

# POLAND

## INTRODUCTION

Strong competition continued in the mobile market, while the incumbent remained dominant in fixed telephony. In the broadband market the incumbent's market share declined substantially as a result of increased competition. At the same time, broadband penetration, amongst the lowest in the EU, grew, though at a slower pace in 2009.

Throughout the year, the NRA was actively trying to find innovative approaches to solve persisting problems. The central regulatory development in 2009 was the agreement signed between the incumbent and the regulator aimed at guaranteeing non-discriminatory treatment of alternative operators in the provision of wholesale access services. Poland finalised the first round of market analyses in 2009. Following the closure of four infringement proceedings in 2009, two infringement proceedings were still pending.

## REGULATORY ENVIRONMENT

### Main regulatory developments

A large review of the Telecommunications Act of 2004, aimed at bringing the Act into line with the regulatory framework and transposing the Data Retention Directive, was published in June 2009, allowing the Commission to close three infringements proceedings concerning the independence of the NRA, consumer contracts and the obligation to negotiate interconnection, in the same month.

The Commission had also opened an infringement proceeding in 2006 since under Polish law consumers, such as pre-paid users who do not have a written contract, could be deprived of many rights under the regulatory framework. In January 2009, the European Court of Justice ruled that Poland had incorrectly transposed the definition of "subscriber" into national law. A further substantial draft amendment of the Telecommunications Act which, among others, amended the definition of "subscriber" was submitted for Government's approval in November.

In November 2009, the Council of Ministers approved a draft Act on the Development of Telecommunications Networks and Services, which is currently being discussed in parliament. The main aim behind the act is ensuring access to electronic communications and in particular broadband Internet in order to combat digital exclusion. The law also provides for a more open access to land and buildings for the purposes of investment and introduces an obligation to provide information on telecommunications infrastructure to local authorities and the Regulator. One of the main aims of the law is to enable local authorities to invest in infrastructure, and, exceptionally, where in a competitive market it would not be commercially viable, to provide services. It should also facilitate the use of ample EU funds for network investments.

One of this year's key regulatory developments was an agreement signed between the incumbent and the NRA, the President of UKE (Urząd Komunikacji Elektronicznej) in October. As regulatory obligations imposed under the first review of the markets were implemented with delay or to an insufficient degree, the NRA had initially considered

functional separation of the incumbent. However, following discussions with the incumbent on an alternative to functional separation which proposed voluntary restructuring and actions to allow alternative operators access on non-discriminatory terms, the President of UKE opted for an unprecedented regulatory agreement as a quicker and less costly solution. While concrete results of the agreement in terms of improved access conditions remain to be seen, the market welcomed the new spirit of co-operation which was previously lacking. In November 2009, a draft law which would allow the President of UKE to accept voluntary commitments proposed by operators was submitted to parliament.

### **Organisation of the NRA**

The responsibility for regulation of the Polish market continues to be shared between the President of UKE who is charged with most of the responsibilities of the NRA under the regulatory framework and the Ministry of Infrastructure responsible for legal acts, including a number of ordinances.

The cooperation between the two bodies has improved considerably over the last year after a new Minister responsible for telecommunications was appointed in February, who had previously worked for the Regulator. The NRA, which is fully state funded, continued to experience some difficulties in attracting suitably qualified staff due to limited resources.

Under the amendment to the Telecommunications Act which entered into force in July 2009, the responsibility for market definition was transferred to the President of UKE, giving the NRA full control over the market analysis process. The amendment also reintroduced a fixed five-year term of office for the NRA President, together with a list of conditions for dismissal. This allowed the infringement proceeding regarding the independence of the NRA to be closed in June 2009. Previously the President of the Council of Ministers had unlimited discretion to dismiss the head of the NRA at any time, and without the need to indicate reasons.

The situation remained generally unchanged with regard to appeal proceedings. The Competition and Consumer Protection Court as well as the Provincial Administrative Court were responsible for the electronic communications cases, and an average appeal proceeding lasted two years. At the same time the very large number of appealed decisions (over 500 proceedings with the NRA) was reduced substantially as a result of the incumbent's commitment to withdraw pending cases, as part of the agreement signed with the NRA.

### **Decision-making**

2009 witnessed much regulatory activity both by the President of UKE and the Ministry of Infrastructure. The Regulator finalised the first round of market analyses with the re-notification of the remaining part of the market for wholesale trunk segments of leased lines which was registered in September and allowed the Commission to close the pending infringement proceeding concerning lack of market reviews in October 2009. The second round of market analyses continued throughout 2009 as the NRA was planning to re-analyse all of the 18 markets of the previous Commission Recommendation on relevant markets.

