

ITALY

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

The main trends in the Italian electronic communications market were increased competition, declining retail prices for certain products and progressive development of innovative offerings such as integrated fixed–mobile services and bundled multi-play products.

Italy has one of the highest penetration rates of mobile services in the world and the largest mobile market in the EU. Broadband penetration continued to grow, but is still lower than the EU average.

Key regulatory decisions were taken on bitstream services, on fixed–mobile integrated offers, on consumer protection and on price transparency for final customers. For some other decisions, technical implementing measures were still not in place (e.g. termination/trunk services and migration procedures between intermediate services). The government introduced a draft law aimed at giving the NRA the power to order functional separation.

REGULATORY ENVIRONMENT

Main regulatory developments

The National Regulatory Authority (AGCOM) has been actively regulating access to the incumbent's network. Decisions on the local loop, the replicability of the incumbent's retail offers and administrative separation of the incumbent's wholesale and retail divisions have produced positive results so far. At the same time, investigations were held with a view to defining regulatory principles covering the transition to a NGN environment. AGCOM recently reopened analysis of fixed retail access, local loop unbundling (LLU) and wholesale access markets.

In October 2007, the National Competition Authority (AGCM) opened an investigation into possible abuse of a dominant position by the incumbent on both fixed voice and broadband markets. In particular, AGCM claims that the incumbent retail division may have made use of sensitive information from the wholesale division to retain users who were in the process of changing operator. The incumbent contests the allegations.

In November 2007 the Commission referred Italy to the Court of Justice for the lack of caller location in mobile calls to 112. Another infringement procedure was pending against Italy in relation to the law on the transition to digital TV (the 'Gasparri' law), which in the Commission's view discriminates in favour of incumbent broadcasters. The

Commission is looking into the action taken by national authorities, both at legislative and operational level, to overcome these problems.

A draft law presented by the government to add functional separation to AGCOM's remedies toolbox is currently under discussion in Parliament. In the meantime, AGCOM has launched two public consultations, covering the issues of the influence of functional separation on existing obligations, the effectiveness of existing regulatory measures and the network elements to be covered by functional separation remedies. AGCOM has recently launched the second round of market analysis related to the fixed network access market.

Regulatory discussions on Next Generation Networks (NGN) have been ongoing, linked to those on functional separation. Estimates of the cost of NGN in Italy vary from €6.7 billion to €12 billion (including all parts of access networks).

Organisation of the NRA

To address the lack of human resources, in July 2007 the government approved an increase in AGCOM's staff from 273 to 419 employees. A new organisational model introduced in February 2006 and leading to a considerable reinforcement of AGCOM staff was fully implemented.

Operators complain about a lack of information on the handling of their complaints. While access to the relevant documents and contacts with the case handlers are frequent, they would like AGCOM to set up more transparent internal procedures for handling formal complaints.

Appeal procedures continue to take a very long time (around 2 to 3 years). However, provisional measures in urgent cases are ruled on by the Court within 2-3 months.

The expected single access point for public consultations from the different national authorities has not been implemented. Measures to make the information more easily accessible are in progress.

Decision-making

In spring 2007, AGCOM started the second round of analysis with the markets for mobile access and mobile call termination.

AGCOM has published final measures concerning all markets analysed during the first round. The measures relating to the broadcasting market, which was the outstanding market, were notified to the Commission in November 2007.

A significant number of obligations have been imposed on the incumbent in all wholesale and retail fixed markets. According to the incumbent, this exceeds the regulation imposed in other Member States, both in terms of scope and strength of remedies.

Furthermore, AGCOM has identified three markets not listed in the Recommendation on relevant markets, namely origination of calls on mobile networks to non-geographic numbers, retail Internet dial-up access and wholesale international termination rates. For

the first of these the process ended in March 2007, when the measure was withdrawn by AGCOM, while for the other two AGCOM found no operators with a significant market power position.

Operators generally criticise the lengthiness of market analysis procedures and, in particular, the delay in implementing obligations on new wholesale services. The delay can be explained by long and difficult consultation procedures and the need for additional investigations by AGCOM. The new bitstream offer is available as of November 2007 and wholesale line rental (WLR) as of 15 December 2007.

