

BULGARIA

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INTRODUCTION

The Bulgarian mobile market seems to be dynamic despite the lack of number portability, for both fixed and mobile numbers, with a high penetration rate well above the EU average. In contrast, there is a marked absence of competition in the fixed market, where the incumbent dominates the market in terms of revenue. There are also some problems related to the particular situation in Bulgaria in the broadband market, where almost half of the retail broadband access is provided by local area networks.

The Electronic Communications Act, adopted on 10 May 2007, was generally welcomed by Bulgarian operators. However, serious concerns remain in the Bulgarian market, especially as regards the NRA's independence and effectiveness, the absence of market analyses and the lack of secondary legislation needed for full implementation of the EU regulatory framework. Moreover, frequent appeals lodged under the old Telecommunications Act by operators against essential NRA decisions have had a negative impact on the smooth development of the market and have delayed the implementation process. In addition, only consumers in the capital region can benefit from the single European emergency number '112'.

REGULATORY ENVIRONMENT

Main regulatory developments

Until May 2007, Bulgaria had in place a law transposing the 1998 regulatory framework. While the Bulgarian authorities notified the May 2007 Law as fully transposing the 2002 regulatory framework, some secondary legislation is still needed to ensure implementation of important measures such as market analyses and access and interconnection. Some of the relevant decisions, ordinances and decrees were expected by the end of the year. These acts were to be adopted by the NRA (the Communications Regulatory Commission (CRC)), by the State Agency for Information Technology and Communications – the executive power's body responsible for electronic communications – or by the Council of Ministers.

No market analyses have been notified yet. Prior to carrying out market reviews, the Bulgarian Law requires a methodology on rules and procedures for the analysis of markets to be prepared by the CRC and adopted by Decree of the Council of Ministers. Approval of this methodology was still pending by the end of the year and, according to the Bulgarian authorities, was expected by the beginning of 2008.

Organisation of the NRA

There are several serious issues concerning the Bulgarian NRA's effectiveness and independence which led the Commission to launch infringement proceedings in November 2007. Some steps to address these concerns have subsequently been taken in Bulgaria.

The division of regulatory functions between the notified NRA – the CRC – and the State Agency for Information Technology and Communications is unclear, as it seems that the State Agency, responsible for electronic communications policy and for adoption of secondary legislative acts under the Law on Electronic Communications, has some regulatory powers or at least some supervision over these. Furthermore, the State Agency's Chairperson was a member of the incumbent's board, which raised questions of incompatibility with Community law principles, as the regulatory framework clearly provides that the regulator has to be legally and functionally independent of all organisations providing services in the market. Moreover, the State keeps a "preferential share" on the incumbent, which was privatised in 2006, and has veto rights on some decisions.

There were also serious delays in the appointment of two CRC board members (the Chairperson being one of them), which had jeopardised and seemingly impeded, in some cases, the NRA's decision-making ability. The two appointments took place in November 2007. It would seem that a general positive approach has been taken by the now completed CRC in order to speed up decision-making.

In addition, there seems to be a significant issue related to the lack of CRC resources, both financial and human, that prevents the CRC from effectively fulfilling its tasks. Administrative charges and fees collected by the CRC are deposited with the State budget. As a part of the State budget, the CRC budget is approved by the National Assembly, on proposal of the Council of Ministers. The CRC's expected revenues and expenditure for the following year have to be approved beforehand by the Minister of Finance. It seems that, even though the Minister increased the CRC's general budget for 2008, there has been a reduction in the CRC's financial resources for its staff, at a time when more resources appear necessary to ensure implementation of the Bulgarian electronic communications law, especially in terms of carrying out the market analyses and putting in place effective monitoring mechanisms. It seems that some proposals aimed at strengthening its financial and regulatory independence have been made by the CRC.

Cooperation between the CRC and the Competition Authority (CA) is, in general, reported to be satisfactory. The CA has to be consulted during the market analysis process. It seems that coordination between the CRC and the audiovisual authority CEM (Council for Electronic Media) suffers from a lack of clarity on the allocation process for digital frequencies and licences to broadcasters. An amendment of the Law on Radio and Television, which was not yet approved when this report was being drafted, would clarify the institutional framework.

