

# HUNGARY

## MAIN MARKET DEVELOPMENTS

In 2009, the Hungarian electronic communications market continued to be characterised by strong infrastructure based competition driven by bundle offers from the incumbent and cable operators. In accordance with an adverse economic environment, the total turnover of the sector decreased considerably, to around € 3.49 billion, remaining at 3.8% of GDP, and showed a recession for the sector for the first time in this decade, with a slowdown of 12.3%. Although the trend for the sector followed the pattern at EU level, this recession is nearly double the downturn registered at EU level. In particular, fixed services recorded a considerably more serious decrease of 20.6%, to € 1.618 billion, whereas the mobile sector could record higher revenue (of € 1.874 billion) in comparison to fixed for the first time, with a lesser annual decrease of 3.6%. As a result of the economic trends, some operators carried out restructuring while some sectors showed signs of further consolidation.

In October 2010, a new “crisis tax” was introduced on three major sectors of the Hungarian economy: retail commerce, telecommunications services and energy distribution. The tax is due for three consecutive years on the basis of net revenue, and starts from 2010. The scope and rate of the tax is defined individually per industry and per amount of revenue. For telecommunication it is defined with reference to the Act on Electronic Communications as activities registered under the general authorisation scheme.

Some market players expressed their concerns over possible distortive affects, as services relying on wholesale products may be due for multiple payments also resulting in a disproportionate burden for alternative operators. In addition, the unexpected introduction of the tax (growing progressively up to 6.5%) may adversely influence the business plan of operators with particular regard to their investments in infrastructure.

Throughout 2010, market developments continue to be influenced by infrastructure based competitive pressure and an increase in bundled offers. In June, the incumbent introduced a quadruple play bundle offer combining TV, Internet, as well as fixed and mobile telephony. In the course of 2010, stand alone MNOs entered into agreement with a number of cable or fixed operators to provide multi play bundles.

## MAIN REGULATORY DEVELOPMENTS

In April 2010, general elections took place in Hungary. As a consequence, the FIDESZ KDNP coalition won 263 out of 386 seats in the Parliament, receiving the 2/3 majority that is required for legislation such as constitutional amendments or amendments to the Media Act. During the summer, a complete restructuring of public administration has been carried out. According to the new administrative architecture, there are now fewer ministries with state secretaries responsible for the individual portfolios. The Senior State Secretariat for Infocommunication of the Prime Minister's Office and the few remaining staff from the former Ministry of Transport, Communications, and Energy is now integrated into the new Ministry of National Development, with a wide range of portfolios received from the former Ministry relating primarily to infrastructure.

In October 2010, the Ministry held consultations on the prospects of the transposition of the revised regulatory framework. However, no draft measures had been published by the end of 2010.

In the second semester of 2010, the governing party has been engaged in extensive legislation. Between June and December, a comprehensive media package has been tabled, that covered a wide range of measures including constitutional amendments, restructuring of the NRA and amendments to the digital switchover.

In December 2010, a new Media Act<sup>1</sup> was adopted. The new act aims to transpose the rules of the Audiovisual and Media Directive that had been subject to infringement proceedings earlier that year<sup>2</sup>. In addition, the new Act provides for a deferral of the switching off of analogue transmissions under certain circumstances, and incorporates the rules on must carry obligations of the Act on Digital Switchover<sup>3</sup>.

In 2010, Act C of 2003 on Electronic Communications was amended on 11 August by Act LXXXII of 2010 on the amendment of certain Acts concerning media and communication. Then on 2 September 2010 it was further amended by Act CIII of 2010 on the amendment of certain Acts concerning media and communication and again on 23 December 2010 by Act CLVII of 2010 on enhancing the protection of public registries belonging to public digital assets.

## **NRA**

Following the resignation of the president of the NHH (National Communication Authority, Nemzeti Hírközlési Hatóság) in December 2009, the Prime Minister appointed in January 2010 the vice president in office to fill in the remaining term of the presidency. Only three months later, the newly appointed president offered her resignation as of 30 June 2010, after which some members of the board voluntarily stepped down.

