

IRELAND

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/annualreports/13th/index_en.htm

INTRODUCTION

Competition became dynamic on the Irish broadband market in 2007, with widespread uptake of mobile and wireless broadband and attractive fixed broadband services, allowing Ireland to record the fourth highest growth in broadband penetration in the EU in the period January 2007-January 2008. In the meantime, fixed operators have started preparing for next generation networks.

2007 was a year of some significant reforms in Ireland, from enhanced enforcement powers for the national regulatory authority ComReg, through a changed appeals mechanism, to a framework for digital terrestrial TV. While several implementation issues identified in previous years in areas such as unbundling and number portability have now largely been resolved, early adoption of final remedies in the fixed interconnection markets and effective implementation of all the remedies will remain a priority.

REGULATORY ENVIRONMENT

Main regulatory developments

In 2007 several important changes to the Irish regulatory framework for electronic communications were introduced through legislation, notably enhancing ComReg's enforcement powers and abolishing the Appeals Panel. The local loop unbundling (LLU) development process has made substantial progress, opening new investment opportunities for alternative operators. At the same time new regulatory challenges have emerged, primarily concerning the incumbent's next generation network as well as the incumbent's initiative to separate its network infrastructure from its retail operations.

Organisation of the NRA

The Communications Regulation (Amendment) Act 2007, signed into law on 21 April 2007, has strengthened ComReg's enforcement powers in several ways. Firstly, as a result of the Act and secondary legislation, penalties for breaches of specific obligations have been increased, maximum fines now reaching €5 million or 10% of turnover, whichever is the greater. Secondly, the Competition Act 2002 has been amended to enable ComReg to investigate breaches of competition law in the electronic communications sector and to strengthen cooperation and coordination of activities between ComReg and the national competition authority. Thirdly, ComReg has been

granted enhanced information-gathering powers, accompanied by enforcement provisions.

The first practical results of these legislative changes are already visible as ComReg is stepping up its enforcement efforts: a dedicated enforcement team has been created, and more own-initiative investigations have been started.

The new legislation also contains measures designed to increase the transparency of ComReg's activities, namely the obligation to publish in advance, before the end of each financial year, an annual action plan setting out ComReg's principal activities and associated budgeted expenditure.

By virtue of the European Communities (Electronic Communications Networks and Services) (Framework) (Amendment) Regulations 2007, adopted on 12 June 2007, the appeals mechanism centred around the Electronic Communications Appeals Panel has been replaced by the possibility of appeal to the High Court against a ComReg decision. It is expected that this will result in a more speedy appeals process.

Decision making

ComReg had analysed and notified all markets identified in the relevant Commission Recommendation in 2006. ComReg has however formally lost two appeals cases, and four appeals have been launched against its market analyses. It has therefore decided not to proceed to the adoption of the final measures for several markets, and to analyse them again on the basis of the most recent data and the improved market analysis procedures. This additional work in the framework of the first round of market analyses was finalised in 2007. Moreover, ComReg has started the second round of market analyses, in particular as regards the markets for wholesale leased lines, wholesale unbundled access and wholesale broadband access.

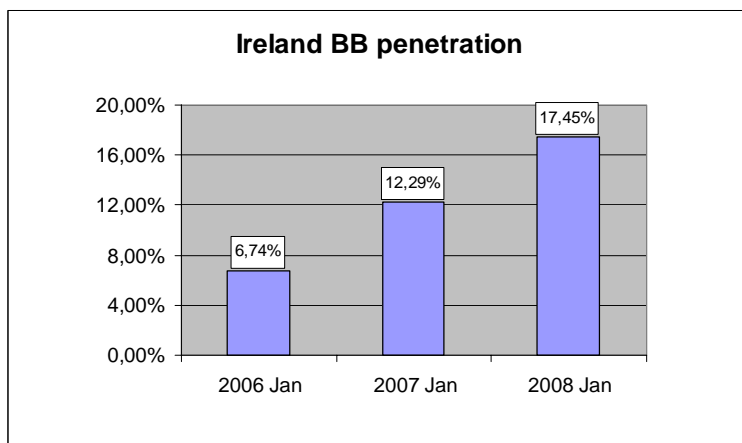
MARKET AND REGULATORY DEVELOPMENTS

The total turnover of the Irish telecommunications sector was €4.1 billion as of 31 December 2006.

