

SLOVENIA

INTRODUCTION

With a growing number of mobile networks, increased competition and consumer choice, mobile traffic in Slovenia grew significantly in 2008. In contrast, the fixed voice telephony market remained stable. Fixed-to-mobile substitution is gaining momentum. Broadband growth remained stable, partly owing to successful local loop regulation, with a focus on a growing number of mobile high-speed connections.

The national regulatory authority has already examined several important markets in the second round of market analyses. The most significant challenge for the regulator remains the regulator's supervisory market activities. A new competition law has introduced stricter system of fines.

REGULATORY ENVIRONMENT

Main regulatory developments

With the exception of some minor secondary legislative changes (e.g. data retention issues), the sector-specific regulatory environment remained essentially unchanged from a year ago. At a general level, however, a new competition law adopted in April 2008 increased the powers of the Competition Protection Office (the NCA). By increasing the penalty thresholds applicable to market players (including fines for non-cooperation with the NCA), this law now makes it easier to implement the telecom regulator's decisions.

In contrast, a draft legislative proposal for the new Act amending the Electronic Communications Act was prepared by the Ministry of the Economy, building on the growing experience with the application of the regulatory framework in Slovenia. The draft legislation contains consumer protection provisions suggested by the Agency for Post and Electronic Communications (APEK), the national regulatory authority (the NRA). These include, for example, the creation of a consumer board allowing consumers to be actively involved in the regulatory debate and the market analysis process. A new regime of penalties includes fines up to 10% of the operator's annual revenue in cases of non-compliance with the remedies imposed.

In July 2008, the government adopted a new broadband strategy, setting out broad political goals to be attained as soon as 2010. One aim of the strategy is to ensure broadband for all by 2010, and access speeds of at least 2 Mbps to 98% of the population by 2012, and at least 20 Mbps to 90% of the population by 2015. The strategy also specifies that competition is the key to achieving these goals, coupled with measures such as openness of networks and participation of the local municipalities. The strategy is, however, less specific on the measures to be taken in order to address underlying market deficiencies.

Organisation of the NRA

For a number of years the NRA's independence to exercise its statutory tasks has not been an issue. During 2008, however, its performance was challenged on several occasions. In

particular, the NRA was accused by several operators of favouring one market player on several occasions for the management of scarce resources. However, the Commission services have not found any clear violation of the regulatory framework. Other examples include the alleged lack of initiative regarding dispute settlement and supervisory activities. Nevertheless, the NRA's track-record in dispute resolution remains good (between 1 July 2007 and 1 July 2008, 85% of all cases, including inter-operator disputes, were resolved). Supervision, either at the request of operators or on its own initiative, remains a challenge for the NRA, not least due to its limited resources (three people work on the supervision of electronic communications).

The new government staff regulations for public employees, which entered in force in 2008, appear to provide less flexibility as to the funding of the Slovenian regulatory authority's human resources. It remains to be seen whether this new arrangement will provide the mechanisms needed to help the regulator carry out its assigned tasks within the regulatory framework.

Cooperation between APEK and NCA remains to a large extent limited to the market analysis process, mainly due to insufficient human resources. Only one employee in the NCA is dealing with cases relating to electronic communications.

Decision making

The NRA is well into the second round of market analyses, having issued decisions relating to four product markets, concluded analyses of eight markets, and started with an analysis of one market.

As regards the supervision of operators' obligations, the NRA's work focused on verifying compliance with regard to the quality of service of emergency calls, fault repairs, confidentiality and security of e-communications, and non-discriminatory conditions associated with collocation and unbundling of local loop (LLU), e.g. requests for access and enquiry systems, information on projects and planning activities. Decisions have generally been observed by their addressees and have contributed to improving market access.

An alternative operator complained about non-compliance of the incumbent and the failure of the NRA to intervene effectively in 2006 and 2007, but APEK seems to have adopted several interim measures in the meantime which have addressed the most pressing issues.

