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The Importance of an International Perspective

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This article explains the Australian Competition and Consumer Commission's and the Australian Energy Regulator's (ACCC/AER's) interest in the practice of economic regulation of infrastructure in other countries. It describes how the ACCC/AER keeps abreast of international developments through its formal and informal relationships. It also aims to alert readers of *Network* to a major research project currently underway in the ACCC/AER. This research project examines the regulatory institutions, processes and practices across seventeen countries and seven different infrastructure areas – energy, telecommunications, posts, water and wastewater, rail, airports and ports. While the project is not expected to be completed until next year, some interesting early insights are emerging. These include institutional trends towards 'conglomeration' both across infrastructure areas and by combining infrastructure regulation with competition functions. The relevance of the Australian 'single-conglomeration model' is considered in relation to these international trends.

Keeping Up With International Developments

The ACCC/AER is committed to keeping-up with international developments in regulatory economics and specifically, in the application of regulatory economics to the practices and processes used to regulate essential facilities. There are numerous reasons why this is important. Here are some of these reasons.

The ACCC/AER aspires to achieve best-practice regulation, that is, to achieve effectiveness (to improve the efficiency of the economy and to increase the welfare of Australians) by least-cost methods. Reviewing regulatory practices domestically and internationally is an essential element to maintaining a focus on best-practice regulation.

Economic regulation is an evolving and changing area of activity. Given the relative 'newness' of economic regulation, learning is in part by doing, but also by observing what is occurring elsewhere. Some broad trends are discernible, although application is often specific to the circumstances in a particular country.

Early this year, Crew and Kleindorfer (2012) provided a 30-year retrospective on developments in regulatory economics. In the article they noted that the regulatory scene of 30 years ago differs significantly from today. Further, the changes in the field in the last 30 years have been greater than in the entire preceding century, with the pace of change in the last ten years being particularly rapid. As they argue, the theme 'is one of continuing, and changing regulation with regulation growing in some industries, expanding into new areas and declining in others' (p. 3). With the increased ubiquity of regulation there are spillovers so that regulatory thinking and practice in one country has had a ripple effect across other countries. To this extent there are no hard barriers separating individual countries from each other.

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Also, at a time when capital movements have few boundaries, issues about the relative competiveness of different regulatory regimes are raised. The ease of these movements points to the importance of having a broad understanding of what is happening in other economies. Some internationally owned utilities that operate in Australia have suggested that Australian regulatory practices – perhaps with regard to information collection or confidentiality – are more onerous than in their home countries. Given that this can be used as a point of criticism, the ACCC/AER wants to be in a position to assess the validity of these arguments and to understand, where possible, the effectiveness of international differences.

The focus of these comparisons is usually on other Organisation for Economic Cooperation and Development (OECD) countries, and more usually on the United States and Europe. The extensive privatisation of utilities in the 1980s in the UK and elsewhere resulted in regulation where it had not previously existed, and can be characterised as the rise of the regulatory state. The regulatory state includes the separation of service delivery from regulation, regulation from policy making and politicians from managerial and regulatory functions. However, interest in aspects of the regulatory state is not confined to the developed economies. The ACCC/AER recognises that it has a role to play in providing advice to authorities in the Asia-Pacific region that are looking to implement regulatory reforms. The ACCC also fulfils a guidance role through its membership of bodies such as East Asia and Pacific Infrastructure Regulatory Forum. It is therefore essential to maintain an understanding of international trends in economic regulation.

International Activity

The International Unit within the ACCC has as its daily work, a focus on keeping-up with competition and consumer protection matters and specifically responding to requests from international counterparts for assistance with existing investigations. This also involves managing the ACCC's engagement with major international bodies such as the International Competition Network (ICN), the International Consumer Protection Enforcement Network (ICPEN) and, of course, the OECD. In particular, the ACCC has been a very active participant in the ICN's Merger Working Group. This participation helps the ACCC keep up-to-date with international analytical and procedural developments, and also assists in the development of bilateral relationships necessary for matter-specific cooperation. Within the OECD, the ACCC plays a lead role in the Working Group on Consumer Product Safety.

However, unlike competition, consumer protection and product safety cross-border investigations are not factors in economic regulatory decisions in Australia. The main emphasis for regulatory work from an international perspective is on keeping abreast with the international developments.

International activity includes membership and participation (conferences, meetings, survey involvement) in bodies such as the International Energy Regulation Network and the International Telecommunications Society. The ACCC/AER is a key player in terms of participation and secretariat support for the Energy Intermarket Surveillance Group (EISG). Staff secondments, especially to the Ofgem, have been regularly undertaken over the past few years. The annual Regulatory Conference brings to Australia eminent international academics and regulators to discuss the responses of their countries to some of the questions that Australian regulators are grappling with. The ACCC publication, the *Regulatory Observer*, keeps the Australian 'regulatory community' alert to the diversity of current regulatory decisions internationally, particularly decisions made in Europe, North America and New Zealand. The ACCC publication '*Network*' features recent literature from the journals, mostly international, on regulatory economics. At meetings of the Utility Regulators Forum, colleagues from the New Zealand Commerce Commission are major contributors. In addition, part of the ACCC/AER research program focuses upon international developments.

Better Economic Regulation of Infrastructure: International Insights

Understanding how other countries regulate their infrastructure services is the major rationale for an ACCC/AER research project titled *Better Economic Regulation of Infrastructure – International Insights*. This updates, broadens and deepens ACCC/AER research conducted for the Infrastructure Consultative Committee (ICC) in 2009 which surveyed regulatory and competition design and practice for energy, telecommunications, postal services, water and wastewater, rail, airports and ports across eleven countries. An interpretative report drew out some insights on such aspects as institutional design, objectives, consultativeness, information collection and dissemination, timeliness, decision-making and reporting, and appeals against decisions. On information collection (the issue raised earlier) the interpretive report found that requirements in Australia were similar to, or less demanding than, those in many international jurisdictions. In addition, when making determinations regarding the publication of commercial-in-confidence material, Australian regulators undertake a process with a relatively high level of procedural fairness, compared with many of the benchmark countries examined (ICC, 2009, p.14-15).

The new research expands the project to seventeen countries (including additional Asian countries and South Africa). The new research looks more closely at issues such as the impact of ownership (private versus government) on the regulatory approach taken, and the ways that consideration of the 'regulatory supply chain' can guide the approach to appeals. Some of the themes emerging from the research are considered here.

There is great interest in testing whether the nature of regulation for government business enterprises (GBEs – otherwise referred to as state-owned enterprises or SOEs), compared with privately owned institutions, is neutral to ownership. Carlo Cambini and Tim Brennan raised these issues at the recent ACCC/AER Regulatory conference. European jurisdictions more often deal with SOEs / GBEs; while North American regulated entities are typically privately owned. One area of particular relevance to Australia is the practice of cost benchmarking in energy distribution, where the mix of benchmark operators includes both privately- and government-owned businesses.

There is a strong emphasis on learning what governments expect of their regulators. Chris Decker (2010) wrote an article for *Network* documenting changes in regulators' remits and exploring future implications of these changes. This issue is a focus of the current ACCC/AER research project. Traditionally, regulators have been given standard economic objectives such as preventing the exercise of monopoly power and promoting competition and economic efficiency. However, increasingly regulators are being given a broader remit including: addressing climate change; the alleviation of fuel poverty; and reducing the digital divide. These may set-up trade-off situations ... and even direct conflicts between competing objectives of the regulator. Further, other bodies may be better suited to pursue these types of objectives. Closer to home, there is also the issue of competition bodies pursuing consumer welfare objectives, and economic regulation having broader efficiency objectives relating to overall economic welfare.

Previous research found an inverse relationship between the extent of consultation undertaken by a regulator and the time taken to reach a decision. The costs of delay can be large, especially in infrastructure areas such as telecommunications and electricity where technological change is rapid. The current research is looking to refine understanding of this relationship – is it more evident in particular infrastructure areas ... or for particular types of decisions? Are there ways of being both consultative and timely? How can regulatory practice be improved in these circumstances?

Appeal avenues, appeal 'triggers' and remedies differ greatly across countries. As observed by the Limited Merits Review Panel (Yarrow, Egan and Tamblyn, 2012, p. 2):

> Section 5 ... summarises review arrangements in other regulatory areas and in overseas jurisdictions. ... [It] suffices to note that (a) for major regulatory decisions such as price or revenue control determinations, some or other form of merits/administrative review is a common feature of regulatory systems, and (b) the comparisons indicate considerable diversity in institutional arrangements.

