

ROMANIA

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

Romania, with a population of 21.6 million inhabitants, had an electronic communications market with almost 2000 operators in 2007, including many local cable operators, and an annual turnover of almost €3.8 billion. Romania has the lowest fixed line penetration and one of the lowest broadband penetration rates in the EU27, although mobile penetration is growing rapidly.

Romania does not appear to have taken full advantage of the liberalisation of the sector. Access to Infrastructure bottlenecks still seems to be limited. No market analysis has yet been notified to the Commission, and ensuring the provision of universal service is a particular challenge for the regulator.

REGULATORY ENVIRONMENT

Main regulatory developments

Following a decision in 1998, the Romanian electronic communications market was liberalised on 1 January 2003. The transposition of the 2002 regulatory framework, without previous transposition of the ONP regulatory framework, has been carried out in several stages. The primary legislation comprises several legislative acts¹. Following the launch of an infringement procedure in April 2007 for incomplete transposition of the Universal Service Directive, the Romanian authorities also notified the European Commission on 12 October 2007 of the 'Government Decision on the general terms regarding the inter-operability of interactive digital TV services as well as of the consumers' digital TV equipment', thereby completing transposition of the regulatory framework. The infringement proceeding was subsequently closed.

In 2007, the main regulatory task was to start the first round of market analysis under the Article 7 procedure. Since Romania had transposed the 2002 regulatory framework

¹ 'Law 304/2003 on universal service', 'Government Emergency Ordinance 79/2002 on the general regulatory framework for communications' ('EO 79/2002'), 'Government Ordinance 34/2002 on the access to public electronic communications networks and to the associated infrastructure as well as their interconnection', 'Law 239/2005 on the amendment and completion of several normative acts in the field of communications', 'Government Emergency Ordinance No 70/2006 on amending and completing several normative acts in the field of electronic communications and postal services, approved by Law no. 133/2007' and the 'Law 506/2004 on the processing of personal data and the protection of privacy in the electronic communications sector'.

before its accession to the European Union, the ANRCTI had already carried out market analyses taking into account the EC Recommendation and Guidelines. However, the draft measures were not notified to the European Commission as Romania was not a member of the European Union at the time. Consequently, the ANRCTI started the market review process directly after Romania's accession. So far, no draft measure has been notified, but preparatory work has been undertaken by the ANRCTI to review the wholesale markets for fixed call termination and broadcasting transmission services. In June 2007, however, it notified the Commission of a draft measure on remedies for fixed call termination under Article 5 of the Access Directive.

Organisation of the NRA

Regulatory tasks are performed by the National Regulatory Authority for Communications and Information Technology of Romania (ANRCTI), while the Ministry of Communication and Information Technology (Ministry) is responsible for national policy in the electronic communications sector and prepares legislation relating to the sector. On 25 April 2007, the ANRCTI also took on the specific tasks of the General Inspectorate for Communications and Information Technology (IGCTI) in relation to spectrum management.

Over the last two years, the ANRCTI has undergone several substantial changes, which have not helped to establish legal certainty and stability for the market players. The president and the two vice-presidents are appointed by the Prime Minister for a five-year term. The president and the vice-presidents may be dismissed by the Prime Minister only for objective reasons defined in law. However, under the law approving Government Emergency Ordinance No 134/2006 on the establishment of the National Regulatory Authority for Communications and Information Technology, adopted by the Chamber of Deputies on 9 October 2007, the ANRCTI was to pass under the control of the Chamber of Deputies of the Parliament and was to receive binding instructions from the Ministry of Communications and Information Technology on how to implement national policy. At the same time, the Romanian State would remain an important shareholder in the fixed incumbent and the 100% shareholder in the national radio and television transmission company. The President of Romania refused to approve the law for constitutional and other reasons and sent it back to Parliament on 5 November 2007 for re-examination. The Commission's services have opened a dialogue with the Romanian authorities on this matter, as the proposed amendments could have threatened the independence and impartiality of the NRA. Following close cooperation with the Romanian authorities, amendments to the draft law will be proposed in order to address the Commission's concerns.

The ANRCTI has approximately 646 employees and is fully financed from own revenues collected from the market players.

Decision-making

Before accession to the EU, the ANRCTI had already analysed all the markets with the exceptions of the wholesale markets for mobile international roaming and for broadcasting transmission services and the retail market for leased lines. While the work of the ANRCTI in 2007 was in general found to be fairly efficient by some market

players, others have voiced criticisms as to its failure to analyse the wholesale or even retail mobile access markets.

The ANRCTI has been confronted with refusals or delays in sending statistical data in the course of the market review process. Consequently, it has imposed fines on a number of operators.

