

ROMANIA

INTRODUCTION

Platform based competition has remained vigorous in Romania, while most electronic communication services have further expanded in 2009, even if at a slower pace. However, broadband penetration and fixed telephony penetration are still lagging behind those in most of the other Member States. Lack of availability of traditional fixed connections in the rural area, low computer penetration rate and low incomes aggravated by the economic downturn have still heavily influenced the Romanian electronic communications market.

To overcome these problems, the Romanian authorities established the policy lines for broadband, digital switchover and universal service for the years to come. However, the ambitious objectives set out by these strategies are yet to be implemented before their effects provide sufficient incentives for the market forces to overcome the existing gaps. The Romanian regulator authority for electronic communications, which paid again tribute to reorganisation, endeavoured to keep up the pace and fulfil its regulatory role. Three wholesale markets still need to be reviewed to complete the first review round following Romania's accession to the EU. The independence of the Regulator continues to be problematic in Romania, as it is not yet supported by a stable legal base and some regulatory activities are not separated from ownership tasks.

REGULATORY ENVIRONMENT

Main regulatory developments

In March 2009, the Government restructured the electronic communications regulator by way of an emergency act²⁰³. The Ministry of Communications and Information Society was also reorganised taking over from the Regulator tasks relating to information technology and domain names.

Upon proposal of the Ministry of Communications and Information Society, the Government approved several important policy papers setting out the way forward for universal service, digital switchover and broadband. However limited progress has been achieved so far in taking practical measures to implement these policy lines.

The infrastructure law is still pending in the Parliament, while amendments have been discussed with the operators. However, before being passed into legislation, the rights of way regime continues to hinder the rolling out of networks in Romania.

A directory of subscribers and associated directory enquiry services have been launched at the end of October 2009 under the universal service regime, supported on a limited database of subscribers.

²⁰³ Emergency Ordinance no. 22/2009 setting up the National Regulatory and Administration Authority for Communications - ANCOM ('Ordonanța de urgență a Guvernului nr. 22/2009 privind înființarea Autorității Naționale pentru Administrare și Reglementare în Comunicații'), Romanian Official Gazette no. 174/19.03.2009.

Organisation of the NRA

Following the infringement proceeding initiated by the Commission in January 2009 for non-compliance with the obligation to guarantee the independence of national regulatory authorities²⁰⁴ enshrined in the Framework Directive, the Romanian Government restructured the electronic communications regulatory authority (hereafter referred to as 'the Regulator') in March 2009.

The new emergency ordinance provides better guarantees to safeguard the independence of the Regulator from both market players and state authorities: it is managed by a president and two deputies appointed by the President of Romania at the proposal of the Government and is responsible before the Parliament, whereas the procedure to dismiss these top officials was limited to specific and objectively justified grounds.

A new president of the Regulator was appointed according to the new procedure immediately after restructuring, but none of the two vice-presidents have been appointed by the end of 2009. The Romanian Senate has failed so far to approve the new emergency act, in spite of the efforts of the Ministry of Communications and Information Society. At the same time, important amendments to the text of the emergency act, in particular as regards the appointment procedure, have been tabled in the Parliament. For these reasons, the Romanian regulatory authority for electronic communications is still not enjoying a stable legal base, which may affect its independence within the meaning of the Framework Directive.

A second infringement proceeding has been initiated by the Commission in October 2009 as it was found that the Romanian Ministry of Communications and Information Society (MCSI) exercises specific tasks, which the EU framework consider to be of a regulatory nature. These regulatory tasks include involvement in the allocation and assignment of radio frequencies, in particular adopting the national frequency allocation plan and preparing government decisions relating to radio spectrum management. At the same time, MCSI exercises ownership and control activities in two companies providing electronic communications networks and services (Romtelecom S.A. and S.N.R. S.A. – 'Radiocom'). However, under EU telecoms rules, Member States that retain ownership or control companies providing these services must ensure effective structural separation of the regulatory function from activities associated with ownership or control.

The Commission services are following these matters closely.

Decision making

In November 2009, following several months of internal reorganisation, the Regulator notified to the Commission the reviews relating to the retail access and calls markets, as well as the wholesale markets for fixed call origination and transit services. The markets relating to broadcasting and the wholesale mobile call termination had been regulated in March and April 2009 following notification to the Commission in February 2009. The wholesale access markets have still not been reviewed and notified, although preparatory work has been carried out over the last year.

²⁰⁴ Determined by the measures taken in September 2008 by the previous Government to restructure the Regulator.

In November 2009, the Regulator launched for consultation its Action Plan for 2010, which core objectives include promoting competition, end-user's interests, and broadband Internet access. The planned measures include reviewing the relevant markets²⁰⁵, implementing the universal service and digital switchover and establishing quality standards for Internet access.