There has also been a significant delay in taking final measures on regulatory cost accounting and the financing of universal service obligations, for which Italy has a detailed system of evaluation.

AGCOM's speed and efficiency in monitoring and sanctioning non-compliance with regulatory obligations has been questioned by alternative operators, although AGCOM is acting more efficiently than in the past (several proceedings have been taken which led to the imposition of fines).

MARKET AND REGULATORY DEVELOPMENTS

As of 31 December 2006, the total turnover of the Italian telecommunications sector was €41.3 billion. Revenue from fixed markets was €19.5 billion and that from mobile markets was €21.7 billion. The total value of tangible investment in fixed telephony networks was €2.5 billion by the incumbent and €1 billion by alternative operators. Mobile operators invested €3.2 billion. Investment in the market decreased compared to the previous year because of the lower amount invested by fixed alternative operators and the fact that the deployment of mobile networks is almost complete.

In 2007, there was significant direct foreign investment in the Italian market. The incumbent's controlling interest was sold to a group of banks and to a telecom operator from another Member State. Furthermore, another foreign European telecom operator acquired the ownership of an important Italian fixed alternative operator.

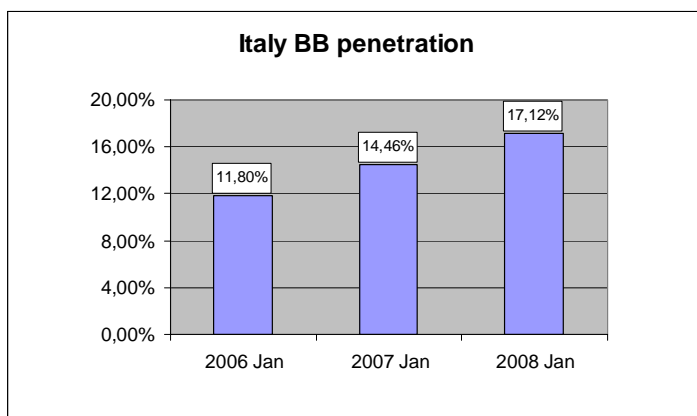
The Italian telecom market has been characterised by the further development of bundled offerings, consisting not only of double play but also triple play services including voice, broadband, and television provided on fixed or mobile networks.

Furthermore, converged fixed-mobile services have started to be widely commercialised by the incumbent and by one mobile operator. All fixed non-integrated operators are entering the mobile market as service providers, so that many other products are expected to be launched in 2008.

In 2007 there was also a consolidation of mobile TV offerings (based on DVB-H standard). Digital television penetration has almost reached 50%, while IPTV figures are starting to be significant (almost 300 000 users).

Broadband

Market situation



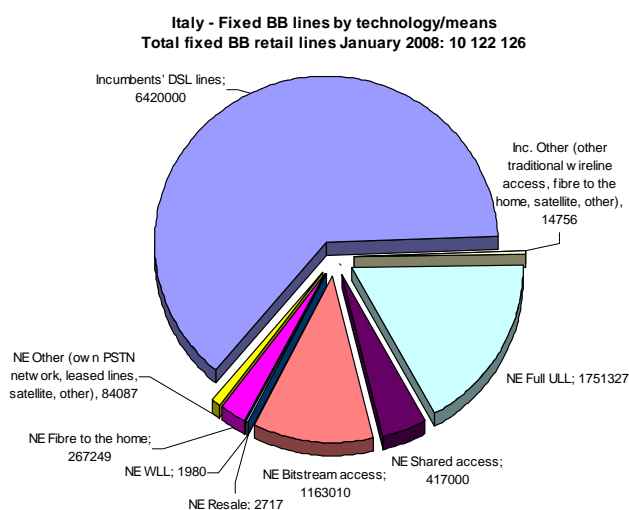
Broadband penetration significantly increased in 2007, reaching 10.12 million broadband users in January 2008 and a penetration rate of 17.12%, still lower than the EU average (20%).

As regards DSL coverage of the population, at 31 December 2006 the gap between coverage in urban areas and the national

average was particularly significant (38.5%). While broadband coverage at national level is 89% (more than 95% for large cities), coverage in rural areas remained quite low (50.5%).¹ With the aim of reducing the digital divide and, at the same time, climbing above the European average for broadband penetration by households and families, the Italian government, together with regional and local administrations, launched a specific programme to extend broadband infrastructure to all disadvantaged areas of the country.

