposes \$60,000 Penalty on Braemar Power Project

On 21 November 2008, the Australian Energy Regulator imposed infringement penalties totalling \$60,000 on Braemar Power Project Pty Ltd. The penalties relate to the alleged failure of Braemar's power station to ensure its offers to supply generation capacity into the National Electricity Market accurately reflected its capability and its alleged failure to follow dispatch instructions issued by the market operator. [Media Release](#)

Australian Energy Markets Commission (AEMC)

Review of Energy Market Frameworks in Light of Climate Change Policies

The Scoping Paper for the *Review of Energy Market Frameworks in Light of Climate Change Policies* was published by the Australian Energy Market Commission (AEMC) on 10 October 2008. The Review will focus on assessing how the Australian Governments Carbon Pollution Reduction Scheme (CPRS) and expanded Renewable Energy Target may affect the existing energy market frameworks and to determine, what if any amendments are needed to those frameworks as a result. [Scoping Paper](#)

Review of the Effectiveness of Competition in Electricity and Gas Retail Markets in South Australia

On 14 October 2008, the AEMC published the Second Draft Report of its Review of the Effectiveness of Competition in Electricity and Gas Retail Markets in South Australia (South Australian Review). Following its finding that competition is effective (as set out in the First Final Report), the AEMC's Second Draft Report outlines its draft advice on ways to phase out retail price regulation. [Second Draft Report](#)

Review into the Use of Total Factor Productivity for the Determination of Prices and Revenues

On 21 November 2008 the Commission announced that it would conduct a review into the possible applications of a total factor productivity (TFP) based methodology in the determination of prices and revenues. [Media Release](#)

Transmission Reliability Standards Review

On 5 November 2008, the Australian Energy Market Commission (AEMC) published its Final Report to the Ministerial Council on Energy (MCE) on the Transmission Reliability Standards Review. The Reliability Panel's Final Report to the AEMC on this review was also published. In its Final Report, the AEMC recommended a nationally consistent framework for transmission reliability standards and recommendations on their implementation. [Link](#)

Annual Electricity Market Performance Review 2008

On 28 October 2008, the Panel published the draft Annual Electricity Market Performance Review 2008. The review focuses on the performance of the market in terms of reliability of the power system and the power system security and reliability standards. [Draft Review](#)

National Competition Council

Declaration of Railway Lines in the Pilbara

The Treasurer, Hon Wayne Swan MP, decided on 27 October 2008 to declare the services provided by the Goldsworthy (BHP), Hamersley (RIO) and Robe River (RIO) railway lines in the Pilbara region of Western Australia. The declaration covers the use of all associated infrastructure necessary to allow third party trains and rolling stock to move along the railways. The decision to declare the rail services was based on the recommendations received by the National Competition Council (NCC) on 29 August 2008, noting that the declaration would promote economically efficient operation and use of infrastructure and promote effective competition in the markets for rail haulage and iron ore tenements. [Link](#)

Application for Light Regulation of the Services of the Moomba to Sydney Pipeline

On 19 November 2008, the National Competition Council made a determination in favour of the application from the East Australian Pipeline Pty Limited (EAPL)—which is part of the APA Group—to apply light regulation to the services of the covered portion of its Moomba to Sydney Pipeline. [Link](#)

Australian Capital Territory

Independent Pricing and Regulatory Commission

Licensed Electricity, Gas and Water and Sewerage Utilities — Performance Report for 2005-06

On 2 December 2008, IPRC released a report that reviewed the performance of licensed utilities that supplied the ACT during 2005-06. [Report](#)

Utility Reporting of Material Breaches and Non-Compliance — Draft Guidance Note

The licences of all utilities licensed under the *Utilities Act 2000* contain standard requirements for the reporting of material breaches and non-compliance. The Commission released a draft guidance note for comment on its expectations in relation to these requirements. Submissions were welcome in writing by 21 November 2008. [Draft Guidance Note](#)

GreenPower Scheme

On 22 January 2008, The Minister for Environment, Water and Climate Change, Mr Jon Stanhope, directed the Commission to give effect to the GreenPower Scheme through suitable variations to the licence conditions of electricity retailers issued under the *Utilities Act 2000*. On commencement, the Scheme will require all licensed retailers to have access to an accredited green energy product. The Commission invited views on the proposed variations to the licence conditions and were submitted by 24 October 2008. [Link](#)

