

# BULGARIA

## INTRODUCTION

The mobile market continues to be the most dynamic in the sector although growth is slowing as signs of maturity appear. While the mobile penetration rate is high, consumer prices for calls within the same mobile network (on-net) still remain significantly lower than prices for calls to other networks (off-net) thus forcing consumers to hold more than one mobile subscription. Broadband penetration has increased slightly but remains the lowest in the EU despite strong platform competition. Alternative operators are continuing to face barriers to entering the DSL broadband market using the incumbent's bitstream or unbundled wholesale products. The fixed market is dominated by the incumbent and is consequently still characterised by limited competition. The number of active fixed lines has fallen despite the availability of various bundled offers from the incumbent, mainly due to fixed-to-mobile substitution and the growing usage of voice-over-IP (VoIP). Alternative operators' fixed market shares are still low and appear to be stagnating.

The level of mobile prices has also become an issue of political debate between the Government and mobile operators. In order to tackle the problem of high off-net mobile prices, the national regulatory authority (NRA), the Communications Regulation Commission (CRC, Комисия за регулиране на съобщенията) has adopted a glide path for reducing mobile termination rates (MTR). The analyses of the broadband markets, which have been delayed by the NRA in 2009, are expected to include measures such as access to the incumbent's passive infrastructure. In general, the efficiency of the regulator has improved and significant progress has been made in market analysis and the imposition of remedies. While the NRA has imposed administrative penalties on a number of operators, the enforcement of remedies and their market impact remains an issue in certain cases due to lengthy administrative procedures and related judicial reviews as well as lack of effectiveness of penalties on certain market players for non-compliance.

## REGULATORY DEVELOPMENTS

### Main regulatory developments

As a consequence of changes in the political landscape following Parliamentary elections in July 2009, the former State Agency for Information Technology and Communications was closed and its responsibilities have been transferred to the Ministry of Transport, Information Technology and Communications (MTITC). A new executive agency for electronic communications networks and information systems has taken over responsibility for electronic communications infrastructure for the purpose of national security and defence.

In November 2009 the new Bulgarian Government adopted a national broadband strategy for the period 2010-2013, which defines broadband as access to voice, data and video at a recommended minimum speed of 1 Mbps. While it lays down a framework for promotional and regulatory measures, a more detailed programme concerning regional broadband availability, the overall scope of broadband projects and private sector co-financing is still pending.

The Law on Electronic Communications (LEC) – which is the primary legislative instrument for transposing Community law in electronic communications – was substantially amended in

the period March-June 2009. In effect, new provisions were included concerning *inter alia* the process of digital switchover, the new board structure of the CRC, the powers of the NRA to impose specific obligations and amendments to reference offers, compensation conditions for provision of the universal service, penalties for illegal cable deployments, and rules for data collection for the purpose of investigating criminal offences. However, after a review in December 2009, the new Bulgarian Government adopted a draft amendment to the LEC which *inter alia* re-establishes the previous board structure of the CRC based on five members with five-year mandates.

A controversial new legal basis for the process of digital switchover was laid down by amendments of the LEC and the Radio and Television Act (RTA), as well as by the new Law on Public Broadcasting (LPB). In particular, the LEC stipulated a separation of stakeholders in the domain of digital terrestrial broadcasting, consisting of the following categories: content providers, broadcast operators (who operate multiplexes), and transmission network operators. According to the LEC, a broadcast operator may not simultaneously be a content provider and an operator of an electronic communications network for the transmission of radio and TV programmes. Furthermore, a broadcast operator may be a holder of rights of use of radio spectrum for digital terrestrial broadcasting. Accordingly, in the period May-June 2009 the CRC conducted two spectrum contests and granted rights of use of radio spectrum to two commercial broadcast operators with a national coverage requirement.

However, as a result of litigation, the Bulgarian Constitutional Court declared certain provisions on digital switchover as outlined above to be unconstitutional, in particular the separation of broadcast and transmission network operators as well as the right of a single broadcast operator to operate multiple national broadcast networks. Appeals against the CRC's decisions arising from the aforementioned spectrum contest procedures have been initiated before the Supreme Administrative Court. These may delay the timetable for transition to digital terrestrial television (DTTV) adopted in 2008. At the time of writing the report, the Court had confirmed in the first instance the CRC's decision on the first contest concerning the authorization for the first phase of transition to DTTV. Also, following a review by the new Government, amendments to the RTA including *inter alia* the abolition of the LPB were pending for adoption by the Bulgarian legislature. The Commission services are following these developments to ensure that Community principles of transparency and non-discrimination are observed.

