SLOVENIA

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/a_nnualreports/13th/index_en.htm

INTRODUCTION

The positive trends from 2006 have continued, in particular in terms of growth on the broadband and mobile markets (including 3G). Thanks to effective price regulation, both broadband penetration and local loop unbundling have grown substantially since the last report. In autumn 2007 the third mobile network operator entered the market, increasing competition for provision of bundled services. However, fixed telephony remains largely non-competitive, with a risk of concentration of market power in the case of provision of IP-based services.

The national regulatory authority (NRA) has been quite effective and has dealt with a number of regulatory challenges resulting from market and technological developments. However, non-price-related aspects of regulation as well as the introduction of incentives to reduce the discriminatory behaviour of operators with significant market power will be crucial to further improve and strengthen competition, especially in the fixed sector.

REGULATORY ENVIRONMENT

Main regulatory developments

The amendment of the primary legislation came into force late in December 2006, with changes focusing on the supervisory powers and the mediator role of the NRA. This has boosted confidence on the part of market players, resulting in an increased number of interventions by the NRA. There were also major legislative changes in the universal service obligations (USO), the assignment of radio frequencies for digital broadcasting and data retention. Secondary legislation was adopted on functional access speeds for the internet, number portability and the quality of universal service, aiming to increase consumer benefits. The new Law on Digital Radio Broadcasting was adopted in October 2007, with the aim of streamlining activities in Slovenia in the years before digital switchover.

Organisation of the NRA

The Agency for Postal and Electronic Communications (APEK) has 80 employees; eight employees are authorised as inspectors and three of them deal with daily market monitoring and supervision in the area of electronic communications. In the area of broadcasting, the NRA assigns radio spectrum and monitors pluralism and content obligations.

The NRA's independence to exercise its statutory tasks remains unchallenged. The NRA has been active not only in solving disputes but also in providing advice to end-users, notably via a free-phone line. However, alternative operators continue to point to difficulties in their dialogue with the NRA, in particular to the fact that their comments are disregarded during consultations in the context of market analyses, citing lack of precision concerning the obligations imposed on operators with significant market power (SMP) as one of the key issues hampering effective regulation. The NRA is further criticised for lacking initiative when acting in its capacity as supervisor of remedies imposed on operators with SMP.

Cooperation between APEK and the Competition Protection Office (NCA) is minimal and mainly limited to market analyses. The NCA faces severe human resource difficulties and has limited *ex-post* regulation to the minimum, with one or at most two decisions taken per year. The Commission services are looking into the current situation, where persistent failure to combine effective *ex-ante* and *ex-post* regulation could irreparably affect further development of competition.

Decision-making

The NRA started the second round of market analyses, re-analysing six markets, and continued to supervise implementation of remedies. In the second round, APEK has moved from a fully allocated cost (FAC) accounting model to a long-run incremental cost (LRIC) model (top-down approach) on all wholesale fixed call markets, the wholesale unbundled access market and the wholesale mobile call market.

Regarding implementation of remedies, however, the nature of the NRA's supervisory powers was questioned following findings by the Ministry of the Economy (the former administrative appeal body) that some measures exceeded the supervisory nature of the role of the NRA and should have been determined in the course of APEK's market analysis. Nonetheless, decisions have generally been observed by the SMPs and have contributed to improving market access.

One alternative operator has asked the Commission's services to intervene on issues related to compliance by the SMPs with the remedies imposed. In the meantime, APEK has addressed some of these issues by adopting interim measures. Further supervision activities had been announced at the time of writing this report. The Commission's services are looking into this matter.

The NRA can impose fines of up to $\clubsuit 3$ 460 on legal entities and up to $\leftrightharpoons 1$ 250 on individuals.

MARKET AND REGULATORY DEVELOPMENTS

A total of €191 million was invested in the electronic communications sector in Slovenia in 2006, of which fixed alternative operators invested €38.5 million, roughly half the incumbent's total investment and more than half the mobile operator's overall investment. In recent years, the telecommunications sector in Slovenia has performed decidedly better than the rest of the economy. Revenue in the telecommunications sector in 2006 totalled €1 048 million, which was €98 million more than in 2005. In 2006 revenue from the fixed market stood at €382 million, while the mobile market generated some €02 million.

As the Slovenian authorities' original plan to privatise 49.13% of the incumbent appeared incompatible with the rules on free flow of capital and right of establishment, following intervention by the Commission services, the Government amended both the strategic guidelines for privatisation and the criteria for participation of bidders. The winner was due to be selected early in 2008 from the group of seven European and non-European bidding operators that have been invited to present their official and binding offers.