Proposed draft measures relating to the market analysis are subject to a public consultation of at least 30 days. In urgent cases, the consultation period must be at least 10 days.

The Administrative Division of the Bucharest Court of Appeal has first-instance jurisdiction with respect to the ANRCTI's decisions. Appeal against an administrative decision does not have automatic suspensory effect. Approximately 10% of ANRCTI decisions are challenged before the appeal court. These appeals reduce legal security and predictability in the market since Romanian courts are overburdened and a final decision by a second-instance court (High Court of Cassation and Justice) can take several years. Third-party appeal is possible in Romania.

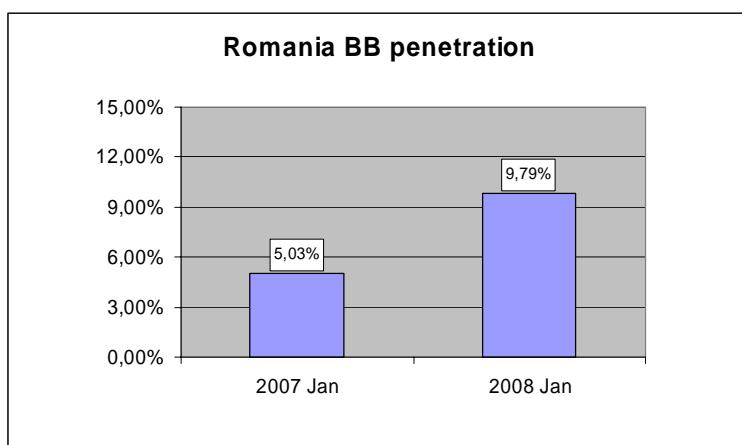
MARKET AND REGULATORY DEVELOPMENTS

There has historically been one fixed-line operator (fixed incumbent) in Romania with special and exclusive rights for the provision of public fixed telephony. The privatisation of the fixed incumbent was carried out in two steps (in 1998 and 2003) with the Greek incumbent operator taking over 54.01% of the fixed incumbent and the Romanian state holding the remaining 45.99%. The ownership rights of the Romanian state in the fixed incumbent are exercised by the Ministry. Further privatisation of the fixed incumbent was announced in 2005 but has not yet taken place. The fixed incumbent had lost its special and exclusive rights with the liberalisation of the market in January 2003.

In Romania, fixed-line penetration has been historically low and constantly decreasing, standing at only 19% in July 2007 (20.4% in July 2006). It is the lowest in the EU27, whereas cable penetration at 16.8% is very close to the fixed-line rate. Fixed voice traffic is also continuing to decrease in the face of constant increases in mobile voice traffic and mobile penetration, reaching 96% in 2007.

Broadband

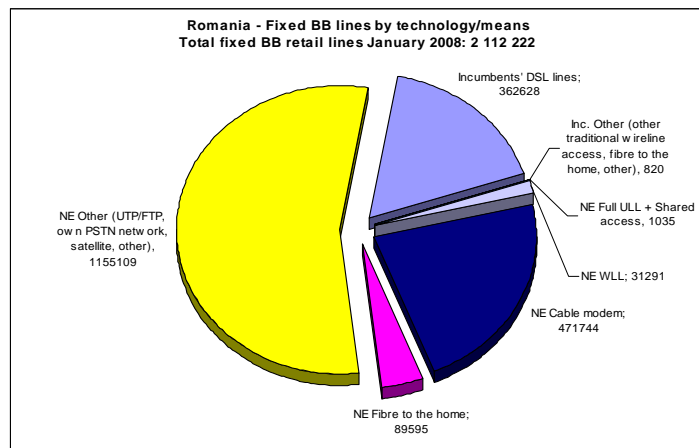
Market situation



Despite rapidly increasing broadband penetration and the decreasing interest in dial-up Internet access, the broadband penetration rate in Romania was 9.79% in January 2008 (compared to 5.03% in January 2007), which constitutes one of the

lowest broadband penetration rates in the EU.

In Romania, platform competition is flourishing as fixed broadband services are provided via xDSL, radio, cable and UTP/FTP connections (neighbourhood networks). While cable and neighbourhood networks account for 22.3% and 56.8% of the market, respectively, in comparison to only 17.2% for xDSL in January 2008, the number of xDSL and radio connections significantly increased in 2007 and the roll-out of the FTTH network has also begun. One of the two major cable operators is in a position to offer quadruple-play services since it is the holder of a UMTS license.