New South Wales

Independent Pricing and Regulatory Tribunal (IPART)

Final Report — Review of CityRail Fares, 2009-2012

On 16 December 2008, IPART released its final report and determination on fares CityRail can charge from 2009. In conjunction with the fare review, IPART is reviewing the economic regulatory framework for CityRail at the request of the NSW Government. Fares will rise on average by 7.5 per cent on 4 January 2009, and will rise by a weighted average total of 12 per cent plus inflation (or an estimated 25 per cent in nominal terms) over the four years from 2009 to 2012. [Final Report](#)

Final Report — Private and Newcastle Ferry Fares for 2009

On 28 November 2008, IPART released its final report into the review of fares for the regulated passenger ferry services run by private operators and the Newcastle (Stockton) ferry service run by Newcastle Buses and Ferries. Based on this review, IPART has made recommendations to the Minister of Transport on maximum fares for private ferry services and the Stockwell ferry service. The exact recommendations are available in the report. [Report](#)

Northern Territory

Utilities Commission

2009 Regulatory Reset

As required by the Final Methodology Decision, Power and Water submitted its 'initial regulatory proposal' to the Commission for the third regulatory period covering all of Power and Water's regulated networks. On 1 December 2008, the Commission released the Draft Determination, based on whether or not it proposes to approve Power and Water's initial regulatory proposal and, if not, what revisions it proposes to require before a revised regulatory proposal could be approved by the Commission. [Draft Determination](#)

Review of NT Electricity Ring-fencing Code

In August 2008 following receipt of submissions on the May Draft, given that significant matters have been raised, the Commission decided to release a further draft for comment rather than going straight to a final decision on the NT Electricity Ring-fencing Code. The Commission released a Revised Draft Code on 22 October 2008 and released final revisions on 1 December 2009, to take effect on 1 January 2009. [Link](#)

Queensland

Queensland Competition Authority (QCA)

Review of Small Customer Gas Pricing and Competition in Queensland

On 1 December 2008, the Queensland Competition Authority's released its Final Report into the review small customer gas pricing and competition in the Queensland retail gas market, as directed by Minister for Mines and Energy. The review examined current market issues in the interests of gas customers, incumbent retail market participants and new entrants. [Report](#)

Full Retail Competition Cost Pass-Through Application from Energex

On 25 November 2008, the QCA released its Final Decision Energex's FRC Cost Pass-through Application. The Authority has approved the pass-through of \$62.6 million of costs associated with the introduction of FRC. The decision follows the initial application in February 2008, and the Draft Decision on 30 April 2008. [Link](#)

Revenue Cap Adjustment 2007-08

On 3 November 2008, QR Network submitted its revenue cap adjustment proposal to the QCA, which seeks to increase future revenues to account for a \$43 million shortfall in its revenue in 2007-08. This submission follows the previous extension granted by the QCA to QR Networks on 31 October 2008. [Submission](#)

2008 Draft Access Undertaking

On 23 October 2008, the QCA published its final decision to approve QR Network's 2008 revised draft access undertaking (2008 DAU) and QR Ltd's withdrawal of its 2006 access undertaking. These two matters were formally submitted to the Authority for approval on 29 July 2008 as a result of QR Ltd's corporate restructure. The final decision follows draft decision released 25 September 2008 in which the QCA decided not to approve QR Network's 2008 DAU. The QCA draft decision stated the reasons for the Authority's decision and identified ways in which the 2008 DAU should be amended in order for the Authority to grant approval. [Link](#)

South Australia

Essential Services Commission of South Australia

Annual Reports on the 2007-08 Performance of Regulated Energy Businesses

The Essential Services Commission of South Australia (ESCSA) released three reports on the 26 November 2008 dealing with the performance of regulated businesses during 2007-08. These reports are the Performance of Energy Retail Market, the Performance of Energy Network Businesses, and the Regulatory Compliance Report. [Link](#)

Residential Energy Efficiency Scheme Code released for consultation

On 14 November 2008, the ESCSA released its draft Residential Energy Efficiency Scheme Code (REES Code) for consultation. The draft REES Code establishes requirements on energy retailers in relation to REES obligations imposed under energy retail licences. The Commission has prepared a Statement of Approach paper to accompany the draft REES code, outlining the Commission's approach to carrying out its role as scheme administrator. [Link](#)

