

SPAIN

INTRODUCTION

Spanish consumers are increasingly choosing bundled services and switching service providers using number portability. Whilst fixed broadband penetration is growing more slowly than the EU average, Spanish consumers are increasingly using mobile broadband services. The switch-off of the analogue television services will take place in April 2010. Operators are concerned about excessive fiscal burden, which was increased this year following the imposition of a new charge for the financing of the public national broadcaster.

During 2009, the Spanish Government has taken a number of initiatives on issues that affect the electronic communications sector. The Comisión del Mercado de las Telecomunicaciones (CMT) has finalised the second round of market reviews. As regards new regulatory obligations, some have already been detailed (such as the reference offer for access to the incumbent's infrastructure), though some others still need to be implemented (such as the new bitstream service). The new regulatory approach of establishing specific discussion fora has been received very positively by all operators. In order to enhance consumer protection, the Secretaría de Estado de Telecomunicaciones y para la Sociedad de la Información (SETSI) adopted a single legislative instrument comprising existing and some new users' rights, such as a two-day period for number portability. New draft legislation includes 1 Mbps Internet access services into the scope of universal service, and addresses issues such as digital dividend, spectrum refarming and the reduction of administrative charges.

REGULATORY ENVIRONMENT

Main regulatory developments

The CMT has been active as regards the revision of relevant markets in the past year, and it has adopted final measures for all the markets in the Commission Recommendation on relevant markets as part of its second round of market analyses. The CMT has not yet reviewed the obligations imposed four years ago on the mobile access market. According to the CMT, this market will be revised by mid-2010.

Retail regulation has been significantly reduced (first in the fixed retail calls markets and more recently in the retail leased lines market) and the CMT withdrew also regulation in the trunk leased lines market, except for ten undersea routes, and in the fixed transit services market. Two of the main developments in 2009 were the adoption of a reference offer for the provision of access to physical infrastructure and a new glide-path for mobile termination rates (MTRs).

The Spanish Government decided to impose a charge of 0.9% of gross revenues, excluding wholesale revenues on certain operators as part of the new financing system for the national public radio and television broadcaster (RTVE). The Commission services are looking into this issue, in particular as to its compatibility with the relevant provisions of the Authorisation Directive and the rules for state aid.

New legislation has been proposed by the Spanish Government²⁵⁵ addressing some electronic communications issues such as the definition of 1 Mbps as functional access to Internet as part of the universal service as of 2011, the reduction of the number of members of the CMT Board, a decrease of administrative charges and the use of the digital dividend for advanced electronic communications services. A draft law on audiovisual services is expected to be adopted shortly.

The infringement proceeding for incorrect transposition and implementation of parts of the Universal Service Directive is still pending, although important developments took place during the year, which seem to address the issues at stake. The Commission is following up this issue.

Organisation of the NRA

The division of regulatory functions between different national regulatory authorities persists, even though the main responsibilities are divided between two of them i.e. the CMT and the SETSI, which is at the moment concurrently responsible for electronic communications policy within the Ministerio de Industria, Turismo y Comercio.

The Spanish Government has not yet taken any decision as regards the appointments of the President and some members of the Board of the CMT, whilst its mandate expired at the end of 2008, but it has proposed a reduction on the number of Board members of several national regulators, including the CMT, from nine to five.

The CMT requested assignment of audiovisual competences, although the Spanish Government has proposed in the draft General Audiovisual Law the establishment of a separate body, the Consejo Estatal de Medios Audiovisuales.

It has been proposed an adjustment of the administrative charges paid by electronic communications operators to the CMT from 1.25‰ to 1.00‰, which is currently in the legislative process.

Decision-making

During 2009, the CMT has concluded all market analyses, with the exception of the mobile access market. Operators have pointed to the fact that the CMT has differentiated remedies in some markets and that prices are often not part of the initial notification leading to further delays in the effective implementation of price obligations. The CMT intends to adapt all regulated prices shortly after the verification of the relevant accounting information. Some operators are also concerned that it might be difficult to comply with certain users' obligations that have been extended by the SETSI to business customers and that the CMT, in the context of market analyses, is not taking sufficiently into account the specificities of the service providers in the business segment.

