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### BEREC'S CONCERNS OVER ITALIAN REGULATOR'S INDEPENDENCE

The Body of European Regulators for Electronic Communications (**BEREC**) has expressed deep concern over an Italian government draft law that may undermine the independence of Italy's national regulator, *Autorità per le Garanzie nelle Comunicazioni* (**AGCOM**). The BEREC was established by the European Parliament and Council. It comprises the leaders from National Regulatory Authorities (**NRAs**) of 27 countries.

The Italian government draft law recently passed the lower house of the Italian parliament. Its effect is to regulate Telecom Italia's network terms of access.

The draft law concerned the repair and maintenance of telephone exchanges that link a customer's home to the infrastructure of the telecommunications network. Third-party telecommunications operators can provide services to Italian customers in the link between the subscriber's home and the exchange.

Telecom Italia currently engages providers to repair and maintain the telephone exchanges. This service has an annual turnover of approximately €400 million. The draft law was introduced to allow third-party telecommunications operators to contract directly with providers to repair and maintain the telephone exchanges. The motivation behind the draft law appears to be in response to concerns that the regulator, AGCOM is too close to Telecom Italia.

The European Framework, revised in November 2009, provides that NRAs such as AGCOM must operate independently in the performance of their regulatory tasks, without interference from the legislature. Further, European law provides that NRAs have exclusive jurisdiction over the imposition of economic regulation. That is, NRAs must have a broad discretion in order to be able to determine the need to regulate a market according to each situation on a case-by-case basis.

Recent decisions by the European Court of Justice were identified by the BEREC that support the proposition that the task of determining the need for regulation of national telecommunications markets is the task of the national regulator and not the task of the national legislature.

The BEREC has called for close monitoring of developments in Italy by the European Commission. In the event that the decree becomes law, the BEREC has called for the European Commission to promptly launch infringement procedures and to speak out against what it has described as a 'worrying trend'.



## INTERNATIONAL REGULATORY ROUND-UP

### Communications

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#### Europe

##### **EU: BEREC Holds Public Consultation on Proposed Principles Relating to Issues of Non-Discrimination**

The BEREC has initiated a [public consultation](#) in relation to its review and update of the three Common Positions covering non-discrimination of access to certain wholesale communications products (wholesale unbundled access, wholesale broadband access and wholesale leased lines). The obligation of non-discrimination seeks to prevent vertically integrated businesses from discriminating against competitors in favour of their downstream businesses. Non-discrimination obligations seek to ensure that all access seekers, domestic and foreign, are treated on the same terms and conditions. The deadline for responses is 30 March.

##### **UK: Ofcom Proposes Licence Regime for GNSS**

The Ofcom has published a [consultation](#) on proposals for a licence regime for the use of Global Navigation Satellite System (**GNSS**) repeaters in the UK. The repeaters operate in the 1164-1215 MHz, 1215-1300 MHz and 1559-1610 MHz RNSS frequency bands. GNSS repeaters are radio equipment that receives, amplifies and transmits signals from a GNSS system, such as GPS, and provides the signal in indoor environments. The Ofcom is proposing a 'light touch' licensing regime to respond to concerns raised by the Civil Aviation Authority (**CAA**) in relation to the residual risk of interference with aviation equipment. The proposed licence regime involves a site licence

approach where the Ofcom would record the locations of all licensed GNSS repeaters.

##### **UK: Ofcom Sets Wholesale Charges for Openreach**

The Ofcom has [set new prices](#) that Openreach can charge for access to its main wholesale telecommunications services. Openreach is BT's wholesale access division. These prices are regulated by the Ofcom because BT has significant market power in the delivery of these services. The prices relate to wholesale charges for telephone and broadband services delivered to homes and businesses over BT's copper network through Local Loop Unbundling (**LLU**) and Wholesale Line Rental (**WLR**). The Ofcom expects real term price reductions for consumers, as communications providers are expected to pass on savings associated with the new prices to landline and broadband customers.

