AUSTRIA

MAIN MARKET DEVELOMENTS

The total turnover of the Austrian electronic communications sector was €5.06 billion[1] as of 31 December 2009, which is 8.7% lower than the previous year. This represents 1.8% of GDP. The fixed sector's revenue was €1.54 billion (€ 2.1 billion in 2008), and the mobile sector's revenue was €3.3 billion (€3.4 billion in 2008). Total investment in the communications sector continued to decline significantly, by 27.1%, from €711 million in 2008 down to €518 million in 2009. The value of investments by fixed telecommunications operators was €248 million, of which 78% was invested by the incumbent, and the value of investments by mobile operators was €270 million.

As in previous years, mobile services have been very popular, with competitive retail offers. The mobile penetration rate in 2010 was 145.6% and the mobile broadband penetration rate 18.9%. The trend in the declining number of fixed lines over the last 12 years has stalled. The main reason is attractive service bundles offered by the incumbent, containing fixed and mobile telephony and fixed broadband with low tariffs, and which can optionally be combined with attractive tariffs for mobile data services.

The fixed broadband market is characterised by infrastructure-based competition, with broadband cable having a market share of 29% as of January 2011. In this environment of low retail prices for broadband services and regulated wholesale prices set based on retail-minus, alternative operators offering retail services based on LLU and bitstream access products increasingly have difficulties competing and have lost further market share, to 22.8% of the DSL market.

Due to the strong position of cable operators offering telephony and broadband services combined with digital TV at attractive prices, IPTV subscriptions with the incumbent have remained at a comparatively low level of ca. 2% of households.

In July 2010, the fixed and mobile arms of the incumbent merged to form one entity.

MAIN REGULATORY DEVELOPMENTS

During 2010 the Government has been preparing a draft amendment of the Austrian Telecommunications Act[2], which contains inter alia new draft provisions meant for the transposition of the new EU telecoms framework into Austrian law that is due by 25 May 2011.

The Government decided in April 2010 that the upper part of the Digital Dividend spectrum, the 800 MHz band, will be made available for mobile broadband services. The framework conditions in order to make the spectrum available have been laid out in a draft revised frequency range assignment ordinance that was published for consultation until November 2010. This revised ordinance also transposes the requirements of the revised GSM Directive with regard to the refarming of the 900 MHz band into Austrian law.

In September 2010, the NRA conducted a spectrum auction concerning the 2.6 GHz band with a total bandwidth of 190 MHz. All four existing MNOs acquired blocks in this band enabling them to increase radio capacity for mobile broadband services in urban areas.

---

1 Revenues from international roaming not included.
2 The draft law was published for public consultation in March 2011

The NRA set out the framework conditions for the roll-out of NGA with its decision of September 2010 concerning the market analysis and remedies for the market for wholesale (physical) infrastructure network access.
In addition, the NRA adopted regulatory decisions comprising market analysis and remedies with regard to the markets for wholesale broadband access, terminating segments of leased lines with low bandwidth at wholesale and retail level, wholesale fixed origination and termination, as well as a decision on mobile termination concerning an MVNO. Further decisions comprising market analysis and remedies were also adopted, with regard to the retail fixed telephone calls market for non-residential customers, as well as the retail markets for access to public fixed telephone networks for residential and non-residential customers.

NRA

The Austrian Regulatory Authority for Broadcasting and Telecommunications (*Rundfunk und Telekom Regulierungs-GmbH* - RTR) acts as the operational arm of the Austrian Communications Authority (*Kommunikationsbehörde Austria* - KommAustria), which regulates the broadcasting sector, and of the Telecommunications Control Commission (*Telekom-Control-Kommission* - TKK), which is responsible for regulation of the telecommunications markets.