Issue of Electricity Generation Licence to Energy Response Pty Ltd

On 7 November 2008, the ESCSA issued an electricity generation licence to Energy Response Pty Ltd. The licence applies to electricity generated by the diesel generators (combined maximum capacity of 2.4MW) within the Amcor Glass Factory at Gawler. The licence was issued following a period of public consultation, a review of information provided to the Commission by Energy Response Pty Ltd and an assessment of the suitability of Energy Response Pty Ltd to be licensed against the criteria laid out in the Act. [Licence Issue](#)

Specification of Residential Energy Efficiency Scheme (REES) Targets and Measures

The Minister for Energy released on 30 October 2008 the determined key inputs for the Residential Energy Efficiency Scheme (REES) for 2009, 2010 and 2011. The customer threshold number, Annual Greenhouse Gas Reduction Targets, Annual Energy Audit Targets, initial list of energy efficiency activities and the minimum specification for an energy audit were all published in the South Australian Government Gazette of 30 October 2008. [Link](#)

ETSA Utilities Demand Management Progress Report

In framing the 2005 to 2010 Electricity Distribution Price Determination (EDPD) the ESCSA approved on 13 October 2008 \$20.4 million for ETSA Utilities to trial a number of specified demand management initiatives during the current regulatory period. The ESCSA monitors the progress of ETSA Utilities in implementing the various demand management initiatives on a quarterly and annual basis and assesses the status of the EDPD demand management program on an ongoing basis. The decision by the ESCSA follows its first progress report on ETSA Utilities' demand management program in July 2007. [Report](#)

2008 Ports Price Monitoring Report

The ESCSA released on 8 October 2008 its 2008 Ports Price Monitoring Report under the price monitoring regime applying to Essential Maritime Services. This is the fourth Ports Price Monitoring Report released by the Commission and the first under the ESCSA's new ports price monitoring approach. The purpose of these reports is to provide South Australian port customers and the community with information regarding certain port costs at South Australian proclaimed ports. [Report](#)

Victoria

Essential Services Commission

Melbourne Metropolitan Water Price Review 2009-10 to 2012-13

On 6 November 2008, the ESC commenced a review of the prices to apply to water and sewerage services provided by the three metropolitan Melbourne retail water businesses and the bulk water and sewerage services provided by Melbourne Water for the four year regulatory period from 1 July 2009. These businesses were required to submit their final water plans to the Commission on 5 November. Interim price increases determined by the Minister were adopted for these businesses for 2008-09. [Link](#)

Goulburn-Murray Water Rural Tariff Review

In its final decision on the water price review 2008, on 17 November 2008 the ESC decided that, because of the uncertainties around the scope and funding arrangements for the Foodbowl Modernisation project, Goulburn-Murray Water are required to submit revised revenue requirements for the regulatory years 2009-10 to 2012-13. [Link](#)

Grain Handling Access Regime Review 2008-09

The ESC is undertaking an inquiry into the Victorian Grain Handling and Storage Access Regime following consultation with the Minister for Finance, WorkCover and the TAC. On 19 November 2008, the ESC released the Issues Paper of the Review. [Issues Paper](#)

ESC Issues Final Decision on GMMWater Pipeline Tariffs

The ESC issued a final decision on 28 November 2008 approving 2008-09 prices for customers connecting to the Wimmera Mallee Pipeline. The Commission did not approve the pipeline tariffs proposed by GMMWater (Grampians Wimmera Mallee Water) in the 2008 regional water price review because it was not satisfied that the proposed pipeline tariffs were cost-reflective or would be readily understood by customers. [Media Release](#)

Gas Access Arrangement Review 2008 -12

The ESC conducted a review of Victoria's gas distribution access arrangements proposed by the three gas distributors to apply from 1 January 2008 to 31 December 2012, and released its decision on 11 November 2008. The final decision followed a period of public consultation and the draft decision released on 28 August 2007. On 7 March 2008 the Commission released its final decision which did not approve the revised access arrangements submitted by the distributors, and were subject to appeal application. [Link](#)

Tasmania

Office of the Tasmanian Energy Regulator

2008 Reliability Review

The Tasmanian Electricity Code requires the Reliability and Network Planning Panel (RNN) to annually review the reliability of the Tasmanian power system. Accordingly, the RNPP commenced in October its 2008 Reliability Review in accordance with the Terms of Reference provided by the Regulator. A Draft Report was released in December 2008. [Draft Report](#)

Western Australia

Economic Regulation Authority (ERA)

