

BULGARIA

MAIN MARKET DEVELOPMENTS

Fixed broadband penetration is the second lowest in the EU despite recent increase. Alternative broadband operators mainly use non-DSL technologies and continue to develop fibre networks. While recently adopted access regulation to passive infrastructure has not yet become effective, illegal¹ aerial cable deployments and unauthorised access to the incumbent's ducts remain major issues despite imposed sanctions, and allegedly often pertain to illegal content distribution. Consolidation of broadband operators and Internet providers has marked significant progress.

The fixed market, while still disproportionately dominated by the incumbent, has continued to shrink due to the steady growth of fixed-to-mobile substitution and VoIP. Increased bundling of fixed and mobile voice as well as triple-play has reinforced competition with converged services.

The total revenue of the electronic communications sector decreased by 6.2%, down to € 1 700 million at the end of 2009 (compared to € 1 813 million one year earlier). Revenues from fixed services (telephony, data and Internet) dropped by 12.6%, while those from mobile services decreased by 3.7%. Total investment in the sector continued to decline in 2009 and reached € 283 million (down by 30.2% compared to 2008), which accounted for 0.8% of GDP. Alternative fixed telephony operators increased their investments by 46.1% to € 16 million.

MAIN REGULATORY DEVELOPMENTS

In the first half of 2010, the Law on Electronic Communications (LEC)² was substantially amended *inter alia* with provisions on data retention, compensation rules for universal service provision as well as penalties for non-compliance with the amended Roaming Regulation.

The Government completed a horizontal measure concerning the restructuring of five independent regulatory authorities, including the NRA in electronic communications, the Communications Regulation Commission (Комисия за регулиране на съобщенията - CRC) and the media regulator (Council for Electronic Media - CEM). This measure invoked legislative acts which reduced the number of board members and, in certain cases, changed their terms of office. In November 2010, the Government determined 1 January 2015 as the deadline for the switch-off of analogue terrestrial broadcasting.

The regulatory decision-making process of the CRC has slowed down, in particular for market analyses and the approval of reference offers. One-stop-shop number portability was launched just in August 2010. The NRA notified the wholesale broadband markets' analyses in December 2010 after a significant delay³. Although regulatory remedies have frequently been appealed before the Supreme Administrative Court, the respective judicial proceedings with an average duration of 1.5 years have normally led to the endorsement of the CRC's decisions.

The Government adopted in December 2010 a comprehensive policy programme in the domain of electronic communications⁴, which sets out priorities and measures for legislation, spectrum management, broadband roll-out and next-generation networks, standardisation, digital switchover and consumer rights. While the preparation of an Electronic Media Act was ongoing, a draft law

¹ With respect to the Law on Electronic Communications

² Закон за електронните съобщения (ЗЕС)

³ The Commission commented on the lack of cost-orientation obligation for dark fibre access

⁴ Decision No. 972 of the Council of Ministers of 29 December 2010 (SG No. 4 /2011)

amending the LEC for the purpose of transposing the provisions of the revised EU regulatory framework was not available at the time of writing this report.

NRA

The structure of the CRC board was changed in April 2010 following amendments to the LEC⁵. The number of board members was reduced from nine to five and a five-year mandate imposed, which re-established the same board composition as before 1 July 2009, with the exception of one board member being appointed by the President. In June 2010, three of the board members, including the deputy chairman, were replaced due to the expiry of their terms of office.

The budgetary independence of the CRC is laid down in the LEC. A portion of the fees for rights of use of frequencies, as well as of the fines on operators, is transferred into the state budget⁶.

ECONOMIC REGULATION

Broadband

Broadband plans

The Government has not yet presented a detailed implementation programme since the adoption of its broadband strategy in 2009. It plans to achieve 100% broadband coverage of 1Mbps by 2013. A governmental project for the development and operation of a broadband access network in less urbanised and rural areas has been launched, promoting open access for last-mile operators.

Market situation (including NGA)

The fixed broadband penetration rate in terms of population reached 14.9% in January 2011 (compared to 13% one year before) which remains far below the EU average of 26.6% (compared to 24.8% one year before). In terms of households, 38.5% used fixed broadband lines while the total number of retail fixed broadband lines increased in January 2011 to 1 125 590 from 986 434 one year earlier (up by 14.1%). The broadband market remained fragmented, with 578 operators

The share of DSL (being exclusively incumbent's lines) in all active broadband lines remained at 30.6% in January 2011 (31.4% in January 2010) and also equalled the share of non-fibre LAN connections. Fibre deployment has grown with FTTB at 20% and FTTH at 1.2% of all active lines. About 74% of all fixed broadband lines operate at download speeds exceeding 10Mbps and another 24% of all broadband connections have speeds above 2Mbps. About 22% of all broadband lines have download speeds above 30Mbps. Cable operators are often the major broadband provider in rural regions. Their market share was 13% of all active broadband lines and they gained 21% more customers. The prevailing cable technology is DOCSIS 2.0 (90% of lines) with DOCSIS 3.0 being increasingly rolled out. About 25% of all broadband subscriptions are bundled.

