

## Is a Standalone Industry Regulator the only way? Australia has a great example from the energy sector

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It can be tough to optimise the inter-play between (a) general competition and regulation law and (b) industry-specific regulation. Australia has a great solution with its new Australian Energy Regulator (AER). We'll compare it with our electricity sector model. But the model is relevant to other sectors (such as gas, telecommunications and the inevitable increasing regulation of the media sector).

The Australian model is designed to meet needs that apply as much if not more in New Zealand. Its outcomes include:

- Optimal use of scarce resources and expertise
- Consistent approach between the "general" competition/regulatory body and the industry-specific regulator
- Cross-sector efficiency (eg; as to decisions on infrastructure investment between industries (say energy and ports), to reduce economic distortions))
- Pro-competitive focus
- Flexibility and pragmatism

New Zealand's competition and regulatory oversight of the electricity sector pivots around 2 standalone regulators: the Commerce Commission and the standalone Electricity Commission.<sup>1</sup>

Australia has gone for a different model. The AER, as industry regulator, has close co-ordination with the Commerce Commission's Australian sister, the ACCC.<sup>2</sup>

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<sup>1</sup> There are other players, not relevant for present purposes

<sup>2</sup> There are various State and Federal issues (for example WA generally has not bought in yet to much of the AER model). There is also the Australian Energy Market Commission (AEMC)

Rather than having two standalone Commissions with relatively limited co-ordination<sup>3</sup>, the Australians have gone for a model with: two separate bodies: ACCC, undertaking a role similar to the Commerce Commission, and the AER (undertaking a role similar to the Electricity Commission);

However, fundamental is that they function out of the same office and there are members in common.

Of the three Members of the AER, one is a full-time ACCC Commissioner. The other two are also part-time ACCC Commissioners.

ACCC's fulltime Commissioner Willett is also an AER member. He has written a very useful paper, "*The AER and Its 'Fit' with the ACCC Model*".<sup>4</sup>

The AER, working out of the same offices as ACCC, shares specialist staff devoted to energy matters.

So the model has separate legal entities but commonality to adequately cover overlap of issues.

Benefits include:

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which is responsible for rule-making and energy market development at a national level.

<sup>3</sup> There is some co-operation between the NZ Electricity and Commerce Commissions pursuant to a Memorandum of Understanding.

<sup>4</sup> 23 July 2006.

<http://www.accc.gov.au/content/index.phtml/itemId/754819> . See also ACCC Chairman, Graeme Samuel "Regulation in the infrastructure sector - a national approach" (<http://www.accc.gov.au/content/index.phtml/itemId/759274/fromItemId/142>).

- In Australia it's recognised that relevant expertise is limited and this is a way of optimising use of scarce resources. *"This allows both bodies to draw on the same substantial body of specialist skills and knowledge while avoiding costly, and potentially time-consuming, duplication."*<sup>5</sup>
- Consistent approach as between ACCC and AER. *"It would have been a much greater challenge if a number of separate autonomous sector-specific organisations had been established to regulate the different infrastructure industries."*<sup>6</sup>
- Facilitating a consistent approach not only as between both regulatory bodies but for cross-sector efficiency as well. *"An economy-wide regulator is more likely to deliver consistency across sectors. While all infrastructure industries have unique features, many of the economic regulation issues raised are similar across the range of regulated industries. As all industries compete for investment capital, inconsistent approaches to issues such as the valuation of capital could lead to inefficient investment patterns. An industry-specific regulator would increase the risk of economic distortions. Alternatively, an economy-wide regulator would have sufficient distance from industries to form objective views on difficult issues... Achieving a consistent approach is a challenge to the ACCC. It would have been a much greater challenge if a number of separate autonomous sector-specific organisations had been established to regulate the different infrastructure industries."*<sup>7</sup>
- A pro-competitive focus. *"One of the key principles behind the move to national regulation of the energy sector was that the choice between gas and electricity should be determined by competition and not regulation. ... The goal of regulation should be to allow both to develop in a way that encourages competition within, and*

*between the two, to the benefit of industry, end users, and the nation."*<sup>8</sup>

- Pragmatism and flexibility. Commissioners of the ACCC and Members of the AER coordinate formally, but there are also informal and flexible communications between the shared staff for both bodies. This is particularly helpful where there are overlapping issues to be considered.

OECD countries have faced, in various ways, this problem of dealing with the split of regulatory responsibility in the energy and other sectors.

In New Zealand we have a significant compliance cost, with industry expertise even scarcer in New Zealand than in Australia.

Should our model be rejigged?

Quite apart from the energy sector, we fully expect that this will become an issue as the media and communications sectors converge. As media and content increasingly *"rule the waves"*, it's inevitable, we think, that the Telecommunications Commissioner role will morph to include media (and maybe spectrum rights too).

Different models are possible, including:

- an AER look-alike (that has overlaps with the Telecommunications Commissioner's relationship with the Commerce Commission)
- the Australian solution (ACCC plus the ACMA: Australian Communications and Media Authority)
- the proactive and more powerful UK model: Ofcom

There's much to be said for the Ofcom approach.

There are many models. The AER model is a great option when these questions arise.

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<sup>5</sup> Page 11 in Commissioner Willett's paper referred to above.

<sup>6</sup> Commissioner Willett in his speech.

<sup>7</sup> Page 4 and also page 6 of Commissioner Willett's paper.

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<sup>8</sup> Commission Willett's paper at page 10.

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