

BELGIUM

INTRODUCTION

No major market development has taken place in Belgium in 2009. The growth of broadband has continued to slow down in Belgium, even though broadband penetration is still above the European average. Broadband speeds are increasing while prices have not significantly decreased. In a relatively stable mobile market, where 3G services have not yet taken off, progress is expected from the auction in 2010 of the fourth UMTS licence. Multiple-play packages are increasingly appreciated by consumers, while prices remain relatively high.

On the regulatory side, the NRA's powers have been reinforced but much work remains to be done by the newly appointed Board. The NRA was not able to conclude its preparatory work for several long awaited important market decisions, among which the broadband and mobile termination markets. While the second round of market analyses still is in its early stages, the NRA is also confronted with the annulment of old market decisions by the national Court. Some pressing competition issues of the past have been decisively settled by the competition authority.

REGULATORY ENVIRONMENT

Main regulatory developments

New bills amending the 2005 Electronic Communications Act and the 2003 NRA Statute and Judicial Recourse and Dispute Settlement Acts, were adopted by the Belgian legislature in May 2009. These amendments are intended to strengthen the regulatory authority, the Institut belge des services postaux et des telecommunications/Belgisch Instituut voor postdiensten en telecommunicatie (IBPT/BIPT), by improving the sanction mechanism, streamlining judicial procedures and consolidating the powers of the regulatory authority. In order to avoid SMP obligations being invalidated for certain periods of time, the NRA is now allowed under certain conditions to adopt decisions with retroactivity.

The second round of market analyses has been delayed, including the adoption of new decisions for the fixed telephony retail market, the wholesale transit market, the wholesale markets for physical network infrastructure access (LLU) and broadband access, and the mobile termination market. Preparatory work including consultations of market parties and the competition authority was ongoing but has not yet been followed by any notification to the Commission.

In the meantime, several appeals against market analyses of the first round were settled by the Court of Appeal in 2009, which led to the complete or partial annulment of decisions. Considering for reasons of legal certainty that this type of work took priority over the normal market reviews, the NRA immediately undertook to re-examine its findings on the basis of its new powers to adopt decisions with retroactivity. A first such decision was adopted in September 2009 for the wholesale markets for (physical) network infrastructure access (LLU) and broadband access.

The Commission's action against Belgium with regard to the universal service obligations is still pending before the European Court of Justice. In September 2009, Belgium was furthermore referred to the Court for not fulfilling its obligations under Article 31 of the

Universal Service Directive with regard to the must-carry obligations in the bilingual region of Brussels Capital.

Organisation of the NRA

After a selection procedure in which a jury of experts participated, four new members were appointed to the Board in November 2009 by royal decree. The governmental decision had been taken on the basis of the experts' final report and the proposal of the minister of Enterprise and Simplification.

Amendments to the 2003 Acts regarding the IBPT/BIPT statute entered into force in June 2009. These amendments encompass improvements to the administrative procedure for enforcement of decisions, and strengthen the NRA's powers. IBPT/BIPT is now allowed to proceed faster when imposing fines, i.e. without issuing (preliminary) formal notices, while being able to impose higher sanctions on operators: the upper limit of 12.5 million EUR has been lifted but the limit of 5% of turnover is maintained. On the other hand, the NRA is entitled, in case of annulment of a decision by a Court judgment, to retroactively restore it, in order to safeguard the objectives of the Electronic Communications Act. The power to specify models and methodologies for accounting separation obligations has also been transferred to IBPT/BIPT, which started a consultation procedure on a proposed decision.

Decision-making

While the selection procedure for the new NRA board was pending, the old board pursued its regulatory work beyond its normal term of office. The announced review of some old market decisions (retail fixed telephony markets, wholesale transit services in the fixed telephony market) as well as the new round of market analyses based on the 2007 Recommendation had yet to produce any concrete results. A few consultations on market decisions were launched during the last months of 2009.