While the NRA continued to concentrate on improving the competitive conditions in the market by facilitating new entrant access, more weight was given in 2009 to fighting digital exclusion and in particular increasing access to broadband Internet. The NRA held a bid for mobile broadband, where 20% of the capacity would be used for the provision of free mobile

Internet, it also published maps of 'white spaces' where broadband was not accessible, and continued to offer local wireless broadband spectrum for tender. This was complemented by legislative proposals aimed at facilitating investment in broadband infrastructure.

The President of UKE continued to have frequent recourse to dispute resolution as a regulatory tool, and wholesale rates continued to be set on the basis of methodology other than cost-orientation. This decision-making practice was formalised with the amendment of the Telecommunications Act which empowered the President of UKE to determine the level of wholesale rates by means of individual administrative decisions under the dispute settlement provisions. Moreover, the new provisions appeared to allow the NRA to deviate from imposed cost-orientation remedies and to set rates on the basis of other methodology. The recourse to dispute resolution as a regulatory tool where decisions can be issued at different points in time may lead to discrimination and a degree of regulatory uncertainty for operators not covered by the decisions. Moreover, such decisions would need to be notified according to the Article 7 mechanism. The Commission is looking into the matter.

## **MARKET AND REGULATORY DEVELOPMENTS**

Revenues in the telecommunication sector in 2008 totalled €15.6 billion. The revenue in the fixed markets decreased by 13.5% while the revenue generated by the mobile market increased very slightly by 0.9%. The total value of tangible investments in the electronic communications sector stood at €2.5 billion in December 2008. Most investments were still made by mobile operators as the fixed incumbent reduced investments by some 36% over the reporting period. Operators pointed to regulatory policy and the economic downturn as reasons for the decrease.

While 2009 again saw no substantial investment in next generation networks (NGN), the President of UKE was working on defining a regulatory approach for next generation access (NGA). In December 2009, a consultation was launched on a model of measuring and estimating investment and maintenance costs for NGA to resolve a number of technical and economic problems with regard to the roll-out of NGN. The model, based on the LRIC methodology, meant to be a starting point for a discussion on the functioning of NGA in Poland. At the same time cable operators were investing strongly to upgrade to the DOCSIS 3 technology and mobile operators actively improved coverage and the capacity of their networks. With regard to investments in the fixed network, under the agreement with the Regulator, the incumbent committed to investing in 1.2 million broadband lines, (including 1 million lines allowing for speeds of at least 6 Mbps) at an estimated cost of PLN 3 billion (€ 0.7 billion). The NRA was also involved in initial talks on further joint investments in NGN by the incumbent and alternative operators (including mobile and cable) and on how to make use of the availability of EU funds.

Competition continued to be keen in the mobile market with the entry of further players and a consolidation of the market share of the fourth entrant. While the incumbent was still dominant in the fixed calls market, fixed to mobile voice substitution continued to be very pronounced. In broadband, the incumbent's market share decreased substantially and mobile broadband (also offered as part of bundles) was dynamic. As of July 2009, 3.3% of the population subscribed to bundled offers.

As regulatory obligations imposed under the first review of the markets were generally not implemented successfully by the incumbent, or did not bring about the desired effects, the

NRA had launched proceedings aimed at functional separation of the incumbent in November 2008. In parallel, the incumbent had submitted its proposal for an alternative to full separation ("Charter of Equivalence"), in which it proposed voluntary restructuring in order to provide alternative operators with access on non-discriminatory terms. The charter was later amended to take account of the results of a consultation and the NRA's suggestions. In the summer of 2009, discussions took place (initially between operator chambers and the NRA and later between the NRA and the incumbent) which led to the signing of a regulatory agreement between the incumbent and the President of UKE in October 2009.

The agreement, which was not formalised by an administrative decision, was seen by the NRA and market players as a sort of binding roadmap, setting out new rules for the functioning of the electronic communications market in Poland. Its overall aim was the improvement of cooperation with alternative operators. In particular, the incumbent undertook to fully implement existing regulatory obligations, and committed to take a series of actions (such as restructuring, introduction of information IT systems, key performance indicators and audits as well as separate motivational systems for employees of the wholesale units) to ensure non-discriminatory access. To limit disputes, bilateral agreements were also being signed with alternative operators (an agreement with the largest fixed alternative operator was signed in December) and the incumbent undertook to sign contracts on the basis of reference offers and to withdraw a large number of pending Court proceedings. In exchange for a commitment to invest in some 1.2 million broadband lines, the President of UKE agreed to keep regulated wholesale rates stable for the next three years.