According to the statistical data provided by the Regulator, the appeals against its decisions are dealt with by the Bucharest Court of Appeal in between 2 and 6 months on average, whereas the second appeal before the High Court of Cassation and Justice may take on average between 12 and as much as 30 months. The frequency rate of appeal has been 5%, whereas all judgements rendered so far have found in favour of the Regulator.

The dispute resolution procedure is based on a decision of the Regulator issued in 2003.²⁰⁶ According to the Regulator, the disputes between providers of electronic communications services are settled in 4-5 months on average, whereas those between providers and end-users take two months on average. As regards the former category of disputes, some providers deplored the length of the dispute resolution procedure in particular cases, which according to the Regulator may be due more to time needed by the parties involved to find a common denominator than to the time taken by the proceeding as such.

In August 2009, the Regulator and the Competition Authority renewed the cooperation protocol to support their active collaboration in promoting competition and fighting anticompetitive practices in the electronic communications and postal sectors.

As regards the cooperation with the Regulator, the market players appeared generally satisfied and considered that their views were taken into account, whereas some of them maintained that the consultation procedure remained rather formal with little possibility to explain the data sent and the concerns the operators might have in relation to the Regulator's proposals.

MARKET AND REGULATORY DEVELOPMENTS

Revenues in the electronic communications sector in 2008 totalled €4.56 billion (3.3% GDP), which is by 18.9% higher than the previous year, one of the highest in the EU. The fixed markets (including broadband and leased lines) contributed €1.788 billion, while the mobile markets €2.773 billion. The total value of tangible investment in electronic communications networks in 2008 was €966 million (0.7% GDP). The investment-over-revenues ratio in the Romanian electronic communications sector was 21.2% in 2008, which is well over the EU average of 14%.

As regards 2009, according to the data centralised by the Regulator, while it is estimated that the growth rate in the electronic communications market has slowed down, it appears that, in terms of lines/connections, fixed telephony and broadband have slightly increased, whereas mobile telephony and cable TV were relatively stable.²⁰⁷ To face the economic downturn and

²⁰⁵ In relation to the next market reviews, one operator expressed its concern that regulating fixed termination rates well before the mobile ones will have a negative impact on the revenues of the fixed operators.

²⁰⁶ The Regulator cannot impose, by means of dispute resolution, new obligations which are not related to a prior regulatory measure.

²⁰⁷ Out of four leading market players that have informed on their financial results for the first three quarters of 2009, as compared with the same period of 2008, two of them announced decreases from

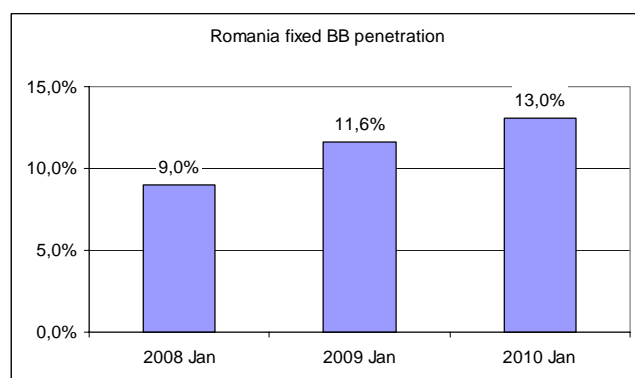
the strong competition in the local electronic communications market, the operators have struggled to come up with better offers in terms of price, speed, minutes included. In 2008 the average price per minute of voice communications was €0.06, less than half of the EU average of €0.13, while the ARPU²⁰⁸ was €119 (€ 323 the EU average).

Fixed-line penetration remained low, although it has maintained the positive trend observed in 2008. The market share (access lines) of the incumbent has continued to decrease. The take-up of mobile services has continued to increase considerably in the second half of 2008, and it slowed down in the first semester of 2009. The broadband penetration rate has continued to increase steadily in 2009, but is only slightly more than half of the EU-27 average.

According to the Regulator, the total voice traffic over the fixed and mobile telephone networks in the first half of 2009 increased by 22% compared to the first semester of 2008. However, whereas the voice traffic on fixed telephone networks dropped by 15%, the voice traffic (excluding roaming) on the mobile telephone networks from Romania increased by approximately 34% compared to the same period of 2008.

Broadband

Market situation



Broadband market is seen by most of the market players as having the most promising growth potential. The fixed broadband penetration reached 13% in January 2010 compared to 11.6% in January 2009, but it is still one of the lowest in the EU (the EU average stood at 24.8% in January 2010). No more than 28% of the fixed broadband lines belonged to the incumbent in January 2010. As far as the mobile broadband is

concerned, the number of mobile broadband active users using only dedicated data cards/modems/keys per 100 population was standing at 2.2% in January 2010 (1.3% in January 2009), while the EU average stood at 5.2%.