Discussions on the concept and configuration of the incumbent's next generation network (NGN) accelerated in 2007. The incumbent fixed network operator announced in January 2007 that its NGN would be built with VDSL2 technology and rolled out to street cabinets, affecting 37 exchanges in the Dublin area in the initial phase, to be completed by 2010. According to the incumbent, a combined copper/NGN network will remain in place for a considerable period of time, therefore minimising the impact at the wholesale level. In April 2007, a chief executive-led industry steering group was created with two working sub-groups dealing respectively with the core network and access issues. In July 2007, ComReg published a position statement analysing impacts of the NGN on existing wholesale products and identifying the broad lines of future NGN wholesale products. ComReg has also commissioned studies on NGN sub-loops and bitstream. While further progress on this regulatory process was expected in the short term, no strict deadline has been set. Alternative operators have however called for more transparency as regards the incumbent's overall NGN roll-out plan.

Broadband

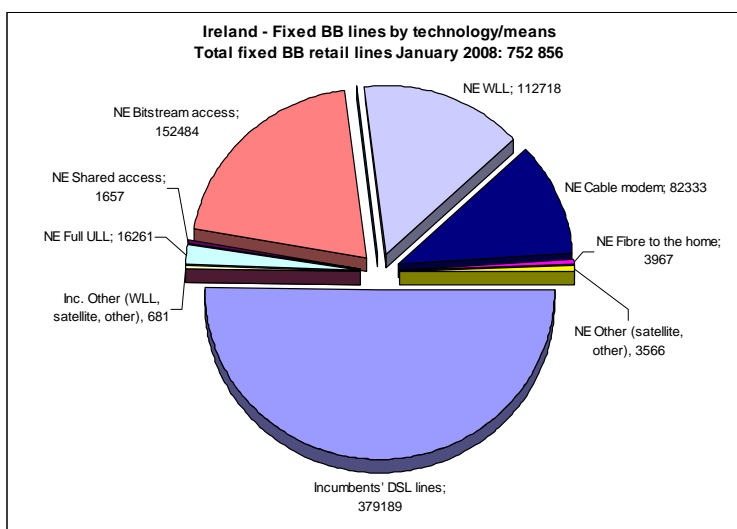
Market situation



In January 2008, broadband penetration reached approximately 17.4% compared to around 12.3% in January 2007, while the EU-27 average was at 20%. Ireland recorded the fourth highest growth in terms of new broadband fixed lines per 100 population in the EU in the period January 2007-January 2008. Broadband services are provided through

a number of competing infrastructures: wireless local loops expanded strongly, and mobile broadband took off in a significant manner. Nevertheless, digital subscriber lines (DSL) have remained the main technology with 73% of subscribers in January 2008. As of January 2008, 31% of all DSL subscriptions were supplied by alternative operators, a slight drop from 34% in January 2007, reportedly due to the withdrawal of an alternative operator from the consumer DSL market. Overall, the broadband market share of the fixed incumbent grew slightly in 2007 and was close to 50% in January 2008 (above the EU-27 average of 46.3%).

The Irish government has launched a national broadband scheme in order to extend broadband access to the remaining portion of the population, estimated at approximately 10%, that is not covered by the existing broadband infrastructure. Following the pre-qualification questionnaire in May 2007 (11 responses), four operators have been invited to submit proposals for the competitive dialogue procedure. The provider is expected to be selected in the second quarter of 2008. In Ireland the DSL coverage in terms of population in rural areas is 64% (compared to the DSL national coverage of 86%).¹



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

Regulatory issues (including market analyses and remedies)

A number of local loop unbundling (LLU) issues that, reportedly, used to result in significant user cut-off periods and hinder investments by alternative operators were finally resolved in September 2007. In particular, the incumbent implemented all requested migration paths to LLU from other wholesale products; provided a standard Service Level Agreement (SLA) which should meet industry requirements; concluded negotiations on and implemented an enhanced SLA and concluded negotiations on appropriate LLU backhaul.

Furthermore, ComReg performed a review of existing regulation concerning GLUMP, a product combining LLU (Local Loop Unbundling) and GNP (Geographic Number Portability), which had been launched in August 2006. As a result ComReg published in September 2007 two documents: Regulatory Guidance for Undertakings on the Provision of GLUMP, setting out provisions relevant to the wholesale interoperator relationship and other provisions relevant to the provision of retail services to all end-users, as well as an information notice “Output of the GLUMP Code of Practice review: Provisions not having a legal basis”, encouraging best practices in managing customer migrations.

The monthly rental charge for both fully unbundled local loop and shared access increased slightly in both 2006 and 2007, and remained amongst the highest in the EU. In contrast, the connection fees were reduced slightly compared to 2006. The number of wholesale LLU lines fell from approximately 18 488 in January 2007 to approximately 16 261 in January 2008. The number of wholesale bitstream lines reached 152 487 (compared to 111 193 lines in January 2007).

Mobile markets

Market situation

The mobile penetration rate reached 117% in October 2007. The market shares by revenue of the four mobile operators were approximately 43%, 39%, 14% and 3% in June 2007, confirming the trend of gradually diminishing market shares of the two largest operators.