These appeal avenues tend to be aimed at achieving 'right decisions' and preventing regulatory opportunism. However, the appeal process can cause uncertainty and increase the time and cost of regulatory decision-making. Can improvements be found by looking more closely at the relationships along the entire 'regulatory supply chain', including levels of prescription, the extent of consultation, and discretion within the decision-making process?

Institutional Structure

The most common organisational structure for infrastructure and competition regulation is to have separate institutions for competition regulation ('anti-trust', 'fair trade commission', 'cartel commission' or 'monopoly commission') and for infrastructure (often 'utility') regulation. Infrastructure regulators are usually organised on a sectoral basis (e.g., across energy or communications) or an industry basis (especially for transport areas like rail and airports). A small number of countries have a relatively high degree of institutional integration – New Zealand (Commerce Commission (NZCC)), Australia (ACCC), the Netherlands (the Netherlands Competition Authority (NMa) that regulates energy and some transport infrastructure) and Germany (multi-sectoral regulator, BNetzA). In recent years there has been a clear international trend towards more 'togetherness' or 'conglomeration' of regulatory, competition and consumer functions.

Perhaps most obvious has been the trend away from industry-based and sub-sector-based regulators towards sectoral ones; especially in energy and communications, but also in transport. So, for example, the Ofcom (formerly the Oftel) in the UK has broadened its responsibilities from telecommunications to include spectrum, broadcasting and postal services. Further, the Ofgem was formed by combining the UK electricity and gas regulators. While it is rare to observe energy and communications sub-sectors regulated other than on a sectoral basis, transport areas (rail, airports and ports) are more often still separated. However, this also is changing. In Sweden, for example, regulatory functions in transport have been gathered together under the Swedish Transport Agency. The

reasons for this trend appear to be related to efficiency gains. It may also reflect concerns raised in the early analysis of the economics of regulation (notably, by George Stigler in the *Bell Journal of Economics and Management Science* in 1971) in relation to the prospect of 'regulatory capture'. 'Regulatory capture' is where the regulated entity influences regulatory decisions in its favour by developing a close relationship with the industry-based regulatory body.

A second trend has been observed across sectors: sectoral-based regulators are increasingly being combined on a multi-sector basis. The most obvious example is the German Federal Network Agency, BNetzA, formed in 2006 by combining sectoral and industry regulators. In the Netherlands, energy and transport regulation is the responsibility of the competition body (the NMa) while post services and telecommunications are a separate regulatory body, the OPTA. However, on 1 January 2013 these bodies will merge to form the Authority for Consumers and Markets (ACM). There is also a proposal and draft law in Spain to combine the sectoral and industry regulators, together with the competition commission (see below). Efficiency advantages, the quest for consistency and the sharing of resources appear to be the key drivers of this trend, although the positive budget impact may also be attractive to governments struggling with fiscal deficits and increasing debt.

Third, competition bodies are being merged with one or more consumer agencies (Finland, Denmark, Italy and the Netherlands), with each other (the UK Competition Commission and the Office of Fair Trading are to be merged into a single Competition and Markets Authority (CMA)) and with regulatory bodies (the Netherlands, and prospectively, Spain). Where competition law enforcement and regulatory responsibilities are separate, procedures need to be in place to deal with situations where enforcement and regulatory responsibilities overlap or are duplicated. Most US economic regulators have powers to enforce competition law within their infrastructure areas, including powers to approve mergers. Regulatory and antitrust agencies might concurrently conduct separate investigations and, in some instances, a matter may require approval from all relevant agencies before being allowed to proceed.

The reasons for these mergers seem clear enough: the need for coordination of approach; the desirability of a broader analytical approach along the supply chain; and the synergies from the sharing of scarce legal, economic and technical skills. On the other hand, a bad decision in one area can inflict reputational harm to the broader institution.

Australian Experience

Australia has taken the conglomeration approach. The Hilmer Report (Independent Committee of Inquiry, 1993) considered very carefully what type of regulatory institution(s) would be required to administer the competition policy reforms. A structure was needed that would minimise the costs of regulation in terms of both compliance costs and the risk of regulatory error. The Hilmer Report favoured the establishment of a national independent statutory authority (that came to be the ACCC) with economy-wide responsibility for economic regulation in addition to competition law and consumer protection. Chief amongst the arguments for favouring this structure was the importance of a focus on competition. If competition law/anti-trust and economic regulation were separated, the competition focus could be lost, distorted or relegated to a secondary position.

It was expected that, if economic regulation was located within a competition agency, the regulator would: prioritise the development and facilitation of competition in the market for the infrastructure service; focus on the impact of the terms and conditions that it set on competition in markets that depended on the regulated service; and be less resistant to the wind-back of economic regulation (that is, losing functions) as the introduction of competition reforms progressed.

Similarly an economy-wide regulator was considered to be better able to provide coordinated regulation and to deliver consistency across sectors. This is of particular importance given that all industries compete for investment capital. Inconsistent approaches to issues such as the valuation of capital could lead to inefficient investment patterns. Industry-specific regulators may produce inconsistent decisions that distort investment decisions. Investment might otherwise be attracted to infrastructure assets where regimes were applied more 'generously'. In a conglomerated regulator, precedents are created across an organisation, allowing increased knowledge and reduced uncertainty around regulatory interventions from area to area.

In a small economy like Australia's, there were seen to be considerable cost advantages to providing combined administrative support by pooling skills and scarce, and often expensive, expertise. Also, the issue of regulatory capture was raised. As discussed, there are well-documented concerns about the impact of a single industry regulator identifying with (rather than being arms-length from) the industry that it is intended to regulate. Rather, the performance of one organisation was likely to be easier to monitor, allowing for greater accountability.

With the years that have elapsed since establishment of the ACCC, it is possible to test the strengths of the rationale provided by the Hilmer review. The ACCC/AER works as one organisation across competition, consumer protection and the different regulatory areas. Responsibility for economic regulation of energy distribution was transferred from State and Territory regulators to the AER in 2008 (other than Western Australia for gas and electricity and the Northern Territory for electricity). At that time, gas transmission regulation was also transferred from the ACCC to the AER. Non-price retail energy functions (including extensive consumer protection measures) are currently being transferred from State and Territory regulators to the AER. However, while the AER has a separate legal identity with an AER Board, the full-time AER Chair participates in the ACCC committee structure (the Chair and part-time members are associate ACCC Commissioners) and another full-time board member of the AER is also a full-time Commissioner of the ACCC.

In contrast, the UK structure of regulatory agencies has been more complex. There is a diversity of specific sectoral regulators, an Office of Fair Trading (OFT) to apply and enforce competition law, and the Competition Commission to deal not only with merger inquiries, but also to deal with references and appeals. With such a structure, emphasis has had to be placed on legislation, committees and conventions to provide coordinated activity between the agencies. (The OFT and the UKCC will be combined to become the Competition and Markets Authority).

The Australian conglomeration model has made an elaborate super-structure of coordination unnecessary. For example, in recent years there has been considerable merger activity in the energy market in Australia. Electricity industry mergers can be extremely complex and can require an understanding of the operation of the electricity spot market and financial markets, an analysis of traditional patterns of bidding by generators in the National Electricity Market, as well as an understanding of the more standard economic issues that affect competitiveness in the market, such as barriers to entry. Within one organisation, the merger group in the ACCC is able to be supported by the highly technical expertise that has been developed by those staff in the AER who administer the National Electricity Laws and National Electricity Rules.

The Hilmer review rationale was correct – developing a regulatory institution with a focus on competition as the unifying theme, on economy-wide consistency, and on getting best use of scarce and expensive specialist skills. Replication of these skills would be difficult and costly. Also, staff working with a particular industry interest are working alongside staff with other industry interests, as well as those with a consumer protection and competition law framework; the risk of capture is reduced.

Using the example of the communications sector, a similar pattern is discernible. With the growth in bundling and the ability to sell supplementary services, there has been jostling within the broader communications sector for the primary relationship with the customer. This scenario is playing out between a wide range of companies, including network owners, service providers, content providers, content rights owners, device manufacturers and online companies. Each participant may be trying to erect various entry barriers which, while possibly driving wider innovation, must not become significant barriers to wider competition.