In June 2010, the Government submitted a comprehensive legislative package that merged the National Regulatory Authority with the National Radio and Television Commission. Consequently it did away with the current structures, leaving the president instead of the board of NHH. A Media Council for media related matters was introduced which members were elected by the Parliament. Following the proclamation of the amending Act, a new president, and a new vice president responsible for electronic communications has been appointed to the converged National Media and Infocommunications Authority (Nemzeti Média és Hírközlési Hatóság). The new president is appointed for 9 years, and is vested with strong safeguards against dismissal. The vice president responsible for electronic communications is appointed by the president for an indefinite period. In December 2010, an amendment to the Constitution vested the authority with the right to issue secondary legislation (decrees)<sup>4</sup>.

## **ECONOMIC REGULATION**

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<sup>1</sup> Act CLXXXV of 20 December 2010 on media services and mass media

<sup>2</sup> Infringement 2010/0099 against Hungary on the non-communication of measures to transpose Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities

<sup>3</sup> Act LXXIV of 2007 on the rules of broadcasting and digital switchover

<sup>4</sup> Act CXIII of 2010 amending Act XX of 1949 on the Constitution of the Republic of Hungary

## **Broadband**

### *Broadband plans*

In October, the Ministry published a discussion paper for consultation on the draft Digital Hungary Programme. The programme is closely linked to the European Digital Agenda in its content and aim, reflecting the broadband targets enshrined therein (100% coverage of broadband connection of at least 4 Mbps by 2013 and 1 million with NGA access of at least 20 Mbps by 2014).

As highlighted in the 15<sup>th</sup> implementation report, the previous government concentrated its efforts to achieve progress with the concept of the Digital Public Utility Project, but as the portfolio of electronic communications has been transferred to the Ministry of Development, the project is being reconsidered.

The incumbent has signed an agreement with the European Investment Bank for a long-term loan of € 150 Million to fund its Long Term Evolution and 3G mobile network expansion and fixed broadband to enable high speed services.

### *Market situation (including NGA)*

Broadband penetration showed a further increase (to 20.6% as of January 2011), but still remained below the EU average (26.6%). The majority of 2 057 820 active retail broadband lines were non DSL (1 236 210, accounting for 60.1 %). Most of the subscriptions allowed a speed between 2 and 10 Mbps, remaining above the number of connections with speed beyond 10 Mbps (767 808), while the number of connections under 2 Mbps were considerably lower (317 071). The market share of the incumbent in DSL lines increased substantially from 76,6 to 80.4%, however, the incumbent lost market share in total broadband lines (from 40.6% to 40.2%), showing further growth of services based on other platforms such as cable and mobile broadband services. Cable operators are upgrading to DOCSIS 3.0 and the incumbent is expanding its NGA network. According to information provided by the incumbent, as of December 2009, 545000 households can be reached via FTTB, although the Market share of FTTH remained low (1.1 %).

As of January 2011, there were 500 000 mobile broadband dedicated terminal equipments and 777 461 mobile active users with access to dedicated data services via modems/cards and other active 3G users using mobile terminals, reaching 4.9% and 7.8% penetration respectively.

### *Regulatory issues*

In June 2010, the NRA held a public hearing on the market analysis of infrastructure and the wholesale broadband access market. The draft measures on markets 4 and 5 were published in December.

In October 2010, the Hungarian monthly price per fully unbundled local loop remained at €7.70, below the EU average (€9.61) and for shared access (€1.55, as in October 2009) it is also below the EU average (€2.13). The growth of full ULL continued in 2010, ULL represented 12,4% of new entrants' DSL lines in January 2011 as opposed to 8.8% in January 2010. The share of bitstream access decreased but remains dominant (85.5% of alternative operators).

## **Mobile**

### *Market situation*

Following an unsuccessful frequency auction for a fourth mobile operator in 2009, the structure of the mobile market did not go through significant changes throughout 2010, as the market share of the incumbent remained considerably higher, with 44.8% of SIM cards (as of October 2010), whereas the third operator was gaining some ground on the others (with market shares of 32.7% and 22.6% respectively). Mobile penetration rose to 108.4% with 10 855 131 subscribers as of October 2010, showing an increase comparable to 2009, but still remaining below the EU average of 124.3%. The number of pre-paid subscriptions decreased in 2010 (59.4% in October 2010), but remained above the EU average (51.6%). The average revenue per user decreased over the year from €207 in 2008 to €175 in 2009, although the decrease has been slighter than at EU level.