Regulatory issues

Despite the significant platform competition between the different network operators, the Romanian cable market is not regulated in accordance with a market analysis. In the market analysis carried out before 1 January 2007, the wholesale broadband access market was considered by the ANRCTI to be an emerging market. SMP operators have therefore not been designated and consequently no bitstream access offer is available.

As regards the local loop unbundling (LLU) market, the fixed incumbent was designated as an operator with SMP. Transparency (publication of a reference unbundling offer — RUO — for both full and shared access), non-discrimination, cost orientation, accounting separation and access obligations were imposed. The RUO of the fixed incumbent was determined on the basis of the 'retail minus' methodology. By January 2008, only 1035 local loops were fully unbundled (compared to 729 in January 2007) while no shared access was reported. While wholesale fees for LLU are basically in line with the EU average, alternative operators point to the low margin between the wholesale prices and retail prices of the fixed incumbent as explaining the low level of LLU.

A national broadband strategy has not been adopted so far. In order to extend broadband coverage to remote areas, the introduction of fixed wireless access is under consideration. Nevertheless, the organisation of competitions for licences in the 3.7 GHz and the 3.5 GHz bands has been delayed and is not expected until 2008.

Mobile markets

Market situation

In Romania, there have been five mobile network operators (MNOs) since the third UMTS licensee launched commercial operations at the end of 2007. Three are Romanian subsidiaries of foreign MNOs and one is an operator of a CDMA network in the 450 MHz band, with market shares of 44%, 40.6%, 13.3% and 2.1%, respectively, in 2007 (compared to 46.2%, 44.3%, 7% and 2.5% in 2006). Since the beginning of 2007, the third MNO has significantly increased its subscriber base, announcing on 31 October 2007 that it had exceeded 3 million. In parallel, mobile penetration reached 96% in

October 2007 (68.8% in June 2006) with fixed-line penetration and fixed-line traffic constantly decreasing.

Three MNOs (the two leaders and the fourth in terms of market shares) and one of the two major cable operators have a UMTS licence (granted in 2005 and early 2007). Three of these licensees have started providing 3G services. The third MNO has challenged the decision refusing it a 3G license.

Regulatory issues

The wholesale mobile access and call origination market has not been analysed yet and there are no virtual mobile network operators (MVNOs) in Romania. However, some interest has been reported by market players. In addition, a new numbering domain has been defined in the national numbering plan for MVNOs.

The application of the second stage of a glide path imposed on the two major MNOs before Romania's accession to the European Union as a result of the mobile termination market review, leading to symmetry of the MTRs of the two main mobile network operators, was postponed by one year in December 2006. Subsequently, MTRs were fixed at 7.21 cents per minute for 2007 (6.4 cents as of 1 January 2008 and 5.03 cents from 1 January 2009). Only transparency and access obligations have been imposed on the third and fourth MNOs. The review of this market is planned soon.

Following interruption of the interconnection link between the third and fourth MNOs, the ANRCTI adopted an interim measure on 2 March 2007, in the course of a dispute resolution, imposing an interconnection obligation on the fourth MNO in order to maintain end-to-end connectivity between the end-users of both undertakings.

Roaming Regulation

Three MNOs are reported to have implemented the Roaming Regulation² in time. The tariffs were set at the maximum ceilings both for receiving and making phone calls within the EU within the deadline set by the Roaming Regulation. The fourth MNO, a CDMA operator in the 450MHz band, is reported not to provide international roaming services in the meaning of the Roaming Regulation.

Fixed

Market situation

The fixed incumbent's market share has significantly decreased. In January 2007, on the basis of outgoing call minutes it had an 80% market share for all types of national calls (93% in 2006) and 42% for international calls (57% in 2006).

The alternative offers are provided mainly by cable operators. 35 alternative operators offer public voice telephony services mainly using their own infrastructure while 10 offer services via LLU. The Romanian cable market is very fragmented as there are approximately 600 cable operators. The consolidation of the cable segment of the market

² Regulation 717/2007/EC of 27 June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC (OJ L 171 of 29 June 2007 p. 32 – 40).

has been very slow to start, explaining the large number of relatively small local cable service providers. Cable operators provide triple-play services at relatively low retail prices. One of the two major cable operators is also in a position to provide quadruple-play services as it holds a UMTS licence.

Regulatory issues

All fixed wholesale markets and retail markets, with the exception of leased lines, were analysed by the NRA prior to Romanian accession to the European Union. On all these markets the fixed incumbent has been designated as having SMP and remedies have been imposed accordingly.

CPS became effective on 30 June 2006. Interconnection tariffs for call origination (including CS/CPS) are set by the ANRCTI based on a LRIC model. Nevertheless, alternative operators mostly do not provide electronic communications services via CS/CPS. Only around 74 500 of the 1.1 million subscribers served by the fixed alternative operators were using this facility as of 1 July 2007.

