

IRELAND

INTRODUCTION

Competition between different infrastructures continued to develop in 2008, with mobile and cable operators attracting many new broadband customers. Nevertheless, fixed broadband penetration was still below the EU average. Removal of retail regulation of fixed calls has meant that the incumbent is in a position to make service offers, in particular bundles, which, combined with the persisting high local loop unbundling (LLU) prices, affects negatively the prospects of the alternative operators.

While the Irish government has launched a major initiative to support the development of next generation networks (NGN), it remains to be seen how the industry will pursue investment plans in a new economic environment. The mobile sector is awaiting important spectrum-related decisions that will shape its future for years to come.

REGULATORY ENVIRONMENT

Main regulatory developments

In 2008 the Irish government issued a consultation paper on next generation broadband, setting out a vision and a framework for investment by the communications industry in next generation broadband networks, and looking at ways in which the government could contribute to the success of the process. The policy actions suggested include requiring open-access fibre connections in new buildings and better use of public infrastructure for backhaul connections, as well as public funding.

The Commission for Communications Regulation (ComReg), the Irish national regulatory authority, undertook several important regulatory initiatives in the mobile sector, proposing liberalisation of the future use of the 900 MHz and 1800 MHz ("GSM") spectrum and reduction of the wholesale number portability charges in particular.

Organisation of the NRA

In 2008, as a result of the Communications Regulation (Amendment) Act 2007, ComReg started performing new functions relating to the registration of the ".ie" domain names. The Communications Minister also announced his intention to enact legislation in early 2009 to transfer the regulation of the content and marketing of premium rate telecommunications services from the private sector (a company called "Regulator of Premium Rate Telecommunications Services Limited" (RegTel)) to ComReg.

ComReg's powers to investigate breaches of competition law in the electronic communications sector, established in 2007 through the amendment of the Competition Act 2002, have not resulted in any findings yet. Nevertheless, several complaints have been received and are being investigated by ComReg.

It seemed also too early to see the impact in practice of the replacement of the Electronic Communications Appeals Panel with the possibility of appeal to the High Court in 2007. The principal reason for replacing the appeals panel process had been that the anticipated increase

in speed and reduction in costs as compared with court procedures would not effectively materialise. Yet, the first estimations by alternative operators are that the Panel could have been a quicker and cheaper option for the resolution of disputes.

Decision-making

The second round of market analyses is well under way. The second reviews of most fixed markets had been notified to the Commission by the end of 2007. In 2008, ComReg further notified to the Commission the analysis of the retail and wholesale leased lines markets. Notifications concerning the markets for wholesale fixed physical network infrastructure access (LLU) and wholesale broadband access are planned for 2009.

The review of local loop unbundling (LLU) pricing, and elaborating a consistent and effective approach to pricing of bundled services, appear to constitute the next challenges for the regulator in particular.

As demonstrated by a recent mobile interconnection dispute, ComReg is finding it challenging to observe the target time frame of four months for resolving disputes while following all required procedural steps at the same time. A public consultation on the dispute settlement process is planned for 2009.

MARKET AND REGULATORY DEVELOPMENTS

The total turnover of the Irish telecommunications sector was €4.4 billion as of 31 December 2007, compared to €4.1 billion one year earlier. The fixed segment contributed €2.3 billion, and the mobile segment €2.1 billion. Investments in telecommunications networks reached €300 million at the end of 2007 and were largely driven by mobile operators who invested a total of €253 million, resulting in an investment over revenues ratio of 6.9%, below the EU average.

Following the announcements made in 2007 about the gradual roll-out of very high speed digital subscriber lines (VDSL2), the incumbent further clarified its next generation network strategy in 2008. In particular, the incumbent would first upgrade the core part of the network and would then invest in the access part. Concerning the latter, trials of VDSL2 solutions are ongoing at two exchanges and 50 cabinets. Once the results of these trials have been analysed, the incumbent will be in a position to make the necessary investment decisions.

The incumbent's transition to NGN had already been accompanied by regulatory discussions in 2007. In February 2008, the market players communicated to the incumbent their expectations as to future wholesale products. The incumbent would prefer, however, to wait until the VDSL2 trials are completed before elaborating specific wholesale products. ComReg continues to pursue discussions with both the alternative operators and the incumbent, and plans to take the NGN developments into account in its imminent analysis of the wholesale broadband access market.