There seems to be an issue regarding rights of appeal, as it appears that operators which are not addressees of the regulator's decisions seldom succeed in demonstrating their interest as an affected party. The Commission services are looking into the matter.

In all but four cases, disputes between operators have been resolved within the four-month deadline since 2006. As an illustration of dispute resolution procedures, in January 2008, the NRA in cooperation with the NCA, successfully resolved a dispute regarding SMP's alleged non-compliance with the remedies imposed concerning access to collocations.

In March 2008, the NCA concluded an investigation concerning the incumbent's alleged abuse of a dominant position during the years 2001-2005 (regarding the bundling of ADSL with ISDN). No fine was imposed, given that the case was considered too old and was dealt with under a defunct misdemeanour procedure. In addition, a formal procedure has been started by the NCA based on a complaint from an alternative operator about the incumbent's

alleged abuse of a dominant position in the wholesale broadband access market (regarding naked DSL offered to the SMP's self-supply, but not to its competitors). Since in this case the NRA's independence is also challenged, the case handlers requested external help from experts, and expect to conclude the investigation within two years.

MARKET AND REGULATORY DEVELOPMENTS

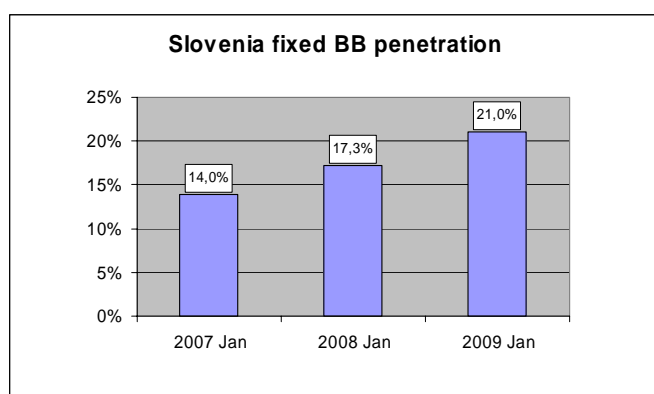
A total of €245 million was invested in the electronic communications sector (28.3% more than in 2006) in Slovenia in 2007, of which the incumbent invested €116 (€36 million more than in 2006), fixed alternative operators invested €50 million (€11.5 million more than in 2006) and mobile operators contributed €79 million (€6 million more than in 2006). The investment in the electronic communications sector thus stood at 0.73% of GDP, with an increase of 28.44% compared to 2006. Revenue in the electronic communications sector in 2007 totalled €1 101 million, which was €53 million more than in 2006. As to the 2007 electronic communications sector revenue, the fixed market contributed €389 million, while the mobile market generated €579 million. Similarly to the 2006 performance, the '2007 electronic communications sector revenue/GDP' ratio, which stood at 3.28%, outperformed the EU average rate, which stood at 2.90%.

According to the NRA, both traffic and length of calls in mobile networks have grown during 2005-2007 by 7.4% on average. On the other hand, traffic in the domestic calls market on fixed locations decreased by 6.4% per year on average. Approximately 10% of the traffic originating in fixed networks was terminated in mobile networks, whereas only 5% of the traffic originating in mobile networks was terminated on fixed networks.

In November 2008, the Slovenian government announced that its 2007 plan to privatise 49.13% of the incumbent had finally fallen short of a deal, the main reason being insufficient financial proposals and the underlying economic conditions.

Broadband

Market situation



There were 426 070 fixed broadband lines in January 2009, compared to 347 492 lines in January 2008, which represents an increase of 22.6%. The penetration of fixed broadband lines is 21.0%, which places Slovenia right in the middle of the EU range. However, this average performance in fixed broadband is more than complemented by a strong mobile broadband take-up. With a 22.0% penetration Slovenia is the third in the EU.