Comments made by the Commission in the process of notification of the market analyses have not always resulted in modifications to the measures finally implemented in the market. On the one hand, as regards the obligation of access to infrastructure in the context of the physical network infrastructure access market, the CMT adopted a reference offer with detailed prices and conditions, following the Commission's comments that a detailed

²⁵⁵ Anteproyecto de Ley de Economía Sostenible

reference offer and price obligations should be developed. On the other hand, the CMT adopted a new glide-path for MTRs for the period 2009-2012, where the fourth mobile network operator (MNO) will still benefit from asymmetric rates, although the Commission invited the regulator to revise the methodology and the margin given to the fourth MNO and to reflect that in the glide-path. This would facilitate future compliance with the Commission Recommendation on termination rates, which provides a period of transition until the end of 2012.

A quicker process for implementing the obligations imposed in the context of market analyses and the necessary revision of reference offers and the margin-squeeze test are also considered to be a priority. As regards the margin squeeze test, whilst alternative operators are concerned about the high Net Present Value (NPV) applied in the test, the incumbent operator criticises the methodology for being too rigid.

All operators seem to favour the regulator's new approach of establishing specific fora for discussion of future regulatory approaches, for example for the definition of a new bitstream service or the migration of LLU systems. The regulator's involvement is requested by operators in order to resolve some issues were a common position does not emerge.

Alternative operators are requesting the use of sanctions by the CMT as a deterrent for some alleged breaches of regulatory obligations by the incumbent as well as a more limited usage of the confidentiality principle. In this regard, in 2009 the regulator imposed two fines on the incumbent (€1 million and €11 million) for delaying the implementation of the 'naked ADSL' bitstream service. Moreover, the regulator has adopted a standard procedure for payment of penalties, which is applicable to all reference offers in cases of breaches of provision or repair deadlines. The incumbent has appealed this decision to the national courts, although it has not been suspended.

Dispute resolutions continue to take on average much longer than four months, which is the period established in the Framework Directive. The 11 dispute resolutions that were resolved by the CMT during 2009 have taken an average of seven months to resolve, which is an improvement compared to the one year average in 2008.

MARKET AND REGULATORY DEVELOPMENTS

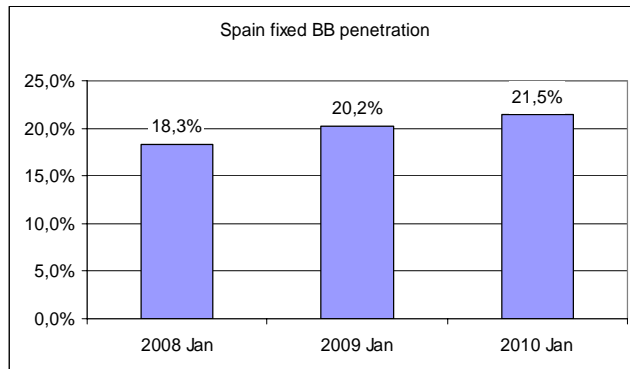
The high ratio for total revenue over gross domestic product (GDP) for the Spanish electronic communications sector shows the importance of this sector for the economy. Total turnover for the sector remained stable at €44.2 billion in 2008. Investment in the Spanish electronic communications market has slightly decreased (€5 172 million in 2008 compared to €5 755 million in 2007), representing an investment to revenue ratio of 11.7%.

In Spain the trend towards bundled services continues to be very significant: 19.2% of the population had subscribed to a bundled offer, with most of them subscribing to a double play offer.

There are several projects of publicly financed networks by local authorities in Spain, most of them based on WiFi technology and a limited number based on fibre. The CMT is monitoring these projects from different aspects, such as structural separation regarding the granting of rights of way, general authorisation and conditions to avoid distorting competition, and it imposes conditions on the projects as necessary. In June 2009, the CMT launched a public consultation on the regulatory approach to public WiFi networks, and is currently preparing guidelines on the subject.

Broadband

Market situation



The number of fixed broadband lines continued to grow but at a slower pace and fixed broadband penetration increased from 20.2% in January 2009 to 21.5% in January 2010, which is below the EU average (24.8%). The use of mobile data services continues to grow and reached a datacard penetration 3.8% in January 2010. Operators are requesting an active policy to stimulate demand for broadband services, as the growth is

limited by a relatively low computer penetration in Spain.

