

LATVIA

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 intensified in the Latvian electronic communications sector, and consumer prices dropped in 2007 despite the general inflation rate, which exceeded 14% at the end of the year. Broadband penetration has risen rapidly and a regional development project was launched to improve access to broadband in rural areas. A notable development, which could lead to significant market and competition changes in the future, was the launch of discussions on the privatisation of the remaining government stakes in the fixed incumbent and in one of the two established mobile network operators.

On the regulatory side, measures were taken to complete the introduction of number portability. The Latvian NRA also completed the first round of market analyses and imposed remedies in a number of markets that had been reviewed previously. Other major developments in 2007 concerned universal service, administrative charges and fees, procedures of granting rights of way and caller location for calls to the European emergency number 112.

REGULATORY ENVIRONMENT

Main Regulatory developments

One of the major issues for the Latvian NRA in 2007 was the universal service. In particular, for the first time it received and confirmed the universal service provider's request for compensation. Preparations were also started to establish a specific universal service compensation mechanism. In the field of financial regulation, the Latvian authorities proposed the introduction of new State duties on the use of radio frequencies and numbering resources, which gave rise to an active debate among stakeholders. They also developed and launched at the end of the year a system to provide emergency services with caller location information for 112 calls from mobile telephones. Earlier in November, the Commission had decided to refer Latvia to the Court of Justice on this issue.

Following the completion of the first round of market analysis with the notification of the broadcasting transmission services market in October, the Commission closed, in December 2007, the infringement proceeding against Latvia concerning market analysis. A related infringement proceeding concerning inadequate transposition of the notification mechanism, on the other hand, was pursued by the Commission, since the

latest amendments to the Electronic Communications law, passed in May 2007, only partially addressed the transposition problems identified by the Commission.

These amendments to the Electronic Communications Law also introduced changes as regards acquiring rights of way and clarified the rules concerning number portability for pre-paid mobile customers, as a result of which the NRA issued new regulations in October on number portability. Accordingly, although with a significant delay compared to post-paid subscribers, number portability will also be introduced in Latvia for pre-paid customers as from 1 February 2008.

Organisation of the NRA

The Latvian NRA, the Public Utilities Commission (PUC), is a multi-industry regulator responsible for electronic communications, postal, energy and railway services. The industry representatives generally recognise the independence of the NRA, the competence of its staff and its capacity to exercise regulatory tasks in the field of electronic communications. In 2007, the NRA was expecting a further extension of its status through amendments to the Constitution, which were being prepared and discussed in Latvia with a view to providing for an explicit Constitutional regulation of certain State institutions, including the PUC. One of the consequences of its wider multi-industry responsibilities is that the NRA does not distinguish, in the annual accounts that it publishes, its specific administrative costs relating to the regulation of the electronic communications market.

A hindrance to effective implementation of the NRA's statutory tasks is the failure of numerous electronic communications to provide market data. Although many market players would like the NRA to publish more of the market data that it gathers from operators, there is also a widespread practice among undertakings to mark their data submissions as confidential, which prevents their publication. Discussions are under way between the NRA and telecoms associations on this issue, including proposals to define a certain set of market data that will be considered public.

Decision-making

The industry representatives generally welcomed the practice of the NRA of organising public consultations on proposals and draft decisions. In the case of public hearings, the NRA publishes their conclusions and, in the case of written consultations, the NRA publishes the submissions of contributors. Several market players pointed out in this regard that they would also like the NRA to provide feedback on the submissions and proposals made in the framework of written consultations, which would further improve the consultation process.

Moreover, the issue of public consultations was raised in relation to the work of the Ministry of Transport, which is in charge of preparing Government decisions that may have great significance for market players, such as changes in the national frequency allocation plan or in relation to charges and fees. In particular, it was noted that the Government Regulations of September 2007, which revised the tariffs of charges applied to electronic communications undertakings by the Electronic Communications Office, were prepared by the Ministry of Transport and passed through the Cabinet under the accelerated decision-making procedure, which excluded public consultation. Previous Government Regulations, which regulated these tariffs, had expired in August 2007, and

there obviously was a need to enact new Regulations quickly in September since a legal vacuum had emerged in this area. However, it would appear that better planning of this regulatory activity could have obviated the need to apply accelerated procedures in this sensitive matter, which caused negative reactions on the part of the industry. More generally, the Latvian associations of electronic communications undertakings appear to be willing to make an active contribution to the discussion of proposals and initiatives in this area, and a constructive dialogue with the industry would be facilitated by the implementation of more streamlined consultation procedures by the State authorities responsible.

