

GERMANY

INTRODUCTION

Fixed broadband and mobile broadband penetration rates continued to increase during 2008. The number of cable broadband connections has grown considerably, mainly driven by a high proportion of new broadband customers. Local loop unbundling (LLU-) based competition remains strong in Germany with a large number of competitors offering electronic communications services. IP bitstream arrived on the market in 2008 and is in the process of being taken up.

The number of fixed subscribers using alternative access providers has grown steadily. Prices for bundles with double-play and triple-play services have dropped noticeably. Mobile options have been added to these double-play and triple-play offers including SIM cards with discounted call rates to the fixed network and one mobile network. A merger of several mobile service providers on the German market has yielded a new player which is now the third biggest mobile service provider according to the number of subscribers.

The deployment of and migration to next generation access (NGA) is still a point of regulatory concern and causes regulatory uncertainty. The medium-term strategy of both the incumbent and other players concerning next generation access does not seem to be transparent. The incumbent's ongoing investment in fibre to the home is currently limited to very high speed digital subscriber lines (VDSL) in big cities for the transmission of IPTV and triple-play, while a few competitors have also made small-scale fibre deployments. Although the Bundesnetzagentur (BNetzA) declared that it intends to set a comprehensive and transparent framework for NGA and to open options for migration of LLU operators, it has not yet taken conclusive action.

REGULATORY ENVIRONMENT

Main regulatory developments

In May 2008 the BNetzA, after lengthy negotiations, decided on a reference offer on IP bitstream, including stand-alone bitstream, and also approved as of August 2008 a reference offer on ATM bitstream. Competitors criticise the insufficient and inflexible control of service quality in the implementation of ATM bitstream as well as the *ex post* approach to price regulation which they say will lead to outdated pricing compared to the price level for leased lines, which are currently the main alternative wholesale product.

The current regulatory decision on mobile termination rates is valid until March 2009. Appeals against this decision, filed by mobile operators, were rejected by the Federal Administrative Court in April 2008. The mobile operators then filed a constitutional complaint against these decisions. The Federal Constitutional Court has not yet decided whether it will accept this complaint and open proceedings.

Regarding the market for wholesale unbundled access to the local loop, on 27 June 2007 the BNetzA was one of the first NRAs to impose on the incumbent the obligation to provide access to its ducts or, if access to ducts is not possible for technical or capacity reasons, to give access to its unlit fibre. This obligation was appealed by the incumbent before the first

instance administrative court, which confirmed the decision of the national regulatory authority (NRA) in May 2008. The incumbent then filed a second appeal – still pending – before the Federal Administrative Court. So far the BNetzA has not approved any duct access prices. For determining such prices a two-stage procedure has been agreed with the market players. In the first stage, alternative operators and the incumbent have to reach a business agreement depending on the location and condition of the street cabinets concerned. The BNetzA will then have to approve general prices for access in the second stage. This will probably increase the accumulated delay for new entrants on this market.

There is a pending infringement case before the Court of Justice on the amendment of the German Law on Telecommunications on 18 February 2007 (C-424/07) with respect to the definition of ‘new markets’ and the resulting limitation of powers of the national regulatory authority (BNetzA).

Organisation of the NRA

The level of independence of the BNetzA can be gauged from its decision-making and the composition of its ruling chambers. As mentioned in previous reports concerns continue to exist that the members of BNetzA’s presidential chamber are political appointments. According to the German Telecommunications Act (Telekommunikationsgesetz, TKG) the presidential chamber plays a decisive role in fundamental political questions, including the market definition and analysis of NGA networks.

Decision-making

In 2008, the BNetzA finalised the imposition of remedies on bitstream access and continued the second round of market analysis. The analysis of the wholesale broadband access market was also started, despite the fact that there has not been much time to monitor and evaluate the effectiveness of some first-round remedies, e.g. in the case of ATM bitstream implementation.

Following the procedures of the consultation and cooperation mechanism under the EU telecom rules, the BNetzA submitted, for a second time in one step, its analysis and proposed remedies for the market for voice call termination on individual mobile networks (October 2008). It also notified the Commission about the markets of call origination and call termination on public telephone networks at a fixed location (December 2008). Moreover, the BNetzA sent its notifications on the markets of publicly available telephone services at a fixed location (December 2008). The NRA is obliged by law to repeat market reviews every two years. In its 2008 analysis the BNetzA failed to provide details of the exact termination rates charged by German mobile operators.