The LLU take-up is very low, with 1073 fully unbundled local loops, and only 275 with shared access.²⁰⁹ The current LLU tariffs were regulated in 2003 based on a retail-minus approach. The Regulator is currently developing a bottom-up costing model for the incumbent's access network based on the TS LRAIC++ standard. The relevant market analysis is scheduled for public consultation in the part of 2010.

As regards the infrastructure used, the Romanian broadband market is characterised by platform based competition. In July 2009, 51% of the market belonged to the UTP/FTP

7.2% to 20.9%, and the third one a reduction of the operational loss of 79.5%. The fourth one announced for the 3rd quarter of 2009 the first increase of revenues in the last two years.

²⁰⁸ Annual average revenue per user.

²⁰⁹ Provisional data in January 2010.

(neighbourhood networks, mainly FTTB based), 27.6% xDSL²¹⁰ and 17% coaxial cable. Several operators have continued to install fibre in the access networks, but the deployment is limited as compared with the other access technologies. However, in January 2010 the FTTH represented over 3.5% of the total broadband lines, which, in relative terms, is twice the EU average.

The fixed incumbent started to offer VDSL based broadband services that allowed 50% speed increase in 10 cities (e.g. 30Mbps for €14.9/month VAT included). One of the cable operators started to offer, to its new clients, higher speeds (up to 24Mbps for €14.7/month VAT included), while another operator launched broadband connections via its fibre network (up to 100Mbps for €9.26/month VAT included).

During the last year, hotspots were opened at the initiative of MCSI in 250 localities offering WiFi access to Internet²¹¹; 500 more are planned for 2010. A second project aims at providing broadband access to 2400 schools.

Regulatory issues

Increasing broadband penetration rate in Romania was announced as priority by the MCSI and the Regulator. On 8 April, the Government approved the Broadband Strategy for 2009 - 2015, which is a first step towards a comprehensive approach on the development of broadband in Romania. The working group which should establish the concrete measures to implement the ambitious targets proposed (such as 100% population coverage by 2015) is not yet operational.

The Government earmarked approximately €65 million from the EU funds allocated for ICT projects under the Operational Programme Increase of the Economic Competitiveness to expand broadband in Romania (available until 2015 – implementation phase included). However the approach to implementing this project is not clear yet and consultation with the Commission is under way. The market players appeared interested to participate subject to the choice of approach.

The wholesale broadband access market and the wholesale (physical) network infrastructure access have not yet been regulated. The public consultation is planned for the first part of 2010. Several alternative operators have already expressed their intention to extend their operations using access remedies.

Mobile

Market situation

The mobile penetration rate continued to increase considerably reaching 115% in October 2009²¹² (from 103% in October 2008) with 24.78 million active SIM cards, out of which 59% are pre-paid. According to the Regulator, the voice traffic (excluding roaming) originated on the mobile telephone networks in Romania increased by approximately 34% compared to the same period of 2008, thus registering more than 19.5 billion minutes in the first semester of

²¹⁰ 27.9% xDSL in January 2010, of which 99.9% belonged to the incumbent.

²¹¹ According to the statistical data centralised by the Regulator, the number of Wi-Fi hotspot locations was approximately 1000 by mid-2009.

²¹² The EU average was 121.9%.

2009, whereas the number of sent text messages (SMS) was 3.5 billion, 96% more than in the same period of 2008.

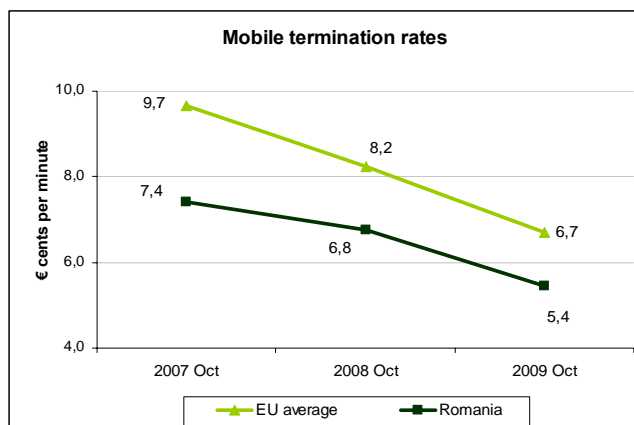
There are no virtual mobile network operators (MVNOs) in Romania. The combined market share of the first two mobile network operators (MNOs) was 73.3%, while the next two MNOs appear to have increased their market shares. Due to the glide path implemented by the Regulator, the average mobile termination rate has continued the downtrend to 5.44 €-cents²¹³ in October 2009, below the EU average of 6.70 €-cents.

