CYPRUS

Note: This document is an excerpt from the Staff Working Document attached to the Communication 'Towards a Single European Telecoms Market – 13th Progress Report (COM (2008(153)). The Communication and the Staff Working Document, as well as the corrigendum of 28th May 2008 can be found on Europa at the following url address: http://ec.europa.eu/information_society/policy/ecomm/library/communications_reports/a_nnualreports/13th/index_en.htm

INTRODUCTION

Despite ongoing investments in alternative infrastructure, competition on the electronic communications market remained limited in Cyprus in 2007, characterised by a very strong market position of the 100% state-owned incumbent operator in the fixed, mobile and broadband markets. Broadband penetration is still low. Efficient granting of rights of way to enable network rollout is still a key issue for alternative operators, in both the fixed and the mobile markets.

Following market analysis, new remedies were imposed in 2007 on operators with SMP, such as the Wholesale Line Rental ("WLR") reference offer. SMP operators' fixed retail prices have also been capped. The impact of these regulatory measures on the market, however, still needs to be seen. A national broadband strategy is still not available.

REGULATORY ENVIRONMENT

Main regulatory developments

2007 saw a number of developments with regard to the regulatory approach adopted by the NRA. For example, the Office of the Commissioner for Electronic Communications and Postal Regulation ("OCECPR") implemented the measures resulting from the market analysis in 2006 following public consultations carried out by the OCECPR on WLR, LLU (revised) and Bitstream.

The constantly growing market shares of the second mobile network operator ("MNO"), the efforts made by public authorities to address rights of way issues, the practical introduction of certain remedies and the take-up of triple-play services stand out as positive developments in 2007. On the other hand, broadband penetration is still low and a national broadband strategy is still not available.

Moreover, by a decision of 5 December 2007, the Supreme Court of Cyprus ruled that all decisions of the Competition Authority taken in the past four years are null and void, as one of the board members was also the mayor of a district in Nicosia during that same period. This development raises concerns of legal certainty with regard to decisions related to the electronic communications sector.

Organisation of the NRA

In Cyprus, the main regulatory tasks continue to be carried out by the Department of Electronic Communications of the Ministry of Communications and Works (DEC) (competent authority in spectrum management) and the Office of the Commissioner for

Electronic Communications and Postal Regulation (OCECPR) (competent authority for all other regulatory tasks).

While concerns were raised by market players about the length of dispute resolutions, no dispute resolution was requested in 2007. However, the OCECPR acted as a mediator or coordinator in several cases.

Appeals against the DEC's and the OCECPR's decisions are addressed to the Supreme Court. Decisions adopted during the appeal procedure stand. However, alternative operators regret that a large number of the decisions of the OCECPR are systematically challenged by the incumbent operator, which has the obvious effect of reducing legal certainty and predictability in the market.

Decision-making

As the OCECPR completed the analysis of all markets listed in the Recommendation on relevant markets in 2006, with the exception of the wholesale international roaming market, and as the Roaming regulation¹ was adopted, the European Commission closed the relevant infringement proceedings against Cyprus in October 2007.

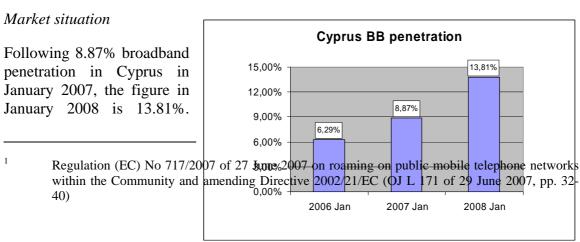
All the markets analysed are considered to be non-competitive and final remedies have been imposed in markets where SMP was found, with the exception of broadcasting transmission services, where the OCECPR applied the three-criteria test and concluded that the wholesale market for broadcasting transmission services is not susceptible to ex ante regulation.