Market players still report that the staff resources of the BNetzA in the Ruling Chambers are insufficient for the regulatory workload. The Ruling Chamber on wholesale markets was expanded in 2008. Some network operators have since noticed improvements in the efficiency of decision-making by this Chamber. Nevertheless, the decision process of the BNetzA frequently involves lengthy proceedings, and may last more than four months for a dispute settlement and more than two years for a complete market analysis and the imposition of remedies.

MARKET AND REGULATORY DEVELOPMENTS

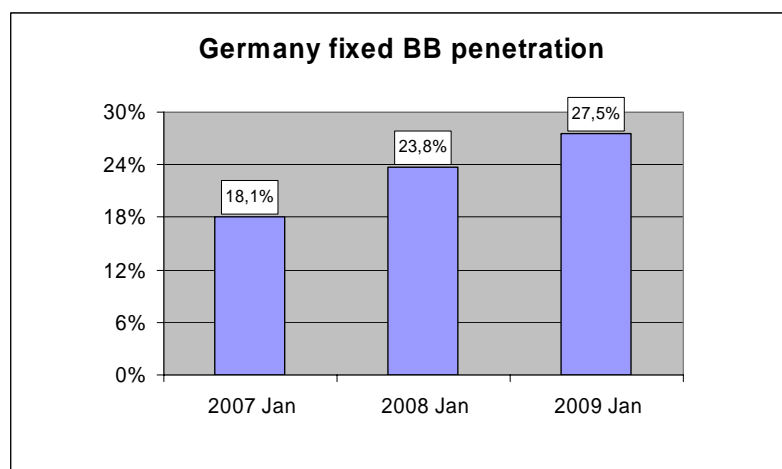
The total turnover of the German telecommunications sector amounted to €64 billion as of 31 December 2007, which is a decline of 3.2% compared to the previous year. The revenue from the fixed markets was €38 billion (€39 billion in 2006), and from the mobile markets €26 billion (€26.6 billion in 2006). The total value of tangible investments by fixed telecommunications operators (including the incumbent) and by mobile operators was €4.8 billion and €2 billion respectively, resulting in a total investment in the telecommunications sector of €6.8 billion. The amount of tangible investment by alternative network operators stood at €3.7 billion⁴⁰.

While voice call traffic volume in fixed networks remained virtually unchanged over the past year, it went up significantly in mobile networks. Stagnation was also observed in the usage of MMS and SMS.

The incumbent fixed operator has continued to roll out its VDSL network in larger cities aiming at competitive triple-play and premium offers. The cable operators have gained market share in triple-play and continue to upgrade the transmission capacity of their networks beyond current VDSL speeds. Increasingly, utility companies have started to invest in fibre infrastructure (“multi-utility” approach).

Broadband

Market situation



The market situation has further improved compared to the previous year with an increasing number of broadband connections and falling prices for flat and bundled offers.

In January 2009, the fixed broadband penetration rate was 27.5% (up from 23.8% in January 2008), which is above the EU average (22.9%). National DSL coverage

increased from 92.6% in 2006 to 95.7% in 2007 and DSL coverage in rural areas reached 87.5%⁴¹. Germany therefore succeeded in increasing DSL rural coverage significantly and so reduced the digital divide for DSL to 8.2 percentage points at the beginning of 2008. For cable, rural coverage increased from 2.5% to 4% while the national coverage went up from 35.7% to 47% over a year. Therefore, the digital divide for cable coverage has widened by almost 10 percentage points to 43%.

⁴⁰ This figure is taken from the Dialog Consult/VATM market study “Zehnte gemeinsame Marktanalyse 2008”, based on a poll of the member companies of VATM.

⁴¹ Figures on broadband coverage in this paragraph are taken from the IDATE studies "Broadband coverage in Europe" 2007 and 2008.

In July 2008, 20.7% of the local loops in Germany were unbundled. The proportion of DSL lines based on LLU was 35%, a rise of 3.2 percentage points from January 2008. In January 2009, the alternative operators' share of fixed broadband and DSL-only lines was 53% and 49% respectively. The cable operators' broadband market share was still relatively low – almost 6% – although their customer base developed at the highest rate.

In the wholesale broadband access market, sub-loop unbundling proved to be a viable business case for only a few providers, according to alternative network operators. On the other hand, IP bitstream was introduced following the approval of the incumbent's reference offer in May 2008 and has started to be taken up.