Alternative operators have increased their market share of broadband (from 33.3% to 36.4%), but the incumbent's share is still above 60%. ADSL represents the most widely used technology for broadband.

Italy remains one of the EU leaders in local loop unbundling (LLU). As of January 2008, there were more than 3.6 million activated full LLU lines (over 1 500 000 lines more than in January 2007) and around 556 000 shared access lines. Prices for full LLU have continued to be among the lowest in the EU (€7.81 per month).



Regulatory issues

In October 2007, AGCOM issued a decision on the incumbent's reference offer for the new bitstream services (for both ATM and Ethernet/IP technology). The rules for the implementation of the bitstream offer were adopted by AGCOM in May 2007 after a lengthy process in which all the operators took part. Alternative operators have criticised

¹ Source: IDATE, Broadband coverage in Europe (October 2007).

the delay in implementing bitstream access (available as of November 2007); in the meantime, they have had to rely on wholesale ADSL services (built on a retail-minus model) that nevertheless had characteristics very similar to bitstream.

Bitstream access includes access either in ATM or Ethernet, up to 20 Mb/s, the IP multicast service, a wide choice of quality of service and “naked” access. The prices of the approved offer are in line with European best practice.

For its part, the incumbent has claimed that the obligation to notify retail ADSL offers in advance cannot be imposed under the analysis of the wholesale market. Moreover, it has claimed that any obligations concerning multicast wholesale services (i.e. IPTV) should be imposed under the analysis of the broadcasting market.

Alternative operators have maintained that collocation costs for shared access have not been brought into compliance with the relevant AGCOM decision. AGCOM is examining further the cost-orientation of such components.

AGCOM’s decision of June 2007 governs customers’ activation/deactivation and migration procedures between operators using LLU, bitstream and WLR services. Operators failed to conclude an agreement on the implementation of the procedures and requested the intervention of AGCOM in December 2007. Thus number portability between alternative fixed operators continues to be inefficient and expensive.

AGCOM has set up an innovative system for measuring the quality and speed of downstream and upstream broadband connections. Consumer associations have asked AGCOM to impose minimum requirements in the matter.

Mobile market

Market situation

The Italian mobile market, with 148% penetration as of 1 October 2007, one of the highest in Europe, is nearing saturation in terms of subscribers. In this situation, mobile number portability represents a key factor in competition, as evidenced by the 14 million mobile numbers ported since its introduction in 2002, including 4.1 million ported in the last year. In terms of revenues, as of December 2006 the first two main operators held, respectively, 41.1% and 36.82% of the market. All mobile operators are gradually introducing advanced services such as mobile TV.

UMTS services have continued to grow, thanks to improved network coverage, the availability of enhanced terminals and the launch of mobile broadband services (HSDPA) and mobile TV. As of 1 October 2007 there were more than 21 million UMTS subscribers, an increase of 38.5% since October 2006.

In 2007, mobile networks operators concluded several reseller/enhanced service provider (ESP) agreements with some important retail chains, the National Post and three fixed operators, some of which exceeded 100 000 subscribers by end-2007. However, alternative fixed operators have maintained that the current technical and economic conditions applied by mobile network operators do not allow them to offer competitive integrated fixed-mobile services. AGCOM pointed out that it has not received any formal complaints on the matter.

Regulatory issues

In August 2007, AGCM fined two operators for discriminatory business practices for terminating fixed-to-mobile calls on their networks, in particular by applying to their commercial divisions more favourable technical/economic conditions than to third operators since 1999. Two other proceedings, against a third big operator for a similar practice and against all three operators for abuse of collective dominance on the mobile origination market, were closed after the conclusion of reseller/ESP agreements by one of the operators involved.