MARKET AND REGULATORY DEVELOPMENTS

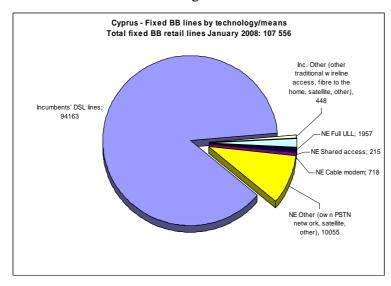
Investment in the Cypriot telecommunications networks totalled €77.03 in 2006, of which the incumbent, the alternative operators and the MNOs invested €32.52 million, 0.6 million and €30.81 million respectively, while the telecommunications sector in Cyprus generated €438.21 million in revenues during the same period.

The Cypriot e-communications market is still in transition from a monopoly to a competitive situation, as the incumbent's still dominant market share in the fixed, mobile and broadband markets demonstrates. In an increasingly convergent world it is regrettable that the market has been slow to open, as reflected in the slow take-up of broadband services in the absence of a comprehensive national broadband strategy.

Broadband



Notwithstanding rapidly increasing broadband penetration, this figure is still relatively low and below the EU average.



The incumbent operator's broadband market share is 88%, which clearly shows a strong dominance on this market. In addition, there is no real platform competition as DSL is the main technology for broadband services for the time being.

Forthcoming auctions of BWA and DTT licences in 2008 are expected to change this situation. The incumbent's broadband

operation is mostly concentrated in the main cities rather than in the countryside. Triple-play services are offered by the incumbent and one of the alternative operators.³ This new entrant, the strategic partner of the Cyprus Electricity Authority, owns its own islandwide fibre optic network built on the electricity network and reaches end-users via the sub-loop of the incumbent, but it also intends to roll out its own network to end-users.

A study describing the situation as at 31 December 2006 on broadband availability showed that rural areas in Cyprus are not covered by xDSL and cable.⁴

Regulatory issues

Following its market analysis, in April 2006 the OCECPR renewed the full and shared access obligation on the incumbent's local loop and/or sub-loop in a non-discriminatory and transparent way at cost-based prices. The incumbent is also obliged to publish an RUO. With regard to the wholesale broadband access market, the provision of bitstream access based on the "retail minus" method was imposed on the incumbent operator. Despite this remedy and the availability of the service, no bitstream agreement has been signed so far between the incumbent and the alternative operators.

The 2006 RUO was adopted and published on 29 December 2006. Under the 2006 RUO, the timeframe for unbundling was dramatically reduced from 25 days to 6 days. The monthly rental fee and the connection fee for full unbundled local loops are below the EU average. In this respect, alternative operators complain about the low margin between the incumbent operator's wholesale and retail prices. The number of unbundled local loops had grown very rapidly up to July 2007 and by January 2008 1 957 fully unbundled local loops (compared to 933 in October 2006) and 215 shared lines were reported, in

Data from January 2008

Pure triple-play services are offered only by one of the alternative operators, while the incumbent offers triple play with a combination platform (ADSL & PSTN/ISDN).

Broadband coverage in Europe, 2007 survey. Data as at 31 December 2006

parallel with the 10 019 recently established broadband lines by alternative operators. These developments enable new entrants to start offering their broadband services.

Under the NRA's decision of 20 April 2006, the incumbent was required to establish and publish an operational version of the Access Network Frequency Plan (ANFP) to be adopted for its network. Despite this obligation, the final version of the ANFP has still not been adopted. However, this obligation has been introduced in an interim form, following common proposals by all interested operators for the adoption of a hybrid version of the plan, as initially proposed by the obligation of the NRA and a later proposal of the incumbent operator. A final version of the plan will be adopted in 2008.

Mobile markets

Market situation

In Cyprus there are two MNOs, the incumbent with an 88.77% (90% in 2006) market share (in terms of subscribers) and the second MNO with an 11.23% market share (10% in 2006). According to its licence, the second MNO must increase territorial coverage of its network to 75% by the end of 2007. The second MNO was taken over in September 2007 by an entity that bought out the parent company.

Both MNOs have 3G licences and provide related services. In 2007, mobile penetration reached 118.48% (113.6% in 2006), which is above the EU average.

Regulatory issues

Cyprus is one of the rare Member States where the mobile access market has been found not to be competitive and the dominant MNO (the incumbent operator) has been designated as having SMP.

In the absence of mandatory MVNO access,⁵ the OCECPR must enforce stringent and effective wholesale regulation to ensure that the two MNOs currently on the market in Cyprus are able to compete at arm's length.