DSL remained the prevailing form of broadband access with a market share of 93% of all fixed lines and 94% of all connections having a downstream transmission rate of at least 2 Mb/s. 52% of the cable broadband connections had download speeds of at least 10 Mb/s. The incumbent operator's market share in fixed broadband lines increased in January 2009 to 47.0% (from 46.1% in January 2008) and decreased to 54.5% (from 64.1% in January 2008) with the inclusion of resale offers, remaining at a significant level. There are seven major competitors to the incumbent in the DSL retail market, with market shares varying between 1.7% and 13.4% according to the number of customers.

During 2008, the prices of double-play offers have been stable for most major fixed broadband providers, including the incumbent, and have significantly fallen for one alternative provider. Triple-play offers, including that of the incumbent, have undergone bigger price cuts in the range of 15-25%. The incumbent has offered a premium triple-play product, including advanced TV control and storage options as well as a DSL speed of 16 Mb/s. In the fixed network, many operators provide special offers such as waiving or reducing the connection fee for a certain period or giving fixed sums of credit.

Fibre-based retail broadband lines (fibre-to-the-building, FTTB) have been rolled out by one regional provider with competitive flat-rate voice and double-play offers. Cable providers are the main driver of the triple-play market and are set to become strong infrastructure and price competitors to telecommunications operators. The incumbent operator claims to be still delaying the wide deployment of fibre due to regulatory uncertainty. However, it continued expanding its high-speed VDSL access network in 37 German cities with 9 million potential customers, which is targeted at the provision of high-definition TV for about 30% of the households at streaming speeds of up to 50 Mb/s. Currently, more than 21% of all households have access to such high-speed connections.

The principal market drivers for cable providers are the managed voice and broadband services offered either separately or more often in a bundle on top of the TV service. Cable operators continued to expand their market share in the broadband market and upgraded their networks in terms of transmission speed and service diversification. At the end of 2008 they reported 1.4 million VoIP or broadband subscribers and the acquisition of up to 20% of all new fixed customers. The main product differentiator for cable operators compared to the incumbent and LLU-based competitors is transmission bandwidth. The targeted cable transmission capacity in 2008 is 32 Mb/s with an upgraded feedback channel. In 2009 trials at transmission speeds of up to 100 Mb/s are planned. This will open the door to premium products which are currently unachievable for many telecom operators. Typically, prices of cable-based double-play offers are lower than similar DSL offers. Competitive triple-play offers are provided by the incumbent on a VDSL basis, by one LLU-based competitor on an ADSL2+ basis, and by one city carrier based on FTTB technology.

Cable connections are currently available in 27 million homes in Germany, out of which 23 million homes can be supplied with broadband services including voice, implying a broadband coverage of 58% of households. Even though most of these connections are in urban areas, a lot of them are also deployed in rural areas, often being the only alternative to the incumbent telecommunications operator. Pricing of cable offers is similar to LLU offers at national level but cable products in rural areas are usually more expensive.

As from October 2008, the majority of German cable operators are represented by the association ANGA (a successor to the former Deutscher Kabelverband) with 120 members serving 19 million cable customers in Germany. The biggest cable provider has 50% of all customers.

Mobile broadband access, although used extensively by business customers via UMTS modems in portable computers, still does not represent real competition to fixed lines in residential markets in terms of bandwidth and quality of service.

Regulatory issues

During 2008, the national regulator approved an IP bitstream reference offer, including stand-alone bitstream, and also approved an ATM bitstream reference offer. The state of competition, in particular with respect to the LLU market, is used by the incumbent as an argument to propose geographic segmentation in the broadband market. There are also competing wholesale broadband products based on the combination of LLU and an own backbone network.

Potential customers for the ATM bitstream offer have complained that the reference offer does not allow them to control appropriately the quality of service from the customer premises equipment and that it contains proprietary technological features deviating from the ATM standard. According to them it cannot be considered to be a true real-time offer and does not offer the flexibility of supporting quite different services simultaneously. In addition, the price for ATM bitstream is regulated ex-post which, according to alternative network operators, has led to much higher prices compared to wholesale broadband products via leased lines. As a consequence, alternative operators claim that ATM bitstream is not yet an effective wholesale product, even though the BNetzA has started its second round of market analysis. On the other hand, ATM bitstream is considered by many market players to be a future-proof wholesale technology capable of replacing leased lines since it provides more flexibility in quality-of-service management.