Crew and Kleindorfer (2012, p. 3) have described the worldwide impact of the electronic communication revolution and the internet:

> The impact underlies not just the obvious industries, namely electronic communications and hardcopy communications but also much more widely. The impact is felt on almost all economic activity and on society more generally. Regulation is having to address the new situation created by this major change. This is not surprising since the change is akin to a new Industrial Revolution but is happening more quickly. For regulation, it means different problems resulting in regulation being far greater in some respects than 10 years ago.

The ACCC is part of the action in this sector. While there is a dedicated Communications Group within the economic regulatory area of the ACCC, all the different parts of the organisation – mergers, authorisations, compliance, consumer protection – are involved in the developments within these dynamic and complex markets. Having one organisation to address this diversity of issues is to Australia's advantage.

Of course the ACCC/AER diversity of functions approach is replicated across the states and territories. These bodies are also involved in some economic regulation of infrastructure services – usually water, rail, sometimes ports, as well as residual roles in energy regulation. And depending on the state or territory, taxis, tow trucks or ferries might be additional areas of oversight.

Conclusion

An international perspective identifies broad trends of which Australia is part and in addition, there are always country-specific variations linked to the legal structure, economy and culture in place. By keeping abreast with these different country-based responses to a particular regulatory situation, new ideas and options for the regulatory challenges being faced in Australia are gained.

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Critical Issues in Regulation – From the Journals

'The Relationship between Regulation and Contracts in Infrastructure Industries: Regulation as Ordered Renegotiation', Jon Stern, *Regulation and Governance*, published online, 22 May, 2012.

A number of researchers have analysed utility regulation as if it were a long-term contract between customers and a monopoly service provider. In this paper, Stern emphasises the key role played by an independent authority (the utility regulator) in facilitating adjustments to that long-term contract over time.

Historically, long-term contracts have played a significant role in monopoly infrastructure industries. Stern points to examples from the previous two centuries of concession contracts for toll roads, canals, and railways in the UK, and to contemporary examples of similar contracts in Continental Europe and Latin America. However long-term contracts have a serious problem: it is not possible to imagine, let alone to negotiate over, all possible future contingencies *ex ante*. As a result, long-term contracts must be constantly updated to changing market conditions *ex post*, creating a role for regulation:

> What we know as economic regulation was invented in the 19th century to provide a way of reviewing and revising infrastructure contracts, primarily for railways and later for electricity, town gas, and telecoms. It provided an external agency by which the prices and other supply terms of the monopoly supplier could be examined and revised following a review.

A key contribution of the paper is its emphasis on strong parallels between conventional utility regulation, on the one hand, and control of a monopoly through a concession contract, on the other. These parallels extend to the design of the institution responsible for monitoring and enforcing the contract.

The core of the paper is a description of historical experience in a range of industries and countries: UK railway and electricity regulation; French water concession regulation; Latin American concession contracts; and the rescue of the Cambodian airport concession. Surveying the history of UK railway regulation, Stern summarises: 'The history of British railways is the story of how there was a continued failure to provide adequate regulation of railway franchise contracts in the sense of being able to review and revise them in the light of new information'. In the case of electricity distribution, Stern argues that US franchise contracts often made explicit provision for renegotiation in response to changes in circumstances. The independent committees established to facilitate these contract adjustments gradually evolved in the 1920s and 1930s into the Public Utility Commissions that exist today. In contrast, the absence of explicit contract review powers in the UK 'meant there was no equivalent provision for explicit franchise review to change the requirements on franchise holders.... As with railways, this was a major reason for nationalization of the UK electricity industry in 1948'. The French water industry is organised around a series of different types of contracts, including 15-20 year concession contracts. There is no formally designated independent regulatory agency, but Stern emphasises that the Conseil d'Etat functions as a 'quasi regulator' or 'super regulator' even though it is a court, because it has the power to revise contracts to resolve disputes between customers and suppliers.

Stern summarises his findings as follows: in infrastructure industries, external regulation 'plays a crucial role in sustaining these [long term] contracts, most obviously by providing a method by which infrastructure contracts can be reviewed, revised, and – if necessary – renegotiated'. While the thesis that regulation should be viewed as a form of long-term contract is not new, this paper extends these ideas to the historical experience in the UK and to the experience with concession contracts in Europe and Latin America.

'Fairness, Financial Autonomy and Independence: Lessons from Regulated Industries', Wayne Olson, *Electricity Journal*, 15(1), 2012, pp. 57-67.

The paper is divided into three parts. The first part emphasises the view of regulation as a form of contract and draws out some of the implications. According to Olsen, the problem of utility regulation is not so much a problem of discovering the right price. Rather, it is a problem of identifying the right governance structure or contract that economises on the cost of adjusting the conditions of trade over the course of the relationship between the service provider and its customers. This regulatory contract, Olsen suggests, is a form of social contract. He emphasises three features of social contracts: stability, efficiency, and fairness. He views stability primarily through the lens of the regulated firm – he sees it as stability to make long-term investments in utility plant. He identifies efficiency with the conventional allocative, productive, and dynamic efficiency.

Olson's emphasis on fairness distinguishes his views from those of neoclassical economics. Fairness, the author suggests, requires a balance between the interests of customers and shareholders, and also between the interests of different groups of customers, such as current and future customers. He cites survey responses which show that fairness is viewed as important both in terms of the process (administrative justice) and in terms of the outcomes themselves. Olson applies this notion of fairness to the issue of electricity transmission cost allocation. The question of who should pay for an electricity transmission upgrade has vexed policymakers in many countries. Specifically, in its recent Order No. 1000, the FERC requires that electricity transmission costs be allocated in a manner 'roughly commensurate' with estimated benefits. Olson interprets this as a fairness requirement.

The second part of the paper argues for privatisation, and for allowing the service provider to recover sufficient revenues to cover its costs as a step towards privatisation. He goes on to apply these ideas to electricity distribution in South Africa, concluding that there would be value in outsourcing network management operations.

The third part of the paper addresses questions relating to the governance of the regulator itself. Olson emphasises that, although regulatory independence is necessary to allow stakeholders to have confidence in the regulatory system, the concept of independence is too simplistic. What is really required is a credible and durable balance between authority to make independent decisions on the one hand, and accountability to the various branches of government, on the other. Olson summarises his conclusion as follows: 'The crux of credible public utility regulation is to treat a public utility's customers fairly while also treating the regulated firm's investors fairly'.

'On the Relationship Between Historic Cost, Forward Looking Cost and Long Run Marginal Cost', William Rogerson, *Review of Network Economics,* 10(2), 2011, pp. 1-29.

In this paper, the author employs a simple model in which a regulated firm must make sunk investments in long-lived assets to deliver services. The model can firstly be used as a formula for calculating forward-looking costs, and secondly (using an appropriate accounting depreciation rule) it can be interpreted as a formula for calculating historic cost. The author argues that the results of the model appear to contradict the commonly expressed view that forward-looking cost is a superior measure of costs when asset prices decline.

There is a long-standing and unresolved debate about the relative merits of the forward-looking and backward-looking approaches to the assessment of a regulated firm's costs. During the 1960s, AT&T first championed the use of the notion of a 'hypothetical new investment' to justify the low cost of one of its packaged telecommunication services. Historic cost is the amount of money actually spent on purchasing an asset. A historic cost *rule* determines the amount of the asset's book value that will be allocated to a particular period. Forward-looking cost is based on an estimated cost of purchasing a new and functionally equivalent asset and then allocating a share of this cost to the given period. A forward-looking cost *rule* determines the allocation of the value of the asset for only the current period.

Rogerson shows that the two cost rules are equivalent if a number of simplifying assumptions hold, such as (1) the firm is always operating at full capacity (2) there is no uncertainty, and (3) future technological progress and asset replacement costs are correctly anticipated. Rogerson's model of historic-cost allocation is known as the 'relative replacement cost' rule (RRC). The relative replacement-cost rule has two properties: first, the cost should be allocated across periods of an asset's lifetime in proportion to the benefits that the asset generates; and second, the firm breaks even. The author notes that the replacement-cost rule is different from the depreciation rule employed by regulators – regulators choose a depreciation rule first, then they calculate the depreciation cost for that period. The relative replacement cost rule requires regulators to first calculate the time pattern of allocation shares that a depreciation rule induces. The time pattern of allocation shares is determined by the constant decline in replacement costs and the break-even constraint (the present discounted value of costs is the asset's replacement cost).