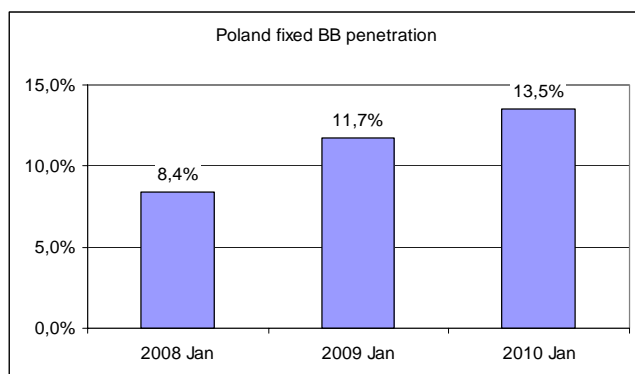
Alternative operators, which were originally concerned that a voluntary commitment would not give the same guarantees as functional separation, were positive about the agreement, while it was too early to speak of concrete results. Improved cooperation was seen as fundamental for a market previously dominated by disputes and Court proceedings.

The NRA is closely following the implementation of the commitments. At the same time the Commission continues its antitrust investigation against the incumbent for suspected infringement of the prohibition of abusive practices (Article 102 TFEU) in the form of possible refusal to give access to its network to provide bitstream and local loop unbundling.

While, the NRA expressed its intention to include the provisions of the agreement in future regulatory decisions, the Commission services are verifying whether the notification requirements for amendments to existing remedies and new obligations were being respected.

## Broadband

### *Market situation*



Broadband penetration in Poland grew at a slower pace in 2009. It reached 13.5% in January 2010, which was one of the lowest results in Europe and significantly below the EU average of 24.8%. Broadband speeds were amongst the slowest in the EU, with over 66% falling in the range of 144 Kbps and 2 Mbps compared to an EU average of 15.4% for

this segment. While in some areas higher speeds were not available due to technology limitations, speeds up to 2 Mbps continued to be popular due to price and consumer preferences. Lack of infrastructure continued to be a barrier to penetration growth.

Local loop unbundling (LLU) was still limited in Poland as 32 131 new entrants DSL lines were based on this type of access as of January 2010. The number of unbundled lines increased substantially in the second half of 2009 as the largest fixed alternative operator started migrating subscribers from bitstream to LLU with special offers for this purpose. Some further growth in uptake may be expected in relation to the agreement signed in October, which is aimed at facilitating alternative operators' access to the incumbent's wholesale services.

At the same time, the competitive situation improved significantly as reflected in a fall of the incumbent's market share in terms of broadband lines from 45.4% in January 2009 to 40.2% in January 2010. Cable operators, which were present in cities, were the main competitors to the incumbent's broadband offering, and while DSL continued to be the dominant technology (at 55.7% of broadband lines), other technologies were closing in. The number of cable subscribers grew steadily reaching 1.4 million subscribers as of January 2010. Cable operators were also able to offer the highest speeds of up to 120 MBps at competitive prices. The incumbent's main fixed competitor had managed to reach 525 000 broadband subscribers by December 2009 (according to operator data).

Mobile broadband experienced further growth and the penetration rate reached 4.3% in January 2010, below the EU average of 5.2%. Mobile operators, including the fourth player, were also quickly expanding coverage and updating networks to HSPA+ allowing for transfer rates of up to 21 MBps. However, mainly due to data transfer limits, mobile broadband could not be considered as a full substitute to fixed services.

With regard to retail prices, consumers could benefit from further tariff decreases or higher transfer rates. Mobile broadband was also inexpensive and often offered in packages with fixed broadband. The incumbent carefully lowered its broadband prices in the autumn as each decrease leads to a discount in wholesale rates for alternative operators (based on a retail minus methodology of 51%).

The digital divide remained an issue, however, the situation improved slightly as the incumbent's mobile arm continued to provide Internet access using the CDMA technology, allowing for transfer rates of about 1 Mbps and allowing broadband access to households in digitally excluded areas. The coverage stood at approximately 70% of the population as of August 2009 and was expected to reach 90% at the end of 2009 according to operator data. The other two large mobile operators were also entering this market with services in WiMAX technology (with specific coverage obligations for 'white space' areas) as well as CDMA. The incumbent started offering satellite broadband in the whole territory allowing for speeds up to 2 Mbps. Some local authorities were also providing free Internet access at restricted speeds.

### *Regulatory issues*

In order to fight digital exclusion, the NRA held a mobile wireless broadband access tender in the range 2570-2620 MHz, covering the whole national territory, with the requirement that 20% of the spectrum capacity would be reserved for the provision of free broadband access restricted to 256 Kbps (later 512 Kbps). In November, the winner (one of two bidders) was

awarded the frequencies, and according to licence conditions was expected to start providing commercial services after 18 months, including a free mobile broadband service.

