

BELGIUM

MAIN MARKET DEVELOPMENTS

Despite the international economic crisis, investment levels and revenues in Belgium's electronic communications markets remained at fairly satisfactory levels throughout 2009. The total revenues acquired in the electronic communications sector throughout 2009 increased to around €10.15 billion from around €9.85 billion recorded at the end of 2008 (an increase of 3% in 2009 in contrast to a almost nonexistent increase in the previous year). The total value of annual tangible investments in electronic communications networks has slightly increased (by 0.8% in 2009), from €1.28 billion at the end of 2008 to €1.29 billion at the end of 2009.

Broadband penetration rate still largely exceeds the European average. This situation seems to be the result of platform competition between the incumbent and the cable providers, which both have a national geographical coverage of almost 100%. They have based their strategy on an upgrade of technologies. While the incumbent uses a fibre-to-the-curb (VDSL2) technology, which allegedly reaches 73% of population at the end of 2009, the cable companies are enabling their networks for EuroDocsis 3.0 (which have allegedly been upgraded for 90%).

On the other hand, mobile penetration is below the European average, while prices remain relatively high and mobile data services do not really appear to have taken off. Much is expected from the recent amendments to the consumer protection law, which completely liberalises the sale of tied offers, including devices, and from the announced auction of a fourth 3G licence and of 4G licences.

Belgian consumers seem to be increasingly attracted by multiple-play offers. Belgium, is one of the most densely cabled countries of the EU, and cable companies have traditionally kept a very strong foothold in the broadcasting transmission market. Multiple play packages (mainly those including IP television) are gradually denting this strong foothold however. .

MAIN REGULATORY DEVELOPMENTS

Apart from some new provisions on spectrum management and consumer protection, the legal framework for electronic communications remained fairly stable throughout 2010. Further amendments to the NRA Statute Act would be necessary in order to strengthen the NRA's powers of strategic decision making. With the notable exception of Royal Decrees regarding the auctioning of 3G and 4G spectrum rights, implementation measures have not been realised due to the reduced legislative powers of the caretaker government after the June 2010 elections.

The transposition of the reviewed Framework only commenced in December 2010 with the consultation of all stakeholders which was organised by the NRA (*Belgisch Instituut voor postdiensten en telecommunicatie – Institut belge des services postaux et des telecommunications*; BIPT/IBPT) at the request of the minister of Enterprise and Simplification. Special attention was also given to possible amendments concerning the universal service regime following two judgments of the Court of Justice of the EU (ECJ) concerning Belgium in this matter, delivered on 6 October 2010 in cases C-222/08 and C-389/08. The Court found that Belgium had infringed Articles 12(1) and 13(1) of the Universal

Service Directive, by failing to include the benefits, including intangible benefits, in the net cost calculation of the social component of universal service and by making a general finding that all undertakings responsible for the provision of universal service are subject to an unfair burden without carrying out a specific assessment.

NRA

The Belgian NRA, to which a new board was appointed in November 2009, has shown strong willingness to take a fresh start. It modified its organisation structure in 2010, thus anticipating a new bill on the NRA's strategic behaviour, still expected to be adopted. All national stakeholders have been consulted on a new strategic plan under the name "Moving forward to a strong and independent BIPT". This high-level plan, which presents the NRA's vision statement, missions, values and strategic choices for the period 2010-2013, remains to be completed by tangible and measurable operational plans as at the end of the reporting period. On 1 November 2010, the NRA services were reorganised. Stakeholders have been expressing strong concerns for many years regarding the human and financial resources of the NRA, in particular regarding the use of the budget.

Throughout 2010, the NRA has adopted a new decision for the market of voice call termination on individual mobile networks, and has further implemented regulation in the broadband markets. Regulated offers for ADSL2+ and VDSL, as well as for Ethernet transport, have been improved or definitively established. For these and other markets, which have not been reviewed since 2008, consultations are ongoing and more regulation is probably to be expected for 2011, also in coordination with the regulators of the Communities.

ECONOMIC REGULATION

Broadband

Market situation

With 31.2% market penetration as of January 2011 and an eighth place in the European ranking, Belgium is still above the European average of 26.6%. Growth in the penetration rate between January 2011 and July 2010 was around the EU average. Broadband coverage, in general, is almost 100%.

The market share of the fixed incumbent, at the national level, has decreased slightly: 46.5% of retail broadband lines were delivered by the incumbent as of January 2011 while the joint alternative operators' market share has reached 53.5%. Cable Internet lines represented 45% share in fixed broadband lines, which is the highest proportion in the EU. The number of users of dedicated data services (via modems/cards/keys only) is growing very slowly and remains very limited (respectively 1.7 and 2.7% of population in January 2010 and January 2011).

