

LATVIA

MAIN MARKET DEVELOPMENTS

The total turnover of the Latvian electronic communications sector was about € 687 million and the total value of tangible investments in electronic communications networks was about € 89 million at the end of 2009. Latvian operators continued to invest in upgrading broadband networks in 2010. The incumbent reported having covered 300 000 households with FTTH networks by the end of the year and the alternative operators also worked on increasing broadband speeds.

As a result, in 2010 Latvia had one of the highest shares of FTTH lines in the EU and the share of high speed lines (above 10Mbps) doubled for the second consecutive year. However, at the same time, the broadband penetration growth stopped completely and Latvia's gap with the EU average broadband penetration increased again. The year 2010 also confirmed the earlier trend of the growing broadband market share of the incumbent, which exceeds the EU average.

Strong competition continued in the mobile sector where operators reported considerable progress in expanding 3G coverage, which was boosted by Latvia's early decision taken back in 2009 to liberalise the use of the 900 MHz band for UMTS. On the other hand, the market for fixed voice services continued to shrink and there was no change as regards the incumbent's undisputed dominance in this market.

MAIN REGULATORY DEVELOPMENTS

Regarding the transposition of the revised EU framework, on 7 October 2010 the Ministry of Transport issued draft amendments to the Electronic Communications Law and the Information Society Services Law for public consultation.

The first reduction of the termination rates of the three main mobile network operators and of the fixed incumbent took place on 1 April 2010 followed by a second one on 1 August, starting the application of the glidepath imposed on these operators by the NRA until 1 January 2012.

The second round review of the network physical access and broadband access markets did not result in any change as regards the use by alternative operators of the regulated wholesale products of the incumbent in 2010 – both local loop unbundling and bitstream access remain non-existent in practice for the time being. The fibre networks are not subject to regulatory remedies but the NRA issued a preliminary consultation document at the end of 2010 on the regulatory approach to these new networks.

As regards radio frequencies, in 2010 the NRA adopted new general rules on their assignment and held the first frequency auctions, which included entitlement for the winner to transfer the rights of use to another undertaking. The digital TV switchover was completed for all national TV channels on 1 June. The switch-off of the analogue TV transmissions has not, however, resulted yet in the availability of any digital dividend spectrum, which is related to cross-border interference issues with Latvia's non-EU neighbouring countries.

Intensive work continued during 2010 on the two pending infringement proceedings launched by the Commission concerning Latvia's electronic communications sector. While the first case concerning the structural separation of the regulatory and ownership/control functions of the Ministry of Transport was finally resolved, the efforts in establishing a new methodology and revising the administrative charge rates of the Electronic Communications Office did not lead to the settlement of all the issues regarding the application in Latvia of EU law provisions in this area and the case will continue in 2011.

NRA

The Latvian NRA dealing in particular with market analysis and dispute resolution in the electronic communications sector is the Public Utilities Commission (SPRK). The tenure of the Chairperson of the SPRK Council, which is the SPRK decision-making body consisting of five members (including the Chair), ended on 4th December 2010. Since one of the five Council members had already ceased working earlier, this left the SPRK Council with just three members and meant that it could only adopt decisions unanimously. The two selection procedures organised by the government in 2010 to fill the vacant posts were not successful¹.

In 2010, the SPRK continued its practice of not issuing formal decisions at the end of market analysis process if the existing remedies imposed in the first round of analysis remained unchanged. The Commission services have repeatedly stressed in this respect that the availability of a formal decision is necessary to enable verification of how the NRA has taken the utmost account of the Commission comments and to guarantee to market players the right of appeal against the NRA decision.

In the area of appeals another issue to be followed in 2011 will be the proposed draft amendments to the Law on Regulators of Public Utilities. These draft amendments, the consideration of which was continued by the newly elected Parliament following the general election in October 2010, provide that the SPRK decisions in dispute resolution procedures will no longer be open to appeal in the administrative court. Instead, the appellant would be able to bring the claim against the other party in the civil court. This proposal is relevant in the context of the provisions of the Framework Directive regarding appeals against decisions of the NRA.