Most broadband residential customers in Spain subscribe to broadband services as part of a bundled offer. The majority of broadband connections in Spain (69.9%) are between 2 Mbps and 10 Mbps and almost one out of five is above 10 Mbps. With four out of five fixed broadband lines DSL continues to be the main technology for the provision of fixed broadband services, followed by cable. Market shares have remained more or less constant: alternative DSL operators held 25.6% of the retail broadband market and cable operators 18.9% as of January 2010. In the last year, the incumbent's market share continued to decrease slightly, contrary to the trends in previous years. In October 2009, the incumbent announced a delay of two years on its fibre investment plans and a move towards VDSL2 broadband services provided from the local exchanges.

With more than two million unbundled loops, LLU is the option preferred by alternative DSL operators, followed by bitstream access and few resale lines. In the last year, the number of fully unbundled lines have more than doubled from 835 831 in January 2009 to 1 706 127 in January 2010. This is partly due to the fact that a large number of shared access lines have been migrated to a new unbundling option (called 'naked shared access'), where the alternative operator, by paying a fee equivalent to the fully unbundled fee, can still provide broadband and VoIP services after the cancellation of the incumbent's fixed telephony services by the subscriber.

Regulatory issues

In January 2009, the CMT adopted final measures in the markets for physical network infrastructure access and wholesale broadband access. As regards the market for physical network infrastructure access, the CMT maintained existing LLU obligations, imposed an access obligation to the incumbent's passive infrastructure; and included the provision of dark fibre in cases where access to infrastructure is not technically or physically feasible. The measures also contained a detailed information obligation and conditions for the closure of local exchanges, in order to ensure the transition to next generation access (NGA) networks.

As regards the market for wholesale broadband access, the CMT imposed an obligation on the incumbent to provide a single bitstream service with an Ethernet interface replacing the existing ATM and IP bitstream, for the provision of speeds up to 30 Mbps in the whole national territory. A group consisting of the regulator, the incumbent and alternative operators

is currently discussing the definition of this new bitstream service, which is perceived as an essential wholesale service for the maintenance of competition in the market. As this remedy would still take some time to be fully implemented, alternative operators are requesting in the meantime an update of the existing bitstream services. The CMT has fined the incumbent with €12 million for delaying one year the implementation of the 'naked ADSL' bitstream service, which was considered a very serious infringement.

In February 2009, the CMT adopted final measures on symmetric obligations on operators regarding in-building fibre infrastructure, which provides for the imposition of obligations on operators for facility sharing according to certain criteria. Under the proposed measures, the first operator to reach a building with its fibre network, regardless of its significant market power condition, should meet reasonable access requests by third parties, at reasonable prices and under transparent conditions.

In September 2009, the CMT further reduced by an average of 26% the wholesale broadband access prices, both the national and the regional bitstream services, which currently provide speeds up to 30 Mbps. The regulator significantly reduced the monthly fee for shared access (from €3 to €2.06), though due to the relatively high connection fees the monthly average total cost for shared access continued to be higher than the EU average (€4.04 compared to €3.53 EU average)²⁵⁶. On the other hand, the monthly average total cost for fully unbundled loops is just below the EU average (€9.47 compared to €9.75 EU average).

In November 2009, the CMT revised the ducts reference offer previously submitted by the incumbent in the context of the infrastructure access obligation at cost-oriented prices and on non-discriminatory and transparent conditions, which was imposed on the incumbent in the context of the market for physical network infrastructure access and is now limited to urban areas only. This measure follows the Commission's comments about the need to develop a detailed reference offer and price obligations. It also includes access to dark fibre, which is considered by the CMT a last resort remedy and, as such, it does not contain detailed prices and other conditions. In the meantime, the implementation of this remedy has proven to be smooth. Alternative operators are of the view that this is a positive measure, but it has been used mainly for the connection of mobile base stations and in some cases for fibre connections to business customers.

The overall implementation of LLU obligations has now improved and alternative operators are starting to have some visibility as regards the incumbent's installation of remote nodes. The incumbent should inform the CMT and alternative operators six months in advance of any new installation of remote nodes between the local exchange and end-users in case LLU deployment may be affected and should provide, as a compensatory measure to collocated operators affected by reduced availability of unbundling, an indirect access service at a discount of 23.5% for ATM bitstream and 40.6% for IP bitstream, although alternative operators can only offer more limited services based on bitstream. In November 2009, the CMT authorised the installation of 17 out of the first 24 nodes requested by the incumbent following the imposition of the transparency obligation.