Ethernet-based bitstream handover has not yet been implemented by the incumbent operator, although this has already been demanded by the BNetzA.

Since their adoption in October 2007, the regulatory remedies imposed for all other types of leased lines show implementation delays. Despite an access obligation on the incumbent operator, no reference interconnection offer has been approved and partial private circuits are not widely available.

Next generation access deployments based on VDSL or FTTB continue to make progress in Germany. As already mentioned in the previous report, it is crucial that the NRA monitors the broadband markets and provides transparent information and regulatory guidance regarding the future of multi-service interconnections. The process of upgrading and migrating local exchanges should not create a risk of disruption to alternative market players who depend on the incumbent's wholesale broadband products.

Negotiations involving regulatory and governmental authorities have started between alternative network operators and the incumbent on future interconnection models and migration strategies for NGA. The main aspects of these negotiations are the timetable for migration, compensatory migration charges, the co-existence of fibre-based and ADSL-based access, and commercial VDSL bitstream offers. However, several complaints have been filed with the NRA in relation to NGA migration and interconnection.

Mobile markets

Market situation

The total number of mobile subscriptions and the number of UMTS-capable subscriptions soared in 2008. The mobile penetration rate in October 2008 reached 128.9% (up from 113.3% in October 2007). The mobile broadband penetration rate in January 2009 rose to 14%, whereas the penetration rate of mobile broadband users accessing data services via dedicated data modems, cards or keys was only 2.3%. Market shares have been relatively static with the two largest mobile operators together still holding more than two thirds of mobile subscribers. The market share of the incumbent fixed network operator's subsidiary was 35.8% (37% in the year before). The main competitor held a market share of 33.5% (34.9% in the year before). The third and fourth mobile network operators changed positions in the overall ranking and together had a market share of 30.7% (28.2% in the year before). All mobile service providers without an own network generated 19.1% of the total revenues in the mobile sector. The volume of mobile voice calls in terms of outgoing connection minutes increased by 33.7% as of 31 December 2007 compared to one year before.

A consolidation of three mobile service providers took place in April 2008, giving rise to a new larger mobile service provider on the German market which is ranked third (in terms of service providers) according to the number of subscribers. There are eight mobile service providers, two of which are mobile virtual network operators (one in 2007), and both of them benefit from access to the network of the fourth largest mobile operator.

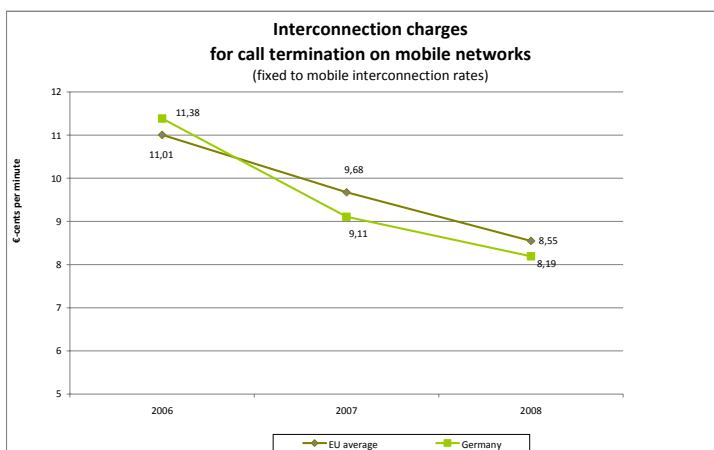
The market for pre-paid mobile services has developed rapidly and now almost equals that of post-paid mobile services. The popularity of pre-paid offers has increased due to their particularly low costs for on-net calls and SMS, competitive prices and easy tariff system with just one price for calls and SMS to all other national mobile and fixed-line networks. Mobile operators promote offers with very low connection prices only to their own networks ('on-net') or to the fixed network. In 2008, 56.6%⁴⁰ of the outgoing connection minutes were 'off-net' i.e. directed to numbers of fixed or other mobile networks.

All four mobile operators continued expanding their 3G networks and upgrading them with new technology. The two largest mobile operators have almost completed the HSDPA upgrade of their UMTS networks, which can deliver a transmission rate of 3.6 Mb/s. The UMTS national network coverage of one mobile operator exceeds 80% of the population and for the other three mobile operators it is about 60% or above.