Rogerson applies an allocation rule which is such that his models of forward-looking and historic costs are equivalent. The allocation rule – based on the known and constant decline in the asset's replacement cost and the break-even constraint – applies to both the forward and historic-cost models. As a result, the model's allocation rules, be it forward-looking or historic, are equivalent over time. Both the forward-looking cost and historic-cost models can be used to calculate long-run marginal cost each period, and the firm breaks even if prices are set equal to long-run marginal cost. The implication is that, like the forward-looking cost rule, historic cost that is based on the RRC allocation rule results in a 'regulatory equilibrium' of efficient prices and quantities.

'Empirical Uncertainties in Climate Policy Implementation', David Pearce, *Australian Economic Review*, 45(1), 2012, pp. 114-124.

Pearce examines the challenges of climate policy. He argues that Australia's climate policy is based on a limited set of models with simplifying assumptions about the benefits and costs of climate policy. The problem is that there are considerable uncertainties associated with the benefits of climate policy, the cost of abatement and future international action in relation to climate policy. The author suggests that a broader understanding of the effects of climate policy is required. This includes the use of sensitivity analysis and a greater variety of modelling approaches. The conclusion is that more research is needed into the effects of climate policy.

Pearce identifies a number of difficulties with modelling the benefits of climate policy. One challenge is that the benefits often cannot be quantified. The benefits of climate policy involve non-market transactions and it is difficult to place a monetary value on such benefits. Furthermore, there are uncertainties about the magnitude of the benefits. In addition, any benefits will accrue only in the distant future. That is, there is a large lag in benefits because of the nature of the climate system. Pearce identifies studies suggesting that the effects of climate policies today will not impact on sea levels until at least 2050. These studies find that similar timeframes also apply to other climate variables. This makes climate policy a unique, long-term policy problem.

Estimates of the current expected costs of climate policy are also problematic. Such costs have been estimated using a range of economic models that each use different specifications and scenario settings. The results vary substantially. Pearce compares the Treasury models with other analyses, identifying large differences in the estimate of the carbon-price that is required to obtain a common abatement target. For example, there is at least a threefold difference between estimates of the carbon-price that is required to achieve a five per cent abatement level. As the abatement target increases above five per cent, there is an increase in differences between the estimated carbon prices. The differences arise because the models make different assumptions about the following issues: the prospect of international action on climate policy; the availability of low-cost abatement for Australia from international sources; the use of different databases; and values of parameters in the models.

Pearce argues that most of the future challenges for climate policy are empirical. Many of the challenges of climate policy could be overcome once the evidence base, on which the particulars of climate policy are formulated, is more certain. Pearce notes that, if approached correctly, the next three years will provide a rich dataset that will provide an indication of the impact of a stable carbon price on the Australian economy. This dataset can be used to aid future policy formation.

'**Ex ante Regulation and Co-investment in the Transition to Next Generation Access**', Marc Bourreau, Carlo Cambini and Steffen Hoernig, *Telecommunications Policy*, 36(5), June 2012, pp. 399-406.

In this paper, Marc Bourreau, Carlo Cambini and Stefan Hoernig observe that, while broadband services based on copper and cable ('legacy' networks) continue to grow in many countries, telecommunications operators have begun to build next generation access networks (NGANs) using fibre-optic technologies. This raises issues for determining access arrangements for both the legacy networks and for the NGANs; recognising that the fibre-optic technology will not immediately displace the copper and cable and that there are differences in effect between geographic regions. Co-investment (or joint investment between rival providers) is considered as a means of overcoming barriers to entry, although it may have adverse consequences for competition.

The authors consider three factors in determining appropriate access prices: first, the rate of migration from the legacy network to the NGAN; second, the interplay between access regulation, risk sharing and joint investment; and third, the geographical dimension of regulatory interventions, considering the differences in the extent of competition across areas.

The authors review the relevant literature in section two of the paper and note that it highlights some clear effects of access regulation on incentives to invest. The coexistence of multiple effects creates a non-monotonic relationship between the access price for copper-based services and investment in the new technologies. A higher access charge for the copper or cable services stimulates investment by new entrants and (sometimes, not always) for the operators of those legacy networks. The authors observe that the literature suggests that 'the interplay between the access charges on the legacy network and the new networks becomes fundamental if the regulator imposes *ex ante* access obligations to the NGANs' (p. 403).

Section three considers the geographical dimension. If a regulator prescribes wholesale remedies differentiated by geographic differences, 'traditional cost-based access methods might be no longer the best regulatory tool to sustain NGAN coverage, but also that regulatory decisions should be conditioned on the degree of product differentiation among operators in order to avoid an excessive duplication'

(p. 406). Light intervention (where the NGAN access price is not 'too high') can have a positive effect on coverage.

The discussion of co-investment in section four begins with the observation that this is a means of reducing the amount of duplication (and therefore of costs) and that risk sharing might have a prominent role in fostering investment. However, in contrast to these beneficial effects of co-investment, there is also a 'concern that co-investing firms can explicitly or implicitly agree on reducing competition' (p. 405). The authors conclude that a key consideration in setting the access price for NGANs is its impact on co-investment incentives. In terms of an overall conclusion, it is contended that NGANs require 'implementation of new regulatory regimes, as the old regimes cannot be applied per se' (p. 406). The various factors that need to be considered include competition between old and new technologies, the geographical dimension, and the desirability of cooperative investments.

'The Economic Impact of Increased Water Demand in Australia: A Computable General Equilibrium Analysis', Muhammad Ejaz Qureshi, Wendy Proctor, Mike Young and Glyn Wittwer, *Economic Papers*, 31(1), 2012, pp. 87-102.

This paper uses a computable general equilibrium (CGE) model to examine the impact of increased water demand (relative to water supply) on the economic performance of a number of sectors and regions in Australia. Like many countries, Australia has experienced increasing water scarcity in recent years due to a number of factors such as a rising population and climate. The Government has responded by implementing a range of policies including water-trading schemes and water-use efficiency programs. Specifically, this paper considers two polices in relation to urban-rural water trading and developing new water sources. To understand the economy-wide and regional impacts of the policies, a static multi-regional CGE model is used to model four alternative scenarios relating to water price, water consumption and employment. The base case assumes the absence of water-trading and water-supply augmentation policies in response to increasing water demand based on the regional population projection by the Australian Bureau of Statistics. The other three scenarios allow for (1) rural-urban water trading (2) water trading and new desalination plants in supply-constrained cities, and (3) the combination of water trading and desalination accounting for wage-driven inter-regional migration.

The results suggest that the increase in water demand will significantly increase the opportunity cost of water use in major urban cities where rapid population growth is predicted. For example, under the base case, the prices of water in Sydney, Melbourne, Brisbane and Perth will rise sixfold, fivefold, eightfold and ninefold respectively by 2032. However, allowing rural–urban water trading and developing new water sources would substantially reduce water scarcity and the opportunity cost of water use and the economic impacts on the Australian economy. Notably, the economic impact of pursuing water trading and water-supply augmentation varies from region to region. Urban regions would benefit from an increase in aggregate water consumption. However, with increasing shadow prices, rural regions would experience a shift away from water-intensive agricultural activities.

The authors consider that water policies could influence the nature of regional and demographic development, and recommend a mix of options for meeting future water needs. They argue that there are good economic reasons to adopt policies such as developing new water resources (via desalination) to address the water scarcity issue in some specific regions where water trading itself may fail to remove the supply-side constraint.

'Time Variation in the Equity Risk Premium', Antti Ilmanen, in *Rethinking the Equity Risk Premium*, Research Foundation of CFA Institute, 2011, pp. 101-116.

The article begins by observing that in the past academics and practitioners typically regarded the equity risk premium (ERP) as constant over time. In this case, the future ERP would best be estimated from the long-run average of the realised return. However, as a result of the recent global financial crisis, as well as theoretical and empirical lessons, many observers have come to believe that the ERP varies over time. The article draws attention to John Cochrane's 2011 'American Finance Association's president address' in which he argues that the ERP is no longer seen as time-invariant. In contrast, Ilmanen argues that not all academics agree that the ERP varies with time.