Ensuring effective regulation within reasonable timeframes remains indeed a challenge for IBPT/BIPT. Most NRA decisions are systematically appealed through long-lasting proceedings and the Court's rulings are often based on procedural grounds. Between May and October 2009, the Court of Appeal annulled three market decisions, respectively on the wholesale markets for physical network infrastructure access (LLU) and broadband access (decision dating from January 2008), the wholesale market for voice call termination on individual mobile networks (from August 2005) and the retail and wholesale leased lines markets (from January 2007).

The outcome of the appeals has seemingly put a strain on IBPT/BIPT's normal activities, as the NRA had to replace the annulled decisions. The revised draft for the wholesale markets for physical network infrastructure access (LLU) and broadband access was again put to public consultation. The motivation to impose sub-loop unbundling and broadband access as a necessary complement to local loop unbundling was strengthened, while calculations and justifications of the competitive situation in the market were improved. After notification to the Commission, the restored decision was adopted in September 2009. As to the annulled decision for the wholesale mobile termination market, the NRA would have to re-examine the market for the period 2005-2008 in order to adopt a retroactive decision, together with the relevant market analysis for the upcoming regulatory period.

In May 2009, the competition authority imposed the largest fine ever in the history of Belgian competition law, amounting to € 66.3 million, on the mobile branch of the fixed incumbent.

The mobile operator was found to have abused its dominant position on the market for mobile telephone services in 2004 and 2005 by a strategy of margin squeeze between its corporate on-net retail tariffs and the mobile termination tariffs charged to competing operators, excluding rivals from the business market in particular. Other competition cases lodged against the incumbent (e.g. on abuse of dominance by the introduction of flat-fee tariff plans in 2005) are expected to be resolved in 2010.

MARKET AND REGULATORY DEVELOPMENTS

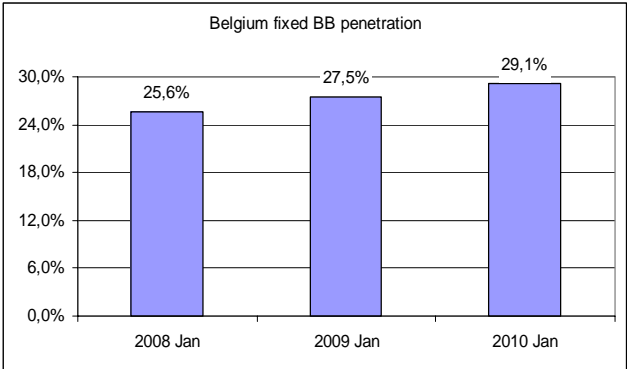
The total turnover of the Belgian telecommunications sector stagnated more or less at the level of €9.66 billion on 31 December 2008, whereas the revenues from fixed markets slightly grew to €5.63 billion, and the revenues from mobile markets fell to € 4.03 billion. The total value of investments in telecom networks grew by 4.5% to €1.28 billion. The incumbent invested €0.42 billion in its fixed infrastructure in 2008, whereas the alternative operators invested €0.46 billion, both investment levels growing by more than 6%. Mobile operators' investments remained stable at €0.4 billion.

While the incumbent is further rolling out its fibre-to-the-curb network (with a declared coverage of more than 70% of households), fibre-to-the-home remains marginal, apart from a few trials. Reflection with regard to the roll-out of NGN-NGA networks has continued throughout 2009. A study regarding strategic options to promote the development of broadband was submitted to consultation at the request of the Minister of Enterprise and Simplification. In a consultation note, the NRA itself expressed its views concerning the actions that might contribute to stimulate Fibre-to-the-Home. When the Ministry finally launched its Digital Action Plan 2010-2015 in 30 points, the attention turned in particular to the necessity of well-performing networks. Some actions like the reinforcement of regulators, and the granting of new licences for mobile services, are already under way while other legislative or administrative interventions, regarding for example the rights of way for fibre roll-out, the equipment of buildings or the use of the digital dividend, would still need to be undertaken.

While prices have remained stable over the last years, competition between the fixed incumbent and the cable operators has led to bundling of products and to improved quality and speed of Internet access.