The changing economic environment has meant that the incumbent's consideration of plans for structural separation have been suspended. It also remains to be seen how the new environment and the reported plans by the incumbent's main shareholder to sell its stake will affect the development of NGN.

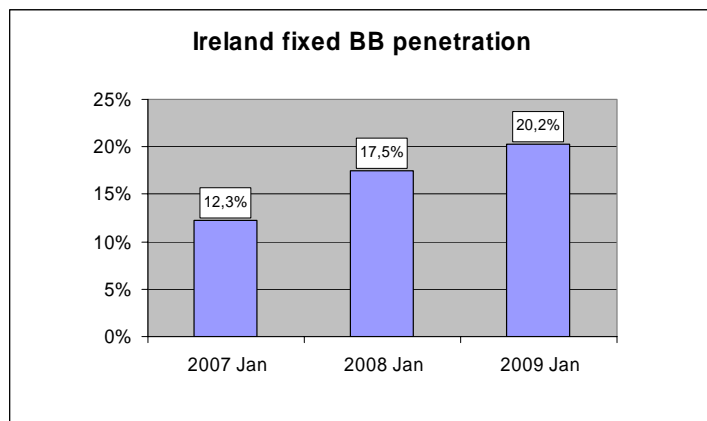
Close to 10% of the Irish population subscribed to bundled offers (mostly "double play") of electronic communications services in 2008. This share has the potential to increase in the

near future, as operators are pursuing active marketing strategies. The alternative operators have urged ComReg to put in place clear rules concerning the incumbent's bundles, particularly in light of recent low-priced offers. ComReg launched a public consultation on the treatment of regulated services within bundled retail offers in January 2008, but the final decision was still under consideration at the end of 2008.

Broadband

Market situation

In January 2009, fixed broadband penetration reached approximately 20.2% compared to around 17.5% in January 2008, while the EU-27 average stood at 22.9%.



Broadband services are provided through a number of competing infrastructures: growth of wireless local loops (WLL) has levelled off, but cable broadband lines have expanded by almost 33% within a year. Mobile broadband penetration stood at 20.5%, largely above the EU-27 average of 13%. Overall, digital subscriber lines (DSL) remain the main technology,

with 74% of subscribers in January 2009. As of January 2009, 31% of all DSL subscriptions were supplied by alternative operators, indicating no change compared to January 2008. The fixed broadband market share of the incumbent grew slightly in 2008 and was 52% in January 2009, above the EU-27 average of 46%.

The Irish government has recently completed the competitive tendering process for the National Broadband Scheme (NBS), aimed at extending broadband access to the remaining portion of the population (estimated at approximately 10%) that is not covered by the existing broadband infrastructure. In December 2008, the contract for delivery of the scheme was awarded to a mobile operator. It is expected that broadband services will be deployed in all NBS areas within 22 months.

National DSL coverage increased from 86% in 2006 to 89% in 2007, and DSL coverage in rural areas stood at 73%, an increase of 9 percentage points over a year. For cable, rural coverage increased from 4% to 15%, and the national coverage grew from 8% to 27% over a year. Ireland therefore succeeded in narrowing the digital gap for DSL from 22 to 16 percentage points, although the digital gap for cable widened from 4 to 12 percentage points.

Regulatory issues

Following the resolution in 2007 of a number of local loop unbundling issues, such as migration paths to LLU from other wholesale products, and enhanced Service Level Agreements (SLA), ComReg took some further regulatory steps in 2008. In particular, the incumbent was directed to reduce the line share monthly rental charge from €8.41 to no more than €2.94 as of 25 July 2008, and the LLU ancillary charges were substantially reduced as of 1 October 2008.

The line share charge reduction had been designed by ComReg to serve as an intermediate measure pending a comprehensive market review. However, following notice of an appeal by the incumbent, the decision on the line share charge was withdrawn. The comprehensive review was completed and a draft decision imposing a charge of no more than €0.75 per month was published for consultation in December 2008.

As a matter of fact, the monthly rental charge for both fully unbundled local loop and shared access increased slightly in both 2007 and 2008, and are the highest in the EU. In contrast, the connection fees were reduced from €55 to €45 as of October 2008, which is under the EU average. The number of retail LLU lines of alternative operators grew from 17 918 in January 2008 to 22 653 in January 2009. The number of retail bitstream lines of alternative operators reached 182 384, compared to 152 484 lines in January 2008.

The actual service levels available to the market players using the incumbent's network, especially the rate of early LLU line failures, seem to constitute a persisting problem. It is expected that the measures taken by ComReg in the context of universal service, as well as recent training courses organised by the incumbent for its technicians, will improve the situation.