As regards other regulatory functions in the electronic communications sector, the year 2010 saw the resolution of the infringement case launched by the Commission in 2008 about the structural separation of the regulatory functions exercised by the Ministry of Transport regarding frequencies and numbering from its activities associated with the ownership and control of State-owned communications and network providers. Following the sending of an additional letter of formal notice on 18 March 2010 and the ensuing discussions on different possible solutions, the Electronic Communications Law was amended on 16 December 2010 providing that the Ministry of Environmental Protection and Regional Development (VARAM) would be in charge of the Electronic Communications Office (ESD), including a review of its decisions on appeal. The Ministry of Transport accordingly remains responsible for the relevant State-owned undertakings whilst its regulatory powers have been transferred to VARAM. The transfer of the responsibility over the ESD should provide this Ministry with the necessary know-how and resources to assume fully its new regulatory powers in these significant areas of telecom regulation.

¹ A new selection procedure was launched in January 2011, which was successful and resulted in Parliament appointing the new Chair and Council members of the SPRK on 24 February 2011.

ECONOMIC REGULATION

Broadband

Broadband plans

In August 2010, the Ministry of Transport submitted for approval to the Cabinet of Ministers draft “Guidelines for the electronic communications policy in 2011-2016”. These draft guidelines did not provide for specific broadband coverage targets but set the penetration targets (20% in 2012 and 25% in 2016 for fixed broadband and, respectively, 15% and 30% for mobile broadband). They also aim at increasing the number of inhabitants who use internet regularly to 70% in 2012 and 85% in 2016.

As regards rural broadband, in 2010 the Latvian authorities continued to prepare, in co-operation with the Commission, the application for a new project worth about € 20 million to be co-funded by EU structural funds.

Market situation

After slowing down in 2008 and 2009, the growth of Latvia's fixed broadband market stopped completely in 2010 with the penetration rate as of 1 January 2011 remaining the same as one year earlier – 19.3%. The EU average penetration rate increased in the same period by 1.8 percentage points to reach 26.6%, thus widening the gap between Latvia's and the EU average broadband penetration rate. The EU average growth exceeded that of Latvia also in the area of mobile broadband. Consequently, in January 2011, Latvia continued to have one of the lowest penetration rates in the EU of mobile connections using only dedicated data cards/modems/keys typically allowing mobile Internet via laptops (2.4% compared to the EU average of 7.2%).

The fixed incumbent reported having rolled out FTTH networks to some 300 000 households in urban areas by the end of 2010. The share of FTTH broadband lines jumped from 5.1% in January 2010 to 17.7% in January 2011, which is one the highest in the EU and well above the EU average of 1.8% for such lines. In addition, the fixed incumbent reported using VDSL architecture to upgrade networks in certain compactly populated rural areas. Latvian alternative providers using cable and Ethernet technologies were also upgrading their networks to offer higher speeds.

These upgrading efforts by operators are reflected in the information on fixed broadband speeds, which continued to show strong progress between 1 January 2010 and 1 January 2011. The share of high-speed lines above 10 Mbps again doubled from 20.7% to 41.3% and is now slightly above the EU average share of 38.9%. Consequently, the share of low-speed lines (up to 2Mbps) dropped in this period from 18.1% to just 5%, which is well below the EU average of 13.3%. The share of lines in the 2 to 10 Mbps range, which is the most common in the EU (47.8% of all lines) also decreased from 61.2% to 53.7%.

The fixed incumbent's progress in network upgrading is also confirmed by its broadband market share, which continued to increase in 2010 to reach 53% on 1 January 2011 compared to 51.8% a year earlier. As a result, for the second consecutive year the incumbent's market share exceeds the EU average, which dropped to 43.3% (46.2% with resale) in January 2011.

Regulatory issues

The second round review of the wholesale market for (physical) network infrastructure access (including shared or unbundled access) at a fixed location, which the SPRK carried out in 2009, did not bring about any change as regards the use by alternative operators of the fixed incumbent's regulated wholesale products. There was no take-up of either LLU or bitstream products in 2010 as operators continued to compete on the basis of alternative infrastructures.

During 2010, the SPRK carried out the second round analysis of the wholesale broadband access market. As it proposed no change in the SMP designation and in remedies already imposed, the existing decision was tacitly extended without a new one being taken.