Due to unavailability of portability services for fixed (geographic) numbers, the Commission launched an infringement procedure against Bulgaria in May 2009. Subsequently, the CRC announced the introduction of fixed number portability as of 1 July 2009.

In 2009, the CRC advanced the process of market analysis and submitted first-round notifications in compliance with the Community consultation mechanism on a number of retail and wholesale markets<sup>112</sup>, prior to subsequent adoption of regulatory decisions. In particular, the CRC adopted its decisions on analysis and remedies for the markets for fixed

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<sup>112</sup> Markets 3 to 6 of the Commission Recommendation 2003/311/CE of 11 February 2003 on Relevant Product and Service Markets within the electronic communications sector susceptible to ex-ante regulation (the 2003 Recommendation) and markets 1, 2, 3 and 7 of the Commission Recommendation 2007/879/EC of 17.12.2007 on Relevant Product and Service Markets within the electronic communications sector susceptible to ex-ante regulation (the 2007 Recommendation) have been notified to the Commission by the CRC under the Article 7 procedure.

and mobile termination in March 2009. These are effective from 1 April 2009 and introduce significant reductions on existing levels.

The analysis of the wholesale broadband markets has been delayed. One reason for this was the proposed approach to regulatory treatment of the access by alternative operators to ducts and masts in the incumbent's network. Many alternative operators complained that certain local area network (LAN) market players operate in breach of the current legal framework, which bans overhead cable installations. In order to resolve potential problems related to the provision of access to the infrastructure of the incumbent, the CRC launched a public consultation procedure on the need to amend the existing general terms and conditions of the incumbent, which are the basis for the conclusion of agreements for co-location.

Furthermore, important secondary legislation was adopted on the rules for access and interconnection, primary and secondary use of numbers, and number portability.

### **Organisation of the NRA**

The structure and organisation of the CRC board lacks legal certainty. Following the draft amendments to LEC proposed by the new Bulgarian Government in November 2009, the number of board members would be limited to five with a five-year mandate, thus re-establishing the situation before 1 July 2009. According to a previous amendment of the LEC, as of 1 July 2009 the CRC board was enlarged to nine members, all of whom are elected for a mandate of six years. Under this system the Chairman of the CRC is appointed by the Council of Ministers and six of the members are elected by the Parliament, including the Deputy Chairman. The Bulgarian President appoints two of the members. The number of administrative staff of the regulator (about 250 people) has stayed virtually unchanged.

### **Decision-making**

Increased regulatory activity and faster decision-making by the NRA lead to important regulatory decisions e.g. on termination rates and fixed number portability. The procedures for the contests for granting rights of use of spectrum for digital terrestrial broadcasting were completed in good time.

However, in certain cases the enforcement of imposed remedies has been incomplete or delayed. The majority of regulatory decisions in 2009 – such as the analyses of the fixed retail markets or the introduction of a 'beep tone' for ported mobile numbers – have been subject to court appeals. While the current Bulgarian legal system includes a two-stage appeal procedure before the Supreme Administrative Court, the LEC stipulates that major NRA decisions should not be suspended pending an appeal. In some cases, the collection of penalty fees from operators has been delayed due to lengthy court proceedings.

## **MARKET DEVELOPMENTS**

The lack of effective competition in the fixed markets is evident from the size of the incumbent's market share in all fixed retail markets. The incumbent merged its fixed and mobile arm in September 2009. Currently all Bulgarian mobile operators also offer fixed-line services.

The total turnover in the electronic communications sector increased by 5.7% to € 1 813 million at the end of 2008 (compared to € 1 715 million at the end of 2007), mainly due to increased revenues in the mobile and broadband sectors. However, the rate of growth has

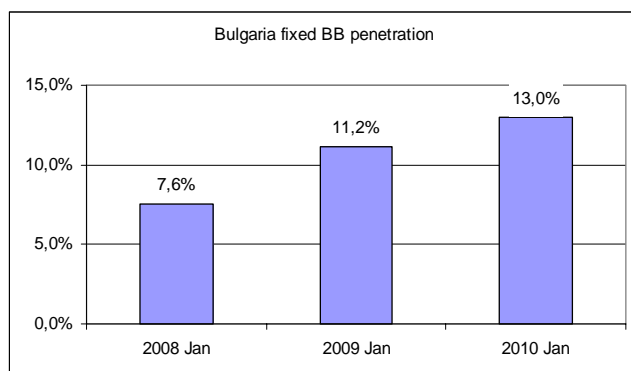
halved compared to the previous year, mainly as a consequence of the economic downturn. While revenues from mobile services increased by 8.8%, the fixed sector has seen its revenues virtually unchanged. Broadband revenues grew by 30%.