In October 2010 KommAustria, which had been a subordinate administrative body of the Federal Chancellor that regulates the broadcasting sector, became an independent authority (collegial body of 5 persons). This authority took over the tasks of the Federal Communication Senate (*Bundeskommunikationssenat*) in the first instance and was given a range of new competences. It is now additionally responsible for legal supervision of the public broadcaster ORF and its subsidiaries, for the legal supervision of private providers of audiovisual media services (also on the Internet), and for certain tasks under the Austrian Act on Exclusive Television Rights.
The NRA is well advanced with regard to market reviews, having already carried out the 3rd round review for many markets, which is more advanced than in most member states. However, since the NRA follows the regulatory practice of carrying out the market review in two steps - first the market definition and then the market analysis together with the remedies – and with relatively long periods between the two steps, many regulatory decisions adopted in 2010 were based on market definitions adopted in 2008. This bears the potential risk that the market analysis and the remedies are based on a market which is either wrongly delineated or is no longer susceptible to *ex-ante* regulation.

ECONOMIC REGULATION

Broadband

Broadband plans

The Government programme for the period 2008-2013 has defined the broadband target of 25 Mbps for all Austrian citizens by 2013. In this context the Government announced in December 2010 the broadband initiative "Broadband Austria 2013", which is a funding programme with a budget of ca. €30 million based on federal, regional and EU funds and is aimed at stimulating the rollout of broadband infrastructure in rural areas. The coverage of the last white spots with broadband infrastructure and in particular the deployment of NGA infrastructure is expected to foster the fast penetration of ultra-fast broadband services. Projects to deploy both active and passive broadband infrastructures in a defined set of regions are eligible for funding and the first projects are expected to start in 2011.

Market situation

The fixed broadband penetration rate was 23.9% in January 2011 (up from 22.7% in January 2010), which is slightly below the EU average of 26.6%. In January 2011, fixed broadband lines based other than on DSL, mainly broadband cable, had a market share of 31%, which is well above the EU average of 23% and illustrates the high degree of infrastructure based competition. However, the market share of the incumbent continued to increase to 54% overall in fixed broadband and to 78.3% in DSL lines, both well above the EU average of 43% and 54%, respectively. The low market share of alternative operators in DSL lines can be explained by the low margin to be gained from a low retail price level, which is limited by the service bundle offered by the incumbent containing fixed and mobile telephony, fixed broadband and the option of mobile data services. This bundle had been introduced in 2007 by the incumbent to address the market trend of fixed-mobile substitution, namely the decline of fixed lines and the tendency of customers to subscribe to mobile services only. This trend can be illustrated by the declining growth rate of fixed broadband lines from 6% in 2009 to 5.8% in 2010, whereas the number of broadband lines based on technologies other than DSL increased by 3%. In January 2011, 85.6% of DSL broadband lines provided by alternative operators were based on full LLU and the remainder on bitstream access.

The mobile broadband penetration rate remained among the highest in the EU in January 2011, at 18.9%, up from 15.1% in January 2010 and well above the EU average of 7.2%, taking into account only the number of mobile broadband connections using dedicated data cards/modems/keys, which typically allow mobile Internet via laptops. Mobile operators continued to offer attractive mobile broadband packages with retail prices in the order of €1/GB data volume.

The incumbent made some progress in the deployment of its NGA network. Those regions with a higher population density saw the network being partly upgraded to VDSL. However, the share of broadband lines based on VDSL was below 1% at the end of 2009 and the number of IPTV subscriptions with the incumbent remained low, at only ca. 2% of households. The share of broadband lines based on FTTH remained low at 0.5%. With regard to FTTC and FTTH deployment, the incumbent has started with four pilot projects in two districts of the capital and two other cities. In parallel, the main cable operator has continued to upgrade its network to offer very high speeds in the main cities.

Regulatory issues

In September 2010, the NRA set out the framework conditions for the roll-out of NGA networks by adopting the market analysis and remedies concerning the market for wholesale (physical) infrastructure network access. The NRA imposed, *inter alia*, access to the ULL at the central office, the street cabinet and the in-house distribution frame, access to ducts and access to dark fibre. Virtual unbundling is imposed, where traditional LLU access obligations need to be replaced or supplemented in areas of NGA roll-out. Furthermore, the NRA imposed an obligation on the incumbent to publish a reference offer for virtual unbundling. The reference offer was published in December 2010 and was amended in January 2011 at the request of the NRA.