Ilmanen states that the dividend discount model (DDM) provides a cleaner conceptual framework for assessing the ERP and provides a common language for evaluating the ERP. The DDM defines ERP as a combination of three primary parameters: equity cashflow yield, real cashflow growth and the real treasury yield. (While 'valuation change' is a fourth parameter in Ilmanen's specification of the ERP, he finds that empirically it has a value of zero). He considers that the estimation of the various parameters in the DDM remains a point of contention among academics and practitioners. Using the DDM, Ilmanen forecasts the forward-looking ten-year ERP in United States to be three per cent. He considers

that for the global market, the ERP may similarly be three per cent. In the paragraphs that follow, Ilmanen's ERP estimate is discussed in the context of each DDM parameter.

The dividend yield is the standard proxy for the equity-cashflow yield. In the United States it has ranged between three percent and six per cent for 40 years, however, in 1997 it fell below two per cent. Dividend yields fell because companies sought to gain tax benefits by replacing dividends with share repurchases. For the dividend yield plus the net addition for buy backs, Ilmanen estimates an equity cash flow yield of 2.7 per cent for the next ten years.

Real cashflow growth is the most contentious parameter in the DDM. Ilmanen cautions against using analysts' forecasts to estimate this growth rate because analysts tend to be overly optimistic. Recommending a more conservative approach, Ilmanen suggests that a trend in real GDP or corporate profits might be used to estimate real cashflow growth. It is often suggested that, if GDP growth were used as a proxy for dividend growth, it would underestimate such growth. It was noted that there is a gap in the growth of GDP and earnings per share which ranges from 0.5 to five per cent. The gap is explained by the dilution of profit growth by net equity issuance. This dilution rate has been stable at two per cent historically. Using a three per cent earnings growth rate and netting out the dilution effect, Ilmanen estimates the earnings per share growth to be 1.3 per cent.

Ilmanen forecast a one per cent treasury yield (which is consistent with the current market pricing of both nominal and inflation linked Treasuries). He then forecasts an ERP of three per cent on the basis of his estimates of a 2.7 per cent cash flow yield, a 1.3 per cent real cash flow growth and a one per cent treasury yield.

'New Approach to Estimating the Cost of Common Equity Capital for Public Utilities', Pauline Ahern, Frank Hanley and Richard Michelfelder, *Journal of Regulatory Economics*, 40, 2011, pp. 261-278.

In this paper, the authors present a method for estimating a stock's equity risk premium (ERP) that differs from the standard CAPM model and from the discounted cash flows (DCF) approach. Whereas the standard CAPM is derived from a static model in which investors' preferences are defined on the means and variances of their portfolios, this paper presents an intertemporal CAPM (ICAPM) in which consumers make consumption choices to maximise their expected utility. The authors highlight the relationship in their model between a stock's ERP and its volatility. They find that for US utilities, this relationship is positive. Their ICAPM yields an estimate of the ERP closer to that generated by the standard CAPM than that implied by the DCF model.

While the authors refer to their model as a 'new approach', they note that the central equation in their paper is taken from John Cochrane's influential book *Asset Pricing* (2004). When consumers maximise intertemporal expected utility, Cochrane shows that an ERP is implied which is a function of four variables: (i) the stock's volatility (ii) the volatility of the marginal value of wealth (iii) the expected marginal value of wealth and (iv) the correlation between the marginal value of wealth and the stock's return. The authors observe that, given that variables (ii) and (iii) are positive, and given that, at least for US public utilities, variable (iv) is negative, Cochrane's equation entails a positive relationship between a utility's ERP and its volatility. The intuition for their observation is as follows. If variable (iv) is negative, the stock is a 'non-hedge': it has a low pay-off during 'bad times' when the value of an additional unit of wealth is highest. For non-hedges, volatility is undesirable, so that the higher the volatility of the stock, the higher the expected return that is required to induce an investor to hold the stock.

The authors point out that Cochrane does not estimate this equation in his empirical work but instead relies on a more specific model, which makes particular assumptions about the form of the utility function. The reason Cochrane uses a more specific model is that variables (ii), (iii) and (iv) are not observable and may change over time. These variables are not controlled for, therefore, in the estimation, so the authors acknowledge that a central 'concern' with their regression 'is the intertemporal stability' of the estimated relationship between a stock's return and its volatility.

Drawing on 80 years of data, the authors use a GARCH model to estimate the relationship between US utilities' ERP and volatility. The relationship is found to be positive and significant. In order to evaluate the intertemporal stability of the relationship, they also use the GARCH model to estimate a series of 720 rolling 20-year regressions. The relationship was found to be generally significant, and, when significant, always positive. However the coefficient that measures the magnitude of the relationship varied greatly over the 720 regressions.

Regulatory Decisions in Australia and New Zealand

Australia

Australian Competition and Consumer Commission (ACCC)

NBN Co Withdraws Special Access Undertaking

On 11 September 2012 the ACCC announced that NBN Co has withdrawn the Special Access Undertaking that it lodged with the ACCC last year. The ACCC has been working with NBN Co to progress preparation of a revised undertaking. If accepted, the Special Access Undertaking would form part of the regulatory framework for access to the National Broadband Network. **Read more**

ACCC Consults Further on Viterra Auction System for Bulk Wheat Exports

On 5 September 2012 the ACCC released a decision to withdraw an Auction Objection Notice issued to Viterra on 11 April 2012. This will allow Viterra to operate an auction to allocate capacity for the export of grain from its South Australian port terminals. The first actions are due to be held in November 2012, to allocate capacity for the February to September 2013 shipping period. **Read more**

ACCC Invites Comment on List of Points of Interconnection to the National Broadband Network

On 3 August 2012 the ACCC issued a consultation paper on the draft section 151DB list of points of interconnection to the National Broadband Network (NBN). The ACCC and NBN Co had previously agreed on the locations to be used as the 121 points of interconnection to the NBN. In the consultation paper, the ACCC proposed setting out the general location of each point of interconnection on the list but keeping the actual street address confidential for security reasons. Feedback was required by 31 August 2012. **Read more**

TPG Undertakes to Release Misled Customers from ADSL2+ Contracts

On 23 July 2012 the ACCC announced that TPG customers that relied upon representations about TPG's $29.99 Unlimited ADSL2+ campaign, may now leave their contracts without penalty after the Federal Court accepted an undertaking from TPG. The Federal Court found that TPG's campaign conveyed false or misleading representations. The Federal Court's orders included TPG to pay $2 million in civil pecuniary penalties. TPG has appealed the Federal Court decision, which is scheduled to be heard by the Full Federal Court in November 2012. **Read more**

ACCC Seeks Comment on Proposed Final Access Determination for Non-NBN Local Bitstream Access Service

On 6 July 2012 the ACCC made an interim access determination for the declared local bitstream access service (LBAS). The LBAS is a wholesale access service for fixed-line networks that are built or upgraded after January 2011. It does not apply to the NBN or to wireless or satellite networks. The ACCC declared the LBAS in February 2012 and sought comment on the proposed final access determination by 3 August 2012. **Read more**

ACCC Issues Discussion Paper on Facilities Access Code

On 4 July 2012 the ACCC issued a discussion paper to examine the Facilities Access Code. The Facilities Access Code sets out arrangements for carriers who wish to install equipment on or in facilities owned by other carriers. The Facilities Access Code was designed to encourage co-location in mobile towers and promote competition. Submissions closed on 24 August 2012. **Read more**

Proposed Price Increases by Airservices Australia

On 27 June 2012 the ACCC announced it did not object to a proposal by Airservices Australia to increase prices for some monopoly services, such as air traffic control, from 1 July 2012. The services are used and paid for by airlines and other aircraft operators. Terminal navigation charges will increase at 24 airports by between 0.2 per cent and 3.5 per cent, and will decrease at six airports by between 1.0 and 5.1 per cent. Charges for aviation rescue and fire-fighting services will increase at 21 airports by between 2.4 per cent and 10.4 per cent and charges for en route services will decrease by between 0.7 per cent and 1.1 per cent. **Read more**

ACCC Issues Final Access Determination for Regulated Transmission Services

On 22 June 2012 the ACCC issued a final access determination (FAD) for the declared domestic transmission capacity service (DTCS). Transmission is a high-capacity wholesale service that aggregates traffic, including data and voice, on other services and carries it between service providers' points of inter-connection in different locations. While parties are still able to negotiate their own commercial

agreements, the FAD establishes benchmark prices for regulated transmission services and non-price terms and conditions for access seekers to employ in negotiations. The FAD expires on 31 December 2014. **Read more**

Australian Competition Tribunal (ACT)

Application by DBNGP (WA) Transmission Pty Ltd (No 3)