The total value of investment continued to decline in 2008 and reached € 405 million (down by 24.8% compared to 2007), which accounted for 1.2 % of the gross domestic product.

Bundled products have not gained a significant market share. The number of double-play offers has increased, whereas the number of triple-play offers showed a downward trend.

## Broadband

### Market situation



The Bulgarian broadband market remains rather fragmented with more than 550 market players. The broadband penetration rate reached 13% in January 2010 (compared to 11.2% in January 2009) which is far below the EU-27 average (24.8% in January 2010) and still the lowest in the EU. The total number of retail broadband lines increased to 986 434 in January 2010, compared to 853 089 (or up by 15.6%) in January 2009,

due to growth both, in the incumbent's DSL customer base and in the number of non-DSL broadband lines.

The broadband market comprises different platforms such as LAN, cable, satellite and DSL. The share of DSL (being exclusively incumbent's lines) increased to 31.4% of all fixed broadband lines in January 2010, compared to 30% in January 2009. The remaining 68.6% of broadband lines belong to alternative operators, dominated by LAN (approximately 54%). The large share of LAN connections has a positive impact on the maximum transmission speeds – 60.6% of the broadband connections operate at download speeds exceeding 10 Mbps and another 35% of the broadband connections have speeds above 2 Mbps. The market share of fibre-based operators in terms of number of subscribers was 1.3% as of January 2010 and that of WiMax operators remained marginal (below 1%). Mobile broadband continued to develop and an increasing number of subscribers were using 3G data services in 2009.

Despite the growth in the number of DSL customers, there is no effective competition in the DSL market since only two alternative operators provide a small number of DSL connections based on bitstream access. The incumbent had 309 554 DSL lines and even increased its share to 99.9% of the DSL broadband market in January 2010 (up from 96.7% in January 2009). It has reduced the prices of its retail DSL products (at maximum speeds of 6 Mbps or 12 Mbps) by more than 20% compared to 2008. Furthermore, the incumbent launched a naked bitstream product in June 2009, which has not been taken up by alternative operators although contracts have been signed. The lack of fully unbundled lines and the scarce availability of shared lines in the country suggest that a rapid completion of the first-round analysis of the broadband markets by the NRA is critical.

In general, the cable sector continued to be fragmented, despite the consolidation of the two biggest cable operators (Евроком and Кейбълтел) – whose combined market share is

estimated to exceed 25%. Competitors are concerned about the impact of the merger on the state of competition.

### *Regulatory issues*

Following the conclusion of several bitstream agreements in May 2008, (in the absence of a completed market analysis) alternative operators have complained about margin squeeze and unfavourable conditions of service delivery. A similar situation appears to exist on the market for local-loop unbundling (LLU), where a few agreements exist. In November 2009, the incumbent published a reference implementation offer for wholesale unbundled access for public consultation.

There are concerns regarding the development of a level playing field in the broadband sector. Both, the incumbent and certain alternative operators complain about insufficient or ineffective measures against broadband LAN operators, who allegedly distort competition by not paying taxes or licence fees or by keeping illegal cable installations, which enables them to offer disproportionately low-price products of average quality. The CRC has intensified efforts in this respect and states that it has carried out more than 450 regular inspections in 2009 and has imposed various sanctions at a total value of € 276 000 on operators for breaches of the LEC, mainly for lack of prior notification, overdue payment or because of illegal cable deployment.

In particular, according to some market players, a number of fixed broadband operators have deployed overhead cables in urban areas or illegally accessed the incumbent's ducts. In this regard, the LEC stipulates that cable networks deployed within urban areas with a population exceeding 10 000 inhabitants should be placed under ground. The LEC also includes provision for serious penalties for aerial cable installations. Since large fines, although legal, may endanger the economic position of small alternative operators, which have largely contributed to accelerating broadband penetration, it is essential that underground access to existing infrastructure is possible without administrative or pricing barriers. In this regard, the current terms of the incumbent for granting alternative operators access to its ducts network (as approved by the CRC in 2007 and judicially confirmed in 2009) are allegedly in contrast to previous agreements by specifying higher charges on a per-cable basis.

Effective regulatory measures regarding the access to the incumbent's passive infrastructure are essential. These are expected to be introduced following the analysis of the wholesale broadband markets, in accordance with the EU telecom rules, which should be notified to the Commission in 2010. As an intermediate solution, the CRC has initiated consultations with the incumbent on improving its general terms and conditions, in order to create a better competitive environment.