In 2010, competitor MNOs increased their efforts to enter into agreements with other providers partly to match the bundle offers brought out by the incumbent. The second mobile operator confirmed in July 2010 that a new reseller will enter the market using the network of the second operator, offering phoneset packages. In July 2010, the third mobile operator concluded agreements with resellers to distribute its mobile broadband products through an IP telecom operator and an alternative operator offering broadband, voice communication and hosting services. The broadband services shall be linked to the services of the resellers who shall be responsible for accounting and client service.

On the basis of temporary licences, all mobile operators run tests on 4G services (LTE and HSPA+).

### *Regulatory issues*

Following the current glide path based on a bottom-up LRIC model, the MNOs are required to gradually decrease their mobile termination rates; symmetry between operators was achieved on 1 January 2009. The level of MTRs in October 2010 stood at 5.16 €-cents, below the EU average of 5.46 €-cents. In accordance with the reductions in wholesale charges, the retail average mobile price per minute also decreased in 2009 (€0.11), but remained slightly above the EU average (€0.10). The average revenue per mobile user has decreased significantly over 2009 (from €188 in 2008, to €166 in December 2009).

### *Roaming Regulation*

Throughout the first semester of 2010, a number of awareness campaigns have been launched by the NRA as well as by some of the MNOs to draw attention to the introduced cut off limits, unintended roaming as well as the new roaming tariffs.

## **Fixed**

### *Market situation*

In 2010, the fixed telephony market did not witness any major structural changes (the largest regional operator is the incumbent, whereas the second regional provider by number of subscriptions is owned by financial investors and the third by a cable company), the three regional fixed operators continue to hold a strong market position in their respective territories. On the basis of national call traffic, in 2009 the three operators had 90.0% market share for all types of fixed calls (84.5% in 2008) as well as 89.4% and 90.3% market shares respectively for calls to mobile and fixed calls. The market share of fixed operators for international calls on the basis of outgoing minutes of communication increased significantly during 2009, from 76.9% to 85.6%, which were partly due to acquisitions in 2009 on the fix

voice market. The increasing competitive pressure from VOIP operators is evidenced by a significant increase in market share of VOIP operators in fixed calls (from 8.5% to 12.1% in December 2009).

#### *Regulatory issues*

In April the NRA published for national consultation its draft decision on market analysis concerning access to PSTN residential and non residential services. The Commission challenged in its decision on the draft measure the inclusion of IP telephony in the market for retail telephony access and as well the non-imposition of wholesale line rental. . According to the justification of the final decision adopted by the NRA in September, mobile, VOIP and leased lines are not considered a substitute for fixed telephony. The decision maintains the geographical segmentation in accordance with the territories of the regional concessions, and each regional incumbent is designated as SMP in its own territory. Measures include a price obligation (adjustment to the consumer price index), non discrimination of subscribers and a carrier selection obligation.

In Hungary, fixed interconnection charges remained unchanged over the past year. Fixed interconnection charges at local level for terminating calls on the incumbent's fixed network were at €0.51 in October 2010, slightly above the EU average of €0.47. Fixed interconnection (single transit) stood at €0.64 (below the EU average of €0.68), whereas interconnection charges (double transit) for terminating calls on the incumbent's fixed network were at of €0.69 (also below the EU average of €0.86).

## **Broadcasting**

#### *Market situation*

Despite a slight decrease in 2009, the household penetration of cable television (55.6%) remained higher than all other platforms (Satellite-TV – 20.8%, IPTV – 2.6%). The cable market saw further consolidation in 2010, as both the incumbent and major cable and fixed operators increased their market share through acquisitions of smaller cable operators.

#### *Regulatory issues*

In spring 2010, the NRA held consultations on the digital switchover and has since been active in raising awareness on the forthcoming gradual switching off of analogue broadcasting, with particular focus on viewers with free of charge access to analogue terrestrial broadcasting. With particular regard to social aspects, a financial scheme to support the acquisition of equipment by viewers has been considered.

In June 2010, the European Commission requested 12 Member States (including Hungary) to update their national broadcasting rules in order to comply with their obligations under the Audiovisual Media Service (AVMS) Directive. Hungary notified the transposition in January 2011.

## **HORIZONTAL REGULATION**

#### *Spectrum management, including refarming, digital dividend*

As highlighted in the 15<sup>th</sup> implementation report, some mobile network operators do not possess sufficient frequencies to provide both voice and data services. In addition, Hungary

did not implement the GSM Directive, and introduced a possible delay for the completion of the digital switchover.