The incumbent's fibre networks, although included in the relevant market, have not been made subject to any regulatory remedies. In this respect, in November 2010 the SPRK issued a consultation document on regulated access to next generation access networks. In this document, SPRK seeks input on the need to regulate unbundled access to fibre access networks, access to the engineering infrastructure of another operator, access to terminating segments and the establishment of a database of ducts.

Mobile

Market situation

The mobile penetration rate was 136.1% in October 2010, which was higher than the EU average rate of 124.2%. The largest mobile network operator (MNO) had 49% of mobile subscriptions (SIM cards), the second largest MNO held 36% and the other mobile operators – the remaining 15% of the market. The competition in mobile services remained strong and Latvia's mobile customers continued to benefit from some of the lowest mobile prices in the EU – the average price per minute was € 0.05 in December 2009, which was just half of the EU average price of € 0.10. The average revenue per user was € 104 at the end of 2009, which was also less than a half of the EU average of € 244.

MNOs reported significant increases in mobile data usage and made use of the early liberalisation in Latvia of the 900 MHz band to increase their 3G coverage. Some LTE tests were also performed in the 2.6 GHz band. On the other hand, the Mobile Virtual Network Operator (MVNO) business continued to shrink – at the end of 2010 there were just two independent MVNOs left, which operate on the network of the new GSM/UMTS entrant.

Regulatory issues

In January 2010, the SPRK notified to the Commission its decision on the termination rates of the two established MNOs, imposed on the basis of the first round market analysis. The relevant decisions had already been adopted in October 2009 and the SPRK notified them *post-factum* before they took effect on 1 April 2010, subject to a commitment to revisit the decisions in the event of significant comments from the Commission.

In parallel, SPRK also notified the second round analysis of the mobile termination markets, which resulted in a decision being taken on 10 February 2010 regarding the new GSM/UMTS entrant, additionally imposing on this operator cost-orientation and cost accounting obligations. The remedies imposed on the two established operators and on the fourth mobile operator (using the CDMA2000 technology) were not changed and no formal decisions were taken regarding these operators.

As a follow-up to the decision concerning the new GSM/UMTS entrant, the SPRK issued a decision on 24 February imposing on it a glidepath starting on 1 April 2010 and ending on 1 January 2012, with rates which are identical to those imposed earlier on the two established operators. As a result, the termination rates of the three Latvian MNOs decreased to 0.047 LVL on 1 April 2010 (about 6.7 €-cents) and to 0.04 LVL on 1 August 2010 (about 5.7 €-cents), which was slightly above the EU average MTRs of 5.46 €-cents in October 2010. The MTRs of these Latvian operators will go down to 0.026 LVL (about 3.7 €-cents) on 1 January 2012.

In the dispute between the two established operators regarding SMS termination charges, on 27 January 2010 the SPRK instructed them to ensure mutual accounting of the SMS services provided to one another and to start making payments for these services according to their original interconnect agreement concluded in 1999.

Roaming Regulation

The MNOs reported having introduced the cut-off limit for roaming data services as required under the amended Roaming Regulation.

Fixed

Market situation

The fixed voice market continued declining in 2010. According to the latest available statistics as of December 2009, the fixed incumbent's market share increased considerably by retail revenues (89.4% compared to 81.8% in December 2008) but slightly decreased by volume of traffic (93.8% compared to 95.8% in December 2008). By both indicators, this is one of the largest market shares for a fixed incumbent in the EU. Compared to mobile and broadband markets, the competition in fixed voice services accordingly remained very limited. A slight reduction in the Carrier Selection (CS) call volumes was reported and only two operators were providing services using Carrier Pre-Selection (CPS).

Regulatory issues

Further to the second round market review carried out in 2009, in January 2010 the SPRK notified to the Commission its decision on the fixed incumbent's termination rates. This notification was made *post factum* as the SPRK had already adopted the decision in October 2009 but before it took effect on 1 April 2010. As a result of the SPRK decision, in October 2010 the charge for terminating calls (given the application of a set-up charge, this is calculated on the basis of a three minute call) on the fixed incumbent's network went down to about 1.21 €-cents in the case of both single and double transit (compared to 1.54 €-cents in October 2009). Nevertheless, this charge still remained above the EU average per minute charge of 0.68 €-cents in case of single transit and 0.80 €-cents in case of double transit.