Resale was the main form of wholesale access as of January 2011 (69 % of alternative operators' broadband access lines). Bitstream access decreased to 14.4% of lines. Lowering access prices has not stirred the further take-up of unbundled lines (14.4 % of lines had been fully unbundled).

Prices have remained at a fairly high level during the last years. At the same time, connection speeds are increasing in Belgium and quite high levels may now be attained. With 26% of all broadband lines having a speed equal or above 30 Mbps, Belgium is one of the EU leaders in very-high speed lines. This transition is driven by the upgrading of existing networks. The

fixed incumbent, on the one hand, has been rolling out its VDSL2 network since 2008 and claims coverage in this regard of more than 73% of households at the end of 2009. Cable companies, on the other hand, claim that 90% of their network infrastructure has been upgraded to Docsis 3.0.

Retail market developments point to a widespread uptake of multiple-play packages since 2009. More than 50% of broadband subscribers purchase this access as part of a bundle, and most of them (almost 50% of broadband subscribers) have digital TV included in their package (according to IBPT/BIPT figures). As of July 2010, 13.6% of the population have subscribed to bundled offers.

Regulatory issues

While the NRA finally made a tangible start with the preparation of new market decisions, the 2008 market review decisions were further refined and completed. In August 2010, IBPT/BIPT lowered the monthly unbundling and bitstream rental fees for ADSL and ADSL2+. At the same time, IBPT/BIPT finalised the regulated VDSL2 offer by adopting the tariffs for bitstream access through this technology, complementing the 2009 regulation on qualitative aspects (contractual terms, operational processes, delivery terms and compensations) and one-time fees. The NRA also established the monthly rates for Ethernet transport in the reference offers for wholesale broadband access, VDSL2 and bitstream access over Ethernet. Such decisions are considered essential by alternative operators in the context of the incumbent's traffic completely migrating to Ethernet technology by the end of 2012.

The operational processes of the incumbent's wholesale business, which were the subject of an audit in 2009, continue to be a matter of concern for alternative operators. They will also be the focus of attention for the NRA according to its newly adopted Strategic Plan. Following a proposal put forward by the incumbent which was aimed at improving quality requirements and introducing new processes to the existing reference offers, a draft decision was submitted to consultation of the market in November 2010.

On 20 December 2010, draft decisions on the markets for physical network infrastructure access (LLU) and for wholesale broadband (bitstream) access were submitted to national consultation. Definitive decisions are to be adopted by June-July 2011, and would again lead to the imposition of regulatory remedies on both markets. In the domain of infrastructure common to both telecommunications and broadcasting, IBPT/BIPT is under the obligation, set out in the cooperation agreement of 2006, to co-operate with the regulators of the Communities. It appears indeed that the proposed regulatory process in the broadband markets is carried out in coordination with new regulatory initiatives from the regulators of the Communities in their respective broadcasting transmission markets.

Mobile

Market situation

The penetration rate in terms of active subscribers rose from 106.9% to 108.4% (throughout the year until October 2010), still well below the European average of 124.2%. Mobile prices have slightly decreased (from 0.18 EUR per minute in 2008 to 0.17 EUR in December 2009) but remain far above the EU average (0.10 EUR).

The distribution of market shares (SIM cards) between the largest and the second operator seems to have slightly changed in favour of the latter (whose share increased to 32.6% as of October 2010, compared to 31.1% one year earlier), while the third largest operator's share remained more or less stable at 24.6%. Although traffic via virtual operators increases (in

minutes), the number of customers (SIM cards) decreased in 2009 and represents 11% of the total number of SIM cards (compared to 12.2% end 2008). The proportion of prepaid subscribers has also decreased from 58.6% to 52.9% (throughout the year until October 2010).

All three mobile operators are currently offering 3G services (covering more than 80% of population). The adoption of a new consumer protection law in April 2010 removed the legal obstacles for mobile operators offering subsidised handsets, which might boost the consumption of 3G services. Several test licences were granted for 4G.

Regulatory issues

In the view of the Commission Recommendation for the regulatory treatment of fixed and mobile call termination rates, IBPT/BIPT adopted a market decision on 30 June 2010 for voice call termination on mobile networks. All mobile network operators were designated with SMP on their respective networks, and a set of remedies including price regulation, non-discrimination and accounting separation obligations were imposed on these undertakings. Mobile termination rates were almost halved from 1 August 2010, and will continue to decrease until 2013. The current asymmetry in the termination rates between the MNOs has started to decrease, and full symmetry should also be achieved by the same date.