2008 Annual Wholesale Electricity Market Report Submitted to the Minister for Energy

The Economic Regulation Authority submitted the 2008 Annual Wholesale Electricity Market Report to the Minister for Energy on 5 November 2008. The report is an assessment of the market's effectiveness. The ERA anticipates that the public version of the 2008 Annual Wholesale Electricity Market Report, that has confidential or sensitive data aggregated or removed, will be published before the end of the year. [Media Release](#)

Inquiry into Pricing of Recycled Water in Western Australia

The Economic Regulation Authority published a Draft Report on 5 November 2008 on its inquiry into the pricing of recycled water in Western Australia. From its inquiry, the ERA has developed a set of draft principles to guide the owners of wastewater networks in pricing recycled water. These principles are aimed at encouraging pricing that would occur if there was competition in the provision of recycled water services. [Draft Report](#)

Notes on Interesting Decisions

Market Reform in European Energy Markets

The adequacy of current regulation to deal with complex markets and sophisticated products is at the forefront of the regulatory agenda across the globe. In a number of jurisdictions, consideration is being given as to how traditional utility regulation, competition law and financial market regulation interact in suspected cases of market manipulation in energy markets and where there is a lack of competition within and among energy regions.

In October 2008 the European Group of Energy Regulators (ERGEG) and the Committee of European Securities Regulators argued for the creation of a European Union market-abuse framework for electricity and gas products. Their proposal rests on an acknowledged inability of existing regulations of financial market abuse in Europe to capture potential instances of market manipulation in physical and financial markets for electricity and gas (such as spot contracts and derivatives markets). The potential need for a market-abuse framework has also resurfaced in the United Kingdom following an Ofgem market investigation ('probe') into competition in electricity and gas retail markets. Ofgem concluded, in its initial findings document, that its existing powers may be insufficient to address potential market abuses in wholesale electricity.

Designing an effective (and enforceable) market abuse framework will likely pose significant challenges for policy makers. ERGEG has suggested that any market abuse framework needs to be broad enough to capture the interdependencies between the physical energy markets and emission allowances. Similarly, in the UK, Ofgem has expressed concern about the potential for 'exploitative' market abuses under proposed measures to accommodate new renewable generation on the network. On the one hand, regulators will require a sufficiently broad framework to capture the complex interactions between physical and financial markets. On the other hand, attempts to introduce too broad a framework are likely to meet with resistance from companies and may prove unenforceable, as the experienced of the Federal Energy Regulatory Commission in the United States shows.

On 10 October 2008, European Union Energy ministers reached agreement on a draft law that would require utilities to separate or unbundle the distribution of electricity and gas from production. The goal is to encourage competition and more energy exchanges between EU countries. Currently distribution networks, pipelines, transmission lines and power stations are often controlled by a single company. This makes it hard for small businesses to get a foothold in the market and for cross-border networks to develop. It was also agreed to set up an agency to help regulate the market.

Most EU governments agree that unbundling can lower costs and give consumers more choice. As a first step, since July 2007, all EU households have been free to choose a gas and electricity supplier, but their choice is still often limited by one company's domination of its region. Since spring 2006, however, the ERGEG has been implementing its Electricity and Gas Regional Initiatives (ERI and GRI). The overall aim of the Regional Initiatives is to facilitate the development of regional gas and electricity markets, working in cooperation with stakeholders, to remove barriers to trade and competition. The Regional Initiatives framework created seven electricity regions and three gas regions in Europe. There was a consensus among stakeholders that the main priorities for GRI NW are transparency, capacity and investment. The most recent report, published on 21 November 2008, focused on the progress in transparency.

The draft law that would require utilities to unbundle the distribution of electricity and gas from production similarly promotes competition. The bill also aims, however, to increase the use of renewable energies like wind and solar power and to increase energy security. The EU relies on Russia for about a third of its oil and about 40 per cent of its natural gas imports. But in recent years regional politics have disrupted supplies. Integrating national energy markets would make it easier for EU countries to help each other when supplies are threatened. If they want to operate in the EU, foreign companies would have to follow the same rules and would only be allowed limited ownership of EU networks. [Link](#)

New Zealand Commerce Commission Decides to Investigate Mobile Termination

The New Zealand Commerce Commission announced on 6 November 2008 it is commencing an investigation, under Schedule 3 of the *Telecommunications Act 2001*, into whether mobile termination access services (MTAS) (incorporating mobile-to-mobile voice termination, fixed-to-mobile voice termination and short-message-service termination) should become regulated services under Schedule 1 of the Act.

