

## FINLAND

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

### INTRODUCTION

In the Finnish telephony markets, fixed subscriptions and traffic have shrunk considerably as a result of fixed-to-mobile substitution. Mobile networks have been expanding their coverage, offering cheap 3G services, including data transmission. Regulatory pressure and agreements between operators have again pushed down mobile termination rates. With Europe's highest growth rate in 2007, Finland belongs to the top countries in the European broadband penetration ranking.

The NRA has already examined several important markets in the second round of market analyses. A series of amendments to the Communications Market Act have reinforced the NRA's regulatory tools and led to better compliance with the regulatory framework in general.

### REGULATORY ENVIRONMENT

#### Main regulatory developments

Amendments to the Communications Market Act entered into force in 2007 that are intended to strengthen the consumer's position in the area of contracts with electronic communications providers. Another amendment, addressing the Commission's concern regarding a priori exclusion of operators from the possibility of becoming USO operators, also entered into force in 2007. It includes provisions which give the NRA, *Viestintävirasto* (FICORA), powers in the field of cost accounting methodologies. A third amendment gave FICORA the power to introduce glide paths and symmetry in mobile termination price regulation. In December 2007, another amendment was adopted by Parliament which seeks to address the Commission's concerns that the NRA does not have all the potentially necessary regulatory tools as envisaged by the Regulatory Framework (the Commission sent a supplementary letter of formal notice to Finland in 2006 in this regard).

In late 2007, amendments to the must-carry regime — partly as a result of the mandatory review according to the law, partly in response to the Commission's letter of formal notice (see the 12th Report) — were also adopted by Parliament.

#### Organisation of the NRA

Finland now has a special Minister of Communications within the Ministry of Transport and Communications (where previously there was one minister with responsibility for

both the transport and communications sectors). While the division of labour and the assignment of complaints could at times be complicated, the cooperation between FICORA and the competition authority continues to be good.

### **Decision making**

In the second round of market analysis, important markets such as LLU, wholesale broadband access and wholesale mobile termination were examined at an early stage. In the second half of 2007, FICORA focused to some extent on fixed interconnection and was able to notify its draft decisions on the markets in fixed call origination, termination and transit services to the Commission.

Operators are still concerned that vague SMP remedies create legal uncertainty and lead to excessive appeals. In the autumn of 2007, a total of six decisions under the Communications Market Act were indeed under appeal, none of which concerned the old, first market analysis round. Two of these cases concerned the wholesale broadband access market. Some spectrum assignment decisions have been appealed, but none suspended.

In Finland, district courts handle appeals against decisions under the Communications Market Act and operators are very concerned about the lack of resources and expertise of and time taken by these courts (with procedures lasting up to 18 months). Since January 2006, decisions relating to SMP obligations are appealed directly to the Supreme Administrative Court, a change that has been welcomed by operators.

One of the mobile operators had previously complained to the Supreme Administrative Court regarding the decision not to regulate the market for mobile access and call origination. The case was withdrawn because the operator in question eventually discontinued further legal proceedings, considering the market more competitive. The Supreme Court had stated in an interim decision that the operator, as a third party, did not have the right to appeal and had referred a question in this regard to the Court of Justice. The Commission is looking into this matter.

In 2007 the competition authority handled and approved a couple of merger cases, one of which concerned the takeover of the smallest mobile network operator by the new group of six operators.

### **MARKET AND REGULATORY DEVELOPMENTS**

The total turnover of the Finnish telecommunications sector was €4.51 billion as of 31 December 2006; revenue from the fixed markets was €1.33 billion and from the mobile markets €2.26 billion. The total value of tangible investments in telecommunications networks was €0.38 billion.

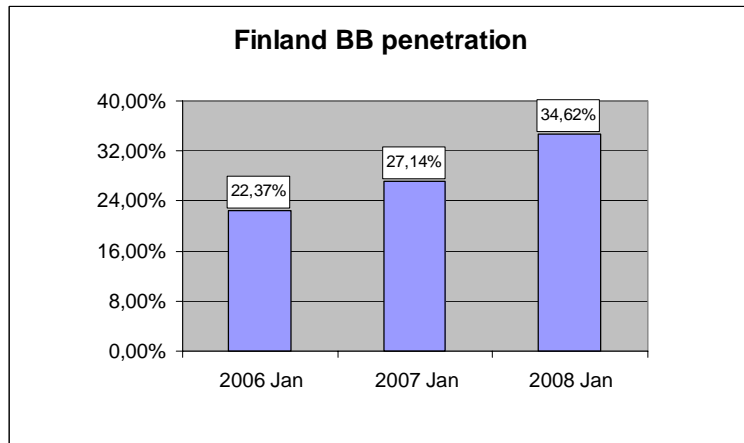
The structure of the Finnish market changed at the end of 2006. While the bulk of the communications infrastructure was previously controlled by three groups, each of them with its own mobile, trunk and access networks, the association of local telephony operators, the smallest group, was effectively split in two. In order to create a new group, the six largest operators of the association left, taking control at the same time of the old association's mobile network business by purchasing the remaining shares from the other operators. A venture capital group has acquired some of the shares in the new group. One

Nordic alternative operator remains (without its own traditional incumbent area in Finland).