Regulatory issues

The regulation of mobile termination rates in Germany took place in two steps in 2006 and 2007 and has led to a moderate reduction in the retail price of mobile calls to an average level of €0.11 per minute as of 31 December 2007. The average mobile termination rate decreased to €0.0819 per minute as of October 2008 (from €0.0911 per minute in October 2007). Fixed network operators have only partly passed on the reductions due to the pending court

procedure on mobile termination rates and the reserves for uncertain liabilities which they set up in anticipation of the decision on ex-ante regulation being appealed⁴². The price levels of the incumbent in particular give no indication that reductions have been passed on to its customers. This was the subject of criticism by the German monopoly commission in its 2007 annual report. Following the Federal Administrative Court's decision of 2 April 2008, these uncertainties no longer exist and the prices are expected to fall⁴².



According to the BNetzA, Deutsche Telekom has reduced fixed-to-mobile tariffs in packages and optional tariffs. It will open the optional tariffs also to all customers without packages, thus allowing 10 million potential customers to profit from them.

The planned amendment of the German Telecommunications Law (TKG) by the government, introducing retail caps to 0180 service numbers, is criticised by some mobile operators for not being preceded by a market analysis by the NRA in accordance with the consultation and cooperation mechanism under the EU telecom rules. The German legislature and the German regulatory authority are of the opinion that the planned amendment does not constitute a case of rate regulation. Rather they believe it is related to the structure and delineation of the numbering ranges, especially regarding the 0900 numbering range for premium services. In this respect, a specific rate limit is to be assigned to a numbering range. The Commission services are monitoring the situation.

Roaming

The average roaming retail price in Germany as of October 2008 was €0.432/minute, excluding VAT.

Germany has not yet fulfilled its obligation under Article 9 of the Roaming Regulation to notify the Commission of the penalties adopted for infringements of the Regulation, and this is being followed closely by the Commission services.

⁴² This statement reflects an opinion provided by the BNetzA.

Fixed

Market situation

The incumbent's market share in fixed circuit-switched phone lines ("PSTN" or "ISDN") has dropped to 81.3% (from 84.5% in 2007). As of July 2008, the share of telephone subscribers using direct access to an operator other than the incumbent operator was 19% (up from 16% a year before). These developments are due to increasing competition from alternative telecom operators (either own infrastructure or LLU-based) and cable operators. There were 78 active operators offering public voice telephony by direct access (up from 69 a year before). The total number of active operators offering publicly available telephony services increased to 170 (165 one year before) and the number of managed VoIP operators went up to 75 (48 in 2007), indicating stronger competition and increasing customer orientation to VoIP services. Prices of voice flat-rate offers have been stable or in some cases were decreasing by at least 10% in 2008. The alternative fixed network operators' share of all outgoing connection minutes (including cable providers) reached 53%. Cable competition has increased in 2008 and the number of cable subscribers for voice has almost doubled compared to 2007.

The total amount of investments realised in fixed network infrastructure in 2008 was €4.8 billion. The infrastructure investment of alternative operators has been quite stable in Germany for the last three years.

The volume of voice calls using call-by-call and pre-selection in terms of outgoing connection minutes has continued to drop and now accounts for 39.4%⁴⁰ of the market (down from 51.4% in 2007). This can be explained by the increasing number of customers opting for flat-rate offers and the growth of LLU.

Regulatory issues

Since the adoption of the current regulatory framework the BNetzA has performed two market analyses in the LLU market. The initial deployment of NGA fibre infrastructure has begun in Germany and market players have raised concerns about how the incumbent fixed network operator will proceed with the closure of obsolete main distribution frames (MDF) in the future. In order to ensure business continuity in the process of migrating to next generation access, alternative fixed network providers are considering a variety of strategies including, for example, deploying their own FTTB or fibre-to-the-home (FTTH) technology, access to ducts or negotiations on a commercial VDSL bitstream contract with the incumbent. The incumbent network operator has revealed only its provisional plans on NGN roll-out and legal uncertainty which still exists in some areas needs to be addressed. In particular, the lack of a timely regulatory approach by the BNetzA to the *ex ante* pricing of access to ducts as well as the lack of pro-activity on markets such as VDSL bitstream are likely ultimately to create barriers to competition and investment. The Commission services are monitoring the situation.