On 30 June 2009, a take-over by Cosmote, the 3rd mobile network operator in Romania (over 6 millions clients) of Telemobil/Zapp Mobile (over 0.37 million clients) was agreed. The transaction was cleared by the Romanian competition authority at the beginning of November 2009 and together with Telemobil, Cosmote acquired two spectrum licences: a 3G and a CDMA licence and the relating recently expanded networks. Cosmote has become a 3G player in a market so far dominated by the first two MNOs. However, at present, the two providers operate as separate entities.

Regulatory issues

Following the analysis of the market of mobile call termination on individual networks, the Regulator found all mobile operators in Romania to have significant power on the relevant markets. Alongside cost-orientation, the Regulator imposed a full set of obligations to all five operators.

In its comments letter, the Commission called upon the Regulator, in the absence of identifiable objective cost differences, to bring the mobile termination rates of the smaller operators in line with those authorised for the two largest operators from the date of implementing the final measure. The Regulator however adopted its final measure as originally proposed. In particular, price control measures have been imposed as of 1 May 2009, according to an asymmetric glide path leading to 5.03 € cents/minute in 2011.



Roaming Regulation

The Romanian mobile operators appear to have complied with the new EU Roaming provisions, offering the EU retail tariffs. According to the Regulator, up to the third trimester 2009, the two largest mobile operators have offered alternative roaming packages in addition to the Eurotariff. Out of the 13 million roaming subscribers, over 99% subscribed to the Eurotariff.

In 2009, a notable development appears to be the lowering of the standard tariff for data roaming of one MNO to a single tariff of 2.38€/MB from 4.76 €/MB on preferred

²¹³ €0.0677 in October 2008.

networks²¹⁴. In addition, the two largest operators are offering data roaming special tariffs and extra-options.

Given its position of new entrant in the mobile telephony market, the fourth MNO found difficult to enter into Roaming agreements with each of the large EU MNOs and has chosen instead to offer Roaming services to its clients relying on another solution – the use of dual IMSI cards based on agreements with MNOs based in other EU countries. It is able to offer to its customers tariffs below the thresholds provided by the Roaming Regulation²¹⁵.

Romania established a legal framework providing for appropriate penalties in case of breaches of obligations provided by the Roaming Regulation.

Fixed

Market situation

In July 2009, there were 34 alternative fixed operators using their own infrastructure to provide access. At the same date, there were 32 managed VoIP operators²¹⁶ in Romania and 9 operators which were offering unmanaged VoIP services only. The fixed telephony penetration rate reached 24.1% (3% more compared to the same period of 2008). The voice traffic over the fixed public telephone networks dropped by 15%, i.e. from 4.6 billion minutes in the first semester of 2008 to 3.9 billion minutes in the first half 2009.²¹⁷

According to the Regulator, the total number of access lines for fixed telephone services registered a slight growth reaching 5.19 million, while the total number of subscribers has decreased to 4.07 million, at the end of June 2009. The number of managed VoIP lines increased to 1.5 million in July 2009 (13% increase in the last year). The number of 'Home zone' lines deployed by the MNOs as fixed access solution has increased in one year from 42 000 to 611 000 in July 2009. However, the traffic originated both in managed VoIP and 'Home zone' lines decreased in the first half of 2009 as compared with the previous year (19% and 16% respectively).

Regulatory issues

The market for call termination on individual public telephone networks provided at a fixed location was regulated in 2008 and remedies were imposed on all the operators identified as having significant market power.

In November 2009, following national consultation, the Regulator notified to the Commission the reviews for retail access and calls markets as well as the wholesale markets for fixed call origination and transit services. The Regulator concluded that the incumbent still had significant power in both wholesale markets submitted for analysis, as well as in the retail market for access services. Nevertheless, it considered necessary to withdraw certain obligations imposed on the incumbent.

²¹⁴ And €9.52 /MB on the other networks within the EU.

²¹⁵ €0,33 Euro/minute for outgoing calls, 0,12 Euro/minute for incoming calls and 0,08 Euro/SMS sent.

²¹⁶ Romania had the second highest market share in the EU on the basis of volume of traffic - 24% in 2008. Starting with 2009 the incumbent is also offering VoIP services

²¹⁷ Source: ANCOM.

Thus, in the retail access market²¹⁸, the Regulator considered necessary to maintain exclusively the obligations of carrier selection and pre-selection and to forbid the conditioning of the purchase of a service by the purchase of another service (i.e. prohibition of unreasonably bundling access with other services). Following the finding of effective competition in the retail calls markets the Regulator withdrew the previously imposed obligations. As for the wholesale call origination and transit markets²¹⁹, the Regulator decided to maintain all the obligations previously imposed on the provider with significant power.²²⁰

In July 2009, there were 25 operators providing carrier selection (CS) services to 59 000 customers and four operators providing carrier pre-selection (CPS) services to 6 000 customers - less customers for these types of services than in 2008.