In order to ensure legal certainty, the 2006 market decision, which was partly annulled by the Court of Appeal in 2009, was restored by a retroactive decision covering the regulatory period 2006-2007.

Roaming Regulation

Belgian operators appear to be in compliance with the requirements of the Roaming Regulation. One network operator and some virtual operators are offering voice roaming at lower tariffs.

Fixed

Market situation

The number of access lines provided by alternative operators has again increased, mainly via cable.

The decline of fixed voice telephony traffic, which started in 2007, has clearly become a trend (-0.1 billion minutes in 2009). Mobile telephony traffic definitely exceeds fixed traffic (47.7% of traffic). With regard to overall traffic volumes, the fixed incumbent's market share remained high (more than 65% as of December 2009), while its share of retail revenues has continued to decrease (65% in 2009 compared to 68% in 2008). Traffic volume in voice-over-broadband telephony is rising.

Regulatory issues

No new market decisions were adopted in the field of fixed telephony in 2010. The NRA consulted the market players on an annex related to voice connectivity completing the draft decision on access to the public telephone network at a fixed location (on which consultations took place in 2009). Migration from ISDN-PSTN to an All IP network with a new architecture is currently taking place, with closure of local exchanges foreseen as from 2013. Access to voicestream is not expected to be imposed as a wholesale obligation.

The 2007 wholesale and retail leased lines market decisions which were annulled by the Appeal Court in 2009, were revised and newly adopted in September 2010 in accordance with the NRA's powers to retroactively restore annulled decisions.

Broadcasting

Market situation

Cable TV remains the most used platform, offering analogue and digital transmission: more than 95% of the Belgian population has access to cable television, while penetration stood at 73.9% of Belgian households as of January 2010. The incumbent's digital TV platform claims coverage, and respectively penetration, of 88% and 13.7% of households. One other operator has started offering IPTV services based on satellite technology. The existing DVB-T platforms only broadcast public service channels for free. In the north of the country, one commercial DVB-T licence has been granted.¹

Belgian customers are taking more and more interest in multiple-play packages. 32% of Belgian households have purchased two or more services from the same provider, with a single price and under the same invoice.² Apart from the fixed incumbent and the cable operators, only a few operators appear to be able to provide triple-play services.

Regulatory issues

In the Belgian constitutional structure, the regulation of media, including that of broadcasting transmission services, falls within the remit of the regional regulators. In a coordinated effort to regulate these markets in accordance with the limits of their respective administrative areas, these regulators (including IBPT/BIPT for Brussels) submitted draft decisions for national consultation in December 2010. These markets would be defined according to the coverage areas of the respective cable operators, upon which appropriate regulatory obligations would then be imposed. The notification and adoption of these measures, by each of the regulators, is expected for the first semester of 2011, in coordination with the adoption – by IBPT/BIPT – of measures for the wholesale broadband markets.

HORIZONTAL REGULATION

Spectrum management

It has been announced that the 4th UMTS licence would be auctioned in 2010 in the 2.1 GHz band. Draft royal decrees for the organisation of the auction and for the reshuffle of the frequencies of the three existing mobile operators were adopted by the Belgian council of ministers, and were further agreed in co-operation with the regional ministerial councils. These decrees were adopted in December 2010 and published in January 2011 in the Belgian Official Journal. The 4th UMTS operator will have a first and exclusive right to obtain 2.1 GHz spectrum as well as the possibility of obtaining spectrum in the 900/1800 MHz bands. National roaming is also available to the new operator for a period up to eight years. 4G licences, which currently are only assigned on a trial basis, are expected to be auctioned after the summer 2011. In March 2010, the NRA delivered an opinion on the possible granting of this licence (including its view on national roaming).

¹ Data collected by the regional regulators.

² Source: Statistics of Ministry of Economy. 01/01/2008.

A royal decree specifying the conditions for spectrum trading was adopted in February 2010. This had no impact in practice yet in 2010.

Royal Decrees adopted in December 2010 have implemented Decision 2009/766/EC by allowing UMTS in the 1800 MHz band by February 2011 and transposing Decision 2008/477/EC on the harmonisation of the 2500-2690 MHz frequency band for terrestrial systems capable of providing electronic communications services in the Community.

According to information available to the Commission, not all of the necessary preparation has been made in Belgium 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 No 626/2008/EC.