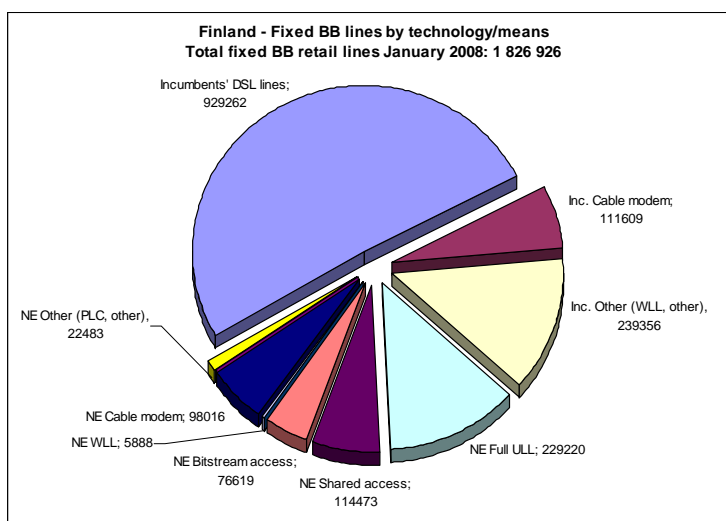
## Broadband

### Market situation

With Europe's highest growth rate (which has been even increasing to nearly 7.5 percentage points between January 2007 and January 2008), Finland has become second best performer in terms of the European broadband penetration ranking (34.6% in January 2008). Broadband infrastructure competition is potentially restrained by the



fact that local telephony incumbents often own the local cable networks as well. In several local areas there is still only one DSL provider. However, some of the local operators have rolled out WiMAX inside as well as outside their own incumbent areas. Nonetheless, WiMAX subscriptions represented less than one percent of total subscriptions in 2007.



While local operators state that their networks are capable of providing broadband via cable TV, xDSL remains the absolutely dominant form of consumer broadband access in Finland (nearly 80% of all lines). The main incumbent groups, but also to some extent other operators, have broadband trunk networks of their own, and use them for reaching the local loops they rent in other incumbents' areas. Any

alternative operator that considers providing services through the use of wholesale bitstream access is increasingly faced with the disconnection of fixed phone lines in favour of mobile telephony. This leaves the alternative operator with having to pay the LLU unbundling price in addition to the bitstream access-related price component.

The network based on the "Digital 450" licence (wireless broadband data communications licence for the 450 MHz band granted in 2005) was launched in April 2007. It aims to cover every household as well as holiday cottages (attaining a 100% coverage in Finland).

Competition seems to be increasing as subscription speeds are rising while retail prices remain stable. Average speeds are relatively low, but increasing (only 28% of broadband subscriptions had a connection speed of over 2 Mbit/s in the second quarter of 2007).

DSL rural coverage is 82%. The gap with respect to the national coverage is 9.8%.<sup>1</sup>

### *Regulatory issues*

LLU delivery times are to various degrees perceived as a problem but seem to have improved. LLU connection charges have decreased, but are still at relatively high levels. SMP operators have generally outsourced LLU connection activities to contractors. It appears that in at least some cases, the charges paid by SMP operators to contractors exceeded the regulated connection price. One regional administrative court has ruled that this fact does not exempt the SMP operator from only charging the regulated LLU connection price. The NRA — not convinced that the contractors' prices reflect efficiency by definition — is examining the matter.

Some of the competition authority's margin squeeze investigations regarding the provision of wholesale bitstream access have been closed without finding any abuse of a dominant position. Two major competition law cases have been under the scrutiny of the Market Court for three years and are expected to be settled in spring 2008. In one specific case, the margin squeeze on the offered wholesale price has been so large that it has in fact been treated as a case of refusal to supply.

### **Mobile markets**

#### *Market situation*

While fixed calls continued to decrease, mobile minutes and number of calls each grew by approximately seven percent between the second quarters of 2006 and 2007. During the same period — shortly after the temporary amendment to the Communications Market Act allowing subsidisation of 3G phones (until March 2009) — the use of mobile data (excluding SMS and MMS) more than quadrupled. All operators have also introduced flat-rate mobile internet access.