In December 2010 the SPRK launched a consultation on the third-round review of the fixed termination markets. Even though the second review of this market was done just a year earlier in 2009, this third review was considered necessary to deal in particular with alternative networks, which have so far been subject only to transparency obligations and did not voluntarily align their termination rates with those of the fixed incumbent.

Broadcasting

The analogue broadcast of the national TV channels was switched off throughout Latvia on 1 June 2010. Also all regional channels moved to the digital platform during 2010 and only some local broadcasters continue analogue broadcasting. The cost of the implementation of digital TV by the fixed incumbent in co-operation with the State-owned infrastructure provider remained a lively debated issue with some national TV channels indicating from time to time their plans to change their legal status in order to avoid the high broadcast transmission fees for the free-to-air channels.

HORIZONTAL REGULATION

Spectrum management

Latvia had liberalised the use of the 900 and 1800MHz bands as early as October 2009, i.e. before the formal adoption of the amended GSM Directive, by removing restrictions to GSM in this band in the national frequency allocation plan. Since the relevant MVNO licences were technology neutral and only subject to conditions set by the frequency allocation plan, the MNOs were thus immediately enabled to launch UMTS in this band, subject to acquiring the necessary installation and usage authorisations from the ESD. The assessment of the effect of the liberalisation on competition, required by Article 1(2) of the amended GSM Directive, has not so far been carried out but the risks from the liberalisation are not considered high given that all the three MNOs have equal 900 MHz spectrum holdings.

According to the Latvian authorities, the 800 MHz digital dividend band cannot be currently made available for electronic communications services because of the interference risks with the aeronautical navigation services of the Russian Federation and Belarus, which are expected to continue in this band until the end of 2015.

On 3 August 2010, the Cabinet of Ministers adopted amendments to the National Frequency Plan implementing Commission Decision 2008/477/EC regarding the 2500-2690 MHz frequency band. However, this frequency band remained reserved for the provision of MMDS (wireless TV) until the existing legacy rights of use in this band expire at the end of 2013.

On 16 February 2010, the Cabinet of Ministers issued a new edition of its Regulations specifying frequency bands, for which the number of rights of use should be limited. The frequency bands listed in this Regulation are those for which the SPRK is obliged under the Electronic Communications Law to organise either an auction or comparative selection procedure. This new edition notably included the 2300 – 2370 MHz band as from 1 November 2011.

On 24 March 2010, the SPRK issued a revised edition of the “Rules on the rights of use for radio frequencies”. These Rules set out the procedure for applying to the SPRK for acquiring, extending, withdrawing and transferring rights of use. Compared to the previous 2009 edition, the revised rules provide for the possibility for rights holders to transfer their rights where these have been acquired through auction, which includes spectrum trading rights for the winner. These trading rights were subsequently applied by the SPRK to the two spectrum auctions it held in 2010 regarding 1x2 MHz of previously unassigned spectrum in the 900 MHz band and regarding the 3.6 – 3.8 GHz band.

By the end of 2010, the SPRK had not issued the rights of use to the two satellite operators, which had been selected by the Commission in 2009 to provide pan-European Mobile Satellite Services (MSS) in accordance with European Parliament and Council Decision No 626/2008/EC. These operators did not apply to the SPRK for the rights of use in 2010.

Rights of way and facility sharing

The amendments to the Electronic Communications Law of 10 June 2010 have now distinguished “installation” from “construction” activities, the former now being within the exclusive remit of the ESD, while in matters of construction both the ESD and local authorities remain involved.

Another issue being discussed in this area in 2010 was duct ownership where the legal situation is complicated by the fact that no duct survey was carried out in 1993 at the time of the privatisation of the fixed incumbent and there are now legal challenges by other operators regarding the incumbent's entitlement to these ducts.