#### Oceania

##### **NZCC Releases Discussion Paper on Telecommunications Levy Allocation**

The NZCC has released a [discussion paper](#) on its proposals to implement the new Telecommunications Development Levy liability allocation process. The paper outlines preliminary views on how the TDL liability allocation process will work and invites interested parties to provide comment.

The Telecommunications Development Levy (**TDL**) was introduced last year by the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 and replaces the Telecommunications Service Obligations (**TSO**) cost allocation process. The Crown will use the TDL to pay for the TSO and other telecommunications infrastructure development in New Zealand. The levy was designed to streamline and more evenly apportion industry contributions. Feedback on



the discussion paper was due by 24 February 2012.

## Energy

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### Americas

#### US: FERC Proposes to Update Standards for Business Practices for Interstate Gas Pipelines

The Federal Energy Regulatory Commission (**FERC**) is seeking [public comment](#) on a proposal to amend standards for businesses of interstate natural gas pipelines. The FERC has issued a proposed rule that would require pipeline businesses to incorporate the latest version of the business practice standards that has been adopted by the Wholesale Gas Quadrant of the North American Energy Standards Board. The new standards are designed to support coordination between the natural gas and electricity industries. Further, they are designed to provide standards for pipeline postings of information regarding waste heat, and they generally revise standards to increase efficiency of processing of wholesale natural gas transactions.

### Europe

#### The Council of European Energy Regulators Releases Energy Guidelines of Good Practice

The Council of European Energy Regulators (**CEER**) has released [Guidelines of Good Practice](#) (the **Guidelines**) in relation to the roles and responsibilities of market actors in the European electricity and gas markets. This includes the distribution system operators' role as neutral-market facilitators. The Guidelines are in relation to retail market design, with a focus on supplier switching, moving and billing.

#### Germany: Bundesnetzagentur and Network Operators Reach Agreement on Investment Budgets

The Bundesnetzagentur has reached an out-of-court [agreement](#) with network operators in relation to future approval and appeal procedures for decisions regarding investment budgets. In the future, neither network operators nor the Bundesnetzagentur will petition the Federal High Court of Justice to overturn decisions reached by the Düsseldorf Higher Regional Court. The agreement was reached following a number of decisions reached by the Düsseldorf Higher Regional Court last year. These decisions clarified detailed issues concerning investment budgets which had given rise to disputes.

#### UK: Ofgem Proposes To Increase Liquidity In Electricity Wholesale Market

The Ofgem has announced [proposals](#) designed to increase liquidity in Britain's electricity wholesale market. The Ofgem suggests that liquidity in Britain's electricity market is low compared to other commodity markets such as the gas market. Six major energy suppliers are vertically integrated. The Ofgem is concerned that competition is being stifled and that independent suppliers and generators cannot buy or sell power. The Ofgem is proposing to require the six energy suppliers to sell 25 per cent of their generated power. The deadline for the Ofgem's consultation is 8 May.

#### UK: Ofgem Undertakes Two Year Review on the Low Carbon Networks Fund

The Ofgem has undertaken a [review](#) of its £500 million Low Carbon Network (**LCN**) Fund (the **Fund**). As a result, the Ofgem plans to introduce a number of changes to the way in which future projects are funded. The Ofgem created the Fund as part of Distribution Price Control Review 5 (**DPCR5**), to encourage



Distribution Network Operators (**DNOs**) to introduce new technologies, operating practices and commercial arrangements that reduce carbon emissions. The changes are designed to encourage collaboration between DNOs. A new approach to quantifying carbon benefits will also be adopted.

## **UK: Ofgem Estimates Net Margin on Supplying Fuel to Customers**

The Ofgem has [estimated](#) the net margin on supplying a typical, standard tariff, dual fuel customer for the next 12 months. The Ofgem's latest calculations suggest that for the 12 months ending February 2013, the total indicative net margin for a typical, standard tariff dual fuel customer is £70 per customer. This estimate is £20 less than the previous update. The 12 month margin is expected to fall further to around £55 over the next six months.