The overall market share of the incumbent operator in January 2009 is 49.2%, whereas the share of the closest competitor in July 2008 was 17%. Take-up of coaxial cable is stagnating, whereas growth of LLU-based products has slowed down due to next generation access (NGA) developments and the fact that bitstream-based products have finally become more available. The number of fibre-to-the-home (FTTH) lines continues to grow, and stands at

approximately 45 000 lines, which is one of the best relative performances in the EU. However, Slovenia fares less well as far as connections involving speeds of 2 Mbps and above are concerned. With only 37.3%, Slovenia is far behind the EU average for high-speed Internet, which stands at 74.9%. Finally, some 14.5% and 70% of the population in rural areas has no DSL or cable coverage, respectively. National DSL coverage increased from 88% at the end of 2006 to 92% at the end of 2007, and DSL coverage in rural areas stood at 86%, an increase of 7 percentage points over a year. For cable, rural coverage increased from 24% to 30%, and the national coverage soared from 49% to 54% over a year. Slovenia managed to narrow the digital gap for DSL and cable coverage over a year, from 9 to 6 percentage points and from 25 to 24 percentage points, respectively. It remains to be seen whether the broadband strategy adopted will more specifically address the issues of low average speeds, and of the relative digital gap.

Largely as a result of successful regulation of the last mile segment in the copper network, 25.7% of all DSL connections are based on LLU (compared to 22.7% in January 2008 and 14.2% in January 2007).

Regulatory issues

Price regulation has brought about significant positive results in terms of numbers of fully unbundled lines and shared access lines. Prices have decreased below EU averages. For example, the monthly average total cost for fully unbundled local loop is €9.6 compared to €10.2 during 2007, whereas the EU average is €10.9. The monthly average total costs for shared access remain slightly above the EU average (€4.1), at €4.8.

Despite collocation access regulation, alternative operators have continued to report difficulties when attempting to connect their networks (remote collocation, in particular). Alternative operators associate these difficulties with frequent changes to the reference unbundling document (RUO) document (seven times since the NRA's LLU decision in January 2007), changes to technical parameters and to conditions of access in particular, as well as the inability of the NRA to address the issues effectively. However, the Commission service note that the NRA has not been idle. Based on the compliance enforcement decision from 2007, it finally succeeded, to a certain extent, to address the long-standing issue of discriminatory treatment of alternative operators as far as information regarding the availability of collocations is concerned. Until its enforcement, some 40% of collocation enquiries were systematically refused by the incumbent.

In the absence of dark fibre backhaul regulation, for a majority of the market players, access to many locations, due to the high level of fibre wholesale prices, is off-limits. In order to be able to justify their investments, they would have to capture at least 50% of the customer base in a particular geographic area. In addition, the incumbent's competitive retail prices based on fibre, coupled with triple play offers, represent a further obstacle for the competitors willing to compete on a basis of significantly slower and relatively dearer LLU lines as compared to fibre.

With its October 2007 retail-minus decision, the NRA attempted to go the extra mile as regards regulating the wholesale broadband access market. The SMP operator, which has challenged the extent of the remedies imposed, has an obligation to provide access to alternative operators in a manner that will allow functional IP telephony, IPTV and video on demand (VoD), in view of the fact that the same services have been provided to the customers

by its retail unit. Despite the fact that alternative operators are not able to diversify their offers from the incumbent's content, this puts the SMP operator in a unique situation within the EU.

Furthermore, based on a complaint by an alternative operator, APEK reconsidered the scope for application of its October 2007 decision, and mandated the incumbent, *inter alia*, to replicate its upper frequency-band bitstream product, which was offered to its retail unit. Naked DSL offered at a price of retail minus up to 66% plus a surcharge for the lower-frequency band of the local loop thus became a part of the reference bitstream offer as of November 2008.

It came as a surprise to some alternative operators to find out that despite the NRA's recent mandate to the SMP incumbent operator with regard to leasing of its IP capacity, enabling competition for business clients (VPN) using IP/MPLS protocols, the incumbent had no technical possibility to provide this type of product at the wholesale level. Also, as a result of the NRA's wholesale leased lines market analysis in the spring of 2008, Ethernet lines are now subject to regulation based on technology neutrality.