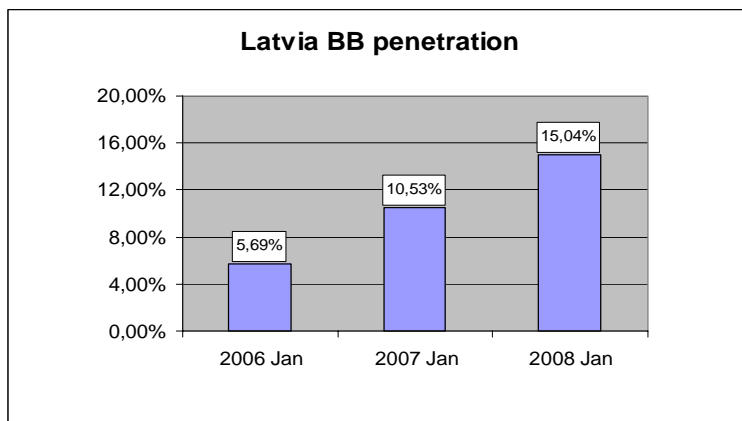
A draft law was presented in 2007 to amend the dispute resolution procedures of the NRA. It is intended that the parties to the dispute would no longer be able to appeal against the dispute resolution decision of the NRA to the court, but instead would be given the option, should they not be happy with the NRA decision, of bringing their case to court for retrial between themselves. The Commission will follow closely the development of this proposal in the light of the regulatory framework requirements.

MARKET AND REGULATORY DEVELOPMENTS

The total turnover of the Latvian telecommunications sector was about €71 million as at 31 December 2006, revenue from the fixed markets being €23 million, and from the mobile markets €66 million. The total value of tangible investments in telecommunications networks was more than €80 million, including about €43 million invested by the fixed incumbent, €1.4 million invested by alternative operators and €40 million invested by mobile operators.

Broadband

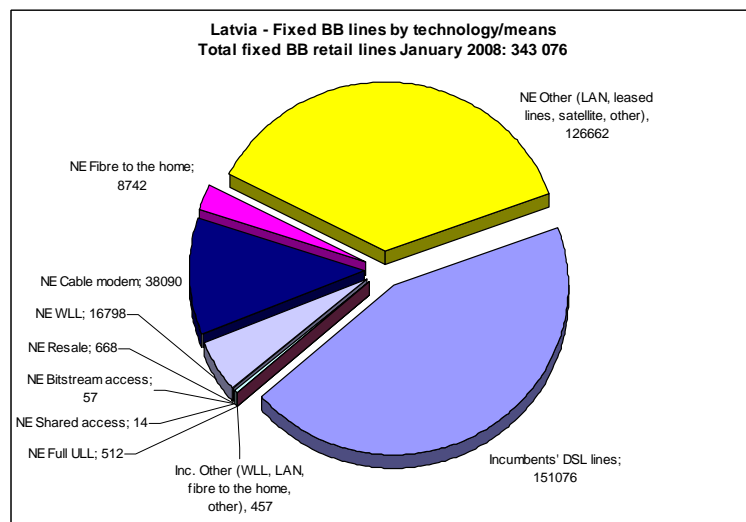
Market situation



Thanks to the continuing strong growth during 2007, Latvia's broadband penetration rate increased by about 4.5 percentage points to reach 15.04% in January 2008 (compared to 10.53% in January 2007 and a growth rate of about 4.8 percentage points in 2006). Although the gap is reducing, Latvia's broadband

penetration remains below the EU average, which increased by 3.7% percentage points to reach 20.0% in January 2008.

The fixed incumbent's broadband market share remained stable during 2007 at about 44%, which is close to the EU average of 46.3%



in January 2008. It ranges from a relatively small share of 15-20% in Riga, which is due to the significant infrastructure-based competition, and a much stronger 80-85% presence outside the capital, where the incumbent's DSL lines remain the dominant infrastructure. The main broadband competitors are Ethernet and cable operators, which were engaged in active consolidation with a number of reported acquisitions in 2007. A regional development project is currently being implemented in Latvia to improve access to broadband in rural areas. The selection procedure was won by a CDMA mobile network provider, which would provide a minimum connection speed of 256/128 Kbps. There is a significant difference between broadband availability in urban and rural areas. For example, as at 31 December 2006, DSL coverage in rural areas was 37% compared to 72% nationally, and there was no cable coverage in rural areas compared to 50% cable coverage nationally.¹

The offer of converged bundled services by operators is expanding, including the fixed incumbent's IPTV service.