In its comments following notification of the mobile access market, the Commission called on the OCECPR to impose price regulation with regard to national roaming services which the incumbent is obliged to offer to the second MNO. In its comments the European Commission emphasised that the price of national roaming services should be cost-based and allow an appropriate margin between the incumbent's retail tariffs and its wholesale national roaming tariff. The price of national roaming was set by the OCECPR at a level of €0.0214, which the second MNO found to be twice as high as its own calculation. The price component for wholesale national roaming services remains important in Cyprus, as the second MNO has not yet rolled out completely its own network (84.76% in December 2007), notwithstanding its desire to achieve total territorial coverage as soon as possible.

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It was announced in the auction documents for the second GSM licence granted on 4 December 2003 that the spectrum reserved in the 2003 auction will not be licensed for a period of 5 years or until the new entrant (second MNO) has achieved a market share of 25%, whichever comes first.

Moreover, it has to be noted that mobile call termination charges in Cyprus are very low (the incumbent's and the second MNO's termination rates are €0.0193/min and €0.031/min respectively, based on asymmetric price regulation). In addition, the fixed-to-mobile prices (2.06 €ents) are the lowest in the EU-27 (average 9.87 €ents). The second MNO published an RIO on 1 January 2007, but no accounting separation obligation applies until its annual turnover exceeds €0 million.

Roaming regulation

Both MNOs are reported to have correctly implemented the Roaming Regulation. The tariffs were set close to the maximum ceilings both for receiving and for making phone calls within the Community.

Fixed

Market situation

In Cyprus, the incumbent operator still has a dominant position in the fixed voice telephony sector. Its market shares in terms of total revenues accounted for 90% of all types of fixed calls and 90% of calls in 2006⁶ (91.2 and 86% respectively in 2005) while the overall fixed line traffic volume is in decline. As regards international calls, the incumbent's retail revenues increased by 4% compared to the previous year.

The Minister of Finance, now responsible for management oversight in relation to the incumbent, drew on the revenues accrued by the incumbent. Nevertheless, as it is still not mandatory to return dividends to the State, the incumbent operator cannot be considered to be subject to the normal constraints of business.

The alternative operators provide voice telephony services mainly through carrier selection, pre-selection and access to the Internet through public switched telecommunications networks.

Regulatory issues

Following its market analysis in December 2006, the OCECPR imposed CS/CPS and WLR obligations on the incumbent, thus finally permitting new entrants to have a direct contractual relationship with their end-users and to provide them with only one bill. As an implementing measure of the decision, the WLR price for alternative carriers was set by the OCECPR in July 2007 at 18.44% retail minus + 5 cents. However, no agreement has been concluded so far.

In July 2007, a price cap based on cost orientation was imposed on the incumbent following an analysis of the fixed access market for residential and non-residential customers. This measure, which entered into force on 1 November 2007, should ensure more margin for alternative operators when setting their retail prices for the corresponding services and consequently enhance competition, whereas the incumbent fears that this movement will speed up the churn phenomenon.

^{6 31} December 2006

The process of carrier pre-selection has improved, but as a consequence there have been allegations that the incumbent operator has launched anti-competitive win-back campaigns for all customers that move to an alternative operator. As a result, the OCECPR inserted a "Subscriber Win-back Code" in the incumbent's 2006 RIO, adopted in October 2006, in order to minimise this kind of market behaviour. Alternative operators claim, however, that this has not been sufficient.

In 2007, the OCECPR designated the incumbent as an operator with SMP in the retail market for the minimum set of leased lines and in the wholesale markets for terminating segments and trunk segments of leased lines. In respect of the latter two, on 1 August 2007, two reference offers for wholesale leased lines were adopted.

Broadcasting

Market situation

In Cyprus, end-users receive broadcasting mainly via analogue terrestrial transmission (88%) and satellite (8%). Nine television channels (seven free-to-air and two pay-tv channels) and 13 radio stations — all with nationwide coverage — are offered via analogue terrestrial transmission. Cable and xDSL each have less than 5% end-user penetration and are in the early stages of development.