Broadband

Market situation



With a ninth place in the European ranking of broadband penetration, Belgium is still above the European average of 24.8%. Growth was again below average (1.6 percent points between January 2009 and January 2010, compared with the EU average of almost 2 percentage points). Belgium is further falling back from fifth place in 2006, to sixth place in 2007 and eight place in 2008.

As of January 2010, almost 49% of the Belgian retail broadband lines are provided by the fixed incumbent. Its market share has considerably increased, compared to 46% in January 2009. When resale lines are taken into consideration, its market share exceeds 51%. Non-DSL lines, among which mainly cable broadband lines, account for 43% of the market (January 2010), an increase in comparison with January 2009 (41.8%). The market share of new entrants relying on DSL technology has strongly decreased (14.3% in January 2010 compared to 21.5% one year before). The number of users of dedicated data services (via modems/cards/keys only) still remains very limited in Belgium (1.7% of population).

Bitstream access remains the main form of access to the incumbent's network (40% of alternative operators' DSL access lines). Unbundled access remains modest (24% of alternative operators' DSL access lines), in spite of low prices for shared access.

While the speed of fixed broadband connections is quite high (41% of all retail lines offer 10 Mbps and more, and 52% offer speeds between 2 and 10 Mbps), prices have constantly remained at a fairly high level during the last years. These findings have been shown notably by means of the price barometer, a new tool developed by the regulator to keep an eye on price developments in several markets, and especially the broadband access market.

An important national consumer association is extremely concerned about the invariably high priced services since many years, and the failing service levels, as regards inter alia the customer services of the Internet service providers. It calls for strong political and regulatory action against the alleged lack of competition and the expensive Internet connections.

Regulatory issues

The NRA had committed in its January 2008 decisions on the markets for physical network infrastructure access (LLU) and for wholesale broadband (bitstream) access, to perform new market reviews before mid 2009. This has however not occurred.

Both market analyses on unbundling and bitstream access were annulled by the Court of Appeal in May 2009. Decisions were declared void because of insufficient substantiation, respectively with regard to some remedies and the eligibility of the market for ex-ante regulation. IBPT/BIPT replaced the decisions in September 2009, strengthening the motivation to regulate the incumbent's network and improving the calculations and justifications of the competitive situation in the market. New market reviews were announced for 2010.

While the bitstream reference offer for ADSL2+ was already made available in 2008, the reference offer for VDSL2 has not been finalised. For the latter technology, which the incumbent has been commercialising at a large scale since April 2008 (70% of households reached), only in October 2009 a qualitative decision was adopted (regarding the use of modem, profiles, service level agreements, migration rules and other operational aspects). In the meantime, consultations were held on rental fees for access and transport, including transport over Ethernet. The alternative operators point to the essential role of a complete wholesale bitstream offer for VDSL2. They urgently request cost-oriented tariffs, good service quality parameters and service level agreements, without limitations, in a context where migrations to Ethernet and All-IP, with the phasing out of leased lines, would be taking place within the near future.

Closures of local exchanges would furthermore take place as from end 2012 in some areas, where unbundling is intensively used. In this regard, the NRA stresses the obligation of

transparency with regard to network developments, as imposed in the market decisions. Following the NRA's request for information, the incumbent published a document presenting its network transformation outlook for the coming years in October 2009 and organised a workshop with the sector in November 2009.

Since many years, alternative operators have expressed strong concerns regarding the quality of the incumbent's wholesale business services. For that reason, the operational processes with regard to provision of access, on a non-discriminatory, transparent and efficient basis, were the subject of an audit in 2009. The recommendations of the NRA based on the audit are expected to be submitted to consultation of the sector by the beginning of 2010.