The market for wholesale broadband access had been deregulated for residential customers in the market definition since September 2009. In its assessment of this market definition the NRA had identified two separate markets for broadband access at the retail level, for residential and business customers, respectively. Whereas the business market comprised only of DSL based connections, the residential market comprised of DSL as well as cable TV and mobile broadband connections. Due to the different degree of competition found at the retail level, the NRA considered only the wholesale broadband access market for the subsequent use of business customers to be susceptible to *ex ante* regulation. Based on this market definition, the NRA adopted the related market analysis and the associated remedies in November 2010. Due to the negligible roll-out of FTTH and the fact that the incumbent still does not operate an optical fibre network directly to the end-user, the NRA continues to exclude FTTH lines from the relevant market. In terms of price-control for bitstream access products, the NRA does not calculate the charges according to a cost-orientation methodology. Instead, it chose to use a retail-minus approach in order to prevent margin squeeze and to ensure that efficient alternative operators are not foreclosed.

Mobile

Market situation

Mobile penetration stood at 145.6% in October 2010, above the EU average of 124.2%, and an increasing proportion of the total voice traffic volumes were handled through mobile networks (75% at the end of 2009). The mobile market continues to be highly competitive, with mobile service bundles being offered at low prices and attractive optional tariffs for mobile data services with large data volumes.

The average price per minute of mobile communications in 2009 was €0.09[3], which is slightly below the EU average of €0.10. The average annual revenue per user has decreased slightly and at the end of 2009 it was €298 compared to €333 the previous year, but it is still above the EU average of €244. This confirms the suggestion that more competition and lower prices for consumers are leading to an increased use of these services.

As of October 2010, the leading mobile operator had a market share of 41%, the second largest operator had a market share of 30% and the rest of the operators together had a market share of 29%. 30.9% of users have a pre-paid service, compared to an EU average of 51.6%. The 3G-only MNO has the lowest market share with regard to voice services, but is the third biggest Internet provider overall when including fixed providers[4].

Operators continued the roll-out of 3G data networks based on HSPA, reaching coverage of 94% of the population, with typical data rates of 5Mbps and peak data rates of 21Mbps. After the frequency auction concerning the 2.6 GHz band, three MNOs announced their LTE roll-out plans for 2010 and 2011 with the objective of covering major cities with fast broadband networks supporting data rates of up to 100Mbps.

Regulatory issues

With its decision of February 2010 concerning the market for mobile termination, the NRA imposed the same obligations on a new entrant, an MVNO, as was previously imposed on MNOs. This decision is in line with the third round review of the market for mobile termination in 2009, where the NRA imposed a symmetrical glide path for the reduction of MTRs, starting at €3.50 cents until June 2010 and reaching the target charge of €2.01 cents from June 2011. In preparation for the next market analysis in 2011, the NRA is adjusting the cost model in order to bring the MTRs of both MNOs and MVNOs to levels representing efficient costs. The level of MTRs is among the lowest in the EU - the EU average is €5.6 cents.

Roaming Regulation

The tariff provisions as well as the transparency provisions for data roaming services of the amended Roaming Regulation were reported as having been applied by all operators without technical problems.

3 Including a fixed fee for minute packages
4 Austrian Internet Monitor Q2/2010

Fixed

Market situation

Even if the shrinking of the fixed market could be halted, the fixed market is still lagging behind the mobile market. This can be illustrated by 12.2 million SIM cards in comparison to 2.7 million fixed lines. In 2010 it was estimated that only 25% of the total minutes of communication went over fixed networks and 75% went over mobile networks.

As of July 2010, 82.0% of the subscribers were using the incumbent operator for direct access[5], a percentage which has remained at the same level as the previous year and which is above the EU average of 75.9%.The market share of the incumbent in the calls markets has remained stable or decreased slightly in some segments; for instance, the market share of the incumbent for all fixed calls increased to 60.2% in December 2009 from 56.7% in December 2008 based on revenues, which was below the EU average of 65%. The second largest operator has a market share of slightly above 15% and the rest of the market is split up among 78 different operators. Based on outgoing minutes, the market share of the incumbent for all fixed calls went up from 52.2% to 55%, and was also below the EU average of 58.9%.