Two analogue UHF channels have at the moment been reserved to facilitate the introduction of digital terrestrial television in Cyprus. 2012 was set as the date for analogue switch-off. In the course of 2008, the DEC and the OCECPR are planning to introduce digital terrestrial television network(s), via an auction process, where the UHF frequencies allotted to Cyprus in RRC-06 will be authorised.

Regulatory issues

As mentioned in the 12th Implementation Report, the Cypriot authorities notified the European Commission in September 2006 of a market analysis of and draft measures relating to broadcasting transmission services. The OCECPR excluded cable, xDSL and satellite from ex ante regulation.

Horizontal regulation

Spectrum management

All radio spectrum harmonisation Decisions have been transposed, including the ones from 2006 and 2007.

Despite plans which have been pending for several years, Fixed Wireless Access networks and services do not yet operate in Cyprus. In order to increase competition, the DEC is planning to introduce Broadband Wireless Access via an auction process (jointly

The framework for using the radio frequencies mentioned in Decisions 2006/771/EC, 2006/804/EC and 2007/131/EC, as well as other radio frequencies, is prescribed in "The Radio-communications (Use of Radiofrequencies by Radio equipment that is Exempted from the Obligation to obtain an Authorisation) Order of 2007" (P.I. 264/2007, 22.6.2007), issued by the Director of the DEC.

with the OCECPR). The auction process should take place in the near future to allow the available frequencies to be distributed that alternative operators need in order to compete effectively with the incumbent operator.

To enhance communications of public safety services in Cyprus and facilitate the provision of digital PMR services, the DEC and OCECPR launched a public consultation in November 2007 to explore the possibility of introducing TETRA networks.

Rights of way and facility sharing

With regard to the rollout of fixed infrastructure, market players voiced heavy criticism at the slowness with which the required rights are granted and at the different practices employed by the different authorities involved in the licence granting process.

Operators need permits from the Department of Public Works of the Ministry of Communications and Work for major roads under their jurisdiction, or from local authorities (municipalities or district authorities) for all other roads under their administration.

Taking into account the difficulties new entrants are having in rolling out fixed networks, such as the refusal by the relevant authorities to grant rights of way to install facilities on, over or under public property and on roads/highways, the European Commission sent a letter of formal notice to the Cypriot authorities in July 2006 and a reasoned opinion in June 2007.

As a result, the Cypriot authorities made an effort to harmonise how the necessary permits are granted between the competent authorities and to tackle the technical difficulties in granting rights of way. On 31 August 2006, the Council of Ministers adopted the "Code of procedures regarding the acquisition of rights of way in the road network by electronic communications providers" (the "Code of 2006"). This was based on the recommendations of the Technical Committee set up under the supervision of the Public Works Department and composed of representatives of the Ministry of Interior, the Planning Bureau, the Town Planning and Housing Department, the Land and Surveys Department, the Union of Municipalities and the OCECPR. These new policy guidelines on procedures to obtain permits from public or local authorities have been adopted in the form of a Policy Decision of the Council of Ministers. The Code of 2006 sets time limits for the various procedures. The time for the collection and recording of comments, opinions and remarks from the various public services and the provision of the relevant authorisation from the competent authority must not exceed a period of 6 weeks, unless there are special reasons, which must be sufficiently justified. According to the Cypriot competent authorities, applications for the acquisition of rights of way will be evaluated within this period, provided that all the essential documents are attached. The recommendations contained in the Code of 2006 were supposed to be implemented by the end of 2006, as, according to the recommendations, the relevant legislation⁸ needed

The Regulation of Electronic Communications and Postal Services Law of 2004 (Law No 112(I)/2004), Public Roads Law (chapter 83), Town and Land Country Use Planning Law, Immovable Property (Possession, Registration and Valuation) Law (chapter 224), Department of Lands and Surveys (Fees and Rights) Law (chapter 219), Municipalities Law of 1985 (Law No 111/85), Basic Requirements that must be met by Specific Categories of Products Law (Laws Nos 30(I)/2002 and 29(I)/2003) and Organisation of Roads Streets and Buildings Law

to be reviewed to be consistent with the provisions of the policy framework in the Code of 2006. A Technical Committee consisting of competent public/local authorities and interested operators agreed on technical aspects and technical plans to be applied under the new procedures, resulting in a progressive implementation of the Code of 2006. Legal amendments were also adopted in July 2007, thereby increasing legal certainty.