In November 2009, the President of UKE notified the market for IP peering with the network of the incumbent and the national market for IP transit. It found a lack of competition in both markets, designated the incumbent as an SMP operator and planned to impose regulatory obligations, including price control.

In August 2009, the incumbent submitted the results of the regulatory accounts for the year 2008, as well as cost calculation results for retail and wholesale services for the year 2010, together with the auditor's opinion. The auditor issued comments with regard to the calculation of the cost of wholesale services which were not calculated in accordance with the President of UKE's new instructions. The incumbent had included in the calculation network maintenance costs for infrastructure over which wholesale services were provided, while these were to be excluded according to the NRA's instructions. The incumbent considers that UKE's method would lead to a situation where the costs of wholesale services, including LLU would have to be borne by its retail clients. The Commission did not have an opportunity to comment on UKE's method as the new methodology was not notified to the Commission.

Minor amendments to the LLU reference offer (related to general information, migration, and fines) were made in May 2009 at the request of the incumbent and alternative operators.

## **Mobile**

### *Market situation*

The mobile penetration rate reached 108.0% in October 2009, below the EU average of 121.9%. Operator's market shares did not change significantly, with the three large players having similar market shares - the leading operator held 32.6% of the market as of October 2009, while its strongest competitor held 31.2% and the combined market share of the other competitors stood at 36.2%. The fourth player, which entered the market in 2007, continued to set the pace with its new competitive offers and strong marketing (including direct comparisons in advertisements). It had 3.5 million subscribers at the end of 2009. Despite some recent growth, none of the 14 mobile virtual network operators (MVNOs) currently operating on the market reached more than 100 000 subscribers and the seven larger MVNOs had some 234 000 customers in total. Overall, the MVNO model was not very successful and one operator withdrew its operations in 2009.

As the Polish mobile market matured, the larger players concentrated on developing additional services such as mobile payments, financial services and the provision of content in an effort to hold on to existing clients. At the same time, players targeted niche clients such as older subscribers by offering special tariff packages and phones.

With regard to retail prices, a minute of mobile voice communication cost €0.11, below the EU average of €0.13. Subscribers enjoyed further price decreases in 2009 as the lower mobile termination rates (MTR) were reflected in retail tariffs. Mobile subscribers increasingly chose monthly subscriptions over pre-paid plans, as the share of post-paid subscribers increased by nine percentage points to reach 51% as of October 2009.

While some cuts to investment plans were announced as a consequence of revenues falling due to regulation (leading to decreased revenues from termination rates and international

roaming) exchange rate fluctuation and to some extent the economic crisis, mobile operators continued to invest to upgrade their networks and improve coverage (HSPA+, CDMA and WiMAX). The winners of the tender for the 1800 MHz frequency band worked on an agreement to use their resources in common to roll out an LTE network which would allow transfer rates of up to 300 Mbps.

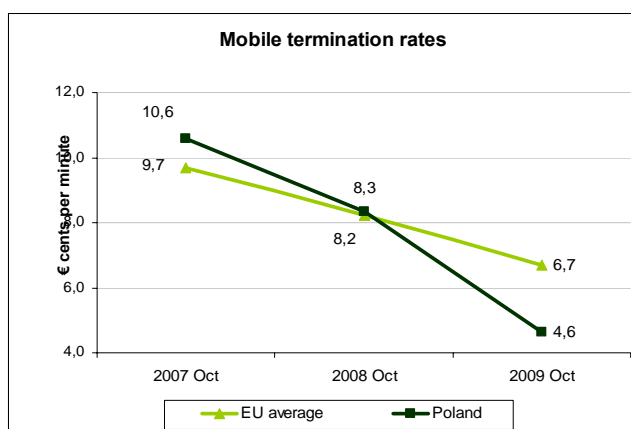
The winner of the beauty contest for frequencies in the range of 470-790 MHz was testing mobile TV services in the DVB-H standard in Warsaw. The frequencies will allow it to offer mobile TV services in 31 cities until 2011, and over the whole territory of Poland thereafter. The company which operates as a wholesale provider and has no possibility to offer its services to individual clients, was having difficulties to enter into contracts with mobile operators. The large players, whose consortium did not succeed in the bid, claimed not to be interested in the offer (only the latest entrant and some MVNOs were involved in the tests which started in October). They were already providing video streaming of channels and video material and this was not very popular. The competition authority started investigations in December to verify whether a collusive agreement, limiting competition, was in place.