Following ComReg's suggestions for modification, the capacity-based bitstream product, which would have been favourable to large operators, has been withdrawn by the incumbent.

Mobile markets

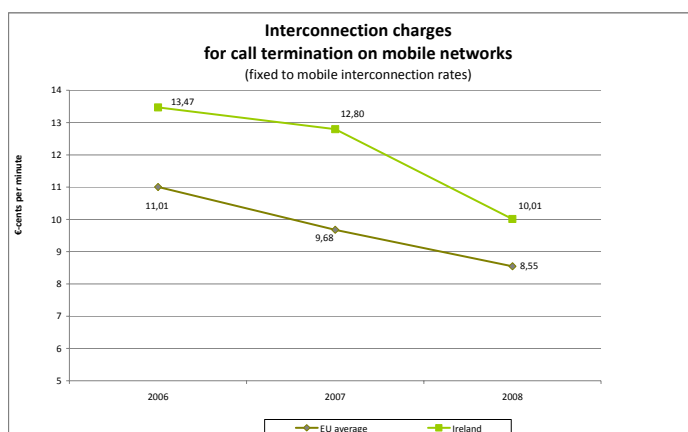
Market situation

The mobile penetration rate has grown from 111% in October 2007 to 119% in October 2008, which is at the EU average of 119%. Three mobile operators have been providing commercial third generation (3G) mobile services for several years now, and the fourth mobile operator is about to launch its 3G services too. Mobile price per minute of voice communication, at €0.11, compared favourably with the EU average of €0.14.

One mobile operator has carried out mobile TV tests (Digital Video Broadcast – Handheld, DVB-H) in Dublin, but the commercial deployment is on hold for the time being, reportedly due to economic viability issues. The operator is considering wholesale options.

Regulatory issues

On 8 January 2008, the Commission registered a notification received from ComReg concerning the market for call termination on the mobile network of the third operator which had not been subject to the SMP (Significant Market Power) status, following an appeal. ComReg's final decision of December 2008 obliged the operator in question to reach a target blended termination rate of €0.08 within 60 calendar months. This decision has also been appealed. The termination rates to which the other mobile operators are committed



aim at an average blended rate of €0.08 by 1 January 2012. ComReg was engaged with these operators in further reducing the blended rate range. As of October 2008, the termination rates applied by Irish mobile operators varied from €0.09 to €0.14, while the EU-27 average was €0.08.

In July 2008 ComReg issued a consultation paper on liberalisation of the use of the 900 MHz and 1800 MHz spectrum bands. In particular, ComReg proposed to lift restrictions on the technology and services that can be provided in these bands, and to increase the amount of spectrum available to operators. ComReg also described its approach to the award of new 900 MHz and 1800 MHz rights of use, following the expiry of current licences in these bands: the 900 MHz spectrum would be assigned through a competitive award process (auction) to be launched in 2009, while the assignment of the 1800 MHz spectrum would be postponed until 2013. ComReg is analysing the responses to this consultation.

Some market players noted a huge impact on consumers of a potential situation where an existing operator in the 900 MHz spectrum would not get a new right of use for this spectrum. On the other hand, a 3G-only operator insisted on equality of opportunity in any award of the 900 MHz spectrum and called for synchronisation of the liberalisation and any new spectrum assignments. Doubts as to the compatibility of the contemplated mobile virtual network operator (MVNO) access condition as part of the spectrum assignment with the EU regulatory framework have also been voiced.

Roaming

All Irish mobile operators complied duly and on time with the European Regulation (EC) No 717/2007 on roaming on public mobile telephone networks within the Community as regards the second round of price reductions as of 30 August 2008. Some operators have set their retail prices at the maximum level indicated by the Regulation, and some slightly or even significantly below the maximum level.

Fixed

Market situation

Signs of fixed to mobile substitution have become visible as the fixed telephony traffic was lower in December 2007 than by the end of 2006. The incumbent's market share (measured by retail revenues) in the fixed telephony market was slightly below 70% in 2008, one percentage point up on 2007. Approximately 22% of subscribers used an alternative provider for voice telephony services in July 2008, although only 5.8% of the alternative operators were using proprietary infrastructure for the delivery of such services. The number of Irish VoIP providers increased from nine to 14 in the period from July 2007 to July 2008. However, they accounted for less than 1% of the volume of fixed communications traffic, below the EU average of 8.33%.