Decision-making

As mentioned above, the prolonged absence of two members of CRC board meant that any decision required unanimity. This appeared to impede a normal and effective decision-making process. Regulatory decisions such as market analysis methodology,

access and interconnection ordinance and functional specifications for number portability seem to have been delayed for this reason. As of December 2007 the board of CRC is complete.

According to operators, the maximum level of penalties that can be imposed by CRC is relatively ineffective. As fines are not linked to the undertaking's turnover, they would appear to be insufficient to incentivise the operator to comply with regulatory obligations.

Appeals

The Bulgarian Act establishes that the main CRC decisions – information requests for market analyses, market analysis-related decisions, remedies and settlement of disputes between operators – stand while appeals are pending. Nevertheless, it seems that operators generally appeal against CRC decisions. While this has been delaying the implementation of the challenged decisions, as appeals had a suspensive effect under the old Telecommunications Act, the situation might change as the new Law on Electronic Communications provides that the main CRC decisions will stand when they are the subject of an appeal.

MARKET AND REGULATORY DEVELOPMENTS

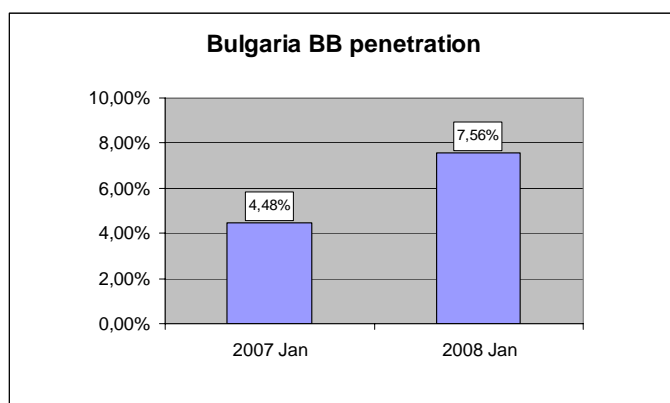
Total electronic communications revenues in Bulgaria at the end of 2006 were estimated at around €1 548 million, of which the mobile sector accounted for €18 million and the fixed sector for €399 million. Total value of investments reached €417 million, of which €255 million came from mobile players, €105 million from the fixed incumbent and a mere €8 million from fixed alternative operators.

The most dynamic market in Bulgaria is indeed the mobile market. The situation is similar to other new Member States, where the number of fixed lines is relatively low and there is high growth of the mobile sector.

Although the two main mobile operators have both mobile and fixed networks, bringing bundled offers to the market has proved difficult owing to problems in concluding interconnection agreements (caused by high termination rates). The broadband market still needs to develop. There were 40 cable operators offering double play offers (cable TV coupled with Internet access or with voice services) and three offering triple play offers (voice, data and television) as at December 2006.

Broadband

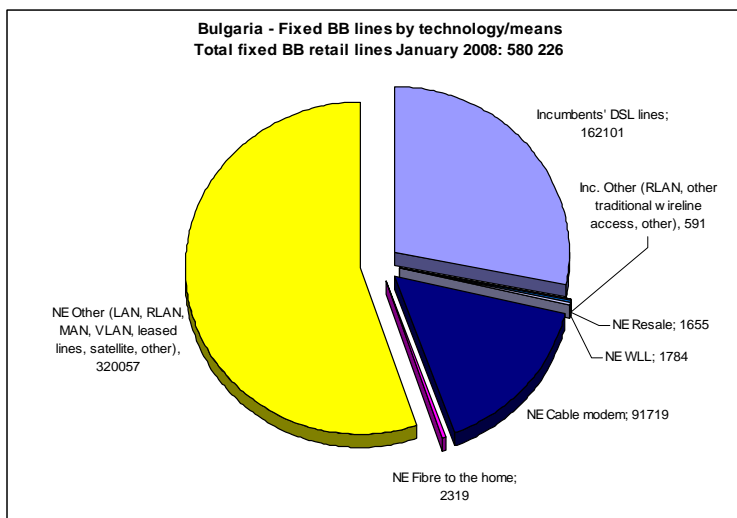
Market situation



The broadband penetration rate in Bulgaria is still the lowest in the EU (7.56% in January 2008, compared to 4.48% in January 2007) and far below the EU27 average (20.04%). There is competition between platforms in the broadband market. Cable

operators as well as local area networks (LANs) and the fixed incumbent are present in this market. Bulgaria had 580 226 broadband lines, 28.3% of which were DSL lines, in January 2008, a slight increase from 27.5% in January 2007. The incumbent had 99% of the DSL market share in January 2008 (it was 100% one year ago).