Regulatory issues

Following the 2006 market analyses, the NRA imposed remedies on the fixed incumbent concerning the minimum set of leased lines market and the wholesale unbundled access market, the wholesale broadband access market and the wholesale terminating segments of leased lines market. The remedies communicated to the Commission and imposed on the fixed incumbent concerning the minimum set of leased lines market were transparency, the obligation to publish a reference offer, price control and cost orientation and accounting obligations. In the other three markets, in addition to the remedies referred to above, the NRA also imposed non-discrimination and accounting separation remedies. In consequence, the fixed incumbent published reference offers in 2007 for wholesale unbundled access to the local loop, wholesale broadband access and terminating segments of leased lines.

The fixed incumbent's wholesale access business is still negligible. The lack of demand for local loop unbundling (LLU) is explained by the fact that it is easy and cheaper for alternative operators to duplicate infrastructure. Some alternative operators were of the opinion that the wholesale price for LLU and leased lines was too high to build a viable business case under the conditions prevailing in Latvia. While the monthly average total cost for full LLU in Latvia is below the EU average, the cost in the case of shared access is slightly above the EU average. On the other hand, some companies had shown interest and were negotiating the purchase of the fixed incumbent's wholesale broadband access product.

The lack of demand for wholesale products is also attributed by some market players to the particularity of the system of turnover charges (regulatory fee) applied by the NRA to cover its administrative costs. Under this system, the regulatory fee, which does not exceed 0.2% of the undertaking's turnover, applies to the wholesale product twice – both when the wholesale service is provided and when its cost is included in a retail product. However, according to the NRA, undertakings purchasing wholesale services, the cost of which is passed on to their retail customers, have the right to discount their wholesale costs from the amount subject to the regulatory fee. This issue therefore appears to be

¹ IDATE report from October 2007: Broadband coverage in Europe

causing confusion and should be clarified between the NRA and the undertakings concerned.

Mobile Markets

Market situation

The existing duopoly in the Latvian mobile market persists as the market shares of the three GSM/UMTS mobile network operators (MNOs) did not change significantly over the last year. This can be explained by the maturity of the market, where market shares can only be expanded by taking customers from competitors (in 2007, the mobile penetration rate increased to 140%, which is one of the highest in the EU, up from 123.3% in 2006). Even though number portability is available and free of charge both between mobile operators and for customers switching providers, its take-up remained limited. One of the reasons advanced is that attracting competitor's customers is complicated by a significant difference between on-net and off-net call retail tariffs. It has to be taken into account, however, that so far number portability has only been available for Latvian post-paid mobile customers.

The 3G networks of all three Latvia's GSM/UMTS operators currently cover about half of the population, as required under the relevant licences. All three MNOs are also working to expand the coverage and capacity of their 2G networks. Thanks to the greatly extended coverage of the new entrant's network, the issue of national roaming is no longer on the agenda.

Regarding revenues, the data stream is growing since mobile broadband products can successfully compete with xDSL. There is competition in mobile broadband speeds that go up to 7.2 Mbps. Mobile TV is also being tested.

As regards mobile virtual network operator (MVNO) activity, it is generally recognised that their prospects in the Latvian market are not too bright since they have to compete with the highly developed prepaid business of the MNOs themselves. The largest Latvian MVNO was acquired in 2007 by its network provider, one of the two established MNOs. The deal was approved by the Competition Council in May 2007, subject to certain conditions. In consequence, it is now only the new entrant that has several independent MVNOs working on its network, the latest addition being one of the largest cable providers.

Regulatory issues

In 2007, following an additional market analysis, the NRA imposed transparency and non-discrimination remedies on the new mobile entrant in the wholesale mobile voice call termination market. A more extensive range of remedies, including price control and cost accounting obligations, were imposed on the two established MNOs earlier in 2006; one of these MNOs has appealed against the decision. In addition, the appeal launched in 2005 by one of the established MNOs against an earlier decision of the NRA, which imposed price caps on termination rates of the fixed incumbent and both MNOs of the time, is also still pending. In June 2007, a district administrative court found the decision of the NRA to be unlawful. An appeal against this decision is now before the second court instance – the regional administrative court. The mobile call termination rates, which are lower than the EU average, have not changed in Latvia over the last year and

have remained asymmetric. GSM spectrum re-farming is not on the agenda for the moment.

Roaming

Both the Eurotariff and transparency requirements of the Roaming Regulation were implemented on time by Latvia's mobile operators.

Fixed markets

Market situation

In fixed voice telephony, the incumbent's market share was still above 90% in December 2006, both by retail revenues and by volume of traffic, and had remained practically unchanged compared to December 2005. In rural areas, the fixed incumbent is co-operating with the CDMA mobile network provider to digitalise telephone lines. Carrier pre-selection (CPS) services are being provided for international calls by a number of undertakings.