Administrative charges

On 12 July 2010, in response to the Commission letter of formal notice issued in 2009, the ESD elaborated and approved a new Methodology for calculating administrative charges for ensuring electro-magnetic compatibility (EMC). On the basis of this methodology, on 28 December 2010, the Cabinet of Ministers adopted new Regulations No. 1236 on the EMC charge rates. In light of the adoption of this methodology and the Regulations No. 1236 a number of new issues emerged with regard to the application of Article 12 of the Authorisation Directive in Latvia that will be followed up by the Commission in 2011².

THE CONSUMER INTEREST

Consumer complaints

In Latvia, consumer complaints about communications service providers are handled by both the SPRK and the Consumer Rights Protection Centre. The SPRK can deal with individual operators, control quality of service and order a reduction in payment or the termination of the contract with a subscriber. Minimum guaranteed broadband data speeds are to be stipulated in contracts with the consumers. SPRK also screens operators' contracts for clauses deemed to be unfair with regard to consumers.

The Consumer Rights Protection Centre hears complaints and can impose administrative fines on operators and order them to change their practices. Furthermore, in the event of repeated breaches and administrative fines, the Centre can request that the police institute criminal proceedings against the operator.

Tariff transparency and quality of service

The broadband speeds testing system provided by the SPRK can now be used also for testing mobile broadband speed.

Number portability/switching

The number of ported mobile numbers between 1 January and 30 September 2010 was once again greater than in the same period a year earlier, amounting to 97 408 numbers. On the other hand, the number of fixed numbers ported in this same period dropped to just 6298 numbers.

Number portability remains free of charge for both fixed and mobile customers. The wholesale rate charged by fixed operators remained 6.02 LVL for a number ported out (about € 8.5), which the SPRK had recognised as being cost-oriented in 2008.

In the mobile sector, the two established mobile operators continued to contest each other's wholesale charges (set at around € 8) and there was no progress in the resolution of this dispute in 2010. On the other hand, in the course of 2010 the new GSM/UMTS entrant reduced its number portability charge to the level of the charge applied by the two established operators.

² The Commission issued an additional letter of formal notice to Latvia regarding these issues on 14 March 2011.

Net neutrality

Net neutrality was not reported to be an issue also in 2010. Mobile operators reported that they were not considering restricting mobile VoIP and also indicated that there is no evidence of any increase in the use of mobile VoIP, which is explained by low retail voice tariffs.

Universal service

There were no developments in 2010 concerning the long-planned introduction of the universal service (US) compensation fund and the fixed incumbent remained the designated US provider. Until the establishment of the fund, compensation to the designated US provider is to be paid from the budget. In this respect, during 2010 the US provider reached an agreement with the Government regarding compensation for the net costs of US in 2006 – 2008 through a reduction of its dividend payments, which were due to the State as its shareholder.

On 2 November 2010, the SPRK issued a decision on the net cost of providing universal service in 2009 and found that it has constituted an unfair burden on the US provider. The SPRK set the net cost in the amount of approx. 94 000 LVL (€ 134 000), which was significantly less than the compensation requested by the US provider (approx. 261 000 LVL / € 373 000) and just about one quarter of the net cost in 2009 (380 000 LVL / € 543 000). Among the different elements of US, as in 2008, public pay phones accounted for most of the net cost in 2009 (about 600 000 LVL / € 857 000) but this was reduced due to profits in the provision of the “social tariff” for PATS and the provision of comprehensive directories and directory inquiry services and due to intangible benefits.

Following the changes to the scope of US made by the SPRK in December 2009, about 4000 disabled users were reported as benefiting from the discounted broadband service.

European emergency number 112

On 9 March 2010, the Cabinet of Ministers adopted an amendment to the National Numbering Plan providing for two additional national emergency numbers – 110 for the police and 113 for medical services, which are now also available on telephone networks alongside 112 and the historical two-digit numbers for each emergency service.

Accordingly, Latvia appears to have chosen a different development path from the one observed in some other EU countries, which work instead on integrating the various emergency services within a common platform that makes less relevant the need for separate national numbers per individual emergency service.

Harmonised numbers for harmonised services of social value (116)

The only 116 number currently in operation in Latvia is 116111 for child helplines, which is run by the fixed incumbent and operates as a freephone. The helpline service is provided by a State authority, the State Inspectorate for the Protection of Children’s Rights, which also covers the cost of communications.