While prices for retail mobile services increased slightly last year — at least partly as a result of operators introducing per-call fees — they still appear to be among the lowest in Europe. The market share of the largest mobile operator shrank by 4 percentage points between 2006 and 2007 (down to 40% by June 2007), while those of the second and third operators grew (to nearly 39% and 20% respectively). No separate data on market shares for 3G traffic is available.

The larger fixed network operators without their own mobile network have been able to negotiate MVNO agreements with one of the mobile network operators.

Mobile penetration is high (more than 108%). Pre-paid card usage in Finland remains very low compared with the EU at large.

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<sup>1</sup> IDATE report (October 2007): Broadband coverage in Europe. The data used in the report refer to December 2006.

As described in the 12th Report, mobile network operators have favoured UMTS-900 over UMA-type solutions (Universal Mobile Access) which combine fixed and mobile access.

The major alternative operator introduced in the autumn of 2007 a wireless LAN/mobile service for corporate customers. With this service, users are on the (virtual) mobile network when outside the office, but automatically switch to the W-LAN IP telephony service when entering the office.

UMTS networks are now being rolled out to cover most of the population. The extension of coverage should be facilitated by the use of UMTS-900 in the near future. HS(D)PA is available and is being built out together with the UMTS networks.

### *Regulatory issues*

A 2007 amendment to the Communications Market Act provides the NRA with the power to introduce glide paths and symmetry in mobile termination price regulation. While it was anticipated that the calculated mobile termination fees would be lower with the new “FIFAC” current cost accounting model developed by the NRA, the mobile operators — actively encouraged by the NRA and under the potential threat of even lower, regulated rates — were able in February 2007 to agree to reduce their mobile termination rates by following a glide path to the year 2010. The asymmetric mobile termination rates will be reduced to €0.05 and €0.06 in 2008, and to a yet to be decided, even lower symmetric rate in 2010 by the latest. The agreement places Finnish mobile termination rates among the EU’s lowest. In the meantime, FICORA continues developing its cost model for the 2009 rates.

As Finnish international roaming rates were relatively low prior to the Roaming Regulation’s coming into force, mobile operators have been less concerned over the retail element and more over compliance with the wholesale element of the regulation. Some operators have signalled delays in implementing the “push” roaming price information solution of up to a few months.

## **Fixed**

### *Market situation*

Fixed calls fell by 22% in number and by 29% in minutes between mid-2006 and mid-2007. Household PSTN penetration, in continued decline, was according to Statistics Finland at 41% in the first quarter of 2007.

Finnish local call prices are among the lowest in Europe. The incumbent that has the most remote and sparsely populated areas found it appropriate however to raise subscription prices (to various degrees depending on the area) as a result of higher per-unit running costs due to the continued decline in PSTN subscriptions.

As in 2006, Fibre to the Home or other access forms continue to replace traditional fixed telephony copper lines in new homes. While broadband telephony is not widely used, around 20% of broadband subscribers were using IP-telephony software, inter alia to make inexpensive calls abroad.

### *Regulatory issues*

In October 2007, FICORA notified its draft decisions on the markets of fixed call origination, termination and transit services to the Commission. While the latter market was declared to be effectively competitive, the NRA's conclusions for the first two markets were roughly identical to those of the first round of market analyses: almost the same undertakings were thus designated as having significant market power.

## **Broadcasting**

### *Market situation*

Approximately 80% of Finnish TV households were using some kind of digital TV reception in August 2007. The national terrestrial analogue network was switched off on 1 September 2007, but the large majority of terrestrial households were already receiving digital broadcasts long before then (by mid 2007, 85% of households had digital antenna reception). Cable television providers will definitively switch to digital signals by the end of February 2008.

An open digital terrestrial network (DVB-H), exclusively aimed at wholesale customers such as content providers, was commercially launched at the end of 2006. However, copyright issues delayed the start of mobile TV services by several months. While TV services are also offered over the 3G networks, the still unclear copyright situation — not least as regards public service programming — has surrounded the provision of mobile TV with uncertainty.

While there are IP-TV offerings (e.g. in the Helsinki area, using LLU), this type of TV service has yet to break through on a large scale in Finland. However, it can be noted that the provision of IP-TV has not faced the same difficulties with copyright as mobile TV.

### *Regulatory issues*

An additional DVB-T multiplexer came on line after analogue switch-off on 1 September 2007. DVB-H programming licences have been issued by FICORA to minor service providers.

## **Horizontal regulation**

### *Spectrum management*

A workgroup set up by the Ministry of Transport and Communications has been tasked with making proposals on how to allocate the digital dividend created by the switch-off of the analogue terrestrial television network on 1 September 2007. Another workgroup was set up by the Ministry in August 2007 in order to prepare spectrum liberalisation.