In March 2007, ComReg issued a 3G mobile licence to the fixed incumbent, increasing the number of Irish 3G operators to four. In 2007 the three established 3G operators saw a widespread uptake of their mobile broadband services. One operator is successfully testing mobile TV services based on the DVB-H standard. Spectrum in the 900 MHz region has been assigned to a potential 4G operator.

In 2007 the first mobile virtual network operator (MVNO) entered the Irish market. Market entry took place later than initially expected owing to technical number portability issues.

Regulatory issues (including market analyses and remedies)

As regards the mobile call termination market, all operators but one have been identified as having significant market power (SMP), as the SMP designation of that one operator was declared null and void by the Appeals Panel. ComReg has completed the re-analysis

of the market in this respect. In August 2007, ComReg announced the undertakings by three mobile operators to voluntarily reduce their mobile termination rates over the next five years, which should result in an average blended rate of €0.08 by 1 January 2012 (compared to the average rate of €0.15 in October 2007, considerably above the EU-27 average). The fourth mobile operator has committed to reductions which are lower at the beginning of the five-year period but will accelerate towards the end of the period.

Roaming

All Irish mobile operators complied duly and on time with the new European Regulation (EC) No 717/2007 on roaming on public mobile telephone networks within the Community. In most cases prices have been set at the maximum level indicated by the Regulation.

Fixed

Market situation

The incumbent's market share (measured by retail revenues) in the fixed telephony market was slightly below 70% in 2007, several percentage points down on 2006. Approximately 22% of subscribers used an alternative provider for voice telephony services in July 2007 (down from 24% in 2006, reportedly due to the withdrawal from the market of an alternative operator). There were nine VoIP providers in Ireland in July 2007.

Regulatory issues (including market analyses and remedies)

ComReg has decided to withdraw market regulation in the retail calls markets, setting the deadline of 30 April 2008 for the implementation of this de-regulation decision in practice. In the retail access markets ComReg imposed as of 1 October 2007 a price cap on the incumbent, entailing a line rental price freeze until 30 September 2008 and a price cap based on the rate of inflation (consumer price index) thereafter.

Fixed termination rates had not been re-set for a long time under the 2002 regulatory framework in Ireland. However in December 2007 ComReg decided to impose cost-oriented prices (using the forward-looking long-run incremental costs — FL-LRIC model) on the fixed incumbent and glide paths towards an efficient rate on the alternative operators, conditional upon exceeding the market threshold of five per cent. The incumbent's fixed wholesale termination rates were close to the EU average in October 2007.

Broadcasting

Market situation

Approximately 30% of Irish TV viewers rely on analogue broadcasting, the remaining 70% being almost equally divided between the satellite and cable platforms. A Digital Terrestrial TV (DTTV) pilot project is ongoing in the Dublin area.

Regulatory issues

On 10 April 2007 the Irish DTTV plans were set out in the Broadcasting (Amendment) Act 2007: one national DTTV multiplex would be assigned by ComReg to the national public broadcaster RTE in order to transmit the four national public channels. Four national multiplexes would be assigned by ComReg to the Broadcasting Commission of Ireland (BCI), which would then issue licences (multiplex contracts) to content providers. One further multiplex is reserved for possible future public service broadcasting requirements. No specific analogue broadcasting switch-off date has been set. The Minister for Communications, Energy and Natural Resources will monitor the availability of DTTV services and the relevant end-user equipment and, depending on the results of such monitoring, will issue a policy direction to ComReg regarding the date or dates after which ComReg may no longer issue analogue broadcasting licences. In November 2007, ComReg published the DTTV multiplex licence conditions and have since issued a DTTV licence to RTE. Market players are urging the Irish government to announce its plans concerning the digital dividend.

Horizontal regulation

Spectrum management

On 11 October 2007 the National Table of Frequency Allocations for Ireland was updated to reflect the Commission's radio spectrum harmonisation decisions and revised to include a column specifically referring to the EU legislation. Procedural improvements have also been put in place in order to speed up the updating exercise in the future. The review of the Wireless Telegraphy Act will probably be finalised only after the review of the EU regulatory framework for electronic communications.

The test and trial licensing scheme, launched in 2006, has proved to be successful and has been used for mobile communications services on board aircraft, DTTV and mobile TV. As a result of the coordination between Ofcom (the UK national regulatory authority) and ComReg of their respective radio spectrum assignment procedures in the 1785-1805 MHz bands, relevant licences were issued on a technology-neutral basis to the same company in both Ireland and the United Kingdom (Northern Ireland). A public consultation on the future use (re-farming) of the GSM spectrum is planned for the first quarter of 2008. Following an unsuccessful initial auction in August 2006, a spectrum assignment procedure for the 26 GHz band is to be organised by ComReg in early 2008.