Broadcasting

Market situation

In Romania there are about 7.2 million households using TV services (out of 7.38 million households), of which approximately 3.4 million are cable-based (46%), 2.3 million satellite-based (DTH — digital signal - nearly 31.2%) and 1.5 million analogue terrestrial (20.3%). As compared to the last year, the number of the cable subscribers (and also providers) decreased, whereas the number of DTH subscribers went up. The cable market is still fragmented among little less than 500 service providers, but the two major cable operators provide services to over two-thirds of cable subscribers. IPTV services, which had been available in the Bucharest area, appeared to take-off in December 2009 as the incumbent started to offer this type of services in ten cities.

In June 2009, the Romanian Government adopted the Strategy on the digital switchover and the implementation of the digital multimedia services at national level, following due public consultation.²²¹ Furthermore, the Audiovisual Act²²² was amended to streamline the procedure of granting licenses to use radio frequencies, which would be based on a selection procedure organized by the Regulator, following which the selected multiplex operators would be able to deploy networks for terrestrial digital broadcast.

According to the Strategy, the first two of six planned national multiplex will be subject to territorial and population coverage targets, should include the national television services (must carry obligations) and should be assigned through comparative tender procedure by the

²¹⁸ As regards the non-imposition of wholesale line rental (WLR), the Commission invited ANCOM to monitor market developments and reconsider imposing WLR should demand from current and potential CS/CPS operators arise for this service.

²¹⁹ The Commission invited ANCOM to closely monitor the market developments and re-assess, even before the end of the review period if appropriate, whether regulation in this market is still needed.

²²⁰ I.e. the obligations: (i) to allow access and use of certain specific network elements and of the associated infrastructure in view of providing the service of call origination at fixed locations and the service of interconnection in view of switched transit, the obligation of transparency, (ii) the obligation of non-discrimination, (iii) the obligation of price control, including tariff cost-orientation and (iv) the obligation of accounting separation.

²²¹ Government Decision no. 1213/2009 on the national strategy for transition to digital systems.

²²² Law No 504/2002 relating to broadcasting, as subsequently amended by Government Emergency Ordinance No 181/2008.

end of 2009²²³. The following four multiplexes should be granted by 1 July 2010²²⁴ through competitive tender procedure, and each of which should carry over at least 7 TV programs.

Although it has been delayed from the original planning, the final date to implement this Strategy, and hence the switchover from analogue to digital broadcasting, is officially maintained to 1 January 2012.

The 790-862 MHz band, which is not currently occupied by analogue television, is to be used as buffer band for transition from analogue to digital television for the entire simulcast period. After complete transition to digital television in Romania and the neighbouring countries, this band is to be used completely for other services than broadcasting, according to international rules and market demand.

Regulatory issues

In March 2009, the Regulator issued a decision designating Radiocom²²⁵ as SMP operator in the market for the analogue terrestrial broadcasting transmission of public radio and television programme services. Radiocom was imposed tariff control and cost-orientation obligations. Furthermore, Radiocom is to implement a costing model according to the rules to be established by the Regulator²²⁶, within one year from the adoption date. Until the costing model is implemented, Radiocom is allowed to increase its tariffs for the regulated services only once, subject to the Regulator's prior approval.

Horizontal regulation

Spectrum management

Following the failure of the 3.6-3.8 GHz WiMax tender procedure in February 2009, and the subsequent consultation with the electronic communications operators and providers of equipments, the Regulator has recommended a new strategy for the 3.6-3.8 GHz band in the second half of 2011 to change the selection procedure and to release the 2.5 GHz band for broadband data transmission services on radio support (BWA). An inter-institutional working group has been set up to deal with the opening of the WiMax spectrum.

In January 2009, the Regulator performed the first assessment of the incumbent's compliance with the obligations attached to the CDMA licence obtained in September 2008 for a 10-year term to provide mobile communications services in the 410-415/420-425 MHz bands. The Regulator found that the incumbent fulfilled its obligations, setting up an operational network in over 100 localities of 37 counties.

²²³ Postponed for 2010.

²²⁴ Subject to the proposals of the relevant inter-ministerial working group and taking into account the market developments and the results of implementing the first step. To implement the digital switchover strategy, MCSI invited all relevant bodies to participate to the working group, which first meeting was scheduled in December 2009.

²²⁵ The National Radio-communications Company (Radiocom) is 100% owned by the Romanian State and enjoys a legislative monopoly to provide, on an exclusive basis, transmission services for the public broadcasters, whereas the public broadcasters are obliged by law to purchase transmission services from Radiocom.