Mobile

Market situation

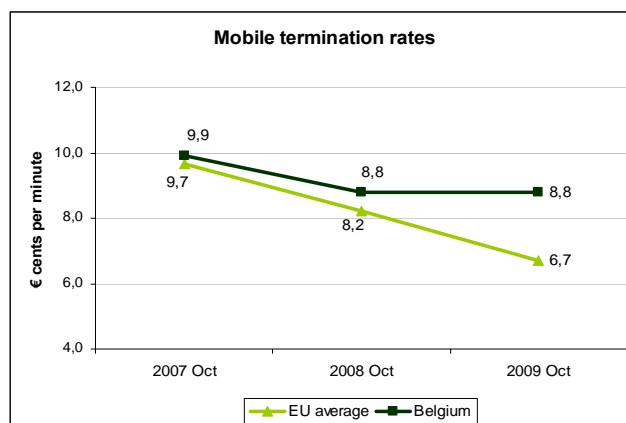
The penetration rate in terms of active subscribers stagnated at 102.9% (situation at 1 October 2009), a one percentage point increase compared to 2008 and far below the European average of 121.9%.

The market shares (SIM cards) of the second and the third operator, with regard to the first operator, have not substantially changed: respectively 31.1% and 24.6% (compared with 33.6% and 23.4% in 2008). The market share of mobile virtual network operators (SIM cards) continues growing: 13.5% in 2008 against 8.2% in 2007¹⁰⁹. The proportion of pre-paid subscribers remains high (59%).

3G services of the first and the second operator covered respectively 90% and 80% of the population by end 2008. The third operator started offering 3G services by the end of 2009.

Regulatory issues

The Belgian termination rates have not changed in comparison with 2008. Currently they are based on the decision that IBPT/BIPT adopted in April 2008 after the Court's decision to suspend the previous decision of December 2007. Following that decision, the applied glide path came to an end in July 2008. Besides their high level (8.80 €-cents) compared to the European average (6.70 €-cents), termination rates are also asymmetric between the first and the second and third operators. In spite of commitments in that regard, the NRA has not undertaken further steps to remedy this situation in 2009.



On 30 June 2009, the Appeal Court annulled IBPT/BIPT's August 2006 market decision. After retroactive restoration of the latter decision for the period 2006-2007, the NRA is expected to carry out a new market analysis taking utmost account of the new Commission

¹⁰⁹ Source: IBPT/BIPT.

Recommendation for the regulatory treatment of fixed and mobile call termination rates, which should lead to lower termination charges.

Roaming Regulation

The Belgian operators are complying with the requirements of the Roaming Regulation. One network operator and some virtual operators are offering voice roaming at lower tariffs.

Fixed

Market situation

The number of PSTN lines has again declined by 9.2% while cable and voice over broadband access lines have been growing in importance. In this market, cable telephony achieved a market share of 14.5%¹¹⁰.

Fixed voice telephony traffic in general has also been declining (by 6.7% in 2008, compared to 2.9% in 2007), and for the first time, mobile traffic volume exceeded that of fixed telephony traffic. With a percentage of 65.0%, the incumbent remains dominant as to overall traffic volumes, also in the international calls market where its market share grew from 54.0% to 59.0%. The incumbent's market share of all calls by revenues has slightly decreased but remains high (68.2% in 2008 compared to 70.6% in 2007). Traffic volume in minutes of voice-over-broadband telephony has been growing but the market share of these operators still remains limited (5.4% in 2008, compared to the EU average of 14.5%)¹¹¹.

Regulatory issues

A draft decision on the wholesale fixed call origination market was consulted with the market in October 2009. The fixed incumbent would again be designated as having SMP and would be imposed remedies. As to the wholesale market of transit services in the fixed telephone network, another consultation was held in October 2009.

The November 2008 decision for the fixed retail telephone services market (for both business and residential customers) provided for a validity of one year. Despite the Commission's comments, inviting IBPT/BIPT to undertake a new market analysis at the latest within one year following adoption of the final measures, no further steps have been undertaken in 2009.

The retail and wholesale leased lines market decisions (dating from January 2007) were annulled by the Appeal Court in October 2009. The Court agreed with the NRA that the existing obligation to co-operate with the regional media regulators, as laid down in the Belgian co-operation agreement, was not applicable to services, and thus to leased lines. It found however, referring to Article 3(4) of the Framework Directive, that the general requirement of co-operation between relevant authorities had not been respected.