The two operators that were awarded 1800 MHz spectrum in 2007 started offering mobile telephony services to meet roll-out requirements (coverage of 15% of the population by the end of 2009). The first one launched its services in May on the basis of three own base stations and national roaming. The second operator started offering services in Warsaw, in September, after UKE refused to further postpone the launch date.

There was some speculation in the market over the possibility of a fifth strong player in the market after the winner of last year's beauty contest for channels in the 900 MHz range, as well as the contest for mobile wireless broadband frequencies, was taken over by a new entrant linked to a large broadcaster. This company also had control of an operator disposing of 850 MHz frequencies and both were quickly rolling out an HSPA+ network over the whole territory of Poland. The company could benefit from the existing large subscriber base of the digital satellite operator and offer bundles of TV, broadband, mobile and VoIP. All these frequency resources put together would allow for similar possibilities as those enjoyed by the larger mobile operators.

### *Regulatory issues*

In April 2009, the Polish Regulator notified the market for mobile termination with regard to the three large mobile network operators, leaving obligations unchanged from the first market review. In its comments, the Commission stressed that the methodology - charges based on costs incurred (with UKE being able to verify the level of charges using benchmarking or other methods), does not promote efficiency and invited UKE, when reviewing its market analysis, to follow the LRIC costing approach in line with the Commission Recommendation. Noting that UKE had previously set termination rates on the basis of individual decisions (including temporary ones), which were neither subject to the



Community nor national consultation procedures, the Commission underlined the obligation to notify such draft measures.

In line with the Commission's comment, three sets of notifications setting the level of MTRs have been registered since September 2009. The first one, registered in October, concerned the rates of the three large mobile network operators (MNOs) which were set at PLN 0.1677 (ca. 3.95 €-cents), below the EU average of 6.70 €-cents. The Commission noted that no glide path was in place beyond July 2009, and invited UKE to define the next steps of price decreases sufficiently in advance to ensure legal certainty and transparency for operators. The remaining notification related to a glide path for the fourth player, which was implemented through temporary six-month decisions and then prolonged by amendments to individual agreements. UKE proposed to set termination rates at the level of 9€-cents, as of 16 December 2009, (in a major asymmetry of 141% to the larger operator's rates) and to gradually lower the rates in order to reach symmetry, as of January 2014. The Commission invited UKE to move more swiftly to an efficient MTR level, since generally exemptions for new players may only be granted for a limited period of time. The Commission also called on UKE to avoid establishing MTRs by means of individual dispute settlement decisions, as this creates regulatory uncertainty for operators not covered by such decisions. While some operators were taking time to pass the benefits of MTR cuts to consumers, the incumbent decreased fixed to mobile retail prices as of November.

With regard to the smallest players in the mobile market, in November 2009, the President of UKE notified the market for mobile termination in the network of the fifth MNO and was planning to impose the obligation not to charge excessive prices on the operator and a glide path covering a period from 30 May 2011 – end of 2015. At the same time, in October and December 2009 (before an SMP decision), the NRA, in individual decisions not notified to the Commission, had imposed a glide path for this operator. In its comments, the Commission invited UKE to revise the level and duration of asymmetry and reminded it of the obligation to notify decisions setting MTR levels. The MTR rates of the latest entrant which launched services in September are not yet regulated. Moreover, UKE also launched public consultations on individual decisions setting MTR rates for a full MVNO linked to a large broadcaster which in March 2009 had been designated with SMP in the mobile termination market. The draft decisions have not been consulted at Community level. The Commission services are looking into these matters.

At the same time, the President of UKE was working on a bottom-up LRIC model for the calculation of mobile termination rates in light of the next review of relevant markets, but initially had difficulty collecting detailed data from operators.

New entrants were concerned about the high level of SMS and MMS termination rates at PLN 0.15 (3.53 €-cents) per SMS and PLN 0.90 (21.18 €-cents) per MMS of 100KB. In June 2009, the President of UKE organised a meeting on the issue, to urge operators to agree on rates which would better reflect the underlying costs, and eventually launched national consultations on the product market definition for SMS termination. Meanwhile, in November, the fourth entrant and one of the larger players managed to agree on a symmetrical decrease for terminating MMS messages (down to PLN 0.3, ca. 7.06 €-cents), after UKE refused to set the rates by an administrative decision.



## *Roaming Regulation*

In general, all mobile operators complied with the provisions of the Roaming Regulation of July 2007 and the amendment to the Regulation, in force since July 2009.