In 2006, the Finnish government had announced its decision to allow the use of the 900 MHz frequencies for UMTS, with better characteristics for area coverage and indoor use ("UMTS-900"). The right to provide 3G services in the 900 MHz and 1800 MHz bands would be reserved to those operators that have the right to offer 2G services in these bands. On 31 October 2007, FICORA issued a decision on the re-assignment of the 900 MHz band between the existing licence holders. The decision provides that the three

mobile network operators have equal and sufficient spectrum resources and contiguous 900 MHz frequency bands for the purposes of GSM and UMTS operations in the 900 MHz band. The building of the UMTS 900 network can be started immediately. This makes Finland Europe's first country to enable the concurrent use of 900 MHz frequencies for second and third generation mobile communications. The operators' mutual transition arrangements will be implemented by the end of 2009.

The licence holder of the "Digital 450" licence started up its network in 2007 in densely populated areas and in parts of Lapland. According to the licence conditions the mobile network is open for all service providers and the licence holder itself does not offer retail communications services. The licence holder is also required to build out the network in rural and remote areas within a certain time frame. Pilots carried out for the provision of broadband services by an incumbent will result in commercial launch in December 2007.

All 3.5 GHz licences for fixed wireless access have now been assigned. While the use and coverage of WiMAX by local or municipal operators has increased significantly in the last couple of years, the operator with the largest number of regional 3.5 GHz licences — covering most of Finland — has not yet launched services and intends to focus on mobile WiMAX (version e, still not commercially available).

Several mobile operators are concerned about radio spectrum interference from Russian mobile operators in the remote areas near Finland's eastern border, where many have summer homes. As a result, in a number of cases subscribers of Finnish operators have been erroneously charged significant amounts for roaming on Russian mobile networks. FICORA is trying to resolve these coordination issues with its Russian counterpart.

#### *Implementation of spectrum decisions*

Finland has fully implemented the Commission spectrum harmonisation decisions.

## **THE CONSUMER INTEREST**

### **Universal service**

An amendment to the Communications Market Act, addressing the Commission's concern regarding the a priori exclusion of operators from the possibility of becoming USO operators, entered into force in 2007. The Commission's infringement proceeding in this regard has therefore been closed. FICORA is preparing decisions concerning the designation of universal service providers. In that process, the starting point has been technological neutrality, in particular as regards fixed versus mobile access solutions. Between 2 and 4 percent of the population relied exclusively on a fixed subscription in 2007. An important question will be whether the decline in fixed subscriptions will accelerate price rises, creating a vicious circle leading to the demise of the PSTN network in remote areas.

### **Number portability**

Finland has the highest percentage of ported mobile numbers over the total of mobile subscribers (68%). Fixed number portability to the contrary is rather limited. The price for fixed porting (between operators) is above the European average (€17.95).

## **Consumer complaints**

In March 2007, amendments to the Communications Market Act entered into force that are intended to strengthen the consumer's position in the area of contracts with electronic communications providers. For example, consumers are entitled to standard compensations in the case of faulty communications, and operators are relatively limited in their right to amend the terms of a communications service agreement. It is not entirely clear to what degree operators can be held responsible for faults in communications (e.g. in the case of a stolen mobile phone), but they have an obligation to compensate the user unless the fault was a result of the user's "gross negligence". An appeal lodged by one of the operators was expected to add clarity to the legal provisions. The Act also contains provisions relating to the unauthorised use of communications services.

## **European emergency number 112**

112 is the main internal emergency number in Finland but only 44% of Finns appear to be aware of the existence of this number for calls to emergency services anywhere in the EU. The national 112 Day is a yearly event on 11 February that draws attention to safety.

Caller location information is provided for all calls, both mobile and fixed.

## **Must-carry**

As required by Finnish legislation, and following the letter of formal notice sent by the Commission to Finland in June 2006, Finland started reviewing its must-carry regime. The proposal tabled in Parliament was expected to be in force by end-2007.

## **Data protection**

Implementation of Directive 2006/24/EC on data retention has not been a great source of concern for operators in Finland, as the State is to fund the necessary implementing measures. According to the proposal, operators will be obliged to retain traffic and location data for 12 months.

FICORA has received additional funding for the Computer Emergency Response Team (CERT) function and has been able to employ a further 6 personnel, resulting in better critical infrastructure services (involving the major operators). It has also started a revision of its e-mail regulation, and in doing so applies technology neutrality in preparing for possible mobile privacy threats. A public awareness campaign regarding mobile internet privacy has been run. Although traffic from certain IP addresses is being blocked, threats from outside the EU remain the biggest problems.