Rights of way and facility sharing

Environmental and health aspects of antennas for mobile telephony fall within the remit of the Regions, which have issued their own norms for electromagnetic fields exposure. The issue of suspended building permits for antennas has been delayed, which creates a complex situation for the roll-out of mobile networks.

Administrative charges

A unique fee for the use of frequencies ("*redevance unique*") has been imposed by law of 15 March 2010 on the three mobile operators.

The NRA manages its budget independently, and all operational costs are borne by itself. It is obliged to provide an annual overview of its administrative costs and of the total sum of the charges collected. As indicated in the IBPT/BIPT 2009 accounts, its revenues exceeded the expenses by more than 4 million EUR. In accordance with the legal obligation to transfer all surpluses to the State, this amount has been transferred to the treasury.

THE CONSUMER INTEREST

Consumer complaints

The amount of consumer complaints lodged before the independent Ombudsman has been steadily increasing over the last number of years. The Ombudsman published its annual report on 15 June 2010. It concluded that the number of complaints increased slightly in 2009 compared to 2008, due to considerable increase in Flanders, and pointed notably to issues of paid SMS services to which some end users seem to subscribe without being properly informed of terms and conditions.

Tariff transparency and quality of service

Since 2009, IBPT/BIPT provides Belgian consumers with a web-based "tariff simulator", which is also intended to include a tool for the comparison of multiple-play services.

In June 2010, a fine 800,000 EUR was imposed on the incumbent for infringing the Electronic Communications Act with regard to the operator's obligation to inform its customers about price increases, and about the right to withdraw, without incurring a penalty, from the contract in such case.

Net neutrality

Net neutrality issues have not been raised so far in the Belgian context.

Universal service

In case C-222/08, Commission/Belgium, the Court found on 6 October 2010 that Belgium had failed to fulfil its obligations under Articles 12(1) and 13(1) of the Universal Service Directive. The Court held that Belgian legislation had failed to take into consideration, in the calculation of the net cost of the provision of the social component of universal service, the market benefits, including intangible benefits, accruing to the undertakings responsible. The Court held furthermore that, by making a general finding that all undertakings designated for the provision of the universal service are in fact subject to an unfair burden on account of that provision, without carrying out a specific assessment both of the net cost which the provision of universal service represents for each operator concerned and of all the characteristics particular to each operator (including the quality of its equipment or its economic and financial situation), Belgium had not ensured a correct assessment of the unfair nature of the burden associated with the provision of universal service.

In the meantime, the Constitutional Court in January 2011 declared the contested provisions of the Belgian legislation unconstitutional and annulled them. Amendments to the legislation regarding the universal service obligations have been proposed in the draft texts for the transposition of the Review Package (submitted to national consultation in December 2010).

Number portability/ switching

In Belgium, mobile numbers should be ported in one (for a simple porting) or two days (for complex operations), but not more than three days. As at 30 September 2010, more than 1.2 million fixed numbers and more than 2 million mobile numbers were held by another operator than the original holder.

A law was adopted in April 2010, imposing the obligation on Internet service providers to allow their end-users to use facilities to keep track of their original e-mails during a certain time, when switching operator. This law requires further implementation with the adoption by the ISPs of a code of conduct, which had not been developed by the end of 2010. A further consumer protection bill, intended to promote switching between operators and changing tariff plans with the same operator, was pending.

European emergency number 112

Operators are obliged to finance modifications to the emergency access centres if expenses are accrued due to the modification of the operator technology. Secondary legislation implementing this fund for emergency services is under preparation.

Harmonised numbers for harmonised services of social value (116)

Only the 116000 number out of the 116 range has been assigned in Belgium to the service for missing children, and is now operational. Regarding 116111 and 116123, a call for candidates was published already in 2007. Following consultations concerning 116006 and 116117, a call for candidates is planned for 2011.

e-Privacy

The document submitted in December 2010 by the IBPT/ BIPT for public consultation regarding the implementation of the revised telecoms package proposes to change rules applicable to storage of information in the terminal equipment of end user and access to such information.

A reference for a preliminary ruling from the Brussels Court of Appeal lodged in February 2010, case number C-70/10, is pending before the Court of Justice of the EU. The reference seeks a clarification on the question whether the relevant directives concerning privacy, data protection and intellectual property rights protection allow Member States to authorise a national court to order an Internet Service Provider (ISP) to filter all electronic communications in order to identify the sharing of electronic files on its network, and subsequently to block the transfer of such files if they infringe a copyright.