## **Mobile**

### *Market situation*

While the mobile sector accounts for 62.8% of the total revenues of the electronic communications market, it has begun to show signs of saturation. The mobile penetration rate increased slightly and is still among the highest in the EU – 138.9% in October 2009 (up from 137.4% in October 2008), compared to the EU average of 121.9 %. The proportion of post-paid mobile users was 55.5%. The average revenue per user remained virtually the same at the level of € 112 in 2008.

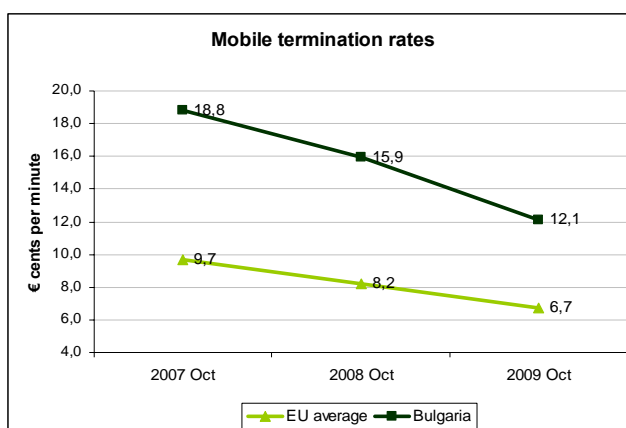
The market share of the major mobile operator in terms of number of subscribers has remained almost unchanged since last year at 49.4% in October 2009 while the third operator slightly increased its market share from 12.3% in October 2008 to 13.1% in October 2009. The second operator's market share declined slightly from 38.3% to 37.5% in the same period. As reported previously, there are no mobile virtual network operators (MVNOs) or national roaming between the mobile operators.

All three mobile operators offer 2G and 3G mobile services and the investment in UMTS networks has grown. UMTS population coverage reached 61.4%, 75.7% and 43% for the first, second and third operator, respectively, at the end of 2008. Mobile broadband penetration rate, based on the usage of data cards, modems or keys, was 1% in July 2009 (EU average of 4.2 %).

As a result of high mobile termination rates and for reasons of business strategy, mobile operators' prices for off-net calls are much higher than on-net prices. Therefore, in order to benefit from low mobile rates per minute (on average € 0.05 in 2008) consumers keep more than one mobile subscription in parallel. This development partly explains the slow growth rate of the smallest mobile operator. All mobile operators offer bundles, including fixed and mobile services.

### Regulatory issues

The CRC adopted its final decisions on the market analysis and remedies on the mobile termination markets in March 2009. The proposed measures include *inter alia* a glide path for MTR which sets a level of 10.5 €-cents for peak traffic as of January 2010. In addition, symmetry was introduced between the fixed-to-mobile and mobile-to-mobile termination rates. As a result, price reductions at the last stage of the regulatory period will vary between 42% and 56% lower compared to the levels before adopting the measures. As of July 2010 the MTR will drop to 6.56 €-cents per minute for peak traffic and to 5.62 €-cents per minute for off-peak traffic. The CRC reported plans to develop a methodology for a cost-orientated calculation of termination rates according to the Commission Recommendation on regulatory treatment of fixed and mobile termination rates of 2009.



### Roaming Regulation

All mobile operators offer the Eurotariff for voice calls and SMS as required by the amended Roaming Regulation of 2009 at levels close to the specified price cap. Incoming calls are billed per second and outgoing calls are billed per second after an initial period of 30 seconds, both for pre-paid and post-paid customers. The two bigger mobile operators offer roaming packages with special tariffs.

Bulgaria adopted the necessary provisions allowing the imposition of fines on operators, who do not comply with the obligations laid down in the first Roaming Regulation of 2007 by an amendment to the LEC just in March 2009. The respective requirements of the amended

Roaming Regulation of 2009 were included in the draft amendments of the LEC, which are expected to be enacted in the first quarter of 2010.

## **Fixed**

### *Market situation*

There has been no significant improvement in the level of competition in the fixed sector during the year. The incumbent had a market share of 94.0% in terms of direct access subscribers in July 2009 (compared to 96.0% one year before) and of 93.6% in terms of call revenues in December 2008. Only the market of fixed international telephone services tends to offer more choice. Fixed-to-mobile substitution – although growing – is still limited since the majority of mobile subscribers tend to keep their fixed-line connectivity in order to benefit from add-on services like internet services in bundle offers. At the end of 2008, 18% of the fixed lines were still analogue.

