

ROMANIA

MAIN MARKET DEVELOPMENTS

Revenues in the electronic communications sector of Romania in 2009 totalled €3.9 billion, which was 14.7% less than the previous year. In particular, the revenues of the mobile sector experienced a considerable decline of 19.0%, from €2.773 billion to €2.244 billion, whereas the fixed sector recorded a slighter decrease of 9.7%, from €1.304 billion to €1.177 billion. This indicates that the divide between the two sectors has decreased, but the mobile is still almost double than the fixed.

The total value of tangible investment in electronic communications networks in 2009 amounted to €611 million (0.5% GDP). This represents a considerable reduction (over 36%) compared to total investment in the sector of €966 million of 2008. Over half of the investment was carried out by mobile operators (€358 million), while the cumulative investment of all alternative operators in fixed networks is higher (of €136 million) than the investment in fixed networks of the incumbent (€117 million).

MAIN REGULATORY DEVELOPMENTS

In July 2010, the Parliament approved the emergency act¹ adopted by the Government in 2009 to restructure the electronic communications regulator.

The national strategies on the development of broadband and the digital switchover process adopted in 2009 have not been followed up with operational plans. The Strategy on digital switchover was amended by the Government to postpone the analogue switch off deadline till 2015. As regards the third policy paper adopted in 2009 relating to the implementation of Universal Service in Romania, the telecoms regulator (ANCOM) has been working to adopt the bylaws to reflect the new approach. The ANCOM Decision was adopted and published on 17th of January 2011.

ANCