

# LUXEMBOURG

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

Luxembourg progressed substantially regarding broadband penetration in 2007, and competition in mobile markets has produced tangible benefits for consumers and businesses. Long-term competitive conditions are, however, uncertain in view of the incumbent operator's predominance in the fixed and broadband sectors, which are increasingly combined in bundles. A gradual transition to fibre-based networks is taking place.

Against this background, the regulatory landscape has remained relatively stable. Despite considerable efforts by the regulatory authority, several remedies that could promote competition, resulting in more choice and lower prices in Luxembourg, have not yet been applied.

## REGULATORY ENVIRONMENT

### Main regulatory developments

Overall, there were no major changes in the legislative environment in 2007. Specific legislation concerning rights of way — two *Règlements Grand-Ducaux* — was adopted in April 2007, which allowed the Commission to close infringement proceedings on this matter. Similarly, the Commission closed infringement proceedings concerning the publication of a statement of compliance regarding the incumbent's accounts. However, concerns persisted regarding the lack of effective separation between the regulatory functions and those functions associated with the ownership or control of undertakings providing electronic communications networks and services. In particular, while no rules are in place to avoid interference between the Ministry of Economy that controls the incumbent operator and the Ministry with regulatory functions (the Ministère d'Etat), two officials are currently exercising both regulatory functions in a department of the latter Ministry and management functions for an operator. The Commission has decided to launch infringement proceedings against Luxembourg on these grounds.

### Organisation of the NRA

There is a general perception that the NRA, the Institut Luxembourgeois de Régulation (ILR) is acting independently. Some operators have pointed to its lack of resources (altogether fewer than 45 staff for the telecommunications, energy, and postal sectors), in particular to carry out market reviews. The ILR, however, made a significant effort to bridge this gap in 2007, relying to a sizeable extent on external consultancy.

While no specific issues of cooperation between the NRA and the competition authorities have arisen, there is an ongoing perception that the competition authorities lack sufficient resources (there are about four staff for both the Conseil de la Concurrence and the Inspection de la Concurrence) and electronic communications expertise. The NRA submits draft market analysis decisions to the competition authorities for an opinion.

In 2007, for the first time, decisions taken by the ILR were appealed against. The incumbent appealed to the administrative court, in particular against decisions approving the reference interconnection offer (RIO) and setting out terms, and against fixed termination and origination tariffs. This creates a certain level of uncertainty in Luxembourg, particularly in view of the risk of the decisions being overturned.

### **Decision making**

By October 2007, the ILR had completed the few remaining market analyses left to be notified to the Commission, except for the market for broadcasting transmission services. Since then, the market has been removed from the Commission Recommendation on relevant markets, and the Commission has been able to close the infringement proceedings on the matter. Generally speaking, the ILR has imposed a full set of regulatory obligations.

At the same time, alternative operators claim that the NRA should be more proactive where the incumbent operator does not offer specific wholesale products on a voluntary basis (e.g. wholesale line rental and ethernet services).

Despite the market analysis having been conducted, remedies are still missing in key areas such as wholesale broadband access. In a dispute between the incumbent and an alternative operator, the NRA decided in September 2007 to impose upon the incumbent a technically feasible replacement solution for alternative operators affected by the relocation of the Kirchberg exchange.