In general, alternative operators experience high entry barriers in the market as a result of structural and regulatory factors. The lack of competition is exacerbated by difficulties in the conclusion of interconnection agreements with the incumbent. As a result of an agreement with a large association of alternative operators, the incumbent is expected to improve the conditions for interconnection in its reference offer. The number of active alternative operators with proprietary infrastructure offering voice services was 14 in July 2009. Two alternative operators offer voice service only on the basis of carrier pre-selection (CPS) or carrier selection (CS) although the proportion of incumbent's subscribers using CS is still below 1%.

In November 2009, a major alternative telecom operator (Спектър нет) acquired another competitor (Орбител), which resulted in one of the largest fixed alternative operators, in terms of number of direct access lines.

The take-up of double-play services (cable TV and internet or cable TV and voice) and triple-play services offered by cable providers continued to grow. 28 operators offered double-play in 2008 (20 in 2007) and just 3 cable operators offered triple-play in 2008 (down from 6 in 2007), while the number of triple-play cable subscribers has grown.

By July 2009, 6.0% of the fixed subscribers were using alternative operators for national calls, and 6.3% – for international calls.

The market for leased lines – with 15 active providers – declined by 33 % in 2008 compared to one year before, mainly because fixed operators continued to invest in own infrastructure.

### *Regulatory issues*

In June 2009, the CRC adopted its analysis and remedies on the retail markets for national and international telephone services and for access to the public telephone network. Regulatory measures already imposed on the incumbent were extended including the obligations of carrier selection, transparency, non-discrimination, price control and cost-orientation. In addition, a new obligation to provide wholesale line rental was imposed.

Although secondary legislation on carrier selection and pre-selection has been in place since November 2008, there are still problems with its functionality. Also, alternative operators complain that, while CS and CPS for long-distance and international destinations are

operational, the introduction of these services for local calls and calls to mobile networks has been delayed.

The CRC adopted in March 2009 new measures on the fixed termination markets, including local, metro, single and double transit segments. These contain a glide path of reductions and symmetry between mobile-to-fixed and fixed-to-fixed termination rates. However, the CRC imposed a price cap for the alternative operators' double-transit termination rates at a level equal to the termination rate charged by the incumbent. This measure has effectuated a temporary increase of termination rates between alternative operators since 1 April 2009.

In January 2009, the CRC adopted secondary legislation on the rules for access and interconnection, which stipulates *inter alia* that an undertaking having a specific obligation for unbundled access must provide services for backhaul transport, co-location and sub-loop access. Subsequently, the incumbent modified its initial reference implementation offer for wholesale unbundled access. The analysis of the wholesale market for segments of leased lines is still ongoing and the final decision on the analysis of wholesale market for transit services is still pending.

## **Broadcasting**

### *Market situation*

Cable operators and satellite operators provided TV services to 1.16 million and 315 000 households, respectively, in July 2009<sup>113</sup> creating strong competition to terrestrial TV broadcasting. 90 operators notified to the CRC their intention to provide IPTV service.

Against the background of controversy around the aforementioned legislation on digital switchover, the acquisition of the incumbent's national terrestrial analogue broadcasting network by a foreign investor was suspended in June 2009 and was resumed later only after the new Bulgarian Government declared its intention to annul the recently adopted LPB.

The deployment of DTTV was due to start in 2009 however this process appears to be delayed due to legal proceedings regarding the authorisations of spectrum use for commercial broadcast operators.

### *Regulatory issues*

The legal provisions on digital switchover in Bulgaria are based on a schedule set out in the plan for the deployment of DTTV, which has been approved by the Council of Ministers and last modified in December 2009. This plan foresees a two-phase introduction of DTTV broadcasting services for commercial and public broadcast operators – up to 2012 (phase one) and up to 2015 (phase two). The switch-off of analogue TV is scheduled for December 2012.

At the end of 2009, the Government announced plans to repeal the recently adopted LPB and to modify the Radio and Television Act in order to set out a new approach for the digital switchover of public radio and TV programmes, which should pave the way for public broadcasters to also utilise the existing network infrastructure. The CRC will conduct a contest procedure in 2010 for granting spectrum rights for broadcasting programs of the Bulgarian national television and radio.

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<sup>113</sup> Data on analogue and digital terrestrial TV are not available.



The CRC granted in June 2009 a spectrum authorisation to one broadcast operator for the construction of two phase-one commercial broadcast networks for DTTV with national coverage by 2012. Another broadcast operator received a spectrum authorisation for the construction of three phase-two commercial broadcast networks for DTTV with national coverage by 2015. Both authorisations were granted for a 15 year duration<sup>114</sup>.