More generally, operators are calling for introduction of key performance indexes (KPI) to be considered by the NRA. Inclusion of KPIs in the inter-operators' service level agreements (SLA) would, according to market players, foster cooperation with the SMP operators and would facilitate the monitoring of compliance with remedies.

Mobile market

Market situation

Six operators are active on the market. The penetration is 99.7%, which is below the EU average of 119%, and the average revenue per user (ARPU) in 2007, at €276, is also slightly below the EU average of €282.

The incumbent's mobile arm continues to dominate the market with 60% of the customer base, even though this is 7 percentage points less than in 2007, while the main competitor controls nearly 27% of the market. The incumbent's mobile arm remains strong in the business segment and free handsets coupled with significant discounts are a key to its 80% market share. The number of pre-paid users stands at less than 37% of all customers, compared to 40% in 2007. Two new entrant mobile network operators (MNO), which started providing services in the fourth quarter of 2007 and second quarter of 2008 respectively, have acquired important market shares. The former has a 3.4% customer base, 90% population coverage and the highest ARPU amongst the operators. Both operators have been successful primarily as a result of attractive pricing regimes, based on an optimising combination of regulated national roaming agreements and use of newly built fractions of their own networks. The share of the two resellers remains stable, around 5% and 2% respectively.

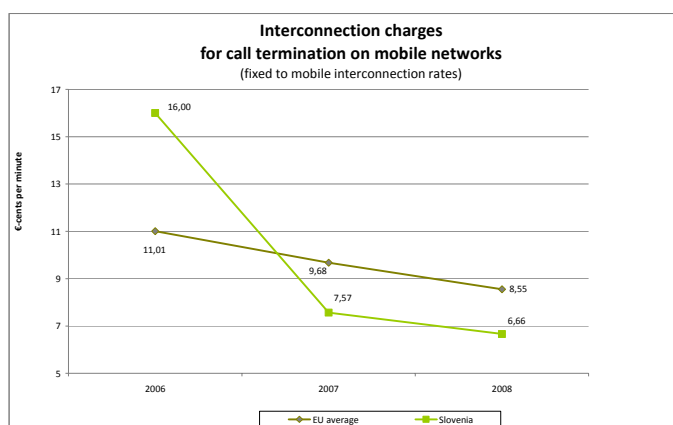
Responding to competitive pressure, some market players have started to imitate the market leader's aggressive marketing campaigns to win back customers, offering flat-rate packages, free calls within closed user groups, coupled with attractive bundles for fixed-mobile calls. However, some of the incumbent's mobile arm services seem difficult to replicate, such as free of charge mobile TV offers using its High Speed Downlink Packet Access (HSDPA) technology.

Amongst the UMTS operators, the market leader is the only operator with a rollout obligation currently providing coverage to 70% of population. Coverage figures of the other three operators are significantly lower, and stand at 25% and 6% of the territory, whereas the holder of the fourth UMTS licence plans to start providing services only by the end of 2009.

Consumption patterns, based on OECD usage basket definitions, reveal that consumers spent less on average in 2008 than in 2007.

Regulatory issues

The wholesale mobile call termination market is characterised by growing asymmetries between the regulated and non-regulated operators. The largest two operators are mandated to follow the glide-path dictated by annual reductions of rates. The rates should stabilise around €0.047, whereas the asymmetry ratio of the two SMP operators will have decreased from the initial 1:1.65 in 2006 to 1:1 in March 2009. The newcomer is not regulated, however (the difference between the leading operator and the newcomer stands at 1:1.95) and is able to offer extremely competitive retail prices. APEK started with the new analysis of the wholesale mobile call termination market in the autumn of 2008.



The resellers would like to see future regulation of the mobile access and mobile call origination markets beyond voice in order to replicate attractive offers of network operators comprising SMS and advanced data services.

The NRA's intervention in October 2007 in an inter-operator dispute clarified that wholesale mobile access also included a national roaming obligation. This encouraged the main competitor, no longer deploying new base stations, to request a national roaming facility from the SMP operator. It is also becoming increasingly difficult to obtain building permits for new base stations.