²⁵⁶ According to the CMT, Spanish operators do not always purchase some of the elements, which are taken into account for the calculation of the connection fees.

Mobile

Market situation

The mobile penetration rate in Spain reached 117.6% as of October 2009, which is below the EU average (121.9%). In October 2009, the market shares in terms of subscribers of the incumbent's subsidiary (44.4%) and its main competitor (30.9%) were more or less stable, whilst the third MNO has lost some market share in favour of the fourth MNO and mobile virtual network operators (MVNOs).

In 2008, the average price per minute for voice traffic on mobile networks was €0.17, which is above the EU average (€0.13), and annual average revenue per user (€381) was higher than the EU average (€323). Mobile number portability continues to be used intensively in Spain and there were 3.27 million portability transactions in Spain between January and September 2009, which is the second highest figure in the EU.

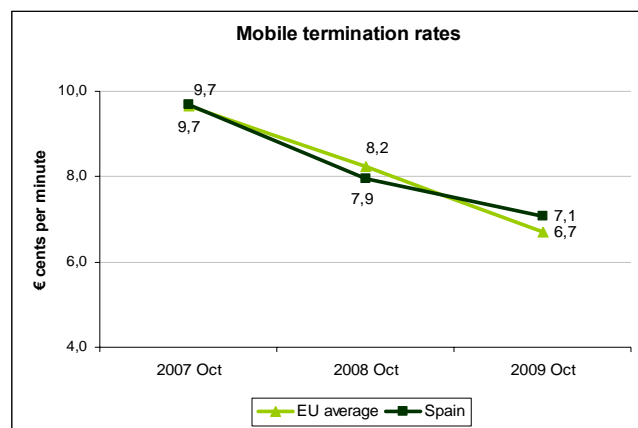
Regulatory issues

The MTRs of the four MNOs and nine 'full' MVNOs have decreased according to the established glide path (7.08 €-cents on average) and are now above the EU average (6.70 €-cents). Following a decision by the CMT in December 2008, mobile operators are now charging a single per-second billed tariff for MTRs.

In July 2009, the CMT adopted the final measure on the mobile termination market establishing an asymmetric glide path that will reduce MTRs from 10.42 €-cents/7.00 €-cents to 4.98 €-cents/4.00 €-cents in October 2011. The regulator is currently developing a LRIC bottom-up model, which should be applied as from 2012 in accordance with the Commission Recommendation on mobile termination rates. In its final measures, the CMT extended the glide-path for six more months compared to the draft measures and maintained the asymmetry on the fourth MNO.

The mobile access market is the only market that the CMT has not yet reviewed. Following the access obligations imposed by the regulator on the three MNOs present in 2006, 16 MVNOs were currently providing mobile services in Spain in July 2009 compared to four operators two years earlier. Some MVNOs have raised concerns about the difficulties to compete due to the existing access conditions, which were agreed on a commercial basis, although only a few operators requested further regulatory intervention. The appeals to the national courts, which were lodged by the MNOs against the regulator's finding of joint dominance, were rejected in 2009 confirming the CMT's decision.

In June 2009, the SETSI launched a public consultation on the opening of a new numbering range for mobile communications, which was positively supported by the sector due to the increase in recent years of mobile broadband services and other types of mobile communications.



Roaming Regulation

Following the adoption of the amendments of the Roaming Regulation in July 2009, the nominal price for domestic SMS charged by the main mobile operators is above the regulated price for roaming SMS, whilst the average revenue per domestic SMS is €0.111. Some consumer associations have reported this issue to the national competition authority. In addition, operators have adapted their voice tariffs for roaming calls made within the EU in order to charge a set-up fee equivalent to the first 30 seconds instead of a complete minute.

Fixed

Market situation

The decline of the fixed market has intensified during 2009. The incumbent remained dominant in the fixed telephony retail market with a more or less stable market share in terms of revenues (75.5% compared to the 63.3% EU average in December 2008). The market share of VoIP is still marginal although increasing at 3.7% as of December 2008. In contrast, as regards numbers of subscribers, by July 2009 27.4% of subscribers were using a provider for direct access other than the incumbent (compared to an EU average of 24.1%), one of the highest proportions in the EU. In Spain, 19.2% of the population had subscribed to a bundled offer as of July 2009, with most offers including fixed voice services, which is becoming a commodity.