Currently, the obligation for pre-selection is fixed in German telecommunications law. The obligation for call-by-call and carrier pre-selection is claimed by the incumbent to have become an obsolete regulatory instrument since competitive LLU-based offers, especially flat rates, dominate the market. In parallel to its PSTN offer, the incumbent operator intends to launch a future offer of single all-IP subscriber lines, where pre-selection can be carried out by router programming. Moreover, the BNetzA has conducted the second round of analysis of

the markets for publicly available telephone services, including fixed-to-fixed and fixed-to-mobile calls at a fixed location and has proposed to withdraw the regulatory measures on these markets. The Commission services have assessed this case.

In June 2008, the BNetzA set one-off fees for LLU (valid until June 2010) and further reduced the price levels for shared access. In November 2008, it increased the interconnection charges for call termination at the fixed network by 4.4% (the incumbent had requested 10%). For the first time in such a decision the regulatory authority took into consideration the costs of special personnel compensation programmes and employment-securing programmes of the incumbent operator. The Commission services are looking into the matter.

Broadcasting

Market situation

The situation in the German retail market for TV and radio has remained unchanged compared to the previous year⁴³ – in July 2008 end-users mainly used cable (52.5%) or satellite (42%). 46.7% of households have access to digital TV programmes. The share of households with digital terrestrial television (DVB-T) grew slightly to 10.5% (from 9.9% in 2007). Television via DSL ("IPTV") accounted for just 0.3% of the serviced households. Mobile TV does not have a significant share of the market.

In June 2008, there were ten major cable providers including four big companies with more than two million customers each.

Regulatory issues

The BNetzA has imposed remedies in the broadcasting transmission services market, which was subsequently removed from the Commission's current recommendation on relevant markets⁴⁴ in April 2007. Accordingly, cable operators have to grant signal delivery access to downstream cable operators, whereby the signal at the handover point must be decoded. The allegedly high implementation costs for such a handover are not conducive to allowing competitive retail offers by new entrants. Cable operators consider the signal delivery market at national levels three and four⁴⁵ to be competitive so that regulatory measures should have become obsolete. A subsequent market review is expected to be notified by the regulatory authority in due time.

The release of broadcast radio spectrum for mobile services in the UHF range (digital dividend) is under discussion in Germany as part of the preparation of the next frequency allocation ordinance (FreqBZPV) by the Federal Ministry of Economics and Technology, which is expected to be adopted within the first few months of 2009 with the agreement of the Bundesländer.

⁴³ The figures in this paragraph are taken from the digitisation report 2008 published by the Association of the Media Authorities of the Länder (prepared by TNS infratest). More than one TV reception path per household may be available.

⁴⁴ Commission Recommendation 2007/879/EC.

⁴⁵ For historic reasons, the cable network in Germany is divided into four network levels. Network levels 1 and 2 serve to transport signals from broadcasters to regional distribution points. Network level 3 extends from these distribution points to the transfer points outside the subscriber's home. Network level 4 is the part of the network from the transfer point to the cable jack in the subscriber's home.

Horizontal regulation

Spectrum management

As regards frequency harmonisation at European level, Commission decisions adopted up until the end of 2007 are reported to have been implemented, except Decision 2007/344/EC on the harmonised availability of information regarding spectrum use. Furthermore, Germany has to implement the Commission Decisions adopted in 2008, and in particular Decision 2008/477/EC on the use of the 2.5-2.69 GHz frequency band for electronic communications, by making changes to the national framework for frequency allocation. The assignment of 2.6 GHz spectrum for electronic communications services is the subject of court proceedings in Germany. Both the 2.6 GHz and 1.8 GHz frequencies will probably be auctioned for next generation communications services in 2009. The Commission requested clarification from the German federal government on the auction of 2.6 GHz frequencies in view of the above-mentioned Commission decision, especially with respect to the principle of service neutrality.

All mobile operators welcome the discussions and the expected allocation of the digital dividend spectrum for wireless services. It will allegedly reduce the deployment cost of future mobile broadband networks in rural areas by 66% compared to the current cost of deploying UMTS networks in the frequency range around 2.1 GHz. The digital dividend makes available additional bandwidth below 1 GHz for next-generation mobile access, complementing the re-farming of the 900 MHz spectrum, which alone will probably not meet high bandwidth demands.