The NRA faced a great deal of discontent from operators in connection with the free of charge granting of the fourth UMTS licence, which took place in the beginning of 2008. In the earlier licensing procedures, the first three UMTS licence holders had to pay significant sums of money. Concerned operators have appealed either the process or the outcome of the NRA's decision, while the Commission services have investigated the matter and found no clear violation of the regulatory framework. The NRA intends to award another UMTS licence early in 2009, presumably this time for a fee, since several operators have already expressed their interest in obtaining the licence.

In August 2008, the Administrative Court upheld a decision of the NRA regarding the granting of an extended GSM band to a new entrant in 2007, which was challenged by another alternative operator. This makes the decision final, as it is not possible for operators to appeal decisions of the Administrative Court if it upholds the appealed decision of the NRA.

Roaming

All GSM operators appear to have implemented to a satisfactory level the requirements set in the Roaming Regulation. According to APEK, in the second half of 2008 retail international roaming prices were falling slightly below the regulated Eurotariff levels, while in the case of one operator they were even up to 25% below the marker.

Fixed market

Market situation

Publicly available telephony services at a fixed location were provided by ten operators at the end of 2007, including nine with own or leased infrastructure. In addition, there were 11 service providers using the services of carrier pre-selection (CPS) and/or carrier selection (CS).

The incumbent's fixed market share, measured in terms of revenue for national calls, at the end of 2007 had grown compared to a year ago, and stood at 97%. More recent data, from the second quarter of 2008, reveal a reversing trend, with the incumbent's share falling for the first time below 90%. Competition is traditionally much stronger in the international calls segment, where alternative operators hold a 21% share as far as revenue is concerned. Growth of IP-based traffic remains strong, and currently some 20% of calls are purely IP-based, with the incumbent's market share being below 50%. There are 170 000 VoIP users in Slovenia. More than 11% of subscribers use alternative providers for voice telephony services, a significant increase of more than 6 percentage points from last year.

Residential charges for 10-minute national calls remain on the level of those in 2007 (€0.288 for the incumbent), whereas monthly rentals decreased marginally from €11.69 in 2007 to €11.12 in 2008.

Regulatory issues

In 2008, the NRA successfully resolved the issue of discriminatory rates for the termination of IP traffic on the incumbent's network. The incumbent has since been charging the same amount for traditional TDM-based and IP-based termination.

As to the asymmetric price regulation on the market for call termination on public telephone networks at a fixed location, all but one alternative operator continue to benefit from the fact that operators convey their traffic through local interconnection points and the fact that the level of asymmetry (1.40) is administratively calculated at the national interconnection level. This increases the incumbent's actual paying rate for termination of its traffic by a factor of three.

The introduction of wholesale line rental (WLR) in 2007 appears to have arrived a little late for alternative operators, given that the incumbent already had switched one-sixth of its customers to the IP platform. Only 800 customers have chosen this type of product since it has been regulated.

Wholesale interconnection charges in general remain above the EU average.

Broadcasting

Market situation

The share of terrestrial TV connected households has dropped from 48% to 43.5%, whereas cable is viewed by 46.4% of homes. IPTV has demonstrated substantial growth and its share is reaching 15.1% of the market, placing the IP platform on a par with satellite.

The 2007 Law on Digital Radio Broadcasting provides for a switchover period to start in June 2009, and anticipates a gradual switch-off of local areas. At the end of 2010 all analogue licences will be revoked, and this will create a dividend accommodating room for eight new digital networks (currently there is a room to allocate three multiplexers).

Only one DVB-T multiplexer, which has been directly assigned to the incumbent transmission service provider and which covers 80% of the population, is currently in operation in Slovenia. In October 2008, the NRA announced that the tender for the assignment of radio frequencies for the second commercial digital video broadcasting terrestrial (DVB-T) network (multiplexer B) failed, given that no technically compliant offer was received from any of the participating bidders. APEK subsequently re-launched the tendering procedure for the multiplexer B and in December 2008 awarded an operating licence to one of the bidders for a period of ten years.