Rights of way and facility sharing

In response to the practice of some property developers of entering into exclusive contracts for the provision of electronic communications services to future residents of their sites and the fact that such property developers effectively fell outside ComReg's jurisdiction, the Communications Regulation (Amendment) Act 2007 has enabled ComReg to ensure compliance with physical infrastructure sharing conditions imposed on infrastructure providers such as property developers.

THE CONSUMER INTEREST

Tariff transparency

The Communications Regulation (Amendment) Act 2007 has provided for sanctions for overcharging for a service or product supplied by an operator or service provider to an end-user. The investigation of this type of offence may involve an audit by ComReg of the undertaking's billing system. Market players have claimed that these provisions are unjustified and disproportionate. Moreover, ComReg was considering improvements in billing formats used by operators. The ComReg's tariff comparison website was extended to mobile broadband in 2007.

Universal service

In 2006 the fixed incumbent had made a formal request to ComReg for compensation of the net costs involved in meeting universal service obligations. On 2 July 2007 ComReg decided that the relevant period for assessing the incumbent's request for funding would be the financial period commencing from 1 April 2006, thus rejecting the incumbent's request for funding to be backdated to 1999. ComReg also called on the incumbent to submit a full justification for its request within one month of the publication of relevant audited separated accounts. Any subsequent request for funding should be submitted on an annual basis.

Based on the development of quarterly statistics on universal service performance by the incumbent, on 1 August 2007 ComReg issued a public consultation on proposals to set binding universal service performance targets for the incumbent. In particular, ComReg has proposed specific performance targets for first-time connection to the public telephone network (e.g. 80% of all requests to be met within two weeks), the level of network fault occurrence (e.g. 12.5 faults per 100 lines (3.125 faults per quarter) to be met by the end of 2009) and repair times (e.g. 95% of fault repairs to be completed within four calendar days).

The European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) (Amendment) Regulations 2007 have provided that ComReg may specify additional quality of service standards in order to assess the performance of undertakings in providing services to disabled end-users.

In October 2007, ComReg and the National Disability Authority (NDA) launched a consumer guide entitled "Phones and Broadband — a guide for people with disabilities and older people". The purpose of the guide is to give straightforward, accessible and useful information on the services available for people with disabilities and older people. It includes information on Textphone, a service that converts voice messages into text, and SMS to Speech, which allows people to listen to text messages. This is the first concrete result of work by the Forum on Services for People with Disabilities, which was established by ComReg in September 2006.

Number portability

On the basis of a public consultation concerning number portability in the fixed and mobile sectors launched in April 2007 and subsequent analysis, on 30 November 2007

ComReg issued a specification on wholesale number portability. According to this specification, charges must be cost-oriented and limited to the incremental (i.e. short-term volume-dependent) administrative cost to the donor operator of per-line enabling/transaction costs, based on a fully efficient number porting process; no direct charges may be applied to subscribers for number portability. One of the concerns so far has been the wholesale mobile number portability charge of €20 per port (one of the highest in the EU) disproportionately affecting new entrants, which by definition have a smaller customer base.

The entry into the market of the first MVNO has also exposed another aspect of the existing mobile number portability mechanism. While the technical sophistication of the mechanism has meant almost instantaneous and automated number portability from a consumer perspective, new market entry involves agreements and technical testing between mobile operators which can take several months.

Approximately 991 000 mobile numbers had been ported by June 2007, compared to 690 000 numbers 12 months earlier. Approximately 70 000 fixed numbers were ported in 2007.

Consumer complaints and out-of-court dispute resolution

Representatives of consumer interests have indicated that consumers could be better informed about the operators' consumer charters and the applicable dispute settlement procedures.

European emergency number 112

The Communications Regulation (Amendment) Act 2007 has provided a legal basis for the Ministry to launch a tender for the provision of an emergency call answering service. The Act also addresses the price per call that the provider of the service may charge for handling emergency calls and empowers ComReg to review this price. The public consultation on the 112 tender documents closed on 7 December 2007. In parallel the Ministry was working with mobile operators on technical specifications for the automatic "push" provision of 112 caller location information. Most market players were concerned about the financial burden that would result from this system.

Must-carry

The must carry obligations apply to cable and MMDS (Multipoint Microwave Distribution System) operators, but not to satellite operators. Four national public channels are included, plus one commercial channel depending on the platform. Approximately three community channels licensed by BCI are included too.

Data protection

At the time of writing this report the Data Retention Directive (2006/24/EC) was not transposed into Irish law. Ireland has challenged the legal basis of the Directive before the European Court of Justice.