¹¹⁰ Source: IBPT/BIPT data of December 2008.

¹¹¹ However, the data are underestimated as one of the cable operators does not provide a split between VoIP calls and other calls.

Broadcasting

Market situation

9.0% of the Belgian population avail themselves of bundled offers. While take-up of bundles is thus increasing, however only 5.2% buy bundled packs that include broadcasting services. Only the fixed incumbent and the cable companies actually offer triple-play packages.

Cable TV remains the most used platform, offering analogue and digital transmission (82% of households; July 2009). 12.3% of households use the incumbent's IPTV platform. Two mobile network operators have started providing a broadcast offering.

Regulatory issues

Digital switchover in the northern part of the country took place in 2008 and the Flemish government was able to free digital frequencies for the provision of a radio and television broadcasting network. In a selection procedure, in which only one applicant took part, the Flemish Regulator for the Media granted licences to the operator that was already providing transmission services to the public broadcaster (June 2009).

In the southern part of the country, digital switchover will take place in November 2011. The media regulator organised a consultation with the market with regard to the launch of digital broadcasting services and the follow-up to the strategic action plan of 2007.

Horizontal regulation

Spectrum management

In 2008, both IBPT/BIPT and the Minister had decided not to proceed to tacit renewal of the 2G licences and to let them expire in 2010 (with regard to the first and second operator). This would have allowed to temporarily extend the GSM900 and DCS1800 licences and to rearrange them in the future. The Appeal Court however annulled the decisions on different grounds, which led to the tacit renewal of these licences until 2015.

The government reiterated in 2009 its intention to allow a fourth 3G operator in the Belgian market. Following the Court decisions with regard to the renewal of the 2G licences, the government modified the applicable conditions and a new public consultation of the market was launched in December 2009. The fourth mobile licence would be technology-neutral. It is expected to be auctioned in the 2 GHz band for a period of 11 years.

The government decided furthermore that five licences should be auctioned in the 2.6 GHz band shortly after the auction of the fourth 3G licence, which would allow further developments in the use of LTE and WiMAX. Legislation for both procedures would be adopted at the same time.

A royal decree concerning licences in the 3400-3800 MHz bands was published in March 2009. Procedures for the issuing of these licences, through a beauty contest, are under preparation.

Another royal decree specifying the conditions for spectrum trading was adopted in February 2010.

Implementation of spectrum decisions

Belgium has reported that it has implemented all the Commission Decisions harmonising the use of spectrum, except Decisions 2007/344/EC on harmonised availability of information regarding spectrum use, 2008/294/EC on mobile communications onboard aircraft, 2008/671/EC on intelligent transport systems and Decision 2008/477/EC on the harmonisation of the 2500-2690 MHz frequency band for terrestrial systems capable of providing electronic communications services in the Community. For the latter decision, a new royal decree was under preparation at the time of drafting this report. The implementation of three Decisions (2005/513/EC, 2008/411/EC and 2008/477/EC) is under scrutiny.

Rights of way and facility sharing

The Belgian Constitutional Court recognised, in its ruling of January 2009, the competence of the Regions for environmental and health aspects of antennas for mobile telephony. As a consequence the three Regions have been issuing their own norms for electromagnetic fields exposure. The delayed adoption of implementation measures in the Flemish and the Brussels Region has led to a moratorium in the delivery of building permits, which has raised concerns among mobile operators as regards the possibilities of further network development.

Two mobile network operators concluded an agreement to share the acquisition and construction of new sites for masts, public utility cables and security and transmission equipment. The agreement, which could have positive effects on network coverage and compliance with environmental norms, would be open to participation from the third mobile operator.