The mobile broadband penetration rate was just 7.9% in January 2011 (the EU average was 26.2%). The share of mobile broadband subscribers using a dedicated data service device (card, key or modem) reached 44% of all mobile broadband users (in total 599 492). Two WiMax (4G) operators are active on the market, with competitive offers, including bundles.

The continuing lack of commercial interest for the incumbent's DSL-based wholesale access products (unbundled or bitstream) deprives this segment of competition. The incumbent's retail

⁵ Similarly, amendments to the Radio and Television Act (RTA) of June 2010 effectuated the reduction of the number of board members of CEM from nine to five.

⁶ In total 42.6 % for 2009 according to the CRC's annual report (http://www.crc.bg/files/_bg/VI_final.pdf)

DSL lines increased to 343 497 in January 2011 (from 309 554 in January 2010, or up by 11 %), while the monthly fee for home DSL (at maximum speeds of 6Mbps or 12Mbps) has remained virtually unchanged, whilst that for business DSL has fallen by 17% compared to one year earlier.

The largest mobile operator acquired two broadband operators (Спектър нет and Мегалан) which provide connections mainly in large cities. Several Internet and cable TV providers united in a holding (Bulgarian Telecom and Television, BTT) which reported plans to cover one million households, to expand coverage and to launch new services, including mobile Internet.

In December 2010, a new Bulgarian association of cable communications operators (БАККО) was created with over 30 members, after a merger of two other associations (АБКО, ТВ Клуб 2000), and set as priorities: infrastructure expansion, access to the incumbent's passive network, liaison work with municipalities and relations with broadcasters. The national electricity company announced plans to deploy fibre infrastructure and largely rent it to telecom operators.

Regulatory issues

In November 2010, the CRC decided on lower prices⁷ for deploying cables in the incumbent's ducts network (4.1 €-cents per meter), as a part of the incumbent's general terms and conditions. Following its notification of December 2010, the CRC adopted in February 2011 its final analyses and remedies for the wholesale broadband markets. Furthermore, alternative operators have complained about the incumbent's complex and slow procedures in response to access applications as well as the low effectiveness in general of dispute resolution under the auspices of the CRC.

The Government has declared its support for measures on the access of telecom operators to the passive infrastructure network of state-owned companies in the energy and railway sector. However, e-communications infrastructure deployment faces serious obstacles due to complex procedures for issuing construction permits, as well as inconsistent and fragmented legislation. Furthermore, while the persistent wide-spread existence of illegally deployed cables handicaps the development of a level-playing field and also facilitates illegal content distribution, the availability of alternative infrastructure and enforcement of access do not seem to match ever growing market demand. The additional control over illegal cables given by law to the Ministry of Regional Development and Public Works⁸ has proven ineffective, according to alternative operators.

Mobile

Market situation

The mobile penetration rate in October 2010 fell to 133.4% (from 138.9% in October 2009), compared to an EU average of 124.2%. The proportion of post-paid mobile users increased to 65.2%. For 2009, mobile services accounted for 65% of all revenues, 57% of total investment and 83.4% of voice traffic in the e-communications sector. The average revenue per user for the same year dropped to €104 (down by 7% compared to one year earlier).

The market share of the major mobile network operator in terms of the number of subscribers increased in October 2010 to 51.9% (from 49.4% in October 2009). Over the same period, the main competitor's market share has declined from 37.5% to 32.6% while the third operator has strengthened its market share from 13.1% to 15.5%⁹. UMTS (3G) population coverage increased to 69.9%, 82% and 54.3% for the first, second and third operator, respectively, at the end of 2009.

⁷ CRC Decision No. 1220 of 11 November 2010

⁸ Under the Territorial Development Act (Закон за устройство на територията)

⁹ There are no mobile virtual network operators (MVNO) in Bulgaria

Regulatory issues

In July 2010, MTR levels fell by up to another 36.5% down to 6.65 €-cents per minute for peak traffic and 5.64 €-cents per minute for off-peak traffic, which was the last step of a glide path adopted by the CRC in March 2009 (likewise for fixed termination rates). In October 2010, peak-traffic MTR levels exceeded the EU average of 5.46 €-cents by 22%. Average prices for mobile off-net calls have dropped by just 17% during 2009 (or by 9.1% for the largest mobile operator). In general, pre-paid tariffs for off-net or international calls remain high with some mobile operators. Alternative operators have complained about the previous single-step decrease of termination rates applicable to them according to the regulatory remedies currently in force.