Regulatory issues

The deadline of 30 April 2008 had been set by ComReg for the implementation of its 2007 market review decision to withdraw regulation in the retail calls markets. This deregulation has been followed by an increase by the incumbent of its local calls tariffs (the incumbent's monthly line rental charge for residential users remained the highest in the EU in 2008).

Following ComReg's market analysis decision in December 2007, the incumbent has to apply cost-oriented fixed wholesale termination prices (using the forward-looking long-run

incremental costs — FL-LRIC model), while alternative operators exceeding the market threshold of five per cent are subject to glide paths towards an efficient rate. The incumbent's termination rates were just below the EU average in October 2008.

In 2008 the incumbent proposed a new wholesale product, called "white label", comprising elements of call origination, transit and termination, and meaning in practice that the incumbent would undertake all switching of calls on clients' behalf. The proposal is under investigation by ComReg. The wholesale line rental (WLR) margin was increased from 10% to 14% by ComReg in 2008, partly as a follow-up to requests from alternative operators.

Broadcasting

Market situation

The share of Irish TV viewers relying on analogue broadcasting had fallen from approximately 30% in 2007 to approximately 25% in 2008. The remaining 75% are equally divided between the satellite and cable platforms. Approximately 58% of Irish TV viewers receive digital TV services. Internet television (IPTV) subscriptions are negligible. A digital terrestrial TV (DTTV) pilot project in the Dublin area has been successfully completed. The launch of both public and commercial DTTV is likely to take place in autumn 2009.

Regulatory issues

The Broadcasting (Amendment) Act 2007 sets out the legal framework for the development of DTTV in Ireland. It requires ComReg to award spectrum usage rights to the national public broadcaster, in respect of the public service multiplexers, and to the Broadcasting Commission of Ireland (BCI) for the purposes of commercial multiplexers in 2009. BCI's DTTV tender process took place in 2008, and contract negotiations were ongoing with the preferred bidder. A specific analogue broadcasting switch-off date remains to be set by the Communications Minister, depending on the success of the take-up of DTTV.

On 1 October 2008 ComReg hosted a national conference with a view to launching an informed debate on the future use of the digital dividend. Nevertheless, ComReg had already issued, in June 2008, a consultation paper suggesting the award through an auction of a right to use a single 8 MHz spectrum channel in the ultra high frequency (UHF) spectrum band, between 470 MHz and 750 MHz, in five main urban areas: Cork, Dublin, Galway, Limerick and Waterford. Two alternative award options, for mobile TV or for any wireless service, are being considered.

Horizontal regulation

Spectrum management

In July 2008, ComReg published the Spectrum Management Strategy Statement 2008-2010, contemplating such regulatory steps as the release of additional spectrum to support wireless broadband access and multimedia mobile services, and the provision of spectrum for a modern digital radiocommunications emergency services network. The Statement also aims at implementing technology and service-neutral spectrum use conditions as far as practicable.

In September 2008, the Department of Communications, Energy and Natural Resources (the Ministry) launched a public consultation on a high-level policy paper on spectrum. It contains nine policy principles, referring in particular to the use of market mechanisms where appropriate. Following consideration of the responses to the consultation, a policy paper on

spectrum was expected to be published in 2009, and any necessary legislative changes would be introduced subsequently.

In September 2008, ComReg announced a new process to award additional spectrum in the 3.6 GHz – 3.8 GHz part of the band for WLL, but the process was later cancelled to allow time for a thorough consultation with all industry stakeholders.

Following a repeat spectrum assignment procedure for the 26 GHz band in 2008, five national rights of use have been issued. The use of this spectrum in practice will include backhaul communications to support the growing mobile broadband segment.

Based on the fourth edition of the Radio Frequency Plan for Ireland, published by ComReg in November 2008, all of the Commission's radio spectrum harmonisation decisions, adopted by the end of 2007, have been implemented. As regards effective implementation in Ireland of the Commission Decision 2007/344/EC of 16 May 2007 on harmonised availability of information regarding spectrum use within the Community, ComReg has been recently upgrading its databases in order to allow smooth transmission of information to the European Radiocommunications Office's Frequency Information System (EFIS).

Rights of way and facility sharing

Rights of way and facility sharing, and more specifically optimal use of public assets, is being addressed in the Irish government's consultation paper on next generation broadband, including a planned one-stop shop to manage access to publicly owned ducting infrastructure. In addition, the consultation paper also proposes a planning requirement that certain new build premises should have open access fibre connections. Some mobile operators, however, have called for more balanced attention to the fixed and mobile NGN infrastructures.