Regulatory issues

Retail regulation was reduced significantly: the regulator withdrew obligations on the fixed retail calls markets after finding that these markets are competitive and on the transit service market as well as some of the obligations in the fixed retail access market. The Commission invited the CMT to reconsider the withdrawal of the ex-ante transparency obligation for customised offers and the price control for the set-up fee. The maximum increases for monthly fees for fixed access are still regulated by the CMT, which decided in July 2009 to maintain the fees of the previous year (€13.97). The incumbent may launch temporary offers for discounted monthly fees but only at national level, as no geographic differentiation of offers was finally allowed in the final measures adopted by the CMT.

As regards the fixed wholesale call origination and termination markets, in 2008 the CMT broadened the scope of regulation by including IP interconnection, while it maintained the previously established asymmetry of 30% between the incumbent's and other operators' termination prices. The CMT has started to review the Reference Interconnection Offer, which is necessary as the current reference offer was adopted five years ago. Fixed termination rates charged by the incumbent for time-based interconnection continue to be slightly above the EU average for all types of interconnection services. However, alternative operators use capacity-based interconnection, which is offered by the incumbent since 2001, in order to provide about 70% of their interconnection traffic and provides significant price reductions.

The introduction of wholesale line rental (WLR) as a remedy in the fixed wholesale call origination market, which allows alternative operators to provide their customers with a single bill, is mainly used in the business segment and for residential customers in areas where LLU is not available. Operators may take further interest in this wholesale offer, given that the combination of WLR and bitstream services is now provided at a discounted price.

In July 2009, the CMT adopted final measures on the trunk leased lines market where it decided to regulate ten undersea routes where there is no competition and withdraw the rest of the existing obligations. The Commission is still expecting the notification of the price remedies by the regulator. The CMT has also decided to withdraw retail obligations in the retail leased lines market as from February 2010.

In July 2009, the CMT also adopted final measures on the wholesale termination leased lines market, which improve conditions by increasing the distance of the circuits, including Gigabit Ethernet and allowing the use of leased lines for connection of mobile base stations. A decision on the revision of the regulated prices is expected in 2010.

Broadcasting

Market situation

Terrestrial television continues to be the main broadcasting platform in Spain. The number of IPTV subscribers in Spain has continued to increase, although the market share is still marginal (4.3% of households). The majority of cable and IPTV subscribers are benefiting from an offer bundled with additional services, such as fixed telephony or access to Internet.

In November 2009, the fixed incumbent increased its presence in the pay TV broadcasting market by acquiring 21% of the only satellite TV service provider in Spain, which has almost two million customers (11.6% of households) and many exclusive contracts for premium content.

Regulatory issues

In April 2009, the CMT reviewed the broadcasting transmission market and adopted final measures including the obligation to provide cost-oriented prices and the publication of a reference offer on the owner of the only terrestrial broadcasting transmission network with national coverage. The reference offer was published in October 2009, and some local undertakings have signed agreements.

The date for the switch-off of analogue TV in Spain is 3 April 2010. Although there have been delays in some of the regional milestones established in the staggered timetable, the process is ongoing and 6.5 million of Spanish citizens were switched off from analogue TV by the end of 2009. New legislation adopted in July 2009 establishes that digital terrestrial television (DTT) broadcasters should provide their free-to-air channels to at least one satellite operator, in order to cover areas without DTT signals (2% of population approximately).

Some stakeholders claim that they have not been properly consulted and legal uncertainty was generated by some controversial decisions during the last year, in particular the new financing of RTVE, the modification of DTT licenses allowing the provision of pay TV services²⁵⁷ and the draft General Audiovisual Law.

In 2009, the national competition authority fined the incumbent broadcasting transmission operator €22.7 million for abusing a dominant position (in particular, for requesting very long contracts, imposing high penalties for cancelling contracts and offering discounts for national

²⁵⁷ Real Decreto-Ley 11/2009, de 13 de agosto.

coverage, therefore foreclosing the market for possible competitors) and determined that broadcasters have the right to finalise contracts in advance.