The practice of exempting calls originated outside the territory of Bulgaria from MTR regulation became a major issue of complaints to the Commission since it led to higher termination charges for international incoming voice calls. While the CRC considered this market situation to be consistent with its notified market analysis, the Commission urged the NRA to remedy the issue by uniformly enforcing regulated MTR levels to all types of calls irrespective of their origin.

Roaming Regulation

Bulgaria adopted in April 2010 the necessary provisions in the LEC allowing the imposition of fines on operators, who do not comply with the obligations laid down in the amended Roaming Regulation of 2009. All mobile operators have implemented consumption limits and warnings about reaching these limits for data roaming as required by the Regulation, and offer the Eurotariff for voice calls and SMS at levels close to the specified price caps.

Fixed

Market situation

The incumbent's market share fell to 85.5% in terms of direct access subscribers in July 2010 (down from 94% one year before), and to 92.5% in terms of voice call revenues in December 2009 (down from 93.6% one year before). At the end of 2010, nearly 10% of the incumbent's fixed lines were still analogue.

In December 2009, 4.5% of the volume of fixed-line national calls was carried by alternative operators, while this portion was 28.2% for international calls, and 10.4% – for fixed-to-mobile calls¹⁰. Altogether, the incumbent hosted 94.1% of all fixed-line calls. In total, 18 undertakings offered fixed telephone services in July 2010.

Bundled services have increasingly penetrated the market with 62 operators placing bundled products in 2009 out of which 47 operators offered double-play of cable TV and Internet (from 28 in 2008). The incumbent launched bundled services for non-residential users just in April 2010, a long time after competing mobile operators¹¹. In total, bundled offer penetration reached 3.8% in July 2010, with triple-play at 0.9%.

Regulatory issues

In April 2010, the CRC decided to deregulate the wholesale market for transit services in the fixed public telephone network and removed previous obligations on the incumbent. The analysis of the wholesale market for segments of leased lines is still pending. In June 2010, the CRC approved the incumbent's reference offer for wholesale line rental, and in July 2010, the NRA reinforced a reduction of the incumbent's retail prices for calls to mobile networks at caps of 0.128 €-cents for

¹⁰ VoIP through geographic numbers is not treated as a separate voice service by the CRC

¹¹ The incumbent is not allowed to bundle services without justification, by virtue of a regulatory decision

peak traffic and 0.106 €-cents for off-peak traffic, following the reductions of regulated wholesale rates for fixed call origination and mobile call termination.

The approval of an updated incumbent's reference interconnection offer was rather delayed after the adoption of remedies for the wholesale markets of call origination and termination in 2009.

Broadcasting

Market situation

Consolidation of stakeholders in the domain of digital terrestrial broadcasting (DTB) has taken place which has led to the creation of an undertaking which controls the largest national broadcast network and also holds a spectrum licence for two broadcasting networks with national coverage. Allegedly, this undertaking may be affiliated with television operators, which would imply its full vertical integration. This development followed contradictory changes in the legal environment of 2009¹² concerning the spectrum contest procedures for DTB, which initially stipulated vertical separation of DTB stakeholders, and raised concerns about legal certainty and discrimination of certain competitors.

In July 2010, cable operators and satellite operators provided TV service to 1.196 million and 306 000 households, respectively, or 41.5% and 10.6% of all households. In September 2010, the incumbent started offering digital TV services via satellite. Although 139 operators have notified their plan to offer IPTV, this service has been marginally taken up.

Regulatory issues

In July 2010, after a contest procedure the CRC granted rights of use of spectrum for the national digital terrestrial broadcasting of public programmes with duration of 15 years to an operator already holding a spectrum license for three commercial networks thus reinforcing concerns among stakeholders about the state of competition. The envisaged spectrum contest procedure for DTB with regional coverage has been postponed.

While current copyright protection rules for broadcasting seem to provide for technological neutrality¹³, cable providers have complained about the lack of transparent justification for the legal obligation to notify in detail commercial agreements with copyright holders to CEM (penalties of up to € 3 500 may apply for non-compliance). Amendment of the Law on Copyright and Related Rights was under way at the time of writing the report.