In the period until 2015, portions of the broadcasting spectrum in the 470-862 MHz frequency range (commonly referred to as the digital dividend), which are currently used for security and defence purposes, have to be released. In particular, the frequency band 790-862 MHz, which is currently allocated for national security and defence purposes with the exception of channel 64 (814-822 MHz), should be released for civil needs in the future. Bulgaria plans to follow the common EU approach for utilising the digital dividend.

In addition, the CRC granted in June 2009 101 rights of use of frequencies for analogue terrestrial TV broadcasting to five regional broadcasters. According to the terms laid down in the LEC, these rights may be abrogated as soon as these frequencies are needed for digital switchover.

Spectrum for the operation of the ground components for pan-European mobile satellite services (MSS) has already been allocated in the national frequency plan according to the requirements of European Union law. The CRC has not yet issued frequency authorisations for MSS since both designated operators are still not in a position to provide coverage over the territory of Bulgaria.

## **Horizontal regulation**

### *Spectrum management*

The primary legal act for frequency management in Bulgaria is the National Radio Frequency Plan (Национален план за разпределение на радиочестотния спектър), which is adopted by the Government and was last modified in 2006. In addition, the CRC maintains a list of radio equipment using harmonised frequency bands within the EU and end-user electronic communications devices. This list reflects *inter alia* the status of implementation of Commission Decisions on harmonised spectrum use.

### *Implementation of spectrum decisions*

During 2009, the Bulgarian authorities have notified the implementation of several Commission Decisions on harmonised use of radio spectrum in the EU, namely Decision 2009/381/EC (amending Decision 2006/771/EC concerning the use of short-range devices), Decision 2007/131/EC (concerning equipment using ultra-wideband technology) and Decision 2009/343/EC (amending Decision 2007/131/EC). In addition, the national implementation of Decisions 2008/432/EC (amending Decision 2006/771/EC concerning short-range devices), 2008/671/EC (concerning intelligent transport systems) and 2007/344/EC (on the availability of information regarding spectrum use) has also been notified to the Commission.

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<sup>114</sup> After contests based on documentation only, no sessions including the applicants' attendance

On the other hand, Bulgaria has failed to implement the Commission Decision 2005/928/EC on the harmonisation of parts of the 169 MHz frequency band. An infringement procedure was launched by the Commission in January 2010.

The Bulgarian authorities requested a prolongation of their existing derogation from Decision 2008/477/EC on the harmonisation of the 2500-2690 MHz frequency band by one year until 31 December 2011 for the whole territory of Bulgaria, on the grounds of budgetary constraints.

#### *Rights of way and facility sharing*

An ordinance on servitudes was adopted in July 2009 by the Government as an act of secondary legislation laying down rules on the rights of way for electronic communications networks infrastructure. Secondary legislation on the construction of mobile networks is still in preparation.

Amendments of the LEC of 2009 strengthened the powers of the CRC related to the control over illegal cable deployments (e.g. in the air) in urban areas. The LEC entitles the CRC to impose sizeable fines of up to € 25 600 for illegal aerial cable deployment.

#### *Administrative charges*

As a result of new provisions in the LEC the scope of administrative sanctions has been updated and amended, e.g. with respect to illegal cable installations, misleading calls to emergency numbers, misuse of personal data or roaming.

As also indicated in the previous report, the CRC does not include in its annual budgetary report or the following year's draft budget a comparison on how the levels of collected administrative charges proportionately reflect underlying administrative costs in order to provide, in accordance with the provisions of European Union law<sup>115</sup>, a reference for verification whether adjustments may be necessary. The Commission services are looking into the matter.

## **THE CONSUMER INTEREST**

### **Tariff transparency and quality of service**

According to a complaint received by the Commission regarding the transition from analogue to digital telephone lines, the incumbent appears to provide in certain cases a solution for digital connectivity, which offers a lower quality and a more limited scope of service than the previous analogue fixed line. The Commission services are looking into the matter.

### **Universal service**

A universal service provider has not yet been designated as required by the EU regulatory framework. Following its decisions for the retail markets, the CRC started in September 2009 a designation procedure. In order to decide on the type of procedure, the CRC began by first assessing potential interest by undertakings to provide universal service. At present, the

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<sup>115</sup> Cf. Article 12(2) of the Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive)

incumbent is obliged to provide universal service by virtue of the LEC, which also includes the obligation to offer special price packages for socially disadvantaged or disabled people.