After a joint investigation by AGCOM and the AGCM in January 2007, a government decree abolished any fixed fee for the recharging of pre-paid mobile cards. Pre-paid cards account for 90% of the mobile subscribers' market and Italy was the only country in which recharge costs were charged. Consumer associations have welcomed the initiative as reducing costs and increasing transparency. However, they complain that additional measures introduced by this decree, concerning unused credit, are not implemented (in the case of credit transfers to the new operator) or are usually long and expensive (for reimbursement of credit). Mobile operators have considered this intervention inappropriate, since a public consultation on a draft AGCOM decision regulating the subject was ongoing when the decree was adopted. The abolition of the recharge cost has particularly affected the two smaller operators, whose revenues from recharges accounted for about 40% of their operating income (between 12% and 15% for the first two operators).

During 2007 the fourth mobile operator, whose termination rate was 50% higher than that of the two major operators, was not obliged to apply regulated termination costs. Given its positive market development (8.9% of market share as of October 2007) AGCOM decided to fix a regulated rate that will decrease its termination rate by 18% from March 2008. The two main mobile operators and the fixed operators have asked for further and faster reduction of the asymmetry, which they consider an unfair burden on users too. With the completion of the second analysis for the mobile termination market (already started by AGCOM) all the mobile operators will be subject to a new price control mechanism as of 1 July 2008.

Roaming

All Italian mobile operators complied duly and on time with the new European Regulation 717/2007/EC on roaming on public mobile telephone networks within the Community. Prices have been generally set at the Euro-tariff level.

Fixed market

Market situation

The traditional fixed market revenue has continued to shrink, mainly to the benefit of mobile and broadband services. While alternative operators have slightly gained market share of the fixed services markets, the incumbent's market share is still above 60% for all types of voice calls (more than 70% in the national fixed voice market). The access market in particular was strongly held by the incumbent, which holds an almost 90% market share.

Regulatory issues

High termination rate asymmetry and delays in approving the incumbent's regulatory accounts were the main regulatory issues arising in 2007.

Alternative fixed operators can take advantage of asymmetric interconnection termination charges. As of October 2007, they can charge up to 1.32 €cents per minute, as against 0.74 €cents applied by the incumbent (single transit). While this is the highest asymmetry level in the EU, five alternative operators have requested even higher termination prices (for 2006 and 2007), claiming high costs. AGCOM has allowed three operators to apply termination rates above 1.54 €cents per minute, from 2006 to 30 June 2007. AGCOM has recently announced the approval of the glide path that will lead to symmetric termination rates among all fixed operators of 0.57 €cents per minute in 2010. The glide path differs according to the extent each operator rolled out its own infrastructures.. With a view to introducing a new glide-path towards symmetric prices, AGCOM has also been developing a cost-based model for determining the termination cost for an efficient alternative operator, in cooperation with the European Regulators Group (ERG), as requested by the Commission.

The incumbent claims it suffers a significant net loss because of the obligation not to differentiate its retail prices according to the termination rates of the different alternative operators' networks. AGCOM found that the asymmetry does not impose retail prices below costs on the incumbent and this decision has since been confirmed by the Italian Court.

AGCOM has not fully made up its delay in approving the incumbent's regulatory accounts. When this report was being drafted, regulatory accounts for 2004 had been approved, while the analysis of the regulatory accounts for the years 2002 and 2003 was ongoing. The incumbent would like AGCOM to apply a more consistent approach instead of imposing different regulatory accounting principles, criteria and reporting rules for each market.

At the time of drafting of this report, AGCOM was analysing the incumbent's reference offers (for both 2006 and 2007) for the new wholesale termination and trunk services. The existing partial circuit architecture has continued to be provided by the incumbent, but alternative operators have complained that price reductions for 2007 (mandated by AGCOM) have not been fully applied.

Broadcasting

Market situation

Digital terrestrial TV (DTTV) penetration continued to grow in 2007 although more slowly than in previous years. 20% of households have a digital terrestrial decoder (around 4.8 million out of a total of 23.5 million TV households). 27.57% of households use a satellite TV platform (6.5 million households). As a result, some 48% of households had digital TV access as at September 2007.

During 2007, the first two Italian cities, Cagliari and Aosta, were fully digitalised. Switch-off in these two pilot regions is expected by mid-2008, while at national level it is planned in 2012.

After a consultation phase, AGCOM adopted guidelines for frequency re-assignment for the switch-off in the first region (Sardinia).

Local operators that are not able to acquire provisional frequencies for simulcasting have asked for the switch-over to be finalised earlier.