Horizontal regulation

Spectrum management

In January 2009, the SETSI published the summary of the contributions received during the public consultation on the future use of frequencies in the 2.6 GHz band and the amendment of licences for 900 MHz, 1800 MHz and 3.5 GHz. However, no concrete decision has yet been taken regarding these issues and operators are demanding more information in relation to spectrum policy.

The SETSI was expected to launch a tender for the assignment of frequencies in the 2.6 GHz band by mid-2010. However, several mobile stakeholders have expressed the view that spectrum refarming should be given priority compared to the 2.6 GHz tender.

Spectrum refarming is still a rather contentious issue, as spectrum in the relevant bands is unequally distributed (16 MHz, 12 MHz and 6 MHz respectively for the three main MNOs) and new operators, such as the fourth MNO and cable operators, are also interested in obtaining frequencies. The incumbent's mobile arm's licence for rights of use of part of the spectrum has recently been extended for five additional years.

The Spanish authorities have recently announced that the upper part of the UHF band (790-862 MHz) will be freed up and made available for advanced communication services by January 2015. National legislation is in the process of being adopted in order to establish the procedure, and it seems that an auction will be organised to help finance the migration by the national DTT channels, which are currently using that band. A decision on the assignment of frequencies for mobile broadcasting services is still pending since the allocation of a single multiplex in 2005 for these types of services.

Although national legislation allows transfer of spectrum rights of use, in May 2008 Spain adopted a regulation on radio spectrum management specifying the conditions for spectrum trading. The SETSI considers the experience so far on the use of spectrum trading successful, although it only applies to very limited frequency bands. It has recently been proposed to extend the scope of that regulation to the main frequency bands for mobile services.

Implementation of spectrum decisions

The Commission services has requested that Spain provide further information as to the implementation of six Commission Decisions²⁵⁸ adopted under the Radio Spectrum Decision²⁵⁹ for the harmonisation of spectrum use in specific bands. The SETSI is currently revising the national frequency allocation plan (known CNAF) in order to incorporate some Commission Decisions. The Commission services are currently analysing the information provided by Spain.

²⁵⁸ Commission Decisions 2008/294/EC, 2008/411/EC, 2008/432/EC, 2008/477/EC, 2008/671/EC and 2008/673/EC.

²⁵⁹ Decision 676/2002/EC

Rights of way and facility sharing

During 2009, there have been two important decisions related to facility sharing, the publication of the incumbent's reference offer for access to infrastructure at cost-oriented prices and on non-discriminatory and transparent conditions following the obligation imposed by the CMT in 2008, and the symmetric obligations on operators regarding in-building fibre infrastructure for access at reasonable prices and under transparent conditions adopted in February 2009. Moreover, the advisory committee known as CADIAU has prepared two draft pieces of legislation with the aim of facilitating network deployment, one on ICT rules inside buildings for NGAs and another one deployment in parallel to works on roads and railways in the public domain.

Operators are still encountering difficulties in obtaining rights of way because of burdensome procedures, delays or even dismantling of mobile antennae in some regions and municipalities. Operators need to deal with more than 8 000 local authorities and the situation is very diverse. The SETSI points out that a significant number of mobile antennae were installed during the last year. However, operators are generally concerned about difficulties in network deployment, in particular as it may affect their capacity to offer mobile broadband services.

As regards the fee equivalent to 1.5% of gross revenue on mobile operators for the use of installed facilities in the public domain charged by an increasing number of local authorities, the national courts ruled in 2009 that mobile operators can be required to pay such a fee but only in relation to the use made of the public domain. The question of what should be the proportionate amount to be paid by mobile operators is still to be clarified.

Administrative charges

The Spanish Government decided to impose a charge on operators as part of the new financing system for the national public radio and television broadcaster (RTVE). The new legislation entered into force in September 2009 through an accelerated procedure. Broadband, mobile and fixed operators, which provide services that may include advertisement in more than one region, are subject to a charge of 0.9% of gross revenues, excluding wholesale revenues. In addition, operators providing pay TV services (such as the main cable operator and IPTV providers) are subject to an additional charge of 1.5% as providers of audiovisual services and free-to-air TV broadcasters to a charge of 3%. The Commission services are looking into this issue, in particular as to its compatibility with the relevant provisions of the Authorisation Directive and the rules for state aid. The CMT is now examining which operators should pay the charge, whilst operators are concerned about the high fiscal burden imposed on the electronic communications sector.