The Ministry of the Economy was actively working out the details of a future government digital TV strategy at the time this report was drafted.

Regulatory issues

Difficult commercial negotiations between the SMP operator and broadcasters on the digital wholesale broadcasting services market led the NRA to intervene in June 2008 in one dispute concerning the reasonable pricing of access for broadcasters, resulting in the transmission service provider's costs being recognised but only as far as they were compatible with the NRA methodology.

Horizontal regulation

Spectrum management

The incumbent operator and one alternative operator both benefit from the NRA's 2006 decision on granting of frequencies suitable for WiMAX. The incumbent has already started providing ISP services (256/128 kbps, 512/128 kbps and 1024/256 kbps) and has met geographical coverage obligations defined in the WiMAX licence, whereas the alternative operator plans to launch the services in 2009. Two frequency blocks are still available and six operators have so far expressed interest in offering WiMAX services.

Slovenia has implemented all the Commission spectrum harmonisation decisions adopted before the end of 2007.

THE CONSUMER INTEREST

Out-of-court dispute resolution

In the period from July 2007 to July 2008, APEK dealt with some 300 disputes, of which 85% were successfully resolved. A consumer hotline number has been introduced to provide guidance to consumers on how to proceed with their claims.

Tariff transparency

APEK has increased the scope and improved the visibility of its web-based price comparison platform (www.komuniciraj.eu), which provides comparison facilities for end-users. The NRA plans to undertake further steps to increase the public awareness of this particular service.

Universal service

Universal service (US) obligations will expire next year. It was not clear how the NRA intends to define the new scope of the US obligation and to select the operators, notably in view of the broadband strategy.

The incumbent, having been appointed as the US provider in 2004, plans to provide wireless mobile access solutions for some 200 standing requests in remote areas. The incumbent's solution would permit no further unbundling, thereby excluding competition in this particular network segment.

A special inter-ministerial working group, together with the Association of societies of deaf and partially deaf was set up to provide further guidance on how to further improve services and equal access for disabled users. Disabled users currently benefit from a limited set of activities based on the ECA and the 2005 Government Decree on measures for disabled users, which amongst others provide for a possibility of Braille usage in the context of the US obligation.

Number portability

Since the introduction of number portability in 2006, more than 218 000 numbers (100 400 fixed and 118 008 mobile) have been ported, which represents some 7% of all available numbers, an increase of 3 percentage points since last year.

Consumer complaints

The NRA has set up a toll-free call-centre 'Modra številka 080 APEK', providing consumers with advice and information on how to proceed in cases where consumer rights relating to the rules on electronic communications appear to have been infringed.

European emergency number 112

Approximately 70 000 calls per month are made to the 112 emergency number in Slovenia; the share of hoax calls is less than 10%. Only 67% of citizens are aware that 112 is a domestic emergency number, and only 13% are familiar with the fact that the 112 emergency number is available across the EU.

Public safety answering points (PSAP) can forward calls to other call centres when another emergency service is more competent to deal with the emergency in question.

‘Push’ is the required forwarding technique for the provision of caller location information to PSAPs. The technical impossibility of providing this information has to be proved by the operators.

The Ministry of the Economy was planning to improve the requirements for the quality of answering emergency calls and reaction times, and is currently working on new rules on the quality of service for the single European emergency call number 112 together with the Ministry of Defence.

Must-carry

Must-carry obligations have in practice been extended to mobile operators, given that mobile TV is a novelty of 2008. Only the television channels of the national broadcaster have to be transmitted free of charge. This obligation has not, on the other hand, been raised by concerned mobile operators as representing any practical implementation issue.

Data protection

According to industry players, the implementation of the Data Retention Directive (Directive 2006/24/EC) has created additional financial burdens for operators to compensate for the operating costs of data retention (e.g. for police investigations, Court orders). It appears that these requirements affect smaller market players unevenly.