The Italian government has launched a series of technological, economic and social measures to support the transition to digital TV. A fund worth €40m, for each of the years 2007, 2008 and 2009, has been set up by the Italian Ministry of Communications to promote the adoption of digital TV technology by network operators, broadcasters, public utilities, content providers and users.

In order to monitor the transition and set out guidelines, a “Digital Italy” Committee has also been set up, comprising the main players involved in the transition including, notably, public and private, local and national TV broadcasters, cable or satellite broadcasters, representatives of local and national institutions and associations.

In the meantime, the Ministry and AGCOM have finalised the setting-up of an electronic database of TV frequencies. 108 free local frequencies have been identified for allocation to analogue TV services. It is the first time in Italy that broadcasting frequencies have been assigned by public tender.

Regulatory issues

The Commission has sent Italy a reasoned opinion that Italian broadcasting law on the transitional period for the implementation of digital TV infringes, amongst others, the Framework and Authorisation Directives. In particular, the law precludes operators which are not active in analogue transmissions from creating their own digital TV networks. A draft law aimed at addressing the infringement issues is under discussion in the Italian Parliament.

In June 2006 AGCOM found two major broadcasters had collective dominance of the market for analogue broadcasting transmission services. A proposal for remedies was opened for public consultation and notified to the Commission in November 2007.

Horizontal regulation

Spectrum management

After the AGCOM decision on the call for tender procedures, in October 2007 the Ministry of Communications approved the call for tenders for 35 local/regional authorisations to provide WiMAX-based services. Some will be reserved, on a priority basis, for newcomers who do not have frequency resources to offer similar broadband services. Alternative fixed operators maintained that such asymmetric measures are not sufficient to be able to compete with the existing large mobile operators in providing broadband services. Furthermore, they would have liked to use these frequencies for backhauling or radio links, which is presently not allowed. For their part, consumer associations have complained about the absence of any coverage obligations for areas not yet served by broadband providers. AGCOM considers that its decision (which has been confirmed by the Italian Court) is in line with European regulatory principles for frequency assignments. It also considers that the digital divide should be tackled within a

nationwide multi-initiative policy and that the imposition of extra coverage obligations would constitute an excessive burden on operators.

The WiMax auction was expected to start at the end of January 2008 and be concluded around mid-February. 47 participants had been admitted.

In August 2007 AGCOM launched a public consultation on the refarming and allocation of the available spectrum in the 900, 1800 and 2100 MHz frequency bands. Furthermore, the limitation to 25 MHz imposed on each 2G operator was expected to be lifted. A new competitive selection procedure is envisaged for the IMT-2000/UMTS system (two blocks of band may be reserved to newcomers).

Italy has transposed all harmonisation decisions taken under the Radio Spectrum Decision 676/2002/EC, through amendments to the national frequency plan. In July 2007 a Ministerial Decree aimed at transposing Decision 2006/804/CE was signed which liberalised the radio frequencies for Radio Frequency Identification Technologies.

Rights of way and facility sharing

Missing secondary legislation for rights of way on highways (which is necessary to complement existing legislation) had not yet been approved by the Ministry of Communication when this report was being drafted. Concerning non-metropolitan roads, there has been no significant improvement in the situation described in the Twelfth Implementation Report. A formal complaint was lodged in 2006 on the basis of an alleged breach of the principles of transparency and non-discrimination. The Commission services are looking into the matter.

THE CONSUMER INTEREST

Tariff transparency

Several new obligations on tariff transparency have been introduced. For billing purposes, premium rate services traffic must be separated from fixed/data traffic and the main components for fixed and mobile traffic must be clearly indicated. Information given to users by operators has also been improved.

Universal service

Pending the designation of the universal service provider, the incumbent continues to provide the universal service.

The scope of the universal service includes access at a fixed location, public payphones and some specific conditions for disabled and low-income users. The latter include a 50% discount on the monthly rental fee for low-income users and for some users belonging to special social classes, and exemption from the monthly rental fee for users who are hearing-impaired. Furthermore, AGCOM introduced two important measures for disabled users (outside the scope of USO service) to be provided by all mobile and internet service providers: low prices for SMS for users with hearing impairments, and 90 hours/month free internet service for blind users.