²²⁶ Launched for public consultation by the Regulator in September 2009.

The competent authorities should also implement the recently adopted GSM Directive²²⁷, by opening up the 900 MHz band, currently used for GSM services, to UMTS services. The Regulator held two public consultations in 2008 and 2009, the second one, organised between 1 September and 1 October 2009, referring to the harmonized use of several related radio frequency bands. Furthermore, at the end of 2011, two of the GSM licences are bound to expire. These processes should observe the objectives set out by the GSM Directive, in particular ensuring least market distortion and a level playing field for all operators.

The Romanian regulatory framework for electronic communications does not contain provisions relating to spectrum liberalisation, but this will be considered when implementing the newly adopted EC regulatory framework. The Commission will follow the implementation process.

The yearly 900 GSM spectrum fees are considered excessive by some market players, in particular under the current economic circumstances, while the Regulator would only concede to their payment by instalments.

Implementation of spectrum decisions

In October 2009, the Commission sent a letter to the Romanian authorities relating to the late implementation of recent spectrum decisions, adopted in 2008: Commission Decisions 2005/513/EC (amended by 2007/90/EC), 2008/411/EC, 2008/432/EC, 2008/477/EC, 2008/671/EC and 2008/673/EC. The national frequency allocation plan²²⁸ was amended in November 2009 to implement these decisions.²²⁹

The Commission services are assessing the information provided by the Romanian authorities as regards the conformity of the Romanian legal framework with the spectrum decisions.

Rights of way and facility sharing

No substantial progress can be reported in relation to the adoption of a law on electronic communications infrastructure, which should set up clear rules to be followed by the local authorities when dealing with rights of way requests, in a fair, unitary and predictable manner. Nevertheless, during 2009, the draft law on infrastructure, initiated several years ago but not yet adopted, was revised following discussions between MCSI, the Regulator and the industry. The new draft seeks to establish a new regime for infrastructure sharing including a clear prohibition for granting exclusive or special rights for the installation or development of electronic communications networks; the Regulator would be involved in publicly financed infrastructure projects, and a coordinated approach on rights of way related works should be developed. The operators met during the evaluation mission in Romania were unanimous that the revised draft law would benefit to the deployment of electronic communications infrastructure in Romania, while at present they continue to face difficulties in getting rights

²²⁷ Directive 2009/114/EC of the European Parliament and of the Council of 16 September 2009 amending Council Directive 87/372/EEC on the frequency bands to be reserved for the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community, OJ L 274, 20.10.2009.

²²⁸ The National Table of Frequency Band Allocations (TNABF).

²²⁹ Order of the Minister of Communications and Information Society No 789/2009, published on 3 December 2009.

of way due to lack of a clear and objective regulatory regime. The Commission invites the Romanian authorities to take the necessary measures to advance the adoption of this law.

As regards the Netcity project in Bucharest, the Municipality passed a new (amended) regulation in May 2009, supporting this project and warned the network providers that they have to go underground in 120 days since the finalisation of the Netcity segments. The Competition Council, the Regulator and MCSI reacted by public statements pointing out to possible inconsistencies with the competition law. The Commission has also requested clarifications in relation to the Netcity project and the conduit of the local authorities in relation to the requests for rights of way.²³⁰

According to the information available, during the last year, the first part of the Netcity project was finalised and in the city centre all electronic communications networks have been moved underground into the first 12 km of Netcity network. The plan is to cover 1 200 km of streets in Bucharest within the second phase, subject to appropriate financing. Insofar the finalised part is concerned, the relevant operators moved into Netcity's ducts. For the moment only ducts are requested and offered and no dark fibre. The tariff applied is €85/km of duct monthly (i.e. the maximum threshold provided by the contract with the City Hall), which some operators consider excessive²³¹. The minimum period for an operator to move its network underground is reportedly 220 days; for the first finalised segment the operators were allowed from June 2008 when they were announced that this segment was ready to July 2009 when the overhead cables were finally cut down. The operator of Netcity and the Municipality of Bucharest have also highlighted that many adjustments have been brought to the initial project to accommodate the needs of each operator. However this view is not shared by all major operators, some maintaining that the Netcity project would determine considerable supplementary costs²³², requiring changes in the structure of its network.

The municipality of Bucharest confirmed that any operator who so wishes may be granted permit to dig in its own network, while admitting that the cost of such works may be too high to be supported by a single operator. This seemed to be confirmed by operators, which expressed the preference that all relevant providers share the costs of digging the trenches and then place in their own ducts.²³³

The Commission services are following the developments on these matters.