The management of the incumbent, however, not too concerned with the outcome of the privatisation, continued with its heavy investment cycle focusing on the roll-out of a fibre-to-the-home (FTTH) network and an upgrade of the existing network capacity.

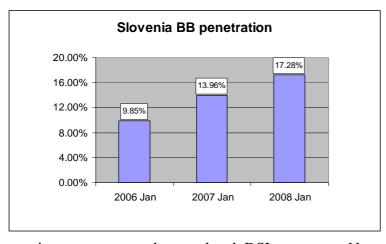
The number of alternative operators on the market has decreased for the first time in years. A few smaller internet service providers (ISP) have pulled out of the market and contributed towards market consolidation by selling their customer base to the incumbent. The incumbent has also consolidated its activities by integrating its ISP daughter company in its core business model. The expected impact of this change has prompted calls for clearer separation of functions within the incumbent.

Furthermore, consolidation activity has increased amongst the cable operators, the major protagonist being the biggest cable operator, which has acquired a couple of regional market players. The operator currently offers triple-play services (TV, internet and voice), while it has also benefited considerably from the introduction of number portability.

Two alternative operators have launched lawsuits against the incumbent for alleged abuse of its dominant position. The cases are still pending before the administrative court at the time of writing this report.

Broadband

Market situation

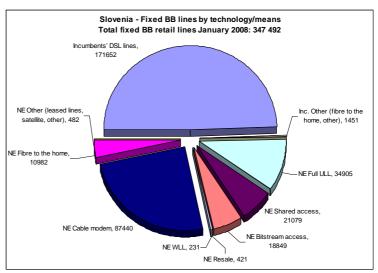


Broadband penetration stands at 17.3%. There were 347 492 fixed broadband lines in January 2008, many of these based on high-ADSL2+ capacity VDSL2 technology, compared with 279 660 lines in January 2007. The market is offering more and more products based on alternative technologies such as optic fibre. However,

remains stronger on the regulated DSL segment. Not surprisingly, fibre-technology-based retail products are significantly cheaper than DSL products, whereas the main competitor on fibre segments appears to be nearly two times cheaper than the incumbent and has thus managed to win more than 85% of all subscribers on this platform.

The market share of the alternative operators grew from 47.1% in January 2007 to 50.2% in January 2008, but the DSL retail broadband market remains dominated by the incumbent, which controls 69.5% of the DSL market, down from 76% in January 2007.

Alternative operators are increasingly using unbundling in densely



populated areas: 22.7% of all DSL connections are based on LLU (14.2% in January 2007 and 0.7% in January 2006), which demonstrates a significant improvement in terms of infrastructure competition and places Slovenia amongst the best performers in terms of LLU lines per capita in the Member States.

Partly as a result of more effective LLU implementation and of new platforms (FTTH) appearing on the market, the share of cable has decreased, in relative terms, to 25.2% in January 2008, down from 29.2% in January 2007, with a total of 87 440 lines.

There is a relative digital divide, since only 78.5% of the population in rural areas has broadband DSL coverage and 24.3% has cable coverage. This is being addressed by a broadband strategy. The gap between broadband coverage in rural areas and the national average is greater in the case of cable (24.8%) than for DSL (9.7%).

Regulatory issues

Despite a significant delay, regulation has put in place a framework for competition. However, in spite of the relatively early introduction of the reference unbundling offer (RUO) dating back more than two and a half years, various amendments to it and measures stemming from supervisory control have failed to address several facets of the incumbent's significant position. Price regulation, though, has shown some improvement. For example, monthly rental fees for full LLU have dropped below the EU average and currently stand at €3.77, whereas the prices of shared access remain slightly above the EU average, at €3.27 per month. Nonetheless, despite a number of recent measures by the incumbent which improved some technical, non-price-related parameters of the reference offer, based on regulatory decisions by the NRA – focusing on improving equal treatment (such as financial compensation for non-compliance with SLA deadlines), transparency and reducing requirements concerning the size of colocations – the incumbent is continuing to behave evasively with respect to providing access to its infrastructure under equal conditions for all.

Newly identified areas of discriminatory behaviour include difficulties with migration of customers from bitstream to LLU and favouring the incumbent's customers over those of

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¹ IDATE, October 2007: Broadband coverage in Europe – data are for the end of 2006.

the alternative operators. Moreover, a number of co-locations made available to the alternative operators are not connected to the network with dark fibre, causing significant service provision delays for alternative operators attempting to compete alongside the incumbent for the same customer base. As access to the fibre backbone is not a regulated market, the NRA instructed the incumbent to grant alternative operators access to the co-locations with their own networks.