As a result, co-location is promoted in the case of existing roads within towns. Underground rollout of fixed line infrastructure on existing roads is examined on a case-by-case basis if co-location is not technically feasible. On new roads special ducts have been dedicated to all operators and the cost will be shared between interested parties.

As regards mobile networks, both the incumbent and the second MNO face significant delays⁹ and difficulties in rolling out their mobile networks. Furthermore, most sites in rural areas are Government-owned, and accordingly approval for construction can be a lengthy process which has to be approved both by the relevant Ministry/ies to which the land belongs and by the Council of Ministers.

To tackle existing problems concerning the granting of town planning and building permits for masts and antennas, the Council of Ministers adopted the "Policy and Procedures for the Installation and Operation of Radio-communication Stations with Transmission Capability" (the "Code of 2005") on 14 December 2005. Under the Code of 2005, the checks for both town planning and building permits should no longer include the verification of exposure to electromagnetic fields. Paragraph 4 of the Code of 2005 states that the maximum time limit for examining applications for town planning and building permits is 6 weeks and, in the case of building permits, applications that have not been examined within the 6-week time limit are to be considered approved.

Finally, radio-communications installations of less than 600 kg or 4 metres in diameter are exempted from the planning permit requirement. As for building permits, an amendment of the Streets and Building Law is under way but it has still not been adopted by Parliament. The draft bill will authorise the Minister of Interior to issue Decrees exempting certain constructions, including masts and antennas, from the necessity to obtain building permits. Other important points of the Code of 2005 will also be covered by the Decree to be adopted after adoption of the draft bill, such as the 6-week rule and in general all the provisions of Paragraph 4 of the Code. Nevertheless, until the requisite legal amendment is in place, the more flexible building permit regime cannot enter into force more than two years after the adoption of the Code of 2005.

In view of the problems the second MNO is having installing its own base stations, the European Commission sent a letter of formal notice to Cyprus in March 2007.

Apart from the slow process of granting the requisite permits and licences for the installation of fixed and mobile networks, operators also face the problem of removing illegally erected masts/antennas. While the incumbent operator has had to remove 5 base stations so far, the second MNO had to dismantle 27 base stations in 2006 and 2007.

Of the 29 applications that the second MNO filed for building permits between January 2005 and November 2007, five were rejected and a licence was issued for three of them (in one case more than two years after submission of the application). Of the pending applications of the second MNO, five have been pending more than a year.

THE CONSUMER INTEREST

Universal Service

In Cyprus, the last designation of the universal service provider (USP) took place on 18 March 2005 for a period of 3 years. The incumbent was designated for all elements and for the whole territory. The OCECPR, however, received no request to set up a compensation mechanism for the provision of the universal service.

This designation will expire on 11 April 2008, on which date a new universal service provider or providers must be designated by the OCECPR.

Number portability

Number portability was implemented in Cyprus on 12 July 2004 under the supervision of the OCECPR. Number portability is valid for fixed telephony numbers within the same geographical area, for non-geographic numbers and for mobile numbers. Between the implementation of number portability in Cyprus and October 2007, 2 552 fixed and 1 139 mobile numbers were ported. Under a decision of the OCECPR, the time to port numbers was reduced from 14 days to 4.

European emergency number 112

In Cyprus emergency calls are made both to 112 and to 199, the national emergency number. 112 calls are diverted to the appropriate Police Department for further action. Emergency operators are required to handle calls in Greek and English and interpreters may be called upon.

In response to the infringement proceedings initiated by the European Commission in April 2006, the Cypriot authorities ensured that caller location information was available from both fixed and mobile networks in Cyprus. Consequently, the infringement proceedings were closed in September 2006.

Some operators have recently reported that 112 caller location information cannot be effectively transmitted to the competent emergency authorities. The Commission is looking into this matter.

Must-carry

In Cyprus, no must-carry obligation is imposed on operators.

Data protection

The Data Retention Directive was transposed by Law 183(I)/2007, which was published on 31 December 2007.