On 26 July 2012, the Australian Competition Tribunal (ACT) decided that the Decision of the Economic Regulation Authority of Western Australia (the ERA) made on 22 December 2011 and titled the *Economic Regulation Authority's revised access arrangement determination for the Dampier to Bunbury Natural Gas Pipeline* be set aside and be remitted to the Economic Regulatory Authority (ERA) of Western Australia, for the purposes of making the decision again in two areas: first with regard to the Debt Risk Premium, in particular to determine a value for the Debt Risk Premium using its bond-yield approach in accordance with the Tribunal's reasons; and second, the correct valuation of capital expenditure in respect of the Burrup Extension Pipeline, in particular to adjust the Base Rent in accordance with clause 4.3 of the Burrup Extension Pipeline Lease to the commencement of the lease. In all other respects the Tribunal affirmed the decision of the ERA. **Read more**

Australian Energy Market Commission (AEMC)

Electricity Distribution Ring-Fencing Guidelines – Request for Submissions

On 4 September 2012 the AEMC released a position paper setting out its view on whether a nationally consistent Distribution Ring-Fencing Guideline should be developed. Submissions were required by 28 September 2012. **Read more**

Review of Electricity Distribution Reliability Outcomes and Standards: NSW Workstream Final Report

On 31 August 2012 the AEMC published its final advice to the NSW Government on costs and benefits of possible changes to the State's future level of distribution reliability. The NSW workstream was part of the AEMC's wider review which is also considering merits of a nationally consistent approach to distribution reliability. Submissions to the national distribution reliability review closed on 9 August 2012 and a draft report is due in November 2012. **Read more**

Strategic Priorities for Energy Market Development 2012/13

On 29 August 2012 the AEMC held a public forum to discuss the challenges facing the energy market over the long term and the development of strategic priorities. The forum was held in collaboration with the AERI (Australian Energy Research Institute) at UNSW. **Read more**

Transmission Frameworks Review – Public Forum

On 28 August 2012 the AEMC published its Second Interim Report on the Transmission Frameworks Review. The review aims to ensure that the arrangements for transmission are the most effective and cost-efficient for the future. A forum was held on 17 September 2012 to discuss the report. **Read more**

Economic Regulation of Network Service Providers and Price and Revenue Regulation of Gas Services

On 23 August 2012 the AEMC released a draft determination and draft rules intended to better equip the regulator to set network prices so consumers avoid paying more than necessary for reliable supplies of electricity and gas. Submissions on the proposed rules are required by 4 October 2012, and a final determination is expected in November 2012. **Read more**

Final Determination Made on Cost Pass Through Arrangements for Network Service Providers

On 2 August 2012 the AEMC published a final rule and associated final rule determination on proposed amendments to the operation of the cost pass through provisions for electricity network service providers. **Read more**

Consultation on Rule Change Request Regarding Market Schedule Variation Transactions

On 19 July 2012 the AEMC commenced a consultation on a rule change request proposed by the Australian Energy Market Operator (AEMO). The rule change request relates to an operational aspect of the Short Term Trading Market (STTM) for natural gas. The request seeks to allow an additional category of participants in the STTM to submit 'market schedule variations' to AEMO. The AEMC published a consultation paper on the request to facilitate stakeholder submissions and feedback on the consultation paper was required by 16 August 2012. **Read more**

Draft Determination Made on Small Generation Aggregator Framework

On 5 July 2012 the AEMC published a draft rule determination on the proposed introduction of a Small Generation Aggregator framework; the purpose of this rule change being to reduce barriers faced by small generators to entering the National Electricity Market. Submissions were required by 16 August 2012. **Read more**

Draft Report: Consumer Choices to Drive Electricity Savings

See Notes on Interesting Decisions.

Australian Energy Regulator (AER)

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

On 4 September 2012 the AER requested submissions for its new electricity transmission draft service target performance incentive scheme (STPIS). The draft STPIS proposes changes to the existing version 3 of the STPIS. Submissions close on 16 October 2012. **Read more**

Cost Thresholds Review the Regulatory Investment Test for Transmission

On 31 July 2012 the AER initiated a review of cost thresholds associated with the Regulatory Investment Test for Transmission (RIT-T). The RIT-T is a cost-benefit test that transmission companies apply before building electricity transmission infrastructure. It applies to transmission investment above certain cost thresholds. Submissions closed on 21 August 2012. **Read more**

AER Request for Submissions on ElectraNet's Regulatory Proposal 2013–2018

On 5 July 2012 the AER invited submissions for ElectraNet's proposal in relation to the transmission determination for its electricity transmission network. ElectraNet has submitted its regulatory proposal, and proposed a negotiating framework and proposed a pricing methodology to the AER. The AER's transmission determination for ElectraNet will set out the Negotiated Transmission Service Criteria (NTSC). The NTSC sets out high level principles for negotiations between ElectraNet and those wishing to receive a negotiated transmission service. Submissions closed on 17 August 2012. **Read more**

AER launches Energy Made Easy Website to Help Consumers

See Notes on Interesting Decisions.

National Competition Council (NCC)

Application for a 15-year No-coverage Determination for Proposed APLNG Pipeline

On 28 August 2012 the Commonwealth Minister for Energy and Resources, the Hon Martin Ferguson AM MP, made a 15-year no-coverage determination in respect of the Australia Pacific LNG Gladstone Pipeline Pty Limited (APLNG) proposed pipeline in Queensland, running from the Surat Basin to Curtis Island. The effect of such a determination is to exempt the pipeline from coverage under the NGL for 15 years from its commissioning. **Read more**

Australian Capital Territory

Independent Competition and Regulatory Commission (ICRC)

Release of Community Consultation Paper: Possible Price Outcomes – Regulated Water and Sewerage Services 2013-18

On 13 September 2012 the ICRC released a community consultation paper on possible water price outcomes that could result from some of the propositions in ACTEW Water's submission on water and sewerage services. A public forum was scheduled for 27 September 2012. **Read more**

Application for a Licence to Supply Non-potable Water in the ACT

On 10 September 2012 the ICRC released an application from Roads ACT for a licence to supply non-potable water in the ACT. Submissions are required by 15 October 2012. **Read more**

Inquiry into Secondary Water Use – Release of Final Report

On 14 August 2012 the ICRC's *Final Report – Secondary Water Use in the ACT* was tabled by the Treasurer Andrew Barr in the ACT Legislative Assembly. **Read more**

New South Wales

Independent Pricing and Regulatory Tribunal (IPART)

Issues Paper released on Regulation Review of Local Government

On 17 September 2012 the IPART released an issues paper covering local government compliance and enforcement. This followed the New South

Wales Government request that the IPART review specific priority areas and make recommendations to reduce unnecessary regulatory burden and red tape, in order to reduce costs to business and the community. The first two priority areas for review focus on local government compliance and enforcement activities and the rationale and design of all licences in New South Wales. Feedback is required by 29 October 2012. **Read more**

Sydney Water Undertaking for Access to Drinking Water Network 2012

On 4 September 2012 the deadline for submissions concerning Sydney Water's proposed access undertaking, was extended to 31 October 2012. On 8 August 2012 the IPART released a document setting out preliminary views of Sydney Water's access undertaking for its water network services, for approval under the Water Industry Competition Act. If accepted, the undertaking will set the conditions of access to the services of Sydney Water's drinking supply network. **Read more**

Customer Engagement for Price Reviews

On 10 August 2012 the IPART released its final report 'Customer Engagement on Prices for Monopoly Services'. The report focuses on customer engagement on discretionary expenditure and changes in price structure proposed by regulated water businesses. **Read more**

Northern Territory

Utilities Commission

Electricity Standards of Service Code

On 21 August 2012 the Commission advised that the commencement of the new Electricity Standards of Service Code (ESS Code) will be delayed to allow the Commission to allow full consideration of matters raised in submissions. The Commission initially advised that it expected the new Code to take effect from 1 July 2012. **Read more**

2014 Network Price Determination

In the lead-up to the next regulatory control period commencing 1 July 2014, the Network Access Code requires the Commission to review the network price regulation methodology used in the previous regulatory period (2009 to 2014). On 10 September 2012 the Commission announced receipt of submissions on its consultation paper released in June 2012 to facilitate public consultation on its proposed approach to the 2014 Network Price Determination. **Read more**

Queensland

Queensland Competition Authority (QCA)

Review Event – Central Queensland Flooding

On 5 September 2012 the QCA announced receipt of a review event application from QR Network relating to a pass through of the costs associated with flooding in central Queensland in December 2010 and January 2011. Following stakeholder requests, the QCA extended the due date for submissions to 21 September 2012. **Read more**

Review of Solar Feed-in Tariff for Queensland

On 24 August 2012 the QCA released an issues paper outlining a review of approaches to estimating a fair and reasonable solar feed-in tariff rate for small scale solar generation in Queensland and appropriate means of implementation, as directed by the Queensland Minister for Energy and Water Supply. Submissions were required by 17 September 2012. The QCA's final report will be provided to the Minister on 22 March 2013. **Read more**

Proposed Standard Rail Connection Agreement

On 24 August 2012 the QCA announced receipt of five submissions in response to its draft decision proposing not to approve QR Network's standard rail connection agreement (SRCA). The draft decision proposes substantial amendments to the proposed SRCA submitted by QR Network on 30 June 2011. **Read more**

Report on a Framework for Reducing the Burden of Regulation

See Notes on Interesting Decisions.