Regulatory issues

In its decision of September 2010, the NRA designated the incumbent as having SMP in the retail fixed telephone network access markets for residential and non-residential customers, respectively. Concerning remedies, the NRA withdrew the obligation to provide Wholesale Line Rental (WLR) and replaced it with an obligation to provide Voice over Broadband (VoB) access. Whereas the NRA argued that WLR products have not been taken up, competitors expressed concerns that an important part of the ladder of investment had been removed.

The third review of the retail fixed telephone calls market for non-residential customers was finalised with the NRA's decision of November 2010. The TKK confirms that the market definition covers all connections made by non-residential customers originating from fixed locations to national and international call partners, including dial-up connections via fax and modem. Calls using VoB are part of the relevant market, while call originations using Voice over Internet (VoI) and calls from public pay phones are not. The NRA imposed on the incumbent an obligation of accounting separation and retail price control on a price cap basis in order to prevent excessive or predatory prices. In addition to the upper price cap, the price control is strengthened by the introduction of a lower boundary in the price levels.

Concerning the markets for fixed call origination and termination, the TKK designated the incumbent as having SMP in the call origination market and designated the incumbent and each of the 21 alternative network operators (ANOs) as having significant market power in their respective markets for fixed call termination. As for the remedies, the TKK decided to maintain the current tariff level for the incumbent for local interconnection, to avoid a price increase and to ensure a smooth transition towards a model based on the incremental costs of an efficient operator providing the relevant service. Furthermore, the TKK decided not to impose an access obligation on ANOs in the market for fixed call termination, because the TKK is of the view that the absence of reported denial of access would justify not imposing such an obligation. As a result, current fixed interconnection charges are among the highest in the EU. Whereas the rate for fixed interconnection at the local level has been set at €0.82 cents, the EU average stands at €0.47 cents. This stands in contrast to MTRs in Austria, which are among the lowest in the EU.

---

[5] Data are estimates.

In May 2010, the NRA adopted the market analysis and remedies concerning the market for wholesale terminating segments of leased lines with low bandwidth. The NRA decided to continue to regulate this market. Most notably, it decided to replace the current general cost-orientation obligation with a price-cap regulation, without taking into account increased efficiencies on a forward-looking basis.

Furthermore, the NRA adopted the market analysis and remedies for the retail market for leased lines with low bandwidth in September 2010 and decided to continue to regulate this market *inter alia* by continuing to impose a price-cap.

Broadcasting

Market situation

As of July 2010, 2.5% of households had analogue terrestrial TV, 5% were relying on DVB-T only, 50% received TV via satellite (97% thereof via digital satellite), and 43% used cable as their TV platform (21% thereof via digital cable). The level of subscription to the IPTV service of the incumbent continues to be limited, at ca. 2% of households.

Due to the poor service take-up of mobile TV services based on DVB-H, the participating companies decided to stop providing the service as from the end of December 2010.

Regulatory issues

The package of amendments to media legislation that was adopted in July 2010,which *inter alia* transposed the requirements of the Audiovisual Media Services Directive (2007/65/EC) and implemented EU requirements concerning the financing of the public broadcaster. Furthermore, in October 2010 the law for private television was replaced by the newly adopted law for audiovisual media services (AMD-G).

The digitalisation process was initiated in October 2006 and the switchover is scheduled to be completed during Summer 2011.

HORIZONTAL REGULATION

Spectrum management

The Government decided in April 2010 that the upper part of the Digital Dividend spectrum, the 800 MHz band, will be made available for mobile broadband services. The related auction is planned for the first quarter of 2012. The decision was partly based on a study commissioned by the RTR, which confirmed the higher economic value of mobile broadband services compared to broadcasting services in this band.

The framework conditions in order to make the spectrum available have been laid out in the draft revised frequency range assignment ordinance that was published for consultation until November 2010. This revised ordinance also transposes the requirements of the revised GSM Directive with regard to the refarming of the 900 MHz band into Austrian law. The actual refarming of 900 MHz frequencies takes place upon request. After the entry into force of the amended ordinance RTR launched a public consultation on future frequency assignments and on the liberalisation of the 900 MHz and 1800 MHz frequency bands.