On 28 May 2007, the ANRCTI adopted a price cap formula setting out the details of the price controls imposed on the fixed incumbent before 1 January 2007 to ensure that the prices it charged for services or service packages were not predatory.

Fixed-to-fixed interconnection charges are well above the EU27 average³. The RIO of the fixed incumbent was amended in 2007 in order to include, among other things, the conditions for associated services necessary for interconnection.

Following several complaints about refusal of interconnection between the end-users of one of the two major cable operators and other operators, putting at risk end-to-end connectivity, the ANRCTI took a decision on 6 August 2007 obliging the major cable operator, not designated as an operator with SMP, to interconnect its network with other network operators if so requested, including conditions and the interconnection fee. The draft measure was notified to the European Commission under Article 5 of the Access Directive. Despite a fine of RON 100 000 (€30 000) imposed by the ANRCTI, however, the major cable operator has not fully applied the decision so far, raising the question as to whether the level of the fine was sufficiently dissuasive⁴.

Broadcasting

Market situation

In Romania, broadcasting transmission services are provided via several platforms: analogue terrestrial, cable, satellite and IPTV. The major television and radio transmission company is 100% state-owned with the ownership rights of the Romanian state being exercised by the Ministry. The future privatisation of the national television and radio transmission company is currently under consideration by the Romanian state.

³ €1.02, 1.18 and 1.29 for the local, metropolitan and national levels, respectively.

⁴ Fines are limited to 2% of the annual turnover of the operators (5% in cases of repeated breaches).

The national coverage of analogue terrestrial transmission is approximately 99% of Romanian territory. Digital switchover is expected to be implemented by 2012. However, a national strategy for digital switchover does not yet exist.

Approximately 52% of Romanian households subscribe to cable TV services (76% in urban areas). The cable market is very fragmented with approximately 600 service providers, although the two major cable operators serve over 2/3 of cable subscribers. The dominant platform is analogue cable for broadcasting services since digitisation is still very low.

Satellite broadcasting services using DTH platform are provided to approximately 13.1% of Romanian households by foreign satellite broadcasting operators. IPTV services are provided only in Bucharest by one alternative fixed operator (ISP using its own infrastructure).

Regulatory issues

Romania has not yet notified the draft measures concerning the wholesale market for broadcasting transmission services to the European Commission.

Horizontal regulation

Spectrum management

The ANRCTI administers and coordinates the management of the entire spectrum of radio frequency bands. It manages and monitors only the frequency bands with non-governmental usage, according to the National Table of Frequency Band Allocation. The management and monitoring of radio frequency bands with governmental usage is the responsibility of government bodies. Spectrum trading is permitted under the Romanian legislation governing the electronic communications sector, but under strict conditions — operators may only transfer the license as a whole, cannot transfer individual rights of use arising from the license, and need to obtain the prior approval of the ANRCTI.

Most of the radio spectrum harmonisation decisions are reported to have been partially or fully implemented, although Decisions 2005/50/EC on 24 GHz automotive short-range radars, 2007/90/EC on WAS/RLANs and 2007/131/EC on ultra-wideband have not yet been implemented.

In order to extend broadband coverage in remote areas, the introduction of fixed wireless access is under consideration.

Numbering

Following several ANRCTI decisions published on 4 September 2007, fixed telephone numbers are to be composed of 10 digits as of 2008. In addition, the ANRCTI has introduced tariffs for the use of numbering resources. Different tariffs are established for each category of numbers in the National Numbering Plan. Charging for the right to use numbering resources is intended to ensure more rational use of numbering resources by operators.

Administrative charges

The monitoring tariff for 2007 was set at 0.171% of the annual turnover of Romanian electronic communications network and service providers, compared with a monitoring tariff of 0.125% for 2006. Operators are concerned about the constantly increasing administrative charges. Under Romanian law, the monitoring tariff can not exceed 0.4% of the annual turnover of operators, while operators whose annual turnover does not exceed €100 000 are exempt.

Rights of way and facility sharing

The application of the rights of way regime has raised certain difficulties in practice. MNOs reportedly face repeated refusals from local municipalities to install their masts and antennas, as required in their respective 2 and 3G licences, and also face delays in the granting process. The ANRCTI is reportedly aware of several cases where local network operators have complained about discriminatory and unreasonable price conditions imposed by private and public land owners.

In order to put an end to the discriminatory application of Romanian law in such cases, a proposal for a 'Law on the electronic communications networks infrastructure' is to be submitted to Parliament. A facility sharing obligation was also imposed on the operator with SMP on the wholesale fixed-line markets in the course of the market review before 1 January 2007.