Ministers' Decision on Irrigation Prices for SunWater Schemes: 2012-17

On 3 August 2012 Queensland's Treasurer and Minister for Trade and the Attorney General and Minister for Justice accepted without qualification the specific prices, fees and charges recommended by the QCA. A schedule of matters was referred to the Minister for Energy and Water Supply for further consideration, and the Minister has referred these to the QCA to work with SunWater as appropriate to provide advice on the recommendations related to pricing practices in developing an implementation plan by 30 September 2012. **Read more**

2012-13 Final Report on Water Grid Service Charges for 2012-13

On 31 July 2012 the QCA released its final report to the Minister for Energy and Water Utilities, following receipt of a Direction Notice to investigate and recommend bulk water Grid Service Charges for 2012-13. As part of the investigation, the QCA was required to undertake a detailed review of fixed and variable operating costs, including undertaking an appropriate benchmark review and to provide advice on potential efficiency improvements and business savings based on good industry practice. **Read more**

Proposed Standard Rail Connection Agreement

On 31 July 2012 the QCA made available its approval letter, following its 27 July 2012 approval of QR Network's roll-forward of its regulated asset base for each system in the central Queensland coal region. **Read more**

South Australia

Essential Services Commission of South Australia (ESCOSA)

Treasurer's Advice on Water Retail Licence Fees to Apply from 1 January 2013

On 7 September 2012 the ESCOSA announced that the South Australian Treasurer has set the water retail licence application fee and the annual licence fee for water retail services. From 1 January 2013, any person or entity providing 'water retail services' to South Australian customers will be required to be licensed by the ESCOSA. **Read more**

Review of Charter of Consultation and Regulatory Practice

On 30 August 2012 the ESCOSA announced receipt of submissions in response to its Draft Charter of Consultation and Regulatory Practice. On 28 June 2012 it announced a review of the Charter of Consultation and Regulatory Practice, to reflect the ESCOSA's changing responsibilities and to simplify the information currently provided to stakeholders on the ESCOSA's approach to its work. **Read more**

2012 Ports Pricing and Access Review – Supplementary Submission

On 20 August the ESCOSA announced receipt of its most recent submission in response to its review into the pricing and access regimes that apply to proclaimed ports in South Australia. The ESCOSA is reviewing whether the ports pricing and access regimes specified in the *Maritime Services (Access) Act 2000* should continue beyond 30 October 2012 for a further five-year period. **Read more**

Revised Enforcement Policy – Final

On 24 July 2012 the ESCOSA announced the final revision of its Enforcement Policy. This has occurred due to several legislative and regulatory changes, which impact on the ESCOSA's roles and functions. After a period of public consultation, the ESCOSA's revised Enforcement Policy became effective from 1 July 2012. **Read more**

Consultation on Economic Regulation of the South Australian Water Industry

On 13 July 2012 the ESCOSA released consultation documents seeking the views of stakeholders of the ESCOSA's proposed regulatory approach for the South Australian water industry. On 1 July 2012 the ESCOSA became the independent economic regulator of the South Australian water industry, under the *Water Industry Act 2012*. Pricing of retail services for SA Water will continue to be set by the Government, with the ESCOSA's initial responsibility being limited to determining the annual revenue requirements. The first revenue determination for SA Water will commence on 1 July 2013. **Read more**

Tasmania

Office of the Tasmanian Economic Regulator (OTTER)

Release of Electricity Price Comparison Reports

On 3 September 2012 the OTTER released the *Comparison of 2012 Australian Standing Offer Energy Prices* Report and the *2012 Aurora Pay As You Go Price Comparison Report*. The reports are the most recent in a series that the OTTER regularly produces to inform electricity and gas consumers. **Read more**

Approval of Revised Price and Service Plans

On 29 June 2012 the OTTER announced approval of revised Price and Service Plans for Ben Lomond Water, Cradle Mountain Water and Southern Water, covering the period from 1 July 2012 to 30 June 2015. **Read more**

Victoria

Essential Services Commission (ESC)

The ESC to Monitor Return of Water Desalination Payments

On 11 July 2012 the ESC outlined its proposed approach to monitor the return of unrequired desalination payments to Greater Melbourne metropolitan water customers. The Victorian Government has requested that the ESC oversee and independently verify the return of payments, adjusted for interest and inflation. **Read more**

The ESC Approves Further Price Increase for Barwon Water

On 11 July 2012 the ESC announced that it had made its final determination in response to Barwon Water's application for a price adjustment to reflect the costs of the Melbourne to Geelong Pipeline. **Read more**

Western Australia

Economic Regulation Authority (ERA)

Final Decision – Western Power's Shenton Park Zone Substation Major Augmentation – Regulatory Test

On 10 September 2012 the ERA announced its Final Decision, on Western Power's proposed new Shenton Park zone substation major augmentation. The ERA decided that the augmentation satisfies the regulatory test under Chapter 9 of the *Electricity Networks Access Code 2004*. **Read more**

Final Decision – Western Power's Proposed Revisions to the Access Arrangement for the Western Power Network

On 5 September 2012 the ERA issues its Final Decision on Western Power's proposed access arrangement revisions for the Western Power Network for the period July 2012 to June 2017. The ERA's Final Decision has not approved Western Power's proposed changes to its network access arrangements. **Read more**

Rail – 2012 Weighted Average Cost of Capital (WACC)

On 6 July 2012 the ERA announced that it has calculated the WACC for the Brookfield Rail, Public Transport Authority, and The Pilbara Infrastructure rail networks, as required by the *Railways (Access) Code 2000*. The WACC values are to apply from 1 July 2012 to 30 June 2013. **Read more**

Draft Decision – Proposed Variations to Western Power's Access Arrangements for 2009-10 to 2011-12: Contributions Policy

On 3 July 2012 the ERA released its Draft Decision on Western Power's proposed mid-period revision to the contributions policy contained within its approved access arrangement for the second access arrangement period. Feedback on the Draft Decision was required by 13 July 2012. **Read more**

Final Decision – 2012 Energy Price Limits

On 25 June 2012 the ERA released its Final Decision approving the Energy Price Limits proposed by the Independent Market Operator in its Final Report on 2012 Review of Energy Price Limits for the Wholesale Electricity Market in the South West Interconnect System (SWIS). **Read more**

Publication – Mid-West and South-West Gas Distribution System (ATCO Gas) Access Arrangement – Revised Decision

On 25 June 2012 the ERA published a revised decision giving effect to the ERA's proposed access arrangement revisions for the Mid-West and South-West Gas Distribution System. **Read more**

New Zealand

Commerce Commission (NZCC)

Draft Decision on Electricity Distribution Default Price-quality Path

See Notes on Interesting Decisions.