²³⁰ In November 2009 (within the evaluation mission), the Municipality expressed its intention to propose amendments of the Decision of Bucharest Council no.252/2008 and the subsequent Methodological Rules, in relation to which concerns were expressed, such as on the prerequisite that the Netcity's operator to approve works on other networks, which should be within the remit of a public authority.

²³¹ The contracting parties maintained that the tariffs have been established before the signature of their contract based on an external study. Furthermore it appears that the tariffs applied are different for other projects, such as in Cluj where, according to the Regulator, the negotiations started at €99 the monthly fee for 100 m of duct, to eventually arrive at €29. Such variety of tariffs highlights the wide margins of discretion enjoyed by the local authorities in granting rights of way to public property and represents one of the issues to be dealt with in the new infrastructure law.

²³² The Municipality acknowledged that the costs to move telecoms networks underground would be higher than the tariffs that have been paid so far. It was also highlighted that at present the operators do not pay for all poles that support their overhead infrastructure.

²³³ It appears that this approach is already implemented in Romania (Brasov).

Administrative charges

There was no complaint in 2009 relating to the monitoring tariff the operators have to pay to the Regulator. Nevertheless, the Romanian legislation on the administrative charges imposed on providers of electronic communications should be reviewed to avoid any risk that charges which do not come under the scope of Article 12 of the Authorisation Directive be passed on operator as administrative charges. The Regulator plans to review the relevant texts on the occasion of implementing the provisions of the newly adopted EC regulatory framework.

THE CONSUMER INTEREST

Tariff transparency and quality of service

Since May 2009, the Regulator required the telephony operators to better inform their customers regarding the services offered and the tariffs involved, so that the latter can make an informed choice. In addition, during the contract duration, any end-user has the right to request and receive a detailed invoice specifying at least the charging period, the tariffs charged, the free offerings/discounts from which the respective subscriber benefited, the full list of the calls initiated and received, alongside their duration.

In 2010, the Regulator plans to start the implementation of an interactive guide, which would allow comparing between the terms and tariffs of electronic communication services available in the market and thus would enable an informed choice for end-users.

Since September 2009, the mobile telephony operators have to unlock, upon request, the handsets locked on their networks, pursuant to a code of practice setting out the minimum standard terms for releasing the terminals locked on the mobile networks in Romania, which was signed in June 2009 by the Regulator and the Association of Mobile Operators in Romania and its members.

Universal Service

A Universal Service strategy was issued by MCSI²³⁴, changing the approach on how to ensure access to basic electronic communications services in conformity with the Universal Service Directive. The main policy objectives relate to providing universal access at a fixed location²³⁵ and a comprehensive directory of subscribers and directory enquiry services, as well as better access to public payphones and to the public telephony services for disabled people. The Regulator plans also to reform the Universal Service national framework to adjust the financing and compensation mechanism to the principles established in the Universal Service Directive.

The implementation of the new Universal Service Strategy started with an assessment of the state of play and the needs of basic electronic communications in Romania. The study revealed significant gaps between the rural and the urban areas as regards the penetration of the communications networks. For instance, approximately 80% of the total fixed telephony

²³⁴ Approved by the Minister of Communications and Information Society by Order No 461/27.05.2009.

²³⁵ The goal is to ensure countrywide connection at fixed location by the end of 2012, and represent a shift from the 'Tele-centre' approach carried out until 2008, which has not satisfied the requirements of the Universal Service Directive.

subscribers are living in the urban area, whereas almost all of the population has access to mobile telephony services.

To address these issues, the Regulator plans to launch in 2010 a series of public consultations on the most suitable methods to ensure that all Romanian citizens benefit from telephone and Internet access services²³⁶, following which, based on the reformed national Universal Service framework, the Regulator will designate one or more Universal Service providers to ensure a connection capable to uphold the provision of telephone services (including emergency calls) and internet access services based on the principles of efficiency, non-discrimination, technological neutrality and minimum market distortion.

A directory of subscribers and a directory enquiry service have been finally made available since 31 October 2009 under the universal service regime, following the designation in June 2009 of the universal service provider for a two years period.²³⁷ However, at the date of launching this service only several telephony operators had communicated to the universal service provider their databases of subscribers. Furthermore, it appears that only a limited number of mobile telephony subscribers have been included in the comprehensive directory as this category of customers have to give their express consent before being included in the database (an opt-in clause).

Romania has registered a considerable delay in complying with the requirements of the Universal Service Directive mainly due to the difficulties faced in ensuring basic access to electronic communications in the rural area. Therefore, to be able to follow the implementation process, the Commission asked in November 2009 the planning covering concrete measures and their timeline to ensure compliance with the Directive, which should develop on the objectives set out by the recently adopted Universal Service Strategy.