An amendment to the LEC in March 2009 laid down a new pre-condition for compensating a universal service provider if its net cost represents an unfair burden. According to the current provision, only an undertaking which has no significant market power, independently or jointly with other undertaking(s), as defined by a decision of the CRC, is entitled to request compensation. As this provision appears to be contrary to applicable European Union law, the Commission services are looking into the matter. The new Bulgarian Government has proposed to repeal this condition in its draft amendments of the LEC.

A comprehensive telephone directory which, by virtue of the LEC must be provided by the incumbent became available in September 2009 after the conclusion of an agreement between the active telecommunication operators in July 2009 regarding the submission of subscriber information for the provision of a comprehensive telephone directory and directory enquiry service. The electronic format of the comprehensive directory had been approved by CRC in December 2008. The incumbent is obliged to provide directory enquiry services to all consumers and on all numbers included in the directory.

Despite the steps taken by the CRC to ensure the provision of these services, there are still difficulties in informing the subscribers and requesting their consent to be included in a comprehensive directory. Furthermore, competing providers of directory enquiry services without their own electronic communications network seem to experience high entry barriers on the market for obtaining dedicated 118 numbers, to which they are entitled only on a secondary basis<sup>116</sup>. The latter restriction is laid down in a governmental ordinance on the rules for granting such numbers by virtue of which a directory enquiry services provider may obtain a 118 number only from a network operator authorised to provide public telephone services or public electronic communications services accessible from numbers of the national numbering plan. The Commission services are looking into the matter.

### **Users' access to the Internet and network management**

While in Bulgaria the issue of net freedom has not been broadly discussed, according to information provided by the NRA, only the biggest mobile operator does not allow customers to perform VoIP calls.

### **Number portability**

The Commission has started an infringement procedure against Bulgaria for not implementing fixed (geographic) number portability (FNP). Shortly after launching the infringement, the CRC announced the conclusion of a procedure on portability between the operators and the official start of the service as of 1 July 2009. By October 2009, 1 795 fixed numbers have been ported<sup>117</sup>. However, the portability of geographic numbers for the incumbent's analogue telephone lines is still not feasible for technical reasons. According to the CRC, the remaining fixed analogue connections will have been digitised by the end of 2010. The Commission is looking into the matter.

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<sup>116</sup> Providers without their own network may acquire a 118 number only from network operators

<sup>117</sup> According to the CRC, by 31 December 2009, 9551 fixed numbers have been ported.

Some alternative fixed telecom operators have appealed the CRC's decision regarding the wholesale price (€ 12.8) which the receiving operator has to pay to the donating operator for each ported number. They claim this charge is disproportionately high and harmful to the business of smaller players, in particular for cases when a group of numbers has to be ported at once.

Mobile number portability (MNP) has been available in Bulgaria since April 2008. Up to October 2009, 49 239 mobile numbers have been ported, which represents 0.5% of the total number of mobile subscribers.<sup>118</sup> The wholesale price of this service is regulated at € 11.2 while end customers are charged € 2.55, according to an agreement between all mobile operators.

Both FNP and MNP are based on a two-stop shop procedure, which obliges users to go first to their own operator and then to the receiving operator. This appears to cause difficulties and delays for consumers and in some cases even out-of-service periods. This is reflected in the long periods to transfer either a geographic number (15 days, compared to the EU average of 6.5 days) or a mobile number (10 days, compared to the EU average of 4.1 days) to a new operator.

In this regard, the CRC announced its intention to introduce a one-stop-shop procedure for all types of number portability at the beginning of 2010. In October 2009, the CRC started a public consultation on new functional specifications for all types of number portability, with the aim to simplify the procedure, to reduce the periods for porting a number from 10 to 7 days for a mobile number, from 15 to 7 for a fixed number, and from 25 to 10 days for a group of fixed numbers, and to establish a unified beep tone in order to warn customers who make calls to ported numbers.

Furthermore, in the light of the increasing amount of ported mobile numbers, yet high off-net prices for mobile calls, the CRC already took the initiative to introduce a short beep tone as of August 2009 in order to inform mobile subscribers when calling to ported numbers. This decision was appealed by one mobile operator, however the Supreme Administrative Court confirmed its preliminary execution so that the introduction of the beep tone in the networks of all mobile operators was functional according to the CRC as of November 2009.

Although functional specifications for non-geographic numbers were adopted by the CRC in January 2009, no related agreement could be concluded by market players, which necessitated a binding decision by the NRA in October 2009. At the time of writing the report, the enforcement of this decision was subject to judicial review before the Supreme Administrative Court.