In particular, Hungary failed to communicate the measures transposing Directive 2009/114/EC (the amendment of the GSM Directive)<sup>5</sup>. Consequently, the Commission launched infringement proceedings for non communication. According to the Authorities, the required amendments shall form part of a more general revision of the frequency fee structure. As a response to a request from stakeholders, the administration has been developing a new scheme for the fee structure. The issues of the current scheme were already highlighted in earlier reports, as they were considered by operators as a major obstacle to network deployment. Finally, the NRA adopted a decree on the assignment and use of frequencies that entered into force on 1 April 2011.

In August 2010, the NRA held a public hearing on spectrum management, encompassing the implementation of the GSM Directive, the use of the digital dividend and the revision of the frequency fee structure.

The new Media Act amended the Act on the Rules of Broadcasting and Digital Switchover in December 2010 to introduce the possibility of delaying the analogue switch off. Under certain conditions (i.e. at least 94% of the population has access via a free-to-air broadcasting service, and that devices required are available) the digital switchover may be delayed until 31 December 2014.

As a result of the active monitoring of the progress of MSS implementation in Member States the Commission urged the relevant authorities in Hungary to better 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*

While the general rules as laid down in the Act on Electronic communications were not amended in 2010, the implementing decree 29/1999 KHVM has been amended<sup>6</sup> to define the scope of the authorisation.

#### *Administrative charges*

The Act on Electronic Communication sets out the ceilings for the administrative fee at 0.35% of the operators' previous year's annual net revenue derived from e-communications services. The exact rate is established by the competent Minister each year<sup>7</sup>; for 2010, it set the rate at 0.212%.

In October 2010, a specific tax has been imposed to certain sectors including the telecommunications industry. As the specific tax on electronic communications services is due on activities defined by the Act on Electronic Communications as being registered under the general authorisation scheme, in the Commission's Services view, this tax, as far as the telecoms sector is concerned, could be considered as a charge imposed in violation of the EU regulatory framework for electronic communications, in particular, Article 12 of the Authorisation Directive. In addition, the tax scheme bears similarities to levies adopted by

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<sup>5</sup> Directive 2009/114/EC amending Directive 87/372/EEC on the frequency bands to be reserved for the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community (GSM Directive), OJ L 274, 20.10.2009, p. 25–27

<sup>6</sup> Ministerial Decree 8/2010 MeHVM amending certain ministerial decrees concerning universal electronic communications services

<sup>7</sup> Ministerial Decree 5/2004 IHM, as last amended by Ministerial Decree 32/2010 KHEM

Spain and France, which were subject to infringement procedures on the same legal grounds (infringements 2009/5061 and 2010/2025 against France and Spain). Therefore, in October 2010 the Commission Services sent an administrative letter to Hungary with a view to clarifying the situation. On 17 December, the Hungarian Authorities replied to this letter, highlighting the general tax aspects of the levy and contesting that the tax would fall under Article 12 of the Authorisation Directive<sup>8</sup>.

## **THE CONSUMER INTEREST**

### **Consumer complaints**

In Hungary, complaints concerning electronic communication services are investigated either by the NRA, the competition authority or the consumer protection authority. In 2010, the primary sources of complaints at the NRA were issues relating to billing, closely followed by complaints relating to contracts (without issues relating to binding contracts). Quality of service and client service issues were third and fourth followed by service related issues and binding contracts.

### **Tariff transparency and quality of service**

In January 2010, the incumbent was fined by the Competition Authority HUF 20 million (approx €40 000), for unfair commercial practices with regard to consumer information on one of its promotions. In April, two operators were fined for unfair commercial practices concerning their comparative promotional campaigns on landline Internet packages. In September, the third MNO was fined HUF 60 million for unfair commercial practices concerning its advertisements on mobile broadband offers, and in October the incumbent had to pay a HUF 200 million fine for insufficient information on one of its SMS games.

In January, the NRA adopted guidelines to enhance the rules on the distribution of premium rate ‘push/pull’ short text messages, and the Representative of Communications Consumer Rights joined an initiative to establish a website dedicated to informing mobile users.

For the past few years, the NRA has been maintaining an online database ([tantusz.nmhh.hu](http://tantusz.nmhh.hu)) on mobile, fixed-line, Internet prices, cable television, multi-play (2-play/3-play) and roaming related applications in collaboration with operators.