Number portability

Number portability is available in Romania since 21 October 2008. By October 2009, more than 144 000 numbers were ported, out of which 68% were mobile telephony numbers. The Regulator's statistics show that 75% of the numbers ported related to post-paid subscribers. As the end-user does not have to pay for the porting, some operators are of the view that the wholesale charges, which have to be supported by the recipient operator, are too high (€11/mobile number ported and €13 for fixed)²³⁸. In practice, it takes 8.5 days on average to port a number.²³⁹

Consumer complaints

The Romanian Consumer Protection Authority (ANPC) enjoys general competence to deal with consumer complaints. At the same time, for specific areas ANPC needs technical support from the authorities specialised in those matters, such as the Regulator. Unlike the Regulator, ANPC has also the competence to apply sanctions on the operators which breach the rights of

²³⁶ The Regulator plans to establish the bandwidth for such access, in accordance with the national needs and the content available on the Internet.

²³⁷ The Regulator has also allotted 118 (xyz) numbers to other 11 providers (in addition to the universal service provider) of directory enquiry services, extending in May 2009 the period allowed to activate such numbers.

²³⁸ In January 2010, the Regulator submitted to public consultation a proposal to reduce these tariffs.

²³⁹ The Romanian regulatory framework allows maximum 10 days to port a number.

consumers. When a consumer complains against an operator to the Regulator, the Regulator tries to mediate the dispute, and when an amiable solution is not possible the consumer may be directed to ANPC.

For these reasons, in November 2009, the Regulator and ANPC were in the process of concluding a revised cooperation protocol with a view to enhance the protection of consumers in the field of electronic communications.

From May to October 2009, ANPC received 665 complaints relating to the electronic communications services, most of which refer to the quality of handsets or services offered (deviations from the parameters of the broadband specified in the contract, type of TV channels offered) and unfair contractual terms. Similarly, the issues brought by consumers to the attention of the Regulator have related to pricing and billing, network/service failure and quality as well as the lack of compliance with the contractual terms.

European emergency number 112

In Romania, 112 has become the single number for emergency calls. Calls to 112 can be handled either directly or by transfer to another PSAP in English, French, Hungarian, German, Russian and Spanish. Caller location is based on the 'Push' method. Activities to promote awareness of 112 have included various means such as display on emergency vehicles, in public pay phone booths and telephone directories, as well as dedicated programs and campaigns, information on websites schools, press.

The three months pilot project aimed at deterring the number of abusive calls to 112 (by sending high number of warning SMSs to those making abusive calls to 112) was run from March to June 2009. According to the Regulator's assessment, this project has made limited and transitory impact on this type of calls, opinion which appears not to be shared by the Service for Special Telecommunications (STS) - the authority operating the 112 system. Consequently, the Romanian authorities are considering implementing a coordinated set of response measures, which could include not only warning text messages, but also temporary disconnection of the subscriber and imposing fines.

A recent survey²⁴⁰ indicated that in Romania the majority of respondents (54%) reported having received information about 112 as the European emergency number in the past 12 months. While 86% of the respondents knew 112 as a number to call in case of emergency in their own country, 36% of the respondents knew that they can call emergency services across the EU by using 112.

Harmonised numbers for harmonised services of social value (116)

At present, two numbers harmonised services of social value are operational: 116 000 – hotline for missing children and 116 111 – child helpline. The Regulator decided to publish on its website the availability of the reserved 116 numbers and the assignment conditions.

²⁴⁰ Eurobarometer Flash survey on the European emergency number 112 (February 2010).

Must carry

There have been no substantial developments in the last year as regards the must carry regime. However, must carry might get more attention with the switching over from the analogue to digital terrestrial television services, as there will be a limited number of multiplexes²⁴¹ carrying a maximum number of channels.

Data protection

At the beginning of 2009, while preparing to launch comprehensive directory services, the Regulator and the National Authority for Surveillance of Personal Data Processing (ANSPDCP) had to work closely to harmonise their views as to how telephony subscribers should be protected in the process of transferring the subscribers personal data from their telephony providers to the provider of the directory services. Eventually, the two authorities issued a common position which included a series of clarifications and recommendations on the applicable regulations.

These preparatory works have delayed the development of the database for directory of subscribers / directory enquiry services, and therefore this service has been launched at the end of October 2009 under the universal service regime, relying on an incomplete database.

As regards the Data Retention Directive, reportedly transposed in November 2009, the national act implementing it in Romania was found to be in breach of the Romanian constitutional principles in October 2009. The Romanian authorities would have to adjust accordingly the national legislation to the requirements of the Directive. However, in the meantime, this Data Retention Directive cannot be applied in Romania.

²⁴¹ Only two multiplexes are planned to be released in the first stage; these include certain obligations attached to the licences, such as broadcasting the national public TV programs.