Regulatory issues

Following the 2006 market analyses, the NRA imposed remedies on the fixed incumbent in retail access and call markets. The remedies imposed on the fixed incumbent in these markets were carrier selection and CPS and price control and cost accounting obligation. In addition to these obligations, the fixed incumbent is also subject to the accounting separation obligation, which is generally imposed by the Law on the Regulators of Public Utilities.

Broadcasting

The deadline for the introduction of digital broadcasting is 2012, but it is expected to happen earlier. In October 2007, the PUC notified the European Commission of its analysis of the broadcasting transmission services market, thus completing the first round of market analysis. This market analysis was based on the findings of the Competition Council in a case concerning the abuse of a dominant position by a dominant player in the broadcasting market. The NRA did not impose ex-ante regulation in this market, considering competition law remedies under the decision of the Competition Council to be sufficient.

Horizontal regulation

Spectrum Management

The NRA is responsible for the management of radio frequency resources for commercial use in telecommunications and it assigns the rights of use to specific frequency bands to undertakings (except for radio and TV broadcasters, which receive their rights of use from the National Radio and Television Council). The Latvian frequency allocation table was updated in March and December 2007 in accordance with the Commission's radio spectrum harmonisation Decisions 2005/928/EC, 2005/50/EC, 2004/545/EC and 2005/513/EC. Commission Decisions 2006/771/EC, 2006/804/EC, 2007/90/EC, 2007/98/EC and 2007/131/EC still need to be implemented.

In June 2007, the NRA issued a decision on the rights of use to radio frequencies, which deals with the grant, extension, withdrawal and transfer of rights of use. The assignee may ask for its rights of use to be transferred to another specific undertaking; the decision is at the discretion of the NRA. The NRA organised a number of selection procedures last year for granting rights of use to radio frequencies, in particular in the 10.5 and 33 GHz bands. On a number of occasions it has also withdrawn rights of use for frequency bands that have not effectively been used by assignees, in particular in the 900 MHz band and 450 MHz band. In 2007, preparations were started for the introduction of new State duties on the use of radio frequencies and numbering resources. These draft measures are giving rise to active debate in the market, and the Commission will closely follow future developments.

While individual rights of use for radio frequencies are assigned by the NRA, technical implementation matters are the responsibility of the Electronic Communications Office, a State Stock Company supervised by the Ministry of Transport, which licenses the installation and putting into operation of radio equipment and ensures electro-magnetic compatibility. The Office applies administrative charges for these activities, which make up a major share of the overall charges imposed on electronic communications undertakings.

The specific legal status of the Office appears to have created some confusion in the electronic communications market. Thus, in 2007 the Competition Council examined a case brought by an MNO, which alleged abuse of a dominant position by the Office in the provision of its electromagnetic compatibility assurance services. The Competition Council found that the Office exercised public functions with regard to the management of radio spectrum and numbering and could not be considered a market player. In addition, the Competition Council noted that the Office should act in conformity with its public status and that tariffs for its services should be objectively justified, based on costs, transparent, non-discriminatory, proportional, and determined according to a single and clear methodology.

Rights of way and facility sharing

No significant administrative problems were reported by operators regarding the acquisition of rights of way. In the May 2007 amendments to the Electronic Communications Law the Electronic Communications Office was given new responsibilities as regards rights of way. The Office would review and decide on technical and building projects, would grant or refuse or withdraw building permits for the rollout of electronic communications networks and would monitor compliance with the relevant regulations. A number of secondary legal acts still needed to be amended for the Office to start implementing this new function. The Office is expected to be the sole permitting authority for authorising projects not involving construction works, while in the case of rollout projects involving construction works it will be the Office and the local authorities that issue permits.

Concerns were expressed in this regard by some market players, who feared that involvement of the Office would slow down the procedures for acquiring rights of way and would increase their costs because additional charges may be introduced. It thus remains to be seen what the consequences of implementing these new rules on rights of way will be.

THE CONSUMER INTEREST

Universal service

The current make-up of the universal service (US) in Latvia consists of directory services, connection to the network at fixed location, social tariff, discounts to persons with disabilities and provision of public pay telephones. In 2007, the designated US service provider, the fixed incumbent, requested compensation for the first time of its net costs for the provision of the US in 2006 in the amount of approx. €2.6 million. The NRA found an unfair burden and confirmed the request for compensation in October.