AGCOM has set up a complex, detailed evaluation system of the net cost for universal services (with an audit held by an independent third party). Due partly to the complexity of the evaluation process, the last approved net cost is for 2003. For subsequent years the net cost will be calculated on the basis of a new methodology, still under approval.

Directory services and directory enquiry services

Mobile operators apply the wholesale price ceiling for mobile call origination to directory service numbers set by AGCOM in 2006 (provisional measure under Article 7(6) Framework Directive). Consumer associations have claimed that retail prices have not substantially changed. On the other hand, directory enquiry service providers maintain that the reduction in wholesale mobile access charges only allows them not to sell under cost. According to them, current retail prices are in line with other EU Member States.

In July 2007, AGCOM solved a dispute between two directory service providers and the incumbent, imposing the application of the reference offer as of 1 January 2007, for third party billing. More recently, the incumbent increased the prices of some components of the interconnection that would constitute a significant burden on service providers. AGCOM was intervening on this matter when this report was being drafted.

Number portability

Mobile number portability has been successfully applied since 2002. So far, almost 14 million mobile customers have ported their numbers, which is the largest number in Europe.

AGCOM had to intervene in 2007 to solve the problem of long waiting lists for mobile number portability, of up to 45 days during the first quarter. At the end of 2007, AGCOM increased the number of numbers ported per day from 9 000 to 12 000 for the two biggest operators. The capacity of the remaining operators has been maintained at 9 000, subject to an increase to 12 000 if necessary. The Commission services are looking into this matter.

The new regulation on “migration procedures” is expected to make fixed number portability between alternative operators cheaper and more efficient. However, the measure has not yet been implemented, because of the lack of agreement between operators, for which AGCOM intervention has been requested. The Commission services are looking into this matter.

Consumer complaints

For the first time, call centres have been the subject of regulation by the Personal Data Protection Authority, to ensure correct use of sensitive data for marketing purposes. AGCOM has also defined a minimum set of quality indicators for call centres.

In 2007 AGCOM approved a new regulation for out-of-court dispute settlement in order to speed up procedures, limit delaying tactics by operators and simplify requests for conciliation. Furthermore, regional public bodies for out-of-court dispute resolution (CO.RE.COM) were given the power to issue binding decisions. To increase transparency, from 2007 all dispute resolution decisions are published on AGCOM’s

website. During 2007 AGCOM imposed fines of €5 million (compared with €3 million in 2006).

Activation of non-requested services (including carrier pre-selection) remains one of the most common consumer problems in Italy, although the new regulation on distance contracts has started to produce positive results. About 650 complaints were lodged with the Data Protection Authority in 2007 on this issue and 105 administrative penalties were imposed (45 concerned unsolicited activation of carrier pre-selection).

A great number of violations of the transparency obligation for premium rate services have been reported. For this purpose, in 2007 AGCOM introduced an obligation to provide selective call barring free of charge for satellite and premium rate service numbers.

European emergency number 112

The Commission has referred Italy to the European Court of Justice because caller location information from mobile calls is not available to authorities handling emergencies. The new “112 plan” that would allow mobile caller location has been delayed and the testing phase has not yet started. The Commission services are also examining the procedures put in place in Italy for the handling of 112 calls when it involves emergency call centres of different national emergency services.

Data protection

Data retention is currently regulated by a number of successive measures adopted by AGCOM, the Personal Data Protection Authority, the Ministry of Communication, the Ministry of Justice and the Ministry for Internal Affairs. In some cases this has led to overlapping requirements imposed by different authorities. Telecom operators would like better coordination to produce clearer and more consistent legislation on the matter, avoiding unnecessary financial burdens.

The Italian Data Protection Code states that operators must retain telephone traffic data for 24 months; this period can be extended by another 24 months in the case of organised crime or terrorism. Internet traffic data (excluding content) must be kept for 12 months. However, a subsequent “anti-terrorism” government decree obliges telecom operators to store all traffic data as of July 2005 until 31 December 2008.

Following a series of inspections at telecom operators’ premises, the Personal Data Protection Authority adopted a new decision on the rules to be followed by telecom operators on the retention of telephone and internet traffic data for the purpose of judicial proceedings. At the time of drafting of this report, Italy had not yet transposed Directive 2006/24/EC on telecom data retention.