### **Consumer complaints**

The installation of mobile antennae on the roofs of residential buildings has been an issue of public concern and complaints. It has also become the subject of litigation between citizens or municipal authorities and mobile operators. Permissions for mobile antennae deployments are issued by the Ministry of Regional Development and Public Works. Control on the levels of electromagnetic radiation is within the competence of the Ministry of Healthcare. At the time of writing the report, a draft ordinance on the maximum admissible levels of electromagnetic fields in the environment was planned for adoption. In addition, a working group has been set

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<sup>118</sup> According to the CRC, by 31 December 2009, 55 830 mobile numbers have been ported.

up by the Bulgarian Government, which has the task to propose modifications to the existing legislation concerning the limitation and effective control of the levels of electromagnetic radiation.

Other major issues giving rise to consumer complaints lodged with the CRC included mobile and fixed number portability, claims for excessive billing or the deployment of overhead cables. There have been about 850 consumer complaints sent to the NRA in the period October 2008 - December 2009. In addition, the European Commission has received complaints about the rules on the provision of competitive directory enquiry services, the transparency of mobile prices, and the digital conversion of the incumbent's analogue fixed-line connections.

According to the LEC, the CRC is responsible for dealing with end-user complaints when there is a potential breach of the provisions of the LEC regarding the rights of consumers in their relations with undertakings which provide electronic communications services. The CRC is empowered to issue a view on disputes between telecom operators and may try to solve them by means of co-operation or binding instructions. The NRA has reported only one request by an operator for binding instructions during 2009.

### **European emergency number 112**

The single European emergency call number 112 is operational in the whole of the national territory, for both fixed and mobile users. There are six 112 territorial centres which handle the calls and refer the caller location information to the appropriate service using the "push" method. A law on the national system for implementing the European emergency number was adopted in November 2008. It also includes considerable fines for abusing calls to 112.

A majority of respondents to the Eurobarometer survey<sup>119</sup> in Bulgaria (52%) reported having received information about 112 as the European emergency number in the past 12 months. Most of them (94%) had received the information via a media outlet, by watching television, listening to the radio, reading newspapers or surfing the Internet. Accordingly, 46% of Bulgarians knew that they can reach emergency services from anywhere in the EU by calling the European emergency number 112, compared to 25% at EU average.

According to a new provision of the LEC, the accuracy of the caller location in mobile networks is required to be less than 100 metres in towns and villages and below one kilometre in other areas.

Another new provision of the LEC refers to the imposition of serious fines (up to € 10 200) for making hoax calls and sending misleading signals over public electronic communications networks about emergency cases, in particular for all case other than calls to 112.

### **Harmonised numbers for harmonised services of social value (116)**

The harmonised number 116111 for child helpline has been assigned to the State Agency for Child Protection.

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<sup>119</sup> Eurobarometer Flash survey on the European emergency number 112 (February 2010)

## **Must-carry**

Must-carry rules apply to analogue broadcast public TV programs. The draft amendments to the RTA at the time of writing the report extend the must-carry obligations also to digitally broadcast public TV programs.

## **E-privacy**

In December 2008, the Supreme Administrative Court annulled certain provisions of the Ordinance on data retention (adopted in January 2008) concerning the rules for access to retained data by the relevant authorities.

Furthermore, in March 2009 amendments to the LEC – which were notified to the Commission as the relevant national law also for the transposition of the Data Retention Directive – were enacted concerning a number of issues including the retention for a period of 12 months of data; the categories of relevant data for the purpose of detecting and investigating serious crimes; the authorities having the right to access retained data, and the conditions for access to such data. At the time of writing the report, a draft amendment of the LEC was pending, which includes *inter alia* provisions transposing the Data Retention Directive with regard to the national supervisory authority – the Personal Data Protection Commission.

The registration of data, required for the identification of users of pre-paid services is regulated in Bulgaria. In accordance with the LEC, undertakings providing electronic communications networks and/or services are obliged as of 1 January 2010 to collect data, necessary for the identification of pre-paid users of public telephone services. In this regard, the CRC adopted secondary legislation on the rules for collecting the necessary data for the identification of users of pre-paid fixed or mobile services (in force since September 2009). It also specifies the obligation on operators to register existing pre-paid customers before 1 January 2010.

The competence for combating online malpractice is shared among different national authorities. In this regard, revision of the legislative framework and better coordination efforts appear to be necessary in order to improve the efficiency of action against spam, spyware and malicious software and to widen the focus of issues to be addressed beyond criminal cases only.