## **UK: RIIO-T1: Publication of the Revised Business Plans of National Grid Electricity Transmission plc and National Grid Gas plc**

The Ofgem has sought [comments](#) on the next transmission price control (**RIIO-T1**). The RIIO-T1 is the first price control to be conducted under the new RIIO model. Under the model, the following formula applies: Revenue = Incentives + Innovation + Outputs. On 2 March 2012, National Grid Electricity Transmission plc (**NGET**) and National Grid Gas plc (**NGG**) submitted revised business plans as part of this process. Stakeholder views are due by 13 April 2012.

## **UK: EDF Energy to Invest £4.5 million to Help Vulnerable Customers Following Ofgem Investigation**

Following an investigation, the Ofgem has found EDF Energy in [breach](#) of its marketing licence conditions. The Ofgem's investigation identified that EDF Energy had weaknesses in some of

the processes and controls it used to ensure compliance with the rules governing clarity and accuracy of sales information. EDF Energy has accepted that shortcomings exist and taken steps to address the shortcomings. EDF Energy also will pay a £4.5 million package to vulnerable consumers.

## **UK: Distribution Connection and Use of System Agreement (DCUSA) DCP105: Fixed Bi-annual Amendment of Distribution Use of System (DUoS) charges**

The Ofgem has published its [reasons](#) for rejecting a proposal by npower Limited to vary its Distribution Connection and Use of System Agreement (**DCUSA**). The DCUSA provides that DNOs and Independent Distribution Network Operators (**IDNOs**) must use 'reasonable endeavors' not to vary their Distribution Use of System (**DUoS**) charges more than two times a year. DNOs and IDNOs can still change their charges in addition to twice a year provided that three months' notice is given. The proposal sought to amend the DCUSA to remove the 'reasonable endeavors' condition.

## **UK: Gas Distribution Networks Guaranteed Standards of Performance and Standard Licence Condition D10 Data 2010-11**

The Ofgem has released [details](#) of the performance of the eight UK Gas Distribution Network businesses and compared their performance to the guaranteed standards of performance and the requirements of standard special licence conditions. The Ofgem uses incentive regulation to encourage GDNs to reduce costs and lower charges to consumers. However, a number of 'quality of service' output requirements are also included, as well as standards which GDNs must deliver. The current quality of service and outputs arrangements have been implemented through



a number of different frameworks including: guaranteed standards of performance (**GSOPs**); overall standards of performance (**OSOPs**); third party and water ingress arrangements; and output reporting.

## UK: Regulatory Ringfence Updates

The Ofgem has published an [update](#) in relation to the proposed changes to the regulatory ring fence. The Ofgem considered the comments received and discussed a set of proposals with the Gas and Electricity Markets Authority (the **Authority**) in October 2011. The proposals were substantively the same as those set out in the consultation. The Authority agreed to the proposals and proposed to implement the changes with effect from April 2013. This would also coincide with the commencement of the first RIIO price controls. The Ofgem expects to contact companies in late April/May with updated drafting and then to issue a decision document in June. The Ofgem will seek comments on the licence drafting.

## Oceania

### NZ: NZCC Finalises Input Methodology for Approving Transpower's National Grid Spending

On 31 January 2012 the NZCC released its [final determination](#) of Transpower's Capital Expenditure Input Methodology; the process for approving investment in the national grid. The NZCC took over responsibility for approving Transpower's major grid upgrades from the Electricity Commission on 1 November 2010, and the Capital Expenditure Methodology replaces the former Electricity Governance Rules for approving Transpower's grid upgrade expenditure and integrates all regulation of Transpower's capital spending with Part 4 of the Commerce Act 1986. Other elements in the regulatory framework include Transpower's individual price-quality path, effective from 1 April 2011, and other Input Methodologies,

released in December 2010. The new Transpower Information Disclosure rules will be released in the second half of 2012.