71.8% of broadband lines are non-DSL (cable, satellite, wireless local loop, PLC, FTTH) and the only DSL offer in the market comes from the incumbent. The incumbent has 28% of the broadband market share. LAN, RLAN, VLAN and MAN technologies, which are used mostly by alternative operators, have 55 % market share among the broadband technologies. Cable operators had 15.80% as at January 2008.



There is no investment in LLU and only two lines are currently unbundled (shared access). Despite the interest of alternative operators in a bitstream offer, as a first tool to start offering broadband services, no agreements had been signed by the end of 2007. The controversial point was the high wholesale prices, which created a price-squeeze effect.

Regulatory issues

CRC imposed price restrictions on bitstream services in November 2007 to address the price-squeeze effect. The incumbent has consequently reviewed the wholesale prices offered to alternative operators in the reference unbundling offer but it appealed against this CRC decision on the grounds that CRC had imposed overly strict price limitations for unbundling. This decision was still pending by the end of 2007. Its impact on competition remains to be seen.

In addition, two decisions imposing access to the incumbent's lines through a bitstream offer have been adopted as a result of specific disputes between operators. Appeals were lodged against both decisions. One of the decisions was confirmed, while the appeal against the other was still pending with the Supreme Administrative Court by the end of January 2007. Alternative operators claim that there is a price squeeze between the incumbent's wholesale offer and its retail prices.

The definition of the local loop in the law covers only the twisted metal pair. This may make it difficult for the NRA to impose access to other types of networks, should market developments require this. An appeal against the definition was brought by alternative operators to the Constitutional Court.

Finally, it seems that LANs have profited from the lack of regulation and control and have accessed the incumbent's ducts without any authorisation or payment. In some cases

they have laid down cable networks illegally. LANs also connect with bigger servers that allow the downloading of content without necessarily paying copyright fees. While some LANs are operating without prior registration or notification, it seems that others have started to notify their operations.

Mobile

Market situation

The mobile market seems to be competitive and has a very high penetration rate, 122.81% at October 2007, well above the EU27 average of 111.8%. Nevertheless, this market is characterised by very high termination rates. There are three main mobile operators. The leading operator had 51.04% market share; the second operator had 38.78% and the third one 10.03%, in terms of number of subscribers at October 2007. An analogue operator, whose phase-out is planned for 2013, has 0.15% of the market share. Most of the customers are pre-paid users. All three leading operators have GSM and UMTS licences. They offer 2G, 2G+ and 3G commercial services. No interest has been shown so far by MVNOs.

Regulatory issues

The main problem concerns mobile termination rates, which are currently among the highest in the EU. Mobile termination is not regulated but subject to commercial negotiation between operators. Average fixed-to-mobile termination rates were extremely high (€18.80 cents) compared to the EU27 average (€9.87 cents) as of October 2007, and also compared to the mobile-to-mobile termination rates (€2.8 cents). According to alternative operators, they have not changed since 2004. The absence of *ex-ante* regulation, as a result of the delay in the market analyses, combined with the lack of regulation under the old Law on electronic communications, are the main reasons for the high prices.

By way of derogation from Article 30(1) of Directive 2002/22/EC Bulgaria has been given, in its accession conditions, the possibility of postponing the introduction of number portability to no later than 1 January 2009. Mobile number portability has therefore not yet been introduced, despite the Bulgarian Law having set a 1 January 2007 deadline for its introduction. The CRC adopted the necessary secondary legislation for the implementation of mobile number portability in December 2007. According to the Bulgarian authorities, it should be effective in the first quarter of 2008.

Roaming

The European Regulation on roaming has been implemented in Bulgaria. One of the mobile operators offers a tariff below the eurotariff threshold and the two other operators offered the eurotariff before the deadline required by the Regulation.