## **MARKET AND REGULATORY DEVELOPMENTS**

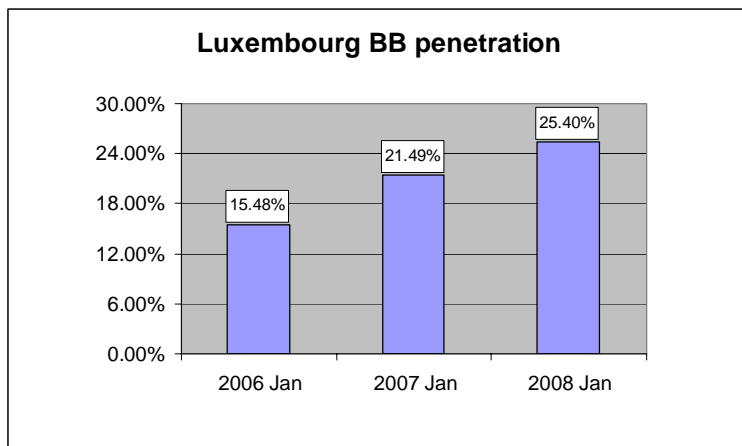
The total turnover of the Luxembourg telecommunications sector was €485 million as of 31 December 2006. Revenue from fixed markets was €37.5 million and revenue from mobile markets was €248 million. The total value of tangible investment by alternative operators in fixed telephony networks was €2 million, while mobile operators invested around €30 million. The incumbent invested approximately €60 million in fixed telephony networks, while alternative operators invested only around €5 million.

Generally speaking, there were no major competitive developments in Luxembourg in 2007. The incumbent continues to control over three quarters of the fixed telephony market and the vast majority of broadband connections. Moreover, it bundles these services together with mobile telephony in an offer which cannot effectively be replicated, in the absence of specific wholesale products. While the takeover of the third mobile network operator by a Belgian mobile network operator (itself controlled by the French incumbent) might open up new prospects for competition in the mobile sector in the medium to long term, the incumbent's mobile arm increased its market share in 2007, according to the ILR.

In the mean time, the state-owned operator created in 2006 to provide dark fibre to other operators has entered into agreements to develop its network, partly using railways. The objective is to provide fibre network and duct access to operators (and universities) from late 2008. While this publicly funded initiative might lead to better connectivity, operators are concerned that it might distort competition. However, no service has been provided yet. As indicated in the previous report, a specific matter of concern is the position of a Ministry official responsible for drafting electronic communications legislation as the president of the operator. The Commission is addressing this independence issue through infringement proceedings.

## Broadband

### Market situation

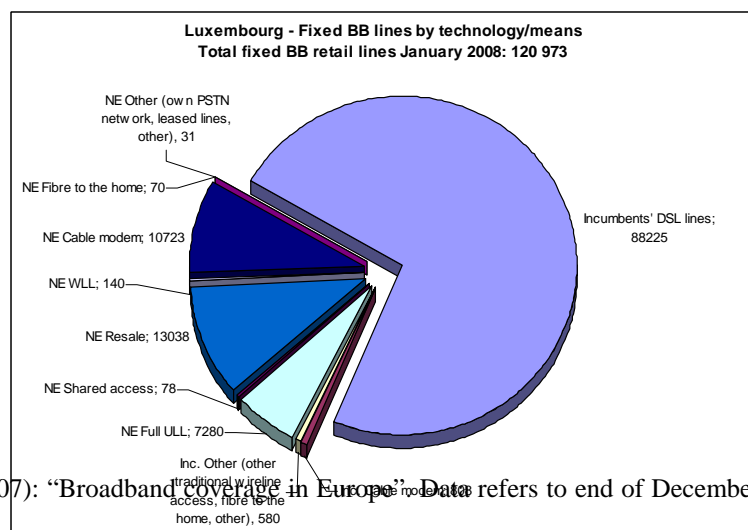


Luxembourg considerably improved its broadband penetration over the previous year, by 3.9 percentage points, to 25.4% in January 2008, well above the EU-27 average of 20.0%. The incumbent's share of the broadband market, still very high, is slightly lower at 84.9% (including resale of DSL lines) as of January 2008, compared to 85.1%

last year. At 15.1%, the market share of the alternative operators (excluding resale DSL lines) is slightly higher than last year. Despite an increase in absolute figures, the number of resale lines has decreased slightly and now accounts for 10.7% of all DSL lines, compared to 11% last year. Luxembourg is also among the top three EU countries with complete national DSL coverage and extensive cable coverage of 70% of the country, almost equally shared between urban and rural areas.<sup>1</sup>

### Regulatory issues

The low presence of alternative operators on the broadband market is partly due to the absence of genuine bitstream access. While the incumbent claims that the offer in place is a genuine bitstream offer, alternative operators generally consider it to be a mere resale product which



<sup>1</sup> IDATE report (October 2007): "Broadband coverage in Europe". Data refers to end of December 2006.

does not allow them to differentiate their products, and they expect the NRA to impose a regulated bitstream offer at cost-oriented tariffs.