Given the significant number of complaints about malfunctioning of unbundled local loops and following a series of mutual allegations between the incumbent and one alternative operator, the NRA decided to call in an independent organisation that will impartially measure the functioning of local loops and give expert opinions to the NRA to facilitate its decision-making and speed up its arbitration process.

Alternative operators have also reported that the incumbent is continuing to make changes to the RUO, without having sought the explicit approval of the NRA, while some of these changes appear to be fundamentally affecting competitors' business models and plans. In a few instances, the NRA has duly intervened.

APEK recently amended price regulation of the two broadband markets, in order to avoid the possibility of a price squeeze. As a result, on the wholesale unbundled access market the incumbent is required, in addition to the cost-orientation-based obligation on the LRIC model, to charge LLU a monthly rental below the price of the PSTN monthly rental, while for the wholesale broadband access market retail minus (with a substantial 66% reference mark for speeds of 20 Mbit/s and over) has been introduced from October 2007 on. The incumbent intends to appeal against the proportionality of the latter measure.

Mobile market

Market situation

Actual (handset) penetration stands at 94% and the market is approaching saturation point. The incumbent's mobile arm holds 67% of the customer base (if the market shares of the two resellers are added, its market share is close to 75%), while the main competitor controls 25% of the market. The market share of the market leader in the business segment is even higher (around 85%). The number of pre-paid users is continuing to decrease and now stands at less than 40% of all customers, whereas the resellers have benefited most on the pre-paid segment from the introduction of number portability.

The second largest mobile network operator (MNO) recorded a significant increase in subscribers on the post-paid segment, with half of gross add-ons being net new subscribers and the other half the market leader's churn. There was no equivalent growth in its market share of revenue, however, mostly because low on-net prices have been maintained.

Both the revenues of the operators and their EBIDTA have been affected by the entry into force of the Roaming Regulation, since a substantial part of the Slovenian customer base is roaming in countries not applying the regulation.

The new entrant MNO, that is also active in providing fixed telephony services, started providing GSM services in autumn 2007, based on a national roaming agreement with the market leader. Recently launched pre-paid packages claim the lowest per-minute retail tariffs on the market.

The market leader has started offering a flat-rate post-paid package for €5.99 with calls free of charge at off-peak times. This has been imitated by the new entrant MNO. The market leader is continuing to promote unregulated UMTS services. For instance, calls using the video-call service are completely free of charge. The second largest market player, which was awarded a UMTS licence in 2006, is covering the most densely populated areas (25% of Slovenia's territory), whereas the other new holder of a UMTS licence has not yet started providing services.

Regulatory issues

For much of 2007 mobile operators continued to charge higher termination charges for calls originating in fixed networks. Amongst other things, this largely allowed them to cross-subsidise their retail activities, leading to a situation where the prices of on-net calls of mobile operators are nearly two times lower than the termination rates charged to alternative fixed telephony service providers. However, following the NRA's decision, equal fixed-to-mobile and mobile-to-mobile termination rates have been applied since 1 September 2007.

Despite an obligation on the market leader to provide access and call origination, one of the alternative operators has not been able to reach an agreement for nearly two years. According to the SMP operator, the alternative operator has continuously failed to define its cooperation model, whereas the alternative operator perceived the SMP operator's discriminatory wholesale pricing as the main reason for the unsuccessful negotiations. The NRA finally managed to bring this lengthy dispute to an end towards the end of October 2007, forcing the SMP operator to grant access and setting the price threshold for call origination (and transmission) at 6.73 euro cents/minute, which is the price also charged to other MVNOs or MNOs in cases of national roaming.

APEK has analysed, for the second time in less than two years, the wholesale termination mobile market and, yet again, imposed asymmetric remedies on the two largest MNOs. However, it significantly reduced the asymmetric termination rates ratio to 1:1.40, down from 1:1.64 in 2006. The glide path, gradually levelling out imbalances in market power between the two SMPs, aims to ensure symmetric mobile termination from March 2009 on.

GSM gateways are another important issue for mobile operators. In particular, some VoIP service providers terminate international calls at rates more than two times lower than the official termination rate for international traffic. The NRA is following this issue closely, even though the possibility of intervention remains largely outside the scope of its responsibilities defined by the Electronic Communications Act (ECA).