Fixed

Market situation

The fixed market is the weakest market in Bulgaria in terms of competition, as it still needs to develop, mainly with regard to local calls and fixed-to-mobile calls. The total

number of fixed lines decreased by 4% in 2006 compared to the previous year¹. The incumbent had 97% of the market share in terms of revenue². The absence of competition is mainly due to the difficulty in concluding interconnection agreements, due to the high fixed termination rates imposed by the incumbent.

Carrier selection (CS) is in place as regards long-distance and international calls. The incumbent has appealed against the CRC decision adding calls to mobile networks to the reference interconnection offer. The incumbent's high wholesale prices for access have made the presence of alternative retail offers very difficult. BTC have recently signed annexes to the current agreements with the alternative operators for reducing the CS prices.

The incumbent is in the process of digitalising its network. This process is a prerequisite for implementing fixed number portability, and is expected to be finalised by the beginning of 2009, when number portability will have to be implemented. The incumbent reported 100% digitalisation of the network in all regional capitals at the beginning of 2007 and had covered 73% of the network by the end of the year.

Regulatory issues

As no part of this market has yet been analysed by the NRA, new remedies to promote competition cannot be imposed and the remedies imposed under the old rules are still in force. In accordance with the previous law, the CRC imposed an access obligation on the incumbent, including cost-orientation, transparency, accounting separation and collocation, but this CRC decision was also the subject of an appeal by the incumbent and was still in court at the end of 2007.

Broadcasting

Market situation

Half of the households have a cable connection in Bulgaria. There are two satellite operators. TV over IP is just emerging. In July 2007 cable operators served 1.66 million TV households, satellite 228 000 and terrestrial TV 62 000.

The timetable for digital switchover has been delayed, December 2012 being the date for the switch-off of analogue broadcasting. The final use ("refarming") of the digital dividend will be decided by the Council of Ministers. The plan for the deployment of digital terrestrial television in Bulgaria, in compliance with WRC 2006 Plan, was developed jointly by the CRC and the State Agency in November 2006. Approval by the Council of Ministers was still pending when this report was being drafted.

Regulatory issues

While the Bulgarian Electronic Communications Act of May 2007 provided that the Radio and Television Act would be amended so as to ensure its compliance with the EU

¹ CRC 2006 Annual Report

² As of January 2007

regulatory framework within six months of the Electronic Communications Act, the amended Act had not yet been published when this report was being drafted.

Some problems have been reported to the Commission concerning the analogue radio and TV frequency allocation. The frequency allocation is directly related to the licensing of radio and TV programmes. The former task is the responsibility of the CRC, the latter of the CEM. Coordination between the CRC and the CEM is unclear and has produced diverging results.

The National Plan for digital terrestrial TV broadcasting and switchover should resolve some of these inconsistencies when approved. It should also incorporate the relevant part of military frequencies for civilian use. The complexity in releasing these frequencies might be one of the reasons why the Plan is being delayed.

Horizontal regulation

Spectrum management

The National Frequencies Plan is prepared by the National Radiofrequency Spectrum Council and approved by the Council of Ministers. The Council's members are all the Ministries involved (including the Ministry of Defence as well as the National Guard Service and the National Intelligence Service), the State Agency and the CRC. This Plan was drawn up in 2002 and has been updated annually. According to the new Bulgarian Law, it must be reviewed at least every two years.

Bulgaria has reportedly implemented all the Commission's spectrum decisions with the sole exception of the ex-ERMES Decision (Decision 2005/928/EC), which does not have a date for entry into force.

WiMAX licences were issued in 2005 and one more was issued in 2007. There are currently two operators offering nationwide WiMAX services.

Administrative charges

The CRC collects administrative charges and fees from operators, which are deposited with the State budget. The Minister of Finance approves the expected revenues and expenses calculated by the CRC for the following year. Only a proportion of the collected fees goes to the CRC budget, which is part of the State budget. It is unclear to what extent the administrative charges are used to cover the CRC's expenses, as specified in the regulatory framework. The Commission services are looking into this matter.