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<sup>8</sup> On 14 March 2011, the Commission sent a letter of formal notice on the “specific tax” imposed on the telecom sector, and expects further information from Hungary on its position concerning the compatibility of the legislation with EU Law.

## **Number portability/switching**

As of October 2010, 534 587 fixed numbers were ported in Hungary that year. The annual growth of mobile numbers ported still remains low in comparison to the number of subscribers in Hungary: between May 2004 and October 2009 a total of 356 106 mobile numbers were ported, and about 0.6% of subscribers ported their numbers between October 2009 and October 2010. Whilst the maximum time permitted for mobile number portability is 8 working days, it takes on average 6 working days to port a fixed and 3 days to port a mobile number in Hungary. Whereas the wholesale price of €4.50 for porting fixed numbers remained below the EU average of €6.10, the wholesale price of €6.00 for porting a mobile number was higher than the EU average of €4.40 to the same proportion.

## **Net neutrality**

The NRA did not impose any fines on MNOs for blocking traffic of consumers with subscriptions advertised as unlimited, as was the case in 2009.

## **Universal service**

In Hungary all incumbent local telephony operators (currently three) are designated as providing universal services in their respective geographic areas. However, as the negotiations failed to achieve an agreement, service obligations were renewed annually by Ministerial decree. In addition, the Universal Electronic Communications Support Fund has not de facto functioned, as providers have not received compensation from the fund over the past few years. In August 2010, the Constitutional Court annulled<sup>9</sup>, with *pro futuro* effect as of 31 December 2010, the Government Decree of 2008 that extended the expiring universal service agreements. The resulting *ex lege* situation needs to be resolved by the signing of the renegotiated universal service agreements. However, this had not been done by the end of 2010.

Following the amendment of the relevant rules of the Electronic Communications Act in 2009<sup>10</sup>, in April 2010, a new implementing governmental decree<sup>11</sup> was adopted to establish detailed rules for the universal services. The rate of functional Internet access established at 9 600 bit/sec has been subject to criticism by consumer organisations.

## **European emergency number 112**

The recent Eurobarometer survey<sup>12</sup> indicated a further increase on the number of respondents who would call 112 in Hungary from 31% in 2010 to 36% in 2011. Nearly one in five Hungarians (17%) had received information about 112 in the last 12 months and a relatively high percentage of them (10%, second highest among Member States) replied to have received information from an electronic communications provider.

In 2010, the Commission asked for clarification concerning the implementation of caller location requirements. On the basis of the information available, the system in place, established by Decree 23/2007 GKM, was considered to be in conformity with the

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<sup>9</sup> Decision 138/2010. (VII. 8.) of the Constitutional Court

<sup>10</sup> By Article 18 of Act CLI of 2009 amending Act LXXVIII. Of 2005 on organization competence, responsibilities and procedures of the National Accreditation Body

<sup>11</sup> Governmental Decree 97/2010. (III. 31.) on the detailed financial and technical conditions and requirements for the provision of universal electronic communications services

<sup>12</sup> Eurobarometer Flash survey on the European emergency number 112 (February 2011)

requirements under EU law. However, in 2011, Commission Services will further assess the implementation in light of the enhanced requirements of the revised regulatory framework.

### **Harmonised numbers for harmonised services of social value (116)**

While the numbers 116000 and 116111 remained active in 2010, the third number has still not been assigned. With regard to the two new numbers, the NRA made it known that the number is available for the provision of the service and that applications may be submitted.

### **Must Carry (optional)**

Articles 73–75 of the new Media Act adopted in December incorporate the rules on must carry obligation previously regulated by Articles 24–28 of the Act on Digital Switchover. The revised obligations appear to be in accordance with existing must carry rules in their scope. According to the new obligation, broadcasters are required to transmit a total of four linear audiovisual and three linear radio media services of the public media service providers free of charge. In addition, up to ten percent of the total capacity, but no more than three media services, shall be dedicated to the provision of regional or local audiovisual community media services. The Media Council of the converged NRA is responsible for the enforcement of these obligations.

### **e-Privacy**

In December 2010, the Parliament adopted an act on public registries<sup>13</sup> that excludes private entities from the processing of certain data of public interest, limiting the processing to public entities. The transition period for execution shall expire on 31 December 2011.

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<sup>13</sup> Act CLVII of 2010 on enhancing the protection public registries belonging to public digital assets