Towards the end of 2006 the NRA decided to replace some of a new entrant's "inherited" DCS 1800 frequency range by a reserved extended GSM 900 frequency range without a competitive selection procedure. Both the large two MNOs and the holder of a newly acquired UMTS licence – all of which initially aspired to this bandwidth, but were not allowed to compete – launched an appeal before the administrative court for lack of

transparency. The court took a decision, based on the ECA, in summer 2007, when it ruled in favour of APEK.

Roaming

All GSM operators appear to have implemented to a satisfactory level the requirements set in the Roaming Regulation. According to APEK, in the second half of 2007 retail international roaming prices were generally falling to the Eurotariff levels.

Fixed market

Market situation

On the market for traditional PSTN and ISDN technologies the incumbent still holds a share of nearly 98% of traffic generated. Only 5% of subscribers use alternative providers for voice telephony services. The introduction of carrier selection and carrier pre-selection (CS/CPS) a few years ago has been beneficial for competition on international calls, but not on national calls. Only one alternative operator is using the CS/CPS services for domestic calls.

At the same time, the number of VoIP connections keeps growing fast, thanks to convergence of services. There are eight IP providers of voice services. Penetration of residential fixed telephone lines is 75% of all households in the case of PSTN and ISDN, while VoIP takes nearly 9%. The largest cable operator, in cooperation with a smaller fixed alternative operator, has also started providing voice services using IP.

Increases in call charges and monthly rentals during 2007 had no significant effect on the purchasing power of end-users. For example, in the 10-minute national calls segment, Slovenia still remains one of the cheapest Member States.

Recently, two numbering ranges of 100 000 non-geographical numbers were assigned to the incumbent.

Regulatory issues

With growing investment in IP-based telephony, which has remained unregulated, a gradual, but resolute, migration away from TDM-based technology towards an IP-based network (largely built on fibre) has led to increasing concern and uncertainty amongst the market players.

VoIP termination rates charged by the incumbent (2.5 euro cents) are significantly higher than the traditional TDM-based termination rate at local level (1 euro cent). In addition, calls originating from alternative operators' networks and terminating within the numbering range of an integrated ex-ISP branch are considered as calls to ported numbers, with the result that alternative operators are charged for technically unjustified transit over the incumbent's network. At the same time, the incumbent succeeded to delay the access of alternative operators to its copper-based network, by attaching a set of complicated conditions to the RUO, which thus lacks a sufficient degree of service unbundling. It is the Commission's services' view that the markets for call origination and termination on networks at a fixed location require particular regulatory attention.

Currently nine operators interconnect with the incumbent, with two more negotiating. However, only one alternative operator accesses the network of the incumbent at local level, while three interconnect at regional level and a couple more are expected to migrate in the near future. Wholesale interconnection charges in general remain above the EU average.

The incumbent amended the existing reference interconnection offer (RIO) following an interim decision by the NRA. Although the updated RIO introduced some improvements, such as an overall reduction in CS/CPS prices and an option to terminate international traffic at regional-level switches, it is still impossible for alternative operators to terminate international calls at local level.

The second analysis of the market for call termination on the networks at a fixed location (including IP telephony) provides for designation of seven alternative operators with SMP status, in addition to the incumbent, and, amongst others, establishes a mechanism of cost-oriented prices. It also allows alternative operators to introduce prices based on a glide path and to apply initial asymmetry of 1.40 to termination of the calls, calculated at the national level, compared with the termination rate of the incumbent. In situations where the alternative operator interconnects at local level, this could increase the asymmetry to 3.11 in favour of the smaller operator.

The WLR obligation is one of the new measures imposed on the re-analysed retail access markets and its full impact remains to be seen.

Broadcasting

Market situation

Terrestrial TV is watched by 48% of households in Slovenia and cable by 39%. However, the newly emerging IPTV segment has grown much faster than cable, with growth of 7.3% in the last year. The main drawbacks of cable are its low-capacity analogue transmission technology and its inability to provide HDTV and services such as video on demand (VoD).

After a public consultation in the framework of the Slovenian digital television forum in October 2006, APEK issued a licence for the first digital terrestrial television (DTTV) network in November 2006, including an obligation for the licence-holder to use the MPEG-4 AVC video compression standard.

Under the new Law on Digital Radio Broadcasting adopted in October 2007, simultaneous digital and analogue transmissions will start when the coverage of at least one DTTV multiplex reaches 90% of the existing analogue coverage and TV content providers in the area will have had a possibility to be on the DTTV multiplex. Nevertheless, the switchover period will start in June 2009 and will be limited to a maximum of 18 months. At the end of 2010 all analogue licences will be revoked. Once all analogue networks are switched off, eight new digital networks are expected to be authorised.