## **Fixed**

### *Market situation*

Overall, the number of fixed subscriptions continued to fall steadily which was paralleled by a decrease in the volume of traffic and lower revenues from this market. The incumbent had 6.068 million fixed telephony subscribers at the end of the fourth quarter of 2009 comparing to 6.913 million a year earlier (according to operator data)<sup>176</sup>. In order to build interest in their fixed services many operators were offering packages of free calls.

The competitive situation in the fixed market remained generally unchanged as the incumbent's market share kept essentially stable at 66.6% (in terms of revenue in December 2008) which represents a decline of one percentage point in the reporting period. It was competing with one large alternative operator and an increasing number of smaller players. Alternative market players continued to base their services on wholesale line rental (WLR) agreements (1.2 million of WLR subscribers in the fourth quarter of 2009 as compared to 941 000 a year earlier) as well as LLU and own networks.

### *Regulatory issues*

On 27 March 2009, the Commission registered a notification concerning the second round market review for the market for fixed termination on the incumbent's network. The President of UKE found lack of competition and proposed to modify the price control remedy by imposing the obligation to set charges based on costs incurred. Previously, the incumbent was obliged to calculate rates according to the LRIC model, and after the approval of an independent auditor, set charges allowing recovery of the justified costs. In its comments, the Commission reminded UKE that termination rates should be set at the cost which would be faced by an efficient operator, stressed that the methodology chosen by UKE would not appear to promote efficiency and invited UKE to review its analysis. The Commission also underlined the obligation of UKE to notify any future draft decisions setting fixed termination rates. The final decision adopted in September was not modified in line with the Commission's comments. Overall asymmetry in fixed termination rates remained very high in Poland in 2009 and the regulator's intention to gradually remove the differences to reach symmetry in 2014 (presented in December 2008) has not been formalised in a binding decision.

With regard to the market for trunk segments of leased lines, in April 2009, the regulator adopted final measures maintaining obligations on the part of the product market which lacked competition. In September 2009, an analysis of the remaining part of the market was notified where the NRA proposed to withdraw the incumbent's obligations in connections between 145 larger cities. As under Polish law, the President of UKE needed to issue a separate decision in order to remove existing obligations, the Commission invited UKE not to

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<sup>176</sup> Company reports for the fourth quarter of 2009

unnecessarily delay the removal of regulation from effectively competitive markets. The reference offer for leased lines was approved in December. The NRA approved the level of fees presented by the incumbent.

National consultations on a single reference offer for access to the incumbent's network covering the scope of LLU, RIO, WLR and Bitstream access offers were launched in July 2009. UKE was considering streamlining the rules of cooperation between alternative operators and the incumbent in such a single reference offer in relation to the process of the incumbent's commitments to provide access to its network on a non-discriminatory basis.

Throughout 2009, the President of UKE was amending the interconnection and access agreements between operators in order to align them with the currently binding RIO of 2008 as well as the WLR reference offer. At the same time, the Consumer Protection and Competition Court upheld the incumbent's appeals against WLR decisions, as it considered that the retail minus methodology applied by the NRA was not foreseen under Polish law. However, as part of the agreement signed in October, the incumbent committed to withdraw appeals relating to WLR decisions, resulting in such decisions becoming binding.

## **Broadcasting**

### *Market situation*

2009 witnessed a further reduction in the number of households relying on analogue terrestrial broadcasting as their main means to receive TV broadcasts, as users switched to the three digital satellite platforms and cable networks which provided a more varied offer and better quality. At the same time, as of July 2009, a majority of households (57.5%) still relied on analogue terrestrial, while cable providers were the second platform (at 34.2% of households) and 26.5% of households relied on digital satellite providers. The fixed incumbent started offering satellite television (in cooperation with one of the large broadcasters) to those subscribers which were not covered by its IPTV service and managed to attract - according to its own figures - 133 000 subscribers in the first three quarters of 2009. The fixed incumbent was also planning to launch a satellite platform and the public broadcaster launched free satellite services in September.

In order to better compete with cable providers, which are capable of providing extensive bundled offers, the largest satellite operator was testing mobile broadband services and already operated a full MVNO. Other satellite operators were also considering offering converged services. The cable market remained very fragmented and only a minority of providers operated digital networks. It remains to be seen, if the process of digitalisation will bring some consolidation to this market. Cable was also only available in cities.

Despite growth, the IPTV market was still marginal since only 1.4% of households had chosen this platform. The fixed incumbent was the market leader with over 100 000 subscribers as of October 2009.