Mobile termination access services (MTAS) are the terms and conditions under which mobile carriers terminate calls and text messages from other networks on their networks, enabling mobile phone users to receive calls and text messages from different phone networks. A key condition is the mobile termination charges which are a significant contributor to the retail prices of calls and text messages to mobile handsets.

The investigation follows consultation on an issues paper on mobile termination released by the Commission in August 2008 and a Commission letter sent to the telecommunications industry in May 2008, asking for views on a possible Schedule 3 investigation. The Commission has previously investigated fixed-to-mobile termination services, but after consultation considered that developments in the mobile market required a fresh investigation into mobile termination access services.

The Commission considers that there are reasonable grounds for an investigation as the current international benchmarks for cost-based mobile termination rates (MTRs) indicate that the prevailing MTRs in New Zealand are likely to be significantly above the cost of providing the service. The Commission also considers that there are reasonable grounds for an investigation to consider whether above-cost MTRs represent an entry barrier for new entrants into the mobile market.

In addition to this investigation, the Commission is also currently considering whether there are reasonable grounds to commence an investigation under Schedule 3 into the whether the national mobile roaming service should be subject to price regulation under Schedule 1 of the Act. [Link](#)

ACCC Issues Draft Water Market Rules and Draft Advice to the Minister

The Australian Competition and Consumer Commission issued on 10 October 2008 its draft water market rules and draft advice to the Minister for Climate Change and Water on the water market rules for public consultation. Consultation on the draft water market rules, prepared by the ACCC, is a final opportunity for irrigation infrastructure operators and irrigators to contribute to the development of the ACCC's advice to the Minister.

The water market rules form a key component of the Act, which creates new institutional and governance arrangements to address the sustainability and management of water resources in the Murray-Darling Basin. By virtue of holding the statutory rights to water, an operator can prevent or delay their member from fully realising the benefits of their irrigation right. The water market rules deal with restrictions imposed by an operator on either transformation, or trade of a transformed irrigation right.

The draft water market rules ensure that policies or administrative requirements of operators of irrigation infrastructure who hold a group water access entitlement on behalf of their member irrigators do not unreasonably prevent or delay transformation arrangements including trade. In developing the draft rules, the ACCC considered stakeholder submissions in response to both the water market rules issues paper (April 2008) and water market rules position paper (July 2008), and the Murray-Darling Basin water market and trading objectives. [Media Release](#)

Review of Small Customer Gas Pricing and Competition in Queensland

On 1 December 2008, the Queensland Competition Authority's (QCA) released its Final Report into the review of small customer gas pricing and competition in the Queensland retail gas market, as directed by Minister for Mines and Energy. The review examined current market issues in the interests of gas customers, incumbent retail market participants and new entrants.

In undertaking the review, the Authority was directed to consider and report on the current level of competition in the markets for reticulated natural gas and substitute fuels such as reticulated and bottled LPG; the impact on retail prices of movements in prices and costs in the upstream gas market and whether current small customer retail prices are reflective of actual costs incurred in the upstream gas supply chain; and the extent of current small customer gas market activity.

With only two gas retailers operating in the market, the QCA found that the lack of activity by new retailers suggests that the current level of profitability is not sufficient to attract new entrants. The report identified two current barriers to entry in the Queensland natural gas market: the capacity constraints of the Roma to Brisbane Pipeline, and less than cost reflective tariff levels, particularly for smaller users, leading to low profit margins. The low profit margins appear to be a major impediment to increased competition amongst retailers.

The QCA also found that the opportunities for substituting energy sources appears quite limited. Even though the LPG market is competitive and has advantages in terms of availability in some areas, LPG is more expensive than natural gas. Only electricity provides a cost-effective alternative for natural gas users consuming more than minimal amounts. However, the report suggests there do not appear to be significant impediments to consumers exercising informed choices. [Report](#)

Declaration of Railway Lines in the Pilbara

The Treasurer, Hon Wayne Swan MP, decided on 27 October 2008 to declare the services provided by the Goldsworthy (BHP), Hamersley (RIO) and Robe River (RIO) railway lines in the Pilbara region of Western Australia. The declaration is made under s.44H of the *Trade Practices Act 1974* (TPA) and is for a period of 20 years commencing on 19 November 2008. The declaration covers the use of all associated infrastructure necessary to allow third party trains and rolling stock to move along the railways including railway tracks and structures, bridges, passing loops, signalling, roads and other facilities which provide access to the railway line route. The railways are used almost exclusively for the haulage of iron ore from mining tenements located approximately 300km to 400km south and south-west of Port Hedland.