Regulatory issues

In November 2005 the Government passed a law on public service broadcasting allowing allocation of a multiplex to a public service broadcaster (without any tender), which should ensure broadcasting of public content. In August 2007 the NRA launched a public consultation on the assignment of radio frequencies for the second, commercial, digital video broadcasting terrestrial (DVB-T) network. APEK has received four answers from interested parties. No tender procedure had been launched at the time of writing this report. The operator of the new digital network, once selected, will hold a multiplex (frequency) licence for a period of ten years and will have to provide the capacity necessary for the media content broadcasted also through the multiplex administered by the public service broadcaster, while the remaining capacity of the multiplex will be used freely for commercial broadcasters. This is the first of the two planned digital networks (multiplexes) that will not be directly assigned to the incumbent transmission service provider. The other planned multiplex network is reserved for HDTV or mobile TV and will not offer national coverage in the beginning.

Horizontal regulation

Spectrum management

In late 2006 APEK began using software for coordinating and managing the frequency spectrum for both radio communications management and broadcasting spectrum management. In 2007 the NRA continued to monitor development of events and technologies in the areas of UWB (broadband application as a continuation of wireless applications), WAPECS (development of the next generations of access systems), FWA with emphasis on WiMAX technology (3.5 GHz frequency band) and mobile satellite.

Slovenia has implemented all the Commission decisions on spectrum harmonisation.²

THE CONSUMER INTEREST

Tariff transparency

APEK continues to run its web-based price comparison platform (<u>www.komuniciraj.eu</u>), providing comparison facilities for end-users looking for the best service in terms of price, capacity, security and quality.

Universal service

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Commission decisions on the 169 MHz, 5 GHz, 24 GHz and 79 GHz frequency bands were implemented in 2006. Six additional decisions were implemented in 2007. These include Decisions 2007/344/EC on harmonised availability of information regarding spectrum use within the Community, 2007/131/EC on allowing the use of the radio spectrum for equipment using ultra-wideband technology in a harmonised manner in the Community, 2007/98/EC on the harmonised use of radio spectrum in the 2 GHz frequency bands for the implementation of systems providing mobile satellite services, 2007/90/EC amending Decision 2005/513/EC on the harmonised use of radio spectrum in the 5 GHz frequency band for the implementation of Wireless Access Systems including Radio Local Area Networks (WAS/RLANs), 2006/804/EC on harmonisation of the radio spectrum for radio frequency identification (RFID) devices operating in the ultra high frequency (UHF) band and 2006/771/EC on harmonisation of the radio spectrum for use by short-range devices.

The fixed incumbent was appointed as universal service (US) provider for a period of five years back in 2004 and, since January 2006, is also under an obligation to provide US to disabled and disadvantaged users.

Number portability

The availability of number portability has not significantly affected the behaviour patterns of Slovenian consumers, who continue to prefer their first-choice operator. Less than 4% of numbers have been ported since the introduction of number portability in 2006. Some 52 000 fixed and 48 000 mobile numbers had been ported by December 2007.

The prices for porting numbers cannot be considered high. However, the incumbent operator requires that they be ported in blocks only. This is considered, in particular by alternative operators, as an obstacle to further development of competition. The NRA had not yet started to look into this matter at the time of writing this report.

European emergency number 112

Despite the absence of any regulatory obligation, only two "Skype"-type voice applications, out of a number of VoIP service providers, do not provide any possibility of calls to the single European emergency number (112).

112 calls are answered by a call centre (public safety answering point) managed by the Administration of the Republic of Slovenia for Civil Protection and Disaster Relief, a body within the Ministry of Defence. Operators at the call centre are able to answer calls in Slovene. English is also widely available. The single emergency number (112) has been available in Slovenia since 1997. Citizens have been informed about its availability and how to use it via notices in payphone booths, advertisements on ambulances, telephone directories and via the webpage www.sos112.si. Several information campaigns have been conducted in the media over the last few years.

Must-carry

Only television and radio channels of the national broadcaster and programmes with "special significance" status must be transmitted free of charge. However, the obligation to broadcast the content of local channels creates difficulties for cable operators that continue to distribute TV programmes using analogue transmission technology. This problem should gradually disappear with the introduction of digital transmission standards.

The new Law on Digital Radio Broadcasting adopted in October 2007 reiterates the must-carry obligations already laid down in the media legislation for the digital terrestrial network (multiplex) operators.

Data protection

The Data Retention Directive (Directive 2006/24/EC) has been substantially transposed and the decision has been taken to require market players to store the data for 24 months.