THE CONSUMER INTEREST

Tariff transparency

In November 2008, ComReg and Excellence Ireland Quality Association (EIQA) proposed a new format for telecommunications billing presentation. It covers various issues such as accessibility, billing information, bill content, bill layout and format.

Following complaints from consumers concerning advertised broadband speeds, ComReg, the National Consumer Agency (NCA) and the Advertising Standards Authority of Ireland (ASAI) held discussions with operators, which led ultimately to a revised voluntary code of standards in relation to the advertising of broadband speeds, published by ASAI in March 2008. The code in particular advises operators to advertise broadband speeds that are available during busy hours.

Although supportive of these initiatives in principle, the industry either called for more clarity on their application in practice, or for more transparency in the discussions and processes leading to such standards.

ComReg's tariff comparison website was further enhanced in 2008, to include more information on headline broadband speeds as well as a new mobile roaming calculator.

Universal service

In 2006 the fixed incumbent had made a formal request to ComReg for compensation of the net costs involved in meeting universal service obligations. ComReg decided on the relevant compensation period and called on the incumbent to submit a full justification for its request, in 2007. ComReg is now in the process of reviewing the incumbent's compensation request together with experts.

Following a public consultation in 2007, ComReg decided in May 2008 to set legally binding performance targets concerning the incumbent's universal service obligations to be achieved, in most cases, by the middle of 2009. In particular, the decision obliges the incumbent to ensure that 80% of all in-situ connections to the incumbent's network are completed within 24 hours of request and 80% of all other connection requests are completed within two weeks of request, to reduce the line fault rates, as well as to meet the target of completing 80% of line fault repairs within two working days. Based on data for the first quarter of 2008 published by ComReg, the level of performance of the universal service obligations has deteriorated as regards both connections to the incumbent's network and line fault rates.

Number portability

Following a specification on wholesale number portability issued by ComReg in 2007, which clarified the application of the cost-orientation principle, a further public consultation was launched in August 2008, which proposed upper limits to the wholesale fixed (€4.02) and mobile (€2.05) number portability charges. ComReg is considering the responses to this public consultation. One of the concerns so far has been the wholesale mobile number portability charge of €20 per port, mostly affecting new entrants, which by definition have a smaller customer base.

Approximately 1.3 million mobile numbers (almost a quarter of all mobile subscriptions) had been ported by October 2008, compared to approximately 1 million numbers 12 months earlier. Approximately 71 000 fixed numbers were ported in 2008. In Ireland the time needed to port a fixed number is 10 days, above the EU average of 7.5 days, whereas the time needed to port a mobile number is one day, substantially below the EU average of 8.5 days.

Consumer complaints and out-of-court dispute resolution

Most consumer complaints continued to be focused on billing issues in 2008, the other frequently aired subjects being quality of service and contractual terms.

European emergency number 112

On the basis of the legislative amendments enacted in 2007, the Ministry launched a tender for the provision of an emergency call answering service. Negotiations with the highest ranked bidder are under way.

116 harmonised European numbers

The number 116123 for emotional support helplines has already been assigned and is expected to be brought into use soon. The number 116111 for child helplines has been assigned, and the assignee has indicated a target in-service date of February 2009. The number 116000 has not been assigned yet. According to ComReg, the introduction of a 116 service is sometimes delayed, because service providers face funding issues to ensure that calls can be made free of charge.

Must-carry

According to the legal framework in place, the must-carry obligations apply currently to cable and MMDS (Multipoint Microwave Distribution System) operators in Ireland. A new Broadcasting Bill is being debated by the Irish Parliament. It is set to extend the must-carry obligation across various broadcasting platforms.

Data protection

At the time of writing this report Ireland's challenge of the legal basis for the Data Retention Directive (2006/24/EC) was still pending before the European Court of Justice. After initial consideration of a draft statutory instrument to transpose the Directive, revised legal advice was issued to the effect that transposition would have to be by way of primary legislation. The necessary Bill was being prepared as a matter of urgency. Infringement proceedings for non-communication were ongoing in the meantime. The industry expressed serious concerns about several modalities of transposition, including the absence of any cost recovery mechanism, and extension of data retention obligations to offences entailing just six months of imprisonment as well as civil litigation cases. The industry is cooperating with the Department of Justice to produce a memorandum describing the methods of interaction between the police and the operators.