### *Regulatory issues*

While many efforts remain necessary before analogue transmissions can be switched off as planned in July 2013, a draft plan for the introduction of digital terrestrial television (DTTV) was approved by the Committee of the Council of Ministers for Informatisation and Communication in December 2009. The draft plan sets out the steps in the process of transfer

from analogue to digital broadcasting, including a new law on the digitalisation of television broadcasting, which would create the much needed formal legal grounds for the switch-over. The Ministry had also issued an ordinance on the technical parameters of DTTV receivers specifying the standard as DVB-T, MPEG 4 in both standard and high definition. In September 2009, (following a July decision of the Broadcasting Council), the President of UKE issued a decision for the allocation of frequencies on the first multiplexer for all existing national analogue broadcasters. The decision specified the time to switch off analogue signals and allowed for the use of the frequencies until 2024 (with the exception of the public broadcaster which will eventually be transferred to a dedicated third multiplexer). While transmission tests were ongoing, the launch of the first multiplexer was delayed, as a commercial agreement still had not been signed with the operator of the broadcasting network. Some uncertainty also remained as to the second multiplexer despite a public consultation on the conditions for a tender for frequency allocation in July.

With regard to digital terrestrial radio, some tests were also ongoing and a public consultation was expected in early 2010. A digital radio multiplexer would give the possibility for some radio stations to broadcast nationally, since national analogue frequencies have been exhausted.

## **Horizontal regulation**

### *Spectrum management*

In the assignment of spectrum, the NRA has generally been supportive of new players in an effort to foster competition and bring about economic and social benefits. The President of UKE was also aiming at countering the digital divide by assigning spectrum for the provision of mobile broadband in the 2570-2620 MHz band, and fighting white spaces by arranging local spectrum tenders in the ranges 3600-3800 MHz band.

In light of the adoption of the GSM Directive, the President of UKE was also preparing for the re-farming of 900 MHz and 1800 MHz frequencies, and was working on establishing technology neutrality in those bands which should facilitate future migration for operators to newer technologies such as UMTS and LTE. Until now, the technology had been specified in the decisions, for the larger operators. Re-farming would serve to create an equal playing field for operators as at present one operator does not have any blocks of 25 channels, allowing for a carrier channel of 5 MHz, which is necessary for 3G services.

The draft Plan on the implementation of digital television estimates the total amount of frequencies to be released via the digital dividend at 392 MHz. According to the plan, the range 470-862 MHz will be allocated to five national television multiplexers, a national DVB-H network, as well as a single national network (in the range 790-862 MHz) possibly assigned for use by systems such as WiMAX 802.16m or LTE-Advanced. The future use of frequencies in the range 174-230 MHz has not yet been clearly defined. Operators are concerned about the lack of substantial public debate on the most efficient use of the dividend.

### *Implementation of spectrum decisions*

According to the Ministry, Poland has implemented Commission Radio Spectrum Decisions 2007/90/EC, 2008/411/EC, 2008/477/EC. Further clarification requested by the Commission in relation to Decisions 2008/411/EC and 2008/477/EC was awaited at the end of 2009. The

implementation of Decision 2007/344/EC on the harmonised availability of spectrum information is still under way. As regards the transposition of the recently adopted GSM Directive, the Ordinance of the Council of Ministers of 29 June 2005 already provides that both ranges 880-890 MHz and 925-935 MHz are allocated for civil mobile use and will not need to be amended further. However, some changes by the President of UKE to the frequency allocation plan may be necessary.

### *Rights of way and facility sharing*

The draft law on the development of telecommunications networks and services discussed in parliament intends to remove the major obstacles with regard to rights of way by opening access to land and buildings for the purposes of investment and is, thus, generally welcomed by operators. The draft law, which would amend a number of primary legal acts, is aimed at facilitating procedures and limits the time necessary to obtain permits. It also gives the NRA powers with regard to local area planning where disproportional and inadequate limitations have been established, and opens access to ducts of utility companies. Among others, the draft law regulates access to in-building wiring, and provides that all new multi-family buildings should be equipped with fibre.

## **THE CONSUMER INTEREST**

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

While consumers continued to face difficulties in comparing increasingly complex price plans and were concerned with the short time limits for the use of call credit, the President of UKE was in the process of certifying web-based tariff comparison tools. The NRA found that such certification would lead to better services for consumers, increase transparency and allow the existing websites to develop. Other certificates were also created for the categories of fair transfer rates or safe Internet.

The amendment to the Telecommunication Act introduced a number of changes in the interest of the consumer. For instance, the amount of penalty for breaking a contract ahead of time became related to the remaining length of the contract. Moreover, following the changes, operators became obliged to inform consumers in writing of all changes with regard to prices (previously only those not in favour of the consumer) and about their right to withdraw from the contract if they do not accept the proposed modifications. Since at times it may have been difficult to ascertain if a promotion was beneficial for subscribers, this approach assures transparency. However, operators pointed to the significant cost of informing all customers and were allegedly more reluctant to offer reductions.