In order to put under ground the aerial cables installed throughout Bucharest with or without the permission of the competent authorities, the installation of an optical-fibre network using a single duct is being considered by the municipality of Bucharest. The installation and operation of the network would be under a public-private partnership between the municipality of Bucharest and the operator designated at the end of September 2007 following a tendering process. A concession for the network will be granted to the designated operator for 49 years against payment of 12% royalties to the municipality of Bucharest. At the same time, several fixed-line operators have reported refusals from the municipality to accede to their requests to install both underground and aerial networks in Bucharest. The Commission services will closely follow these matters.

THE CONSUMER INTEREST

Universal Service

Taking into account the low fixed-line penetration, Romania has implemented the universal service obligation mainly via a 'Tele-Centre' approach. The mid-term objective is to have 600 Tele-Centres installed and operated in villages of more than 400 inhabitants before the end of 2008, so as to allow citizens to make calls, receive calls and voice messages, use fax services, have broadband Internet access and make round-the-clock free-of-charge emergency calls on the basis of community rather than individual access. The Tele-Centres are operated by electronic communication service providers in cooperation with the local administrations, the operator being selected on the basis of public tenders for a period of 3 years. So far, 6 tenders have been awarded for 461 Tele-Centres, with 253 already operational. Many different operators are involved in the installation and management of the Tele-Centres.

In villages with fewer than 400 inhabitants and with no public payphone (approximately 3600 villages of this kind exist in Romania), the installation of public payphones was

envisaged but so far no provider has been designated, since the sole participant in the pilot tender organised in 2007 was disqualified for failure to comply with the minimum requirements of the tender.

There are no comprehensive directory and directory enquiry services yet, since no directory enquiry service numbers have so far been allocated in Romania. The universal service provider for the provision of comprehensive directory and directory enquiry services is expected to be designated by the ANRCTI in 2008.

The fixed incumbent provides a social scheme for retired persons with low incomes, while disabled users are offered a monthly amount to cover their electronic communications needs.

With regard to the financing of the Tele-Centres, the final net cost of providing the service is the net cost of the winning tender, covering, among other things, the installation and operation of the access link and the procurement and installation of the equipment. As for the intangible benefits, it is estimated that they will have a low impact on revenues, so they are not taken into account in the estimation of the net cost⁵. A Universal Service Fund has been set up by the ANRCTI and is financed by the market players with an annual turnover exceeding €3 million. For 2006, the actual percentage of the contribution to the Fund was 0.389% (the ANRCTI decision capped the contribution for 2006 to a maximum of 0.5% and no more than €3 million) of the market players' turnover, less the revenues from interconnection and inbound roaming. Although the Universal Service Fund is active, the ANRCTI decided not to collect the contributions for 2007.

The Commission services are examining the conformity of these measures with the Universal Service Directive.

Number portability

Number portability does not exist in Romania, neither for fixed nor for mobile numbers. Although number portability is provided for under Romanian legislation, it is expected to be available only in 2008⁶. The Commission services are looking into this matter.

European emergency number 112

By law, Romanian electronic communication service providers must guarantee free access to emergency call services, including the single European emergency call number 112. Operators must also make available caller location information to the emergency authorities. However, as caller location information is in practice not provided to the Romanian emergency authorities from mobile networks, the European Commission sent a letter of formal notice to the Romanian authorities in November 2007.

⁵ In establishing the estimated net cost, the ANRCTI considers that the intangible benefits are negligible, as the Tele-Centres are installed in areas with low economic potential. However, in the tender process, each tenderer, in calculating the net cost, can use its own estimations of the cost and revenue elements, including the intangible benefits.

⁶ The decision on the technical and commercial conditions for the implementation of number portability was adopted by the ANRCTI on 19 December 2007. Number portability must be available within nine months following the entry into force of the decision.

Must-carry

Under ‘Law 504 of 11 July 2002 on Radio and Television Broadcasting’ (‘Law on Broadcasting’), broadcasting service distributors using electronic communication networks are required to include in their commercial offers, free of charge, the channels of the Romanian Television Company, along with other radio and TV stations operated by private broadcasters, up to a limit of 25% of the total number of programs distributed on the given network. The fact that general interest objectives are not defined by the Law on Broadcasting and that no periodic review of such an obligation is provided for has led the Commission services to examine concerns about the conformity of the Romanian legislation with the provisions of Article 31 of the Universal Service Directive.

Data protection

The Data Retention Directive has not yet been transposed, although the Emergency Ordinance transposing the Data Retention Directive is expected to be adopted by the end of January 2008.