The Federal Ministry of Economics recently published a draft amendment to the Ordinance on Frequency Allocation which caused controversy and led to disputes between the Bundesländer on the usage of the digital dividend. However, there are signs of compromise which could lead to a solution in the first half of 2009. The Commission services are looking into the matter.

THE CONSUMER INTEREST

Tariff transparency and quality of service

The transparency of DSL offers with respect to the achievable download rate and related contractual obligations are often criticised by German citizens. They complain of very low DSL speeds and the lack of opportunity to cancel a contract or seek compensation in cases of possible violation of the contractual obligations by the incumbent.

The consumer protection organisations conducted an online survey in November 2008 which showed that consumers are forced to wait for one month on average to change their broadband provider. Two thirds of the participants in the survey indicated that they were not satisfied with the customer service of their provider.

Universal service

In Germany no undertaking is designated for the provision of universal service. The State authorities have not intervened as they consider that the market provides the necessary service.

Number portability

In 2008 the average period for having a phone number ported and operational was five working days for fixed numbers and three working days for mobile numbers, similar to previous years. No wholesale charges are levied in the case of the fixed network and the incumbent operator's retail price is regulated at €5.81. Mobile operators charge end customers between €21 and €30 for porting a number.

Between 1 October 2007 and 1 October 2008 there were 558 928 new ported mobile numbers, giving a total amount of 1 987 647 ported mobile numbers in Germany.

Consumer complaints

The number of consumer complaints registered by the BNetzA in 2008 increased compared to the year before and while the exact number is not available it seems to be about 36 000. A few complaints have also been directed to the Commission. As mentioned above, citizens' complaints demonstrate unacceptably low download DSL speeds for the connections provided by the incumbent, especially in rural areas. It is evident that citizens often assume that the DSL speeds claimed in offers, and included in subsequent contracts, are not simply upper limits but rather typical operating speeds. It appears that DSL offers do not make clear, or even completely omit to inform consumers about, the technical limitations of their DSL connections.

Some citizens also complain about the lack of choice of broadband offers in rural areas, where often the fixed line provided by the incumbent operator represents the only possible choice for broadband access.

European emergency number 112

As indicated in the previous report, 112 is technically operational in Germany. Since 112 has been used in Germany for decades to call the fire brigade and the rescue services in emergencies, it seems that its EU-wide application and its usage as a universal emergency number, including for calling the police, needs to be emphasised.

Must-carry

Must-carry is regulated in all sixteen "Bundesländer", and in some of these all analogue channels are reserved for must-carry. It appears that in a few Bundesländer the stations that take part in terrestrial digital TV provision (DVB-T) receive, in turn, must-carry status for analogue provision via cable. Restrictions are regulated in the legislation and in cable allocation statutes of the Bundesländer. Some must-carry rules have been called into question by market players, and the Commission initiated an infringement proceeding against Germany in October 2006. In so doing, the Commission addressed the legislation of four Bundesländer, without prejudice to the legislation dealing with must-carry rules or the application of these rules in the remaining Bundesländer.

In parallel with the Commission's proceedings against Germany, a German national court asked for a preliminary ruling from the Court of Justice with regard to the must-carry legislation for the Land of Lower Saxony (C-336-07). On 22 December 2008 the Court of Justice ruled that Article 31(1) of the Universal Service Directive does not preclude national legislation from requiring a cable operator to carry over its analogue cable network television channels and services that are already broadcast under DVB-T, even if this results in the utilisation of more than half of the channel capacity available. In the event of a shortage of

available channels, this legislation can also provide for an order of priority of applicants which results in full utilisation of the channels available on that network. The Court stated, however, that these obligations should not give rise to unreasonable economic consequences, which is a matter for the national court to establish.

Data protection

As a result of scandals concerning theft and misuse of personal data, also involving the incumbent operator, the German government adopted in December 2008 the draft of a new law on data protection. This draft prohibits the circulation of any private data without the explicit approval of the person concerned, and closes a gap which existed before for certain types of personal data. In particular, internet sales with major companies may not depend on the customer's agreement that his or her personal details be further used for marketing purposes. The law may be enacted in the middle of 2009.

The Parliament's Legal Committee adopted, also in December 2008, a draft law regarding the compensatory payments to providers for complementary services on telecommunications interception. Sector associations criticised the lack of adequate compensation of their member companies for the infrastructure investment for data retention which these companies have undertaken.