THE CONSUMER INTEREST

Tariff transparency and quality of service

In August 2009, new national legislation for users' rights entered into force in Spain: the "Charter of rights of users of telecommunications services", which provides for a single document comprising existing and some additional users' rights in the electronic communications sector. Some of the main changes introduced are the provision by operators of more detailed contracts, a more efficient procedure for complaints, a two-day deadline to implement the consumers' request for service cancellation, and specific rights for users of

prepaid services. The promotion for the adoption of a European Charter of users' rights is one of the objectives of the Spanish Presidency.

Following the legislation adopted in February 2008 on data premium services (SMS and MMS), a code of conduct on the provision of these services has entered into force in November 2009²⁶⁰. The code of conduct provides for reinforced users' information and the right to be disconnected from these. A separate code of conduct was adopted in June 2009 on premium rate services based on massive calls using the 905 numbering range by TV programmes.

The SETSI publishes quarterly data on quality of service of fixed and mobile telephony services, fixed broadband services and directory enquiry services as well as a comparison table of the retail broadband offers available in the market and the CMT publishes information about the incumbent's offers, as a result of its monitoring of the transparency obligations.

Universal service

As regards affordability of the current universal service, in May 2009 the limit for family income was reduced in order to allow an increased number of citizens to benefit from measures for special needs (known as "abono social")²⁶¹. The Spanish Government has recently proposed to establish 1 Mbps as functional access to Internet as from 2011 within the scope of universal service.

Infringement proceedings are still pending for incorrect implementation and transposition of parts of the Universal Service Directive, although there have been significant developments in the last year. In particular, as regards the transposition issues, in April 2009 a Royal Decree²⁶² amended the relevant national provisions related to certain requirements for financing of universal service (i.e. the evaluation of an unfair burden by the regulator and the prior request for compensation by the designated operator) and the commencement of a new designation procedure through the launch of a public consultation in September 2009. Following a more open consultation process, a relatively high number of expressions of interest by different potential stakeholders have been received for most of the universal service elements. The SETSI should complete the new designation processes during 2010.

During 2009, the CMT established the net cost for the provision of universal service in the years 2006 at €75.34 million and for 2007 at €71.09 million, a reduced figure compared to previous years due partly to the EU funds that the universal service provider had previously received, and it has established the sharing of the 2006 net cost between operators. The main elements for the net cost are fixed access and measures for special needs. The appeals against the net cost calculation and the CMT's decision of August 2008, where the CMT established that only mobile operators will contribute to the universal service compensation mechanism for the years 2003-2005, are still pending at the national courts, although the amounts were already paid by April 2009.

In December 2008, following applications by three operators, the incumbent was awarded a tender for the provision of directory enquiry services for a period of three years and it has also

²⁶⁰ Orden ITC/308/2008, de 31 de enero and Resolución SETSI de 8 de julio de 2009.

²⁶¹ Orden PRE/1231/2009, de 18 de mayo.

²⁶² Real Decreto 329/2009, de 13 de marzo.

been designated for the provision of the remaining universal service elements for a period of two years. As a result and although it seems that retail tariffs for this service have not yet increased, the provision of directory enquiry services will now be provided at zero cost whilst before the same operator was providing it at a cost²⁶³. The benefits from the provision of some elements (such as directories as from 2006 and payphones) have not been taken into account in the calculation of the universal service net cost although it could have possibly reduced the overall amount, as in accordance with the provisions of the Universal Service Directive the sum of all benefits and costs should be taken into account in the calculation.

Number portability

In the current period of economic crisis, Spanish subscribers have more frequently adapted their tariffs plans and changed service provider while keeping their number. As a result, there were 1.08 million fixed porting transactions and 3.27 million mobile porting transactions between January and September 2009. The use of mobile number portability in Spain entails no cost for the end-user or for the operators while fixed number portability also entails no cost for the end-user although a small wholesale charge is paid between operators.