HORIZONTAL REGULATION

Spectrum management, including re-farming, digital dividend

Bulgaria has notified the implementation of the revised GSM Directive and the related Commission Decision 2009/766/EC on harmonised use of the 900 MHz and 1800 MHz frequency bands. The frequency licenses of all mobile operators have been amended in order to fulfil the re-farming requirements for both bands, in particular to allow use of UMTS technology.¹⁴

Bulgaria has notified the use of the 766-814 MHz and 822-862 MHz frequency bands for the purpose of national security and defence in view of Commission Decision 2010/267/EC on harmonised technical conditions for using the digital dividend (790-862 MHz) for terrestrial e-communications systems. The Bulgarian authorities have not yet presented a schedule for

¹² Amendments of the LEC, which were followed by a decision of the Bulgarian Constitutional Court

¹³ By virtue of Art.125B of the RTA

¹⁴ CRC Decisions No. 968, 969 and 970 of 2 September 2010

releasing the digital dividend for wireless broadband services. According to information available to the Commission, also not all of the necessary preparation has been made to facilitate the granting of an authorisation to the operators of systems providing mobile satellite services selected by the Commission in accordance with European Parliament and Council Decision 626/2008/EC.

Bulgaria has not yet implemented Commission Decision 2005/928/EC on harmonised applications in the 169 MHz frequency band. The Commission closed in November 2010 the infringement procedure in this regard after Bulgaria notified the use of this band for a private mobile radio communications system for the purpose of national security¹⁵. The Bulgarian authorities made the commitment to make available the 169 MHz frequency band by the end of 2013. Bulgaria was also granted a prolongation of a previous derogation from Commission Decision 2008/477/EC on the harmonised use of the 2.5-2.69 GHz frequency band until 31 December 2011¹⁶.

The major mobile operator has lent its rights of use of spectrum within the 3.4-3.8 GHz frequency band to one of the WiMax operators for one year with the approval of the NRA. Furthermore, the has CRC granted additional spectrum resource of 2x5 MHz in the 2 GHz frequency band to one mobile operator for broadband wireless services without a contest procedure.

Rights of way and facility sharing

Lengthy administrative procedures aggravated by fragmented legislation frequently handicap the prompt issuance of permits to telecommunications operators by municipalities for the purpose of infrastructure deployment, including next generation networks.

Administrative charges

As indicated in the previous report, the CRC does not include in its annual budgetary report a comparison between collected administrative charges and administrative expenditure in order to provide a reference for justifying any adjustment of these charges, if necessary, in accordance with EU law¹⁷. The NRA has reported about the adjustment of administrative charges in 2010.

THE CONSUMER INTEREST

Consumer complaints

Number portability and the automatic prolongation of individual contracts with mobile operators became major topics of consumer complaints lodged at the NRA (about 1 700). With the endorsement of the CRC, all mobile operators have indicated their consent to remove automatic prolongation clauses from individual contracts. A large portion (about 460) of the complaints on number portability (about 1000) referred to the new one-stop-shop procedure. Due to technical problems with the major mobile operator's billing system, many mobile customers experienced problems with incorrect invoices and inadequate service provision. Further complaints referred to issues with the scope of universal service (in particular fax), availability of telephony services or invoicing. The CRC has issued 340 penalties to operators, out of which 168 on number portability.

Tariff transparency and quality of service

In the process of digitalising analogue fixed lines by wireless connectivity, the incumbent began offering existing subscribers a solution which did not allow re-use of their end devices for fax or data transmission. Customers also complained about voice quality. Following contacts of the

¹⁵ In line with Article 3(6) of the Decision

¹⁶ Commission Decision 2010/194/EU

¹⁷ Article 12(2) of Directive 2002/20/EC (Authorisation Directive)

Commission services with the CRC and the incumbent, the latter declared to start renting wireless gateways to subscribers free of charge (subject to a reimbursable deposit) in order to fulfil its obligations regarding universal service at a fixed location¹⁸.

Number portability/switching

The Commission issued in April 2010 a reasoned opinion to Bulgaria on the non-implementation of fixed number portability (FNP) with respect to analogue fixed lines and certain digital fixed lines. As a result, the Bulgarian authorities presented a plan for digitalising the incumbent's fixed network and for ensuring FNP for all subscribers in 2011. The CRC adopted in December 2010 a decision to introduce as of 10 March 2011 a 'closed' dialling method for all fixed-line calls, including local destinations, which implies that the calling party has to dial the full national phone number starting with the geographical destination code. This remedy, although providing a viable solution, will not reinforce the digitalisation of the incumbent's existing analogue lines. The NRA updated the functional specifications on FNP in August 2010 in line with the planned measure.