### NZ: NZCC Input Methodology Processes Delayed

The New Zealand High Court (the **Court**) has handed down a [judgment](#) addressing a number of judicial review applications that are in relation to the NZCC's 2010 Input Methodology determinations. The judicial review applications were in relation to the NZCC's consultation processes in developing the Input Methodologies across a range of areas including its overall process, and some specific points in relation to the cost of capital Input Methodology. NZCC said that the Court found the overall consultation and determination process 'robust and appropriate'. However, the Court also found that the NZCC needed to consult further in relation to part of Transpower's cost of capital Input Methodology.

## Rail

## Europe

### Germany: Bundesnetzagentur Approves DB Energie GmbH Grid Fees and Revenue Caps for the Traction Current Grid

The Bundesnetzagentur has [approved](#) DB Energie GmbH's grid fees for 2005 to 2008, and has also approved a revenue cap for 2009 to 2013, for prices charged for the use of the railway electricity transmission grid. The grid fees will be published shortly by DB Energie GmbH. The actual volume of fees in the application submitted by DB Energie GmbH has been reduced by 23 per cent. A judgment passed in 2010 by Germany's Federal Court of Justice required DB Energie GmbH to obtain approval for the prices it charges for carrying electricity through its railway electricity transmission grid. The decision confirmed that under the Energy Industry Act, the



Bundesnetzagentur is responsible for determining these charges.

## Spain: CNC Begins Study of Competition in Railway Freight Transportation

The CNC has commenced a [study](#) of competition in railway freight transportation in Spain. The market for railway transportation of cargo was liberalised in 2006. However, Renfe Operadora, successor to the former public monopoly, continues to have a market share of more than 90 per cent of all rail cargo. The market share is even greater when considering the railroad managed by the railroad infrastructure management entity, Administrador de Infraestructuras Ferroviarias. The study aims to identify obstacles to competition and to make recommendations to remove them.

## UK: ORR Sets Out Expectations of Rail Industry 'Alliances'

The economic regulator of Britain's railways, the Office of Rail Regulation (**ORR**) has published what it terms '[regulatory expectations](#)' for future agreements between rail industry 'alliances'. Network Rail and train operators are currently developing plans to form alliances. These alliances may involve closer working relationships which range from partnerships on specific projects, through to long-term commercial links. The ORR has said it will ensure that alliances do not disadvantage other customers of Network Rail. Further, the regulatory expectations are designed to ensure that there is no loss of clarity about responsibilities, including for the safety of workers and passengers.

## AUSTRALIAN REGULATORY ROUND-UP

### Communications

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#### ACCC to Consult Market on Proposed FOXTEL Undertaking

The Australian Competition and Consumer Commission commenced [market consultation](#) on the proposed undertaking offered by FOXTEL Management Pty Limited in respect of its proposed acquisition of Austar United Communications Limited. The ACCC's main areas of concern with the proposed acquisition are in the national market for the retail supply of subscription television services, particularly at the entry level. Also of concern is a number of regional markets for the supply of fixed broadband and fixed voice telephony products. Submissions are due by 20 March 2012.

### Energy

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#### Productivity Commission Publishes Issues Paper on Electricity Network Regulation

On 23 February 2012, the Productivity Commission (**PC**) published an [issues paper](#) in relation to its 15-month inquiry into aspects of national electricity network regulation. The purpose of the inquiry is to identify practical or empirical constraints on the use of benchmarking of network businesses and provide advice on how benchmarking could deliver efficient outcomes, consistent with the National Electricity Objective (**NEO**). A second stream will examine if efficient levels of transmission interconnections are being delivered. Initial submissions are due by 16 April.