Many operators joined the incumbent's initiative for education on the dangers of the Internet and, together with a number of non-governmental organisations, service providers and public bodies, signed an agreement for the safety of children on the web. A code of good conduct was also in place and its implementation was being monitored by the President of UKE.

### **Universal service**

The fixed incumbent has, over the last three years, applied for compensation of the net cost of the provision of the universal service. The total requested for the years 2006-2008 amounted to PLN 567 million (approximately €133 million), to be shared by operators with revenues above PLN 4 million (€0.9 million). Following the Judgment by the Supreme Administrative

Court in August 2009, which ruled against the NRA's refusal to grant the 2006 compensation, the President of UKE was now obliged to verify the correctness of the cost calculations. However, this was delayed due to difficulties in selecting an auditor. At the same time, the NRA had finalised its internal analysis which included the estimation of intangible benefits resulting from providing the service. Operators were concerned about the need to make reserves for a possible compensation.

While an improvement in some quality indicators of the universal service was noted, the incumbent was not providing new connections on time and was paying fines, as this was more economical than building new lines.

The incumbent was offering a range of services dedicated to handicapped subscribers including dedicated discounts, special bills for the blind, equipment for those with hearing difficulties as well as free software allowing for the use of a computer by the blinking of an eye. Phone boxes equipped to be accessible by the handicapped were popular with this group of users, which led the President of UKE to reject the incumbent's application for a reduction of their number in the scope of the universal service.

### **Number portability**

As a result of an amendment to the Telecommunications Act and a new ordinance of the Minister of Infrastructure, which entered into force in July 2009, the time to port a number was shortened to one day for mobile numbers and seven days for fixed numbers, which means a significant improvement compared to last year. The procedures were also simplified and the law removed direct charges to consumers for mobile portability. Operators were concerned about the short time to implement the changes and noted the lack of clarity on how to implement the new process. While mobile operators were generally applying the new rules, some problems were reported by fixed operators due to the large number of operators in the market and the lack of a central database.

As a result of the changes, and raised consumer awareness, operators noted an increase in the number of portings. As of October 2009, 421 973 mobile porting transactions were registered comparing to 228 055 the previous year. However, this still represents only a small share (1%) of the total mobile subscribers. The number of fixed porting transaction also increased from 274 047 in October 2008 to 378 848 in 2009.

### **Consumer complaints**

Consumers continued to make good use of the NRA's services such as the call centre, an e-mail box and Internet communicators as well as the mediation service. In 2009 over 7 000 entries were registered in the NRA's complaint mail box and the consumer information call centre received 5 251 calls. A common source of complaints was the quality of the Internet service and in particular differences between the speeds advertised and those actually provided. As regards mobile broadband services, many end-users noted frequent connection cuts and limited coverage. Consumers also raised issues related to number portability, penalties for terminating a contract as well as disruptions in the provision of services.

### **European emergency number 112**

As part of the planned implementation of a more advanced system of providing caller location information for calls to the European emergency number 112, in October 2009, the NRA has

signed a contract for the creation of a central database which, amongst others, would allow answering points to have quick access to location information. Polish consumers continued to be well informed about 112, as 56% of respondents knew that they could reach emergency services from anywhere in the EU by calling the European emergency number 112<sup>177</sup>.

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

As of November 2009, more than 4 500 calls were made to the 116 000 number for missing children which became operational on a 24 hours basis in March. The number 116 111, for child support, was launched in November and the number 116 123, for moral support to adults, which had been assigned in 2008, was expected to be launched in January 2010.

### **Must-carry**

The Polish must-carry provisions in the Broadcasting Act date back to 1992 and apply only to cable operators. Digital satellite operators have pointed out that over time their platform has become one of the principal means for users to receive television broadcasts and would like to see technology neutrality apply to the must-carry regime. In accordance with the regulatory framework, national must-carry provision should be subject to periodical review.

### **Data protection**

The transposition of the Data Retention Directive (2006/24/EC) was completed with the amendment of the Telecommunications Act and a supplementary regulation was issued in December. The retention period was set at 24 months and costs will be borne exclusively by market players.

With regard to Internet piracy, the Law on the Provision of e-Services provides that responsibility for making files available lies with the user and not the administrator of a service. The administrator, however, is obliged to remove files when it is officially informed that such files infringe copyright rules. While large sharing sites generally comply with this obligation, the police have intervened to stop sites which allow for illegal file sharing.

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<sup>177</sup> Eurobarometer Flash survey on the European emergency number 112 (February 2010)