The average period for porting both fixed and mobile numbers in Spain is five days, which is below the EU average for fixed numbers and above for mobile numbers. The "Charter of rights of users of telecommunications services" has established a reduction of the period for porting fixed and mobile numbers to two days as from the day after the reception of the request, and it already provides for a possible further reduction to a one-day period. In October 2009, the CMT started the procedure for adapting the portability rules accordingly.

In April 2009, the CMT allowed the subscribers' verbal consent to be accepted for portability, which will be later on verified by an independent third party²⁶⁴. By February 2009, there would be a change from a distributed to a centralised system for mobile number portability²⁶⁵ and the sharing of the costs would be clarified.

Consumer complaints

The number of complaints in the electronic communications market continues to increase, and these issues constitute 80% of the cases dealt with by the arbitration centres, which do not always apply the same criteria for resolving the cases. The office established within the SETSI to deal with users' complaints and to provide information on their rights received an average of 835 queries and 98 complaints a day in the first half of 2009; most complaints (81.3%) were resolved in favour of the user. The number of complaints related to mobile services has increased and billing continues to be the most problematic area for fixed and mobile services, whilst users increasingly complained about problems in cancelling contracts for access to Internet services²⁶⁶. On the other hand, the number of complaints on areas such as provision of universal service, premium rate services and mobile coverage has decreased.

The poor level of operators' customer service provided through call centres was the main concern expressed by consumers' associations, who also raised the issue of lack of notification

²⁶³ €16.61 million in 2003, €10.06 million in 2004, €6.87 million in 2005, €3.27 million in 2006 and €3.00 in 2007.

²⁶⁴ Circular 1/2009, resolución de la CMT de 16 de abril de 2009.

²⁶⁵ Circular 3/2009, resolución de la CMT de 3 de julio de 2009.

²⁶⁶ SETSI's report on queries and complaints, first semester 2009.

of contract changes and the difficulty in cancelling contracts of electronic communications services. Some of these issues have been addressed in the "Charter of rights of users of telecommunications services". A better coordination between all the different bodies dealing with complaints in the area of electronic communications at national, regional and local level was also requested by the consumers' associations.

European emergency number 112

Spain has a system with a network of 17 centralised Public Safety Answering Points (PSAPs) at regional level in addition to two PSAPs in Ceuta and Melilla, as responses to 112 calls are a matter of regional competence. In five 112 centres, caller location is not available for users of international roaming services. The Commission services are looking into this issue.

Whilst 65% of the Spanish population know 112 as a number to call in case of emergency in Spain, only 23% are aware that this emergency number can be called from other Member States²⁶⁷.

Harmonised numbers for harmonised services of social value (116)

In January 2010, Spain has assigned the first number in the 116 numbering range, the number 116111 for children helplines, although it is not yet operational²⁶⁸.

Must Carry

Must-carry obligations were traditionally imposed on cable operators for specific analogue TV channels and only until the end of the switch-over process in April 2010. In July 2009, national DTT broadcasters have been obliged to provide the free-to-air channels to at least one satellite operator in order to cover the areas that are not reached by the DTT signal²⁶⁹.

e-Privacy

The Commission services have received several communications from citizens who experienced problems with SMS for direct marketing. According to a recent national survey²⁷⁰, the majority of Spanish citizens are concerned about data protection and the use of their personal information, 70% had received a call or SMS for direct marketing from an undertaking to which they are not aware of having provided their personal data and 83% had received unsolicited e-mails.

The national data protection authority, Agencia española de protección de datos, which is responsible for issues related to personal data protection including the resolution of consumers' complaints, issued some recommendations in 2008 in this regard and participated in the introduction of a Robinson list in June 2009, which is a list for people who opt not to receive direct marketing communications.

The law that transposed the Data Retention Directive into Spanish national law²⁷¹ foresaw the establishment of a register of mobile prepaid customers. In November 2009, prepaid

²⁶⁷ Eurobarometer Flash survey on the European emergency number 112 (February 2010).

²⁶⁸ Resolución de la SETSI de 12 de enero de 2010. BOE 26 de enero de 2010.

²⁶⁹ Ley 7/2009, de 3 de julio, de medidas urgentes en materia de telecomunicaciones.

²⁷⁰ Barómetro CIS Septiembre 2009.

²⁷¹ Ley 25/2007, de 18 de octubre.

customers that had not been registered were temporarily disconnected, although they can still be connected back in case they register by May 2010.