Proposed Framework for Considering Chorus's Copper Services Ahead of Conference

On 17 August 2012 the NZCC published a paper outlining the relationship between Chorus's regulated copper services and associated pricing principles. The copper services considered in the paper are the unbundled copper local loop (UCLL), unbundled copper low frequency service (UCLFS) and sub-loop services. The NZCC is publishing the paper as part of the process towards re-benchmarking the prices for UCLL and UCLFS. **Read more**

NZCC Identifies 29 Companies Potentially Liable for Telecommunications Development Levy

On 24 July 2012 the NZCC released its final notification of the companies potentially liable for the $50 million Telecommunications Development Levy

(TDL) for the 2011/12 year. The levy will fund telecommunications service obligation (TSO) charges, rural networks and upgrades to the emergency calling services. **Read more**

NZCC to Continue Mobile Monitoring

On 18 July 2012 the NZCC released its fourth mobile monitoring report, which continued to show a decrease in the difference between the cost of calling and texting on the same network compared to calling and texting other networks. **Read more**

NZCC Finds Backhaul Competition Continues to Increase

On 5 July 2012 the NZCC released the draft decision of its annual competition review of unbundled copper local loop (UCLL) and unbundled bitstream access (UBA) backhaul link services. Submissions on the draft decision were required by 27 July 2012, and a final decision was anticipated by mid-September 2012. **Read more**

NZCC Issues Final Determinations for UFB Information Disclosure

On 29 June 2012 the NZCC issued final determinations for information disclosure requirements for companies who are building fibre networks as part of the New Zealand Government's ultra-fast broadband (UFB) initiative. **Read more**

NZCC Concludes Study into Factors Likely to Affect the Uptake of High Speed Broadband

On 29 June 2012 the NZCC released its final report on factors that may affect the uptake of high speed broadband. Following the introduction of the Ultra Fast Broadband and Rural Broadband initiatives, the NZCC undertook a study to identify what factors may affect uptake of high speed broadband services by consumers and businesses. **Read more**

Notes on Interesting Decisions

High Court of Australia – The Pilbara Infrastructure Case

On 14 September 2012 the High Court of Australia handed down its judgment in the case of *The Pilbara Infrastructure Pty Ltd v Australian Competition Tribunal* [2012] HCA 36.

The dispute related to four railway lines in the Pilbara in Western Australia. The railway lines were operated by either BHP Billiton or Rio Tinto Ltd (or related companies). Fortescue Metals Group Limited sought access to the railway lines and applied to have the services declared under Part IIIA of the *Trade Practices Act* 1974 (Cth) (now the *Competition and Consumer Act* 2010 (Cth)) (the **Act**). Part IIIA of the Act provides a process for third-party access to infrastructure owned by others.

A pre-condition for declaration is 'that it would be uneconomical for anyone to develop another facility to provide the service' (s 44H(4)(b) of the Act). The meaning of this expression was an issue raised on appeal to the High Court.

When considering this expression, the Australian Competition Tribunal (the **Tribunal**) previously applied one of two possible tests that were based on economic theory: a 'net social benefit approach' or a 'natural monopoly test'. The 'net social benefit approach' examined whether 'it would be more efficient, in terms of costs and benefits to the community as a whole, for one [facility] to provide those services rather than more than one'. The 'natural monopoly test' examined whether one facility can satisfy society's 'reasonably foreseeable' demand 'at a lower total cost than if it were met by providing two or more facilities'.

A majority of the High Court did not accept that the meaning of 'uneconomical' should be drawn from the study of economics. As the High Court noted, an economist uses the term 'uneconomical' to refer to 'an 'inefficient' use of society's resources'.

Rather, the majority held that the term 'uneconomical' means 'unprofitable', and that the expression 'uneconomical for anyone to develop another facility to provide the service' requires an inquiry into whether there was anyone who could profitably develop another facility. The High Court remitted the matter to the Tribunal for determination. **Read more**

New Zealand Commerce Commission (NZCC) Draft Decision on Electricity Distribution Default Price-Quality Path

In 21 August 2012 the NZCC released its draft decision to reset the default price-quality path for 16 electricity distributors. The price adjustments proposed are the first under the new Part 4 regime. A default price-quality path is a generic form of regulation that places a cap on prices and sets minimum standards for the quality of services provided to users.

According to the NZCC the approach taken aims to achieve a balance between providing incentives for suppliers to invest in networks, and ensuring that consumers are being charged prices that are aligned with the cost of services provided.

Under the proposal some electricity distributors will be required to charge less for their services while others will be able to charge more. While the proposed adjustments for individual suppliers in the 2013-14 year vary, larger increases are proposed for the smaller distributors. However, increases have been capped at 15 per cent per year in line with the NZCC's commitment to manage price shocks that might be felt by electricity consumers as a result of price adjustments. Here it should be noted that changes relating to electricity distribution are only part (about 30 per cent) of the total retail bill received by consumers.

The draft decision is based on input methodologies the NZCC has determined. However these input methodologies are under appeal and are being heard by the High Court.

The NZCC previously proposed to reset the default price-quality paths in 2011 but, due to an appeal to the High Court, the NZCC had to suspend the process until further input methodologies had been determined.

The NZCC intends to make a final decision on the reset of the default price-quality path by 30 November 2012, and changes would apply to suppliers from 1 April 2013. Submissions are currently being sought.

It should also be noted that if the proposed prices do not suit an electricity distributor's particular circumstances, it can apply for a customised price-path. **Read more**

Office of Best Practice Regulation – Queensland Competition Authority – Report on Reducing the Burden of Regulation

On 2 July 2012 the Office of Best Practice Regulation (OBPR) was established within the Queensland Competition Authority (QCA). The OBPR was established by the new government with the intention of reducing unnecessary government regulation. To achieve this objective the OBPR was given a range of functions, including undertaking reviews of policies and regulations that create a burden for business, government, and the community.

The first step in this process involves reporting to Government on a framework for reducing the burden of regulation. The framework is to include measurement of the regulatory burden, with appropriate regulatory burden benchmarks for Queensland Government departments. To this end the OBPR released an issues paper on 3 August 2012 on measuring and reducing the burden of regulation.

The OBPR will look at the total economic costs of regulatory intervention. 'Regulation' refers to both legislative requirements and the scope for government entities to set conditions or standards under legislative delegations. According to the issues paper, the scope of the review includes both state and local government laws and regulation. The QCA interprets the 'framework for reducing the burden of regulation to encompass principles, governance arrangements, consultation and incentives for reform as well as technical methodologies'.

In undertaking the review, significant stakeholder consultation will occur both within government and with the wider community. An interim report is to be produced by 1 November 2012, with the final report scheduled for 31 January 2013.

On the completion of this report the OBPR will have an overall advisory and monitoring role in relation to reducing the burden of existing regulation and new regulation. **Read more**

Australian Energy Regulator (AER) Launches Energy Price Comparison Website

On 1 July 2012, the AER launched an energy price comparison website 'Energy Made Easy' (www.energymadeeasy.gov.au). The website helps residential and small business energy consumers better understand electricity and gas retail markets, and identify and compare energy offers. The website contains information in relation to a wide range of energy-related issues that include energy contracts and bills, consumer rights and energy efficiency.

The website allows consumers to compare their use of electricity with the average amount of electricity used by similar-sized households in their local area. The information can also assist consumers find ways to be more energy efficient. These features are available to residential electricity customers in all Australian states and territories.

The website contains an energy price comparison feature that is available for small energy customers in states and territories that have commenced the National Energy Retail Law. Currently, residential and small business gas and electricity customers in the Australian Capital Territory can also use the website to compare all generally-available electricity and gas offers in their area. This feature is also available to contestable small business electricity customers in Tasmania.

The website has been designed to provide information to energy consumers in an accessible, easy-to-read manner. It is one of a number of responses to the recent enactment of the new National Energy Retail Law, which describes the regulatory framework that applies to energy companies dealing with the retail market, and includes provisions to assist small energy customers understand and make more informed choices about energy.

The National Energy Retail Law also provides additional protections for small energy customers. These include provisions for flexible payment options, protections for customers with pre-payment meters, specific rules for energy marketing and responsibilities for energy retailers to help customers experiencing financial hardship. **Read more**

Regulatory News

Regulatory Conference

Planning has commenced for the 2013 ACCC/AER Regulatory Conference, which will be held in Brisbane on 25 and 26 July 2013.

In case you have not caught up with the 2012 conference, all papers and presentations are available on the ACCC website at:

http://www.accc.gov.au/content/index.phtml/itemId/1034271

ACCC/AER Working Paper Series

The seventh ACCC/AER Working Paper has now been released. This working paper by Dr Darryl Biggar, an independent consultant to the ACCC/AER, is titled 'The Allocation of Costs between Government and Users in the Regulation of Wholesale Water Providers in New South Wales'. The paper examines the economic rationale for different roles that an independent regulator might play in setting water tariffs. The paper is available on the ACCC website at the following link:

http://www.accc.gov.au/content/index.phtml/itemId/878990

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