Administrative charges

The operators continue pointing to the IBPT/BIPT's accounts, which show since many years an allegedly unjustifiable surplus. Although the NRA is obliged to provide a yearly overview of its administrative costs and of the total sum of the charges collected, it appears that surpluses on the accounts are recurrent and systematically transferred to the State treasury. As indicated in the IBPT/BIPT 2008 accounts, an amount of €7.5 million was transferred to the treasury. Operators signal that these and other expenses would not be covered by the administrative costs resulting from the regulatory work. They are furthermore required to contribute to new funds such as the fund for the management of the social tariffs database and the fund for emergency services.

THE CONSUMER INTEREST

Tariff transparency and quality of service

On 3 April 2009, IBPT/BIPT put its long awaited "tariff simulator" for consumers on the web. This tool allows comparing the tariffs for fixed telephony, mobile telephony and also broadband access and use. At a later stage, it would also become possible to compare bundled offers. Following the NRA decision of October 2009, to be implemented within one year, operators are furthermore obliged to make available for the consumer, on request and at a secured page of their website, a certain amount of information regarding the consumer's profile. In a later stage, this profile could be linked to the tariff simulator. According to a new bill proposed in December 2009, the compulsory mention on every invoice to the customer of

the possibility to consult the tariff simulator finally would promote easier switching between Internet service providers.

End-users of premium rate numbers were generally confronted with higher tariffs when the call was made from a mobile network. By royal decree of 24 March 2009, maximum tariffs for certain categories of expensive premium rate numbers have been reduced and aligned with the tariffs for fixed calls.

Universal service

In January 2008, the Commission referred Belgium to the Court of Justice, since it considered that the Belgian legislation regarding the costing and financing of the universal service obligation, in particular the social tariffs, as well as the determination of the unfair burden, infringes the Universal Service Directive. While the case is still pending before the Court, no steps have been undertaken by Belgium to address this issue.

The NRA adopted a further decision, in April 2009, with regard to the methodology for allocation, among the concerned operators, of the costs related to the management and the use of the social tariffs database (and the specific costs relating to 2006 and 2007), set up to ensure the implementation of the social component of the Belgian universal service obligations.

Number portability

Since 1 July 2009, number portability is also available for geographical numbers assigned for nomadic services of voice-over-broadband operators.

In Belgium, it takes only 2 days for porting a fixed or a mobile number. The cumulative number of ported mobile numbers has further increased to 2.8 million numbers as of 30 September 2009.

Consumer complaints

The amount of consumer complaints lodged before the independent Ombudsman has been steadily increasing over the last years (doubling in five years time). It stabilised however for the first time in 2009. A new bill, proposed by the government in December 2009, is expected to reduce the number of complaints by a certain number of measures. Operators would be made more responsible for the first-line service (customer service, help desks, etc.), insofar as they would be obliged to answer calls within a limited timeframe of a few minutes (or, if this is not possible, to contact the customer at his request). By the same bill, switching between Internet access packages within the same provider and switching from one provider to another would be made faster and easier.

A royal decree establishing an Ethical Code for Telecommunications, on which base the Ethical Commission is able to settle certain complaints on certain aspects of premium rate services, is under preparation.

European emergency number 112

Belgium's emergency call centres are migrating to a new technology, which allows a centralised handling of all calls to emergency numbers. Eleven centres would become operational, one for each province and one for the Region of Brussels Capital. Delays or

difficulties in passing 112 calls to the police services should be limited, as these centres would handle all emergency calls to the European as well as to the national emergency numbers.

Harmonised numbers for harmonised services of social value (116)

By royal decree, the number 116000 assigned in 2007 to Child Focus (hotline for reporting missing children) has been granted the status of emergency number, which means that it has to be carried free of charge by operators. The numbers 116111 and 116123 have been reserved in the numbering plan but have not yet been assigned.

Must-carry

Considering that Belgium's 2007 must-carry legislation for the bilingual region of Brussels-Capital does not conform to the Universal Service Directive, the Commission referred the Member State to the Court in September 2009.

ePrivacy

The Data Retention Directive has not yet been transposed into Belgian law. This matter is being discussed in the federal government.