## Final Report Published of Latest Annual Review Which Examines the Performance of the National Electricity Market (NEM)

The Reliability Panel (**Panel**) published the [final report](#) of its latest annual review which examines the performance of the National Electricity Market (**NEM**) in the 2010-2011 financial year. Each year, the Panel undertakes a review under the National Electricity Rules (the **Rules**) of the performance of the NEM in terms of the reliability of the power system, the power system security and reliability standards, and other relevant standards and guidelines. The Panel notes that in 2010-2011 there was no 'unserved energy' (**USE**) due to reliability events and the USE continued to remain within the reliability standard. Although there were some incidents in the year, these incidents did not result in under-frequency load shedding. The Panel's assessment also includes a review of a number of 'operating incidents' that occurred in 2010-2011.

## Final Determination Made on Expiry of the Reliability and Emergency Reserve Trader

The AEMC has published a [final rule determination](#) that retains the Reliability and Emergency Reserve Trader (**RERT**) for four years until 30 June 2016. The new rule also removes the need for the Reliability Panel to review the RERT a year prior to its expiry. The RERT is a safety net mechanism that allows the market operator to procure additional reserves to help achieve a reliable and secure supply of electricity to customers. It is only used in emergencies where ordinary market mechanisms are unlikely to deliver an adequate supply of electricity to meet customer demand.

## Draft Rule Determination – Reference Service and Rebateable Service Definitions Rule Change Request

The AEMC has published a [draft determination](#) on a rule change requested by the AER in relation to a change of the definitions of service and rebateable service in the National Gas Rules. The draft rule differs from the proposed rule in that it makes changes only to the reference service definition. It provides the regulator with discretion in considering the appropriate regulatory treatment of pipeline services that are likely to be sought by the market. The draft rule does not amend the current rebateable service definition. Requests for a public hearing close on 22 March 2012. Submissions on the draft determination close on 26 April 2012.

## AEMC Consults on Rule Change Request from AEMO Concerning a Small Generation Aggregator Framework

The AEMC has published a [consultation paper](#) in relation to a proposal by AEMO to add Small Generation Aggregators as a new category of market participant in the National Electricity Rules. The intention is to lower potential barriers to the participation of small generators in the National Electricity Market. A consultation paper has been prepared to facilitate public consultation on this rule change proposal. Submissions close on 12 April.

## Determination on Powercor Australia Ltd's VBRC Cost Pass Through Application

The Australian Energy Regulator (**AER**) has released a [determination](#) on Powercor Australia Ltd's (**Powercor**) cost pass through application of 13 December 2011 for recovery of costs arising from the Victorian Bushfire Royal Commission (**VBRC**) recommendations. The AER determined that a positive pass through event occurred and has approved additional



capital and operating expenditure of \$73.98m (in 2012 dollars). This represents a reduction to Powercor's proposed capital and operating expenditure of \$11.16m.

## **ActewAGL's Application for Revocation and Substitution of its 2009-14 Distribution Determination**

ActewAGL Distribution (**ActewAGL**) has [notified](#) the Australian Energy Regulator (**AER**) that it has identified two errors relating to the forecast superannuation costs in the 2009-14 ACT electricity distribution determination. ActewAGL

has requested that the AER use its discretion under clause 6.13 of the transitional National Electricity Rules to correct the errors. Under this clause the AER can revoke and substitute a distribution determination if it appears to the AER that the determination is affected by a material error or deficiency. ActewAGL's application and supporting documentation are available on the website. Interested parties are invited to comment. Submissions close Friday, 30 March.

*Regulatory Observer* is a regular publication of the Australian Competition and Consumer Commission. For editorial enquiries please contact Jason King ([Jason.King@acc.gov.au](mailto:Jason.King@acc.gov.au)), and for mailing list enquiries please contact Genevieve Pound ([genevieve.pound@acc.gov.au](mailto:genevieve.pound@acc.gov.au)).