The May 2007 amendments to the Electronic Communications Law provided that a specific mechanism for the compensation of US net costs should be set up by the Cabinet of Ministers and that compensation would be paid from the State budget before such a mechanism is established. A working group with the participation of market players was set up to deal with the matter. It was intended to devise a single compensation mechanism for the US obligations in three industry sectors regulated by the NRA – electronic communications, post and electricity, which should be operational as from 2010. The introduction of a US net costs compensation mechanism will be a significant test of the Government's and the NRA's capacity to provide an appropriate solution for the electronic communications sector. The Commission will closely follow future developments in this area.

At the end of 2006, the NRA invited undertakings to apply for the designation as US provider in 2007, although only a few working days were granted to respond, which clearly did not make it easy for applicants to formulate proper applications. As regards US provision in 2008, the NRA did not issue an invitation to apply for designation, considering that it was not feasible in the absence of a compensation mechanism. Instead, the NRA extended the existing designation of the fixed incumbent to provide US until the end of 2008 or until the establishment of a compensation mechanism and a new designation, if that takes place earlier. At the same time, the NRA stipulated that losses incurred though the provision of the connection to the network are not to be included in net costs for the provision of US. It also relaxed, to some extent, the rules regarding maintenance in operation of public pay telephones.

Number portability

The May 2007 amendments to the Electronic Communications Law clarified the rules concerning number portability for pre-paid mobile customers, as a result of which the NRA issued new regulations in October on number portability. Accordingly, although with a significant delay compared to post-paid subscribers, number portability will also be introduced in Latvia for pre-paid customers as from 1 February 2008.

The charge applied between operators for porting fixed numbers (€8.55) is lower than the EU average (€9.69), no charges apply to number porting between mobile operators and porting of numbers is free for the customers of both mobile and fixed operators. Moreover, the beneficiary operator would usually grant certain bonuses to customers switching providers. As of October 2007, 12 533 fixed numbers and 25 944 mobile numbers had been ported in Latvia. In the case of mobile numbers this amounts to 0.81%

of all mobile numbers, which is one of the lowest percentages in the EU, where in total 9.3% of mobile numbers have been ported since the introduction of this facility.

Call routing to ported numbers is provided through a common database established by the industry. In addition, the Electronic Communications Office developed another database for the same purpose at about the same time as the industry database was set up. The authorities explain this duplication of work by long inaction on the part of the industry, which forced the authorities to act in its place to meet the approaching implementation deadlines for number portability. Major operators continued to use the industry database and had no plans to switch to the one provided by the Office. While the existence of two databases serving the same purpose could raise issues as regards efficient use of administrative charges collected from operators, it certainly appears to suggest a failure to coordinate efforts between the public authorities and the industry in this project.

Consumer complaints

The NRA has information of about 150 complaints arising between undertakings and their customers every year, and this number remains stable. It also examines a number of consumer complaints each year concerning the terms of service contracts. In a number of instances, it has found certain contractual terms to be incompatible with the law and has consequently, required the electronic communications undertaking to remedy the situation within a prescribed time limit. In 2007, the NRA established an IT system that allows Internet service providers to test their broadband service quality, which should also be helpful in resolving their disputes with consumers. Some market players have cited overlaps in the dispute resolution activities of the NRA and the Latvian Consumer Protection Centre, which, in some instances in the past, have both initiated proceedings in the same dispute.

European emergency number 112

In December 2006, the Government issued Regulations providing for the establishment by the Electronic Communications Office of a central database to transmit caller location information from electronic communications undertakings to emergency services. These arrangements, which involve the Office acting as an intermediary, are designed as an intermediary solution pending the introduction of an integrated emergency call handling platform. There will thus be a need to ensure smooth transition of the currently implemented system to the new integrated emergency call platform, once it is introduced.

In the course of 2007, the new system was first put into operation for the delivery and transmission of caller location information for fixed 112 calls. Its implementation for mobile 112 calls took longer because of the technical complexity and costs involved in ensuring the availability of caller location information from mobile networks, which in Latvia are fully borne by MNOs. The system for providing emergency services with caller location information in relation to mobile 112 calls was finally launched at the end of December.

Data protection

The amendments of May 2007 to the Electronic Communications Law transposed Directive 2006/24/EC on the retention of data. There was an active discussion on the issue of access to retained data, involving telecommunications providers, NGOs, law enforcement institutions as well as the office of the Ombudsman. According to the Electronic Communications Law, the Cabinet of Ministers has to determine the procedure for accessing retained data but it had not been enacted by the end of 2007. As regards e-privacy, the Latvian Code of Administrative Offences was amended in May 2007, providing for an administrative fine to be imposed on undertakings in the case of failure to provide information to data subjects as required by law. The authority responsible for personal data protection – the Data State Inspection – issued its first decision imposing an administrative fine for spamming.