The CRC announced the introduction of a one-stop shop procedure for all types of number portability as of 6 August 2010, which also made operational non-geographic number portability. In effect, customers can submit a single application only to the receiving operator. According to the new procedure, the period to port a single number has been reduced to 7 days (10 days for a non-geographic number of the 700, 800 or 900 range or a group of geographic numbers), compared to the EU average of 7.7 days for fixed and 4.2 days for mobile numbers. The wholesale charge for porting a single number amounts to € 9.2 (€ 15.9 for a non-geographic number), and a discount of 30% applies when porting a group of at least 500 numbers. A retail charge may be levied by the receiving operator, yet this has not become common practice. According to the CRC 139 377 mobile numbers (1.38% of all mobile subscribers) and 60 337 fixed numbers (2.5% of all fixed subscribers) have been ported until the end of January 2011.

Although some alternative operators have indicated that non-geographic number portability is not operational, the NRA has not reported any complaints in this regard. Non-geographic number portability seems to be handicapped by the lack of interconnection agreements. Similarly, the access of a customer of one operator to value-added services of another operator does not appear to be fully operational. Currently, customers of WiMax operators cannot port their numbers.

Net neutrality

Announced plans for legislation on access control to Internet content has not yet materialised.

Universal service

Following contacts between the Commission services and the Bulgarian Government, a provision in the LEC was repealed in April 2010, which – contrary to requirements of EU law – excluded an undertaking with a significant market power from the right to request compensation as a universal service provider. Subsequently, the incumbent – being the only universal service provider by virtue of the LEC – applied for compensation.

An act of secondary legislation¹⁹ obliges the NRA to start a designation procedure for a universal service provider within one month after adoption of the analyses of the retail telephony markets²⁰. After the CRC launched a call for interest by undertakings in September 2009 as well as a public

¹⁸ In line with Article 4(2) of Directive 2002/22/EC (Universal Service Directive)

¹⁹ Ordinance No. 6 (SG No. 32, 2008)

²⁰ Markets 1 to 6 of the Commission Recommendation 2003/311/EC

consultation on the quality parameters for universal service in March 2010, this designation procedure was delayed due to necessary amendments of secondary legislation.

In May 2010, secondary legislation²¹ on the terms of issuing public directories and the provision of directory enquiry services (DES) was amended, which *inter alia* elaborates the rules for passing subscribers' data to providers of public directories and DES. In July 2010, the CRC amended secondary legislation²² on granting numbers on primary and secondary basis. The latter should ensure the assignment of up to three 118XY numbers for directory enquiry services on a primary basis to service providers without an own network.

European emergency number 112

A minority of respondents to the Eurobarometer survey²³ in Bulgaria (41%) reported having received information about 112 as the European emergency number in the past 12 months. Most of them (84%) had received this information by watching television. In total 66% of all Bulgarians knew that they can call 112 in the event of an emergency in their own country, and 44% knew that they can reach emergency services from anywhere in the EU by calling 112, compared to the EU average of 26%. Emergency calls to 112 can be handled also in English, German and French languages. A new raising awareness initiative was reported to start in 2010 in large cities.

Harmonised numbers for harmonised services of social value (116)

The CRC assigned in December 2010 the harmonised number 116000 to a foundation for setting up a national hotline for missing children, which must become operational by December 2011.

Must-carry

According to amendments of the Radio and Television Act (RTA) of 2010, certain television operators holding rights of use of frequencies for analogue terrestrial broadcasting have become beneficiaries of additional (bonus) 'must-carry' obligations for future DTB networks. In addition, there are no legislative provisions on the periodic review of must-carry obligations, as required by the Universal Service Directive²⁴. The Commission services are looking into the matter.

E-privacy

In May 2010, amendments to the LEC on the rights and rules of access to personal data retained by operators of electronic communications networks came into force²⁵. A period of 12 months was laid down for storing data about certain categories of traffic data of the communication for the purposes of detection and investigation of serious crimes, missing people and computer crimes. Furthermore, the Commission on Personal Data Protection was designated as a national supervisory authority. In the beginning of 2011, controversial violations of the right to privacy of e-communications raised concerns about the enforcement of national and EU law.

Self-regulation on online advertising activity and the usage of cookies has shown some progress.

Bulgaria made use of financing by the European Investment Bank for an electronic pass project.

²¹ Ordinance No. 5 (SG No. 38, 2010)

²² Ordinance No. 1 (SG No. 64, 2010)

²³ Eurobarometer Flash survey on the European emergency number 112 (February 2011)

²⁴ Article 31(1) of Directive 2002/22/EC (Universal Service Directive)

²⁵ In transposition of Directive 2006/24/EC (Data Retention Directive)