Rights of way and facility sharing

Rights of way and facility sharing rules are laid down in primary law. Secondary legislation is needed for some implementation aspects, which should be drafted by the Ministry of Regional Development and Public Works, the Ministry of Agriculture and Forestry, and the Chairman of the State Agency. It seems that this procedure is seriously delayed.

Authorisations

In the broadcasting area the CEM has responsibility for programme content and selection of broadcasters to be authorised, and the CRC issues the frequency licences.

The situation in the broadband market is very unclear. As already mentioned, it is not clear whether most of the LAN providers have already asked for a general authorisation. It is clearly very difficult for the regulator and public authorities to impose on unauthorised LANs obligations which would force them to comply with the regulatory framework or with the law in general.

Numbering

As a result of the absence of interconnection agreements between alternative operators and the incumbent, non-geographic numbers are provided mainly by the latter. It would appear that these numbers are not accessible from mobile operators' networks, including the universal directory enquiry services.

THE CONSUMER INTEREST

Universal service

The incumbent operator was designated as the universal service provider under the old Law. This operator is allowed to cover some remote zones through DECT wireless technology. In addition, the designated operator was granted, by the end of 2007, a CDMA licence which could also be used for provision of universal service in barely accessible and remote regions.

It seems that comprehensive directories and comprehensive directory enquiry services are not yet available in Bulgaria. An Ordinance on comprehensive directories and directory enquiry services, issued at the end of 2007, is meant to clarify the problems relating to access of the alternative operators' subscriber lists.

The Bulgarian Law provides for a compensation fund, which may be used, if appropriate, by the universal service provider. Nevertheless, the precondition set by the Law is that the retail revenues of the universal service provider should be less than 80% of the total revenues of public telephone services, and the incumbent currently has 97% of the total telephony revenues on the retail fixed market.

Directory services and directory enquiry services

Despite the liberalisation of the market, alternative operators' networks do not give access to these services, because of the above-mentioned problems with the interconnection agreements.

Concerning the provision of the subscribers' lists to the directory services editors, the principles of fairness, objectivity, cost-orientation and non-discrimination laid down in the Universal Service Directive do not appear in the Bulgarian Act. The new ordinance on comprehensive directories and enquiry services is reported to incorporate these principles. The Commission services are looking into this matter.

Also, it seems that the Bulgarian Act has adopted an opt-in system for both mobile and fixed users, which would mean that subscribers have to actively request their inclusion in

the directory. In practice, this leads to a lower number of users registered on the directory lists than in Member States using the opt-out system.

European emergency number 112

The single European emergency call number '112' is not available in Bulgaria, either for end-users of fixed telephony services or for end-users of mobile services. The Commission launched an infringement procedure against Bulgaria on this ground in October 2007. A first emergency centre started operating in Sofia at the beginning of July 2007, allowing '112' calls in that region. A second centre for the north-eastern region was planned to start operating by the end of 2007. The Council of Ministers adopted a plan in October 2007 for deploying the "112" number and "112" centres in Bulgaria for the period 2008 – 2009.

Number portability

Number portability is not available either for mobile or for fixed numbers. The conditions of accession of Bulgaria to the EU, as set out in the Accession Treaty, allowed Bulgaria to postpone the introduction of number portability until 1 January 2009 at the latest. Although the Bulgarian Law stipulates that mobile number portability should be available as from 1 January 2007, this was still not the case when this report was being drafted. The functional specifications for mobile number portability have been the subject of several appeals by the leading mobile operator, delaying their implementation. The CRC adopted the new version of the technical specifications, in accordance with the Law on Electronic Communications, in December 2007.

Must-carry

The "must-carry" provisions relate to the national and regional public television and radio channels and apply to the incumbent, cable operators and digital multiplex operators.

Consumer complaints and out-of-court dispute resolution

The Bulgarian Act devotes one Chapter to consumer protection, regulating in detail the general terms and conditions of the contracts between operators and end-users. The CRC is the body responsible for dealing with disputes between operators and consumers, when an operator does not respect these general terms and conditions. Complaints concern mainly billing and the location of masts.

Data protection

There is a general Law on data protection, supplemented by a specific Chapter in the Bulgarian Act. Users have to give their prior consent before receiving calls, messages or emails for advertising.