In September 2010 the NRA conducted a spectrum auction concerning the 2.6 GHz band with a total bandwidth of 190 MHz. All four existing MNOs acquired blocks in this band enabling them to increase radio capacity for mobile broadband services in urban areas. The licenses contain a population coverage obligation of 25% until 2013 and run until 2026.

According to information available to the Commission, not all of the necessary preparation has been made in Austria which would facilitate the granting of an authorisation to the operators of systems providing mobile satellite services selected by the Commission in accordance with European Parliament and Council Decision 626/2008/EC.

Rights of way and facility sharing

After the amendment of the Telecommunications Act from 2009 with the aim of facilitating access by electronic communications operators to existing infrastructures, which are not limited to electronic communications infrastructure, to promote NGA deployment, the possibility to demand access has been taken up by several operators. Several dispute resolution procedures on the matter are ongoing.

The RTR has started a stakeholder discussion on a coordinated approach to mobile network deployment and infrastructure sharing with the aim of publishing a position paper in 2011.

THE CONSUMER INTEREST

Tariff transparency and quality of service

The 2nd amendment to the communications parameters, fees and value-added services ordinance 2009 (KEM-V 2009) entered into force in October 2010. As a result, cost transparency for calls to numbers for private networks (05 numbers) has been extended. The amendment requires that for new mobile phone contracts from March 2011, an upper limit of €40 cents per minute will apply for calls to 05 numbers. Operators are also required to play a message providing information on rates whenever more is charged for 05 calls than for fixed number calls. Consequently, this lead to the designated effect that the charge for 05 numbers decreased and is now basically similar to the charge for fixed number calls.

In order to provide comparative information on current prices for mobile communications, in November 2010 the Austrian Chamber of Labour launched tariff guidelines and a tariff calculator based on simple customer profiles.

Net neutrality

In October 2010 a content association requested several Austrian ISPs block certain foreign websites because of alleged copyright infringements. The same association also initiated legal proceedings in this regard against the largest Austrian cable operator.

Universal service

As in previous years, the financing of universal service was not based on the funding mechanism laid down in the Telecommunications Act, and operators continued to agree amongst themselves on compensation for the universal service provider.

Number portability/switching

The issue of changing provider has not been identified as a problem, as the service is generally transferred within one day, overnight. The number of complaints on service interruptions received by the NRA was not significant. Concerning the mobile number portability, the switching fee is usually set at the maximum regulated rate of €19, while the wholesale fee typically lies at €3.50.

Consumer complaints

Complaints in 2010 were often centred on the hidden costs that arise in addition to advertised prices comprising of e.g. excessive prices for value-added service numbers charged over mobile networks and outside the flat rate volume. By far the most complaints are related to high prices for consumed volumes exceeding the flat rate limit and data charges outside the service bundle. Consumers often complained about hidden costs, in particular when tariffs were switched by the same provider. Consumer associations explained the issue of hidden costs was a result of the fierce competition and very low prices that forced operators to make offers look extremely attractive. Other complaints were concerning differences in the actual level of quality experienced compared to the one advertised or contractual quality levels.

European emergency number 112

The European emergency number 112 can be called from both fixed and mobile telephones. Caller location information is provided for all calls, upon request (‘pull-system’). There are different national emergency numbers in Austria and the level of awareness among the population of the European emergency number 112 has been low. The government launched an information campaign via TV and advertised the number in public transport.

Harmonised numbers for harmonised services of social value (116)

In September 2010, the harmonised number 116 000 (the hotline for missing children) was assigned to the Austrian association for the search of missing persons. The availability of that number is expected in 2011. In addition to 116 000, the harmonised numbers 116 123 (the emotional support helpline for life aid) and 116 006 (the helpline for victims of crime) are currently assigned in Austria. However, out of these, only 116 123 is actually available.

Must Carry

The must-carry requirements have been amended with the adoption of the audiovisual services media law in October 2010. In particular the law requires cable network providers to carry up to three channels. In addition to the requirement to carry the public channels, including the public sport channel, a private channel can request to be carried, if it contributes to cultural diversity in the relevant region.

e-Privacy

The EU Directive on data retention has still not been transposed. Regarding data on Internet use and emails, Austria had to transpose the relevant rules laid down in the EU Directive on data retention by March 2009.