This situation has led one alternative operator to offer products based on local loop unbundling (LLU), which has not reached substantial numbers so far (8 017 lines as of July 2007). Alternative operators have difficulties competing with the incumbent for lack of a service level agreement for LLU. The monthly rental price for full local loop unbundling has decreased to €10.75 as of October 2007 compared to €11.73 in October 2006, while the connection fee costs €11.1, which is about twice the EU average (€6) for full LLU connection fees. The shared access monthly rental decreased from €4.68 in October 2006 to €3.2 in October 2007 but the connection fee is still very high at €157.4 compared to the EU average of €51 as of October 2007. It follows that very few operators request shared access from the incumbent.

While the incumbent is upgrading its network to fibre, the ILR has obliged it to offer access to physical infrastructure, ducts, an “Ethernet” solution, or any other appropriate solution, under favourable financial conditions, to an alternative operator affected by the relocation of a telecom exchange centre.

## **Mobile markets**

### *Market situation*

As of October 2007, the penetration rate for mobile was 146%. (This is lower than the previous year’s 171% rate due to the methodological changes in data collection in Luxembourg.) The market share based on traffic is 51% for the incumbent, 40% for the second mobile operator and 10% for the third mobile operator. (The market share based on revenue is confidential.) Revenue in 2007 was estimated at €270 million, compared to €247.8 million in 2006. The number of mobile subscribers as of 1 October 2007 was approximately 700 000, with 371 620 post-paid subscribers and 324 859 prepaid subscribers. While prices have remained stable, this relatively competitive situation has prompted operators to launch flat-rate packages to attract customers.

The third mobile operator was acquired in the course of 2007 by the second Belgian mobile network operator, which itself is controlled by the French mobile and fixed incumbent. The first visible consequence of this takeover was the launch of transborder mobile voice and SMS packages which exclude specific roaming charges in Luxembourg, France, and Belgium.

### *Regulatory issues*

The third 3G licence, which had been reallocated in May 2006, was declared void by the administrative court following a competitor’s appeal.

As a result of the expiry of the existing transitional national roaming agreement with the first operator by the end of 2007, the third MNO is expected to rely on its own network from 2008. It remains to be seen whether the revised procedures for obtaining planning permission for mobile masts and antennas will facilitate deployment.

While the ILR has imposed a glide-path for mobile termination rates on the three operators on the market for mobile termination, the market for access and call origination on mobile networks is considered to be competitive.

### *Roaming*

Luxembourg operators implemented the Roaming Regulation in July 2007, i.e. they were among the first operators in the EU to do so. The Roaming Regulation is generally considered to have been well implemented. Tariffs are at the ceiling of the eurotariff.

Inadvertent roaming is a specific issue in Luxembourg, due to the proximity of Belgium, Germany and France. Consumer complaints in Luxembourg are expected to be addressed by operators, which have apparently made efforts to improve network coverage, partly by installing several mobile antennas in foreign territories, e.g. Germany.

## **Fixed**

### *Market situation*

The fixed market did not evolve significantly in 2007. The incumbent, wholly owned by the Luxembourg State, continues to have a strong market share, with over three quarters of traffic (76.1% by call minutes). Revenue market shares are even higher. (The incumbent and alternative operators' revenue market shares in the fixed market are confidential.) Its market share of national calls to mobile, by call minutes, is slightly higher, at 78.4%; for international calls it is slightly lower, at 71.45%.