The decision to declare the rail services was based on the recommendations received by the National Competition Council (NCC) on 29 August 2008. In framing a recommendation, the NCC was required to consider and be satisfied of a number of matters, including whether:

- duplication of the service is uneconomical for anyone to develop another facility;
- the facility is of national significance;
- the importance of the facility to the national economy; and
- access would not be contrary to the public interest.

In his decision, the Treasurer agreed with the recommendations of the NCC and in particular noted the objects of Part III and the belief that declaration would provide access which would promote the economically efficient operation and use of infrastructure (as the potential use of existing facilities or the expansion of facilities would be more efficient than duplication) and provide access that would promote effective competition in the markets for rail haulage and iron ore tenements.

The High Court rejected an earlier appeal by BHP, holding that the services for which declaration was sought do not involve 'the use of a production process' and therefore the services can be declared under Part IIIA of the TPA. There are four separate rail networks in the Pilbara region that are the subject of declaration proceedings: Goldsworthy (BHP), Hamersley (RIO), Robe River (RIO), and Mount Newman (BHP). [Link](#)

Inquiry into Pricing of Recycled Water in Western Australia

The Economic Regulation Authority (ERA) published a Draft Report on 5 November 2008 on its inquiry into the pricing of recycled water in Western Australia. From its inquiry, which was requested by the State Government of Western Australia on 8 July 2008, the ERA has developed a set of draft principles to guide the owners of wastewater networks in pricing recycled water. These principles are aimed at encouraging pricing that would occur if there was competition in the provision of recycled water services.

The guiding principles would allow for three components to be included in the recycled water price: a charge associated with the costs of delivering the water to the customer, a negative adjustment in price to account for any costs that are avoided as a result of selling recycled water, and an additional premium added to the price to reflect the relative scarcity of wastewater to be recycled. The premium adjustment would be determined by a neutral tendering process.

The guiding principles would complement, and may be superseded by, pricing principles that would be established

under a third party access regime. A third party access regime would allow other parties to transport wastewater through the natural monopoly infrastructure (in exchange for an appropriate access fee to the infrastructure owner), which would facilitate the provision of recycled water services. The ERA is not recommending that the price of recycled water from large recycling plants be regulated.

The ERA was also requested to consider the pricing recommendations of the State Water Recycling Strategy, including the appropriateness of faster adoption of cost-reflective prices for major industry. [Draft Report](#)

Review of CityRail Fares, 2009-2012

On 16 December 2008, IPART released its final report and determination on CityRail fares for the period from 1 January 2009 to 31 December 2012. Fares will rise on average by 7.5 per cent on 4 January 2009, and will rise by a weighted average total of 12 per cent plus inflation (or an estimated 25 per cent in nominal terms) over the four years from 2009 to 2012.

IPART took account of a wide range of matters in making its final determination – including (but not limited to):

- the impact of price increases on the affordability of fares and the patronage of CityRail services
- the urgent need to create effective incentives for CityRail to reduce its costs by increasing its economic efficiency, and
- the need for passengers and taxpayers to each fund an appropriate proportion of the costs of providing CityRail services that reflects the level of benefits individual users and the wider community derive from these services.

IPART revised the approach it uses to set fares, to help create the right incentives for CityRail. The new approach includes a more rigorous assessment of the efficient operating, maintenance and capital expenditure that will be required to provide CityRail services over the determination period.

In the decision, IPART made an explicit decision on the appropriate share of CityRail's subsidised costs to be funded by taxpayers and by passengers, based largely on the value of the external benefits of CityRail services. It found that the value of these benefits, which include reduced road congestion, traffic accidents and greenhouse gas emissions, was \$1.7 billion in 2007/08, and this value will increase to \$1.9 billion in 2011-12 in real terms. IPART's final decision on the value of the external benefits represents around 70 per cent of CityRail's revenue requirement over the determination period. [Final Report](#)

IPART also examined the economic regulatory framework for CityRail at the request of the NSW Government and released a final report, *Improving CityRail's accountability and incentives through an effective service contract*. [Final Report](#)

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).