### *Regulatory issues*

The lack of wholesale line rental (WLR) remains an issue in Luxembourg. In a decision on 2 February 2007 on the fixed retail access markets, the ILR imposed an obligation on the incumbent to offer WLR based on cost-oriented prices from October 2007. While alternative operators considered that the proposed offer provided no viable margin and needed to be accompanied by a service level agreement, the ILR was expected to approve the incumbent's WLR offer in early 2008.

In response to time-consuming procedures for customers that wish to change to a carrier pre-selection (CPS) operator, the ILR has so far suggested that the incumbent put in place an automated system of customer identification. No decision was taken on such a system in 2007.

## **Broadcasting**

### *Market situation*

Cable penetration in Luxembourg is estimated to be above 80%, while satellite penetration is estimated to be below 20%. Very few households receive television via terrestrial means. All but one channel has switched to digital, yet the take-up of digital terrestrial TV is limited. IP-TV is expected to be launched by the incumbent fixed operator in 2008, on the basis of experiments that started in 2007.

Cable is still quite fragmented in Luxembourg. There are approximately 70 non-profit organisations and municipalities having less than 5 000 connections (with the exception of the municipality of Esch-sur-Alzette and Dudelange, which have between 10 000 and 20 000 connections). The three main actors have a combined market share of 60% (in terms of subscribers), and some of them offer double and triple play packages combining television with internet access and/or voice telephony.

#### *Regulatory issues*

The Commission has been able to close the infringement proceedings opened against Luxembourg for failure to notify the market for broadcasting transmission services, which is no longer listed in the amended Commission Recommendation.

### **Horizontal regulation**

#### *Spectrum management*

Most Radio Spectrum Decisions were not implemented in Luxembourg at the time of drafting this report. The current national legislation on radio spectrum management prohibits any spectrum trading. A new National Frequency Plan, in the form of a Règlement Grand-ducal, was, however, expected to be adopted in early 2008.

While the switchover from analogue to digital broadcasting has almost been completed, no specific debate has apparently taken place in Luxembourg on the distribution of the digital dividend which is generally generated by the use of digital technologies.

Two WiMAX licences were awarded by the Ministry of Communications on 1 August 2007. An additional call for proposals was made in October 2007 for the remaining capacity.

#### *Administrative charges*

Some operators were questioning the level of the administrative charges imposed by the ILR based on turnover. A decision of 21 November 2007 lowered the taxation rate based on gross income to 0.4% as compared to 0.5% in 2006.

#### *Rights of way and facility sharing*

An important development in 2007 was the adoption in April of two Règlements Grand-Ducaux regarding respectively State motorways and railways, and municipalities' public roads. At the same time, some operators voiced concerns that one municipality was both running a cable network and issuing permits for network infrastructure, including antennas for mobile phones. The Commission services are looking into this matter.

### **THE CONSUMER INTEREST**

#### **Universal service**

While there is no designated undertaking with universal service obligations in Luxembourg, the incumbent has been providing universal service on an informal basis.

#### **European emergency number 112**

Information on 112 is available via notices in phone books and in payphones and campaigns for citizens are organised on a regular basis. Caller location information is available for fixed networks. For mobile networks, caller location information is available in push mode and the phone number is automatically displayed.

### **Number portability**

Mobile number portability continued to grow in 2006 and during the first half of 2007. There were 47 422 ported mobile numbers as of August 2007, which represents 21 339 numbers ported in one year and about 1 800 numbers per month. By contrast, fixed number portability is quite limited, as only 6 576 numbers had been ported as of August 2007.

Alternative operators and the NRA identified an issue regarding the incumbent's implementation of CPS, namely that it requests the subscriber's bill number before proceeding with the request. The incumbent claims that this measure is justified as it guarantees the identity of the subscriber.

### **Data protection**

A new law on data protection amending the existing law of 2002 was adopted on 27 July 2007. It simplifies formalities and application of the law by companies, associations and professionals. They do not have to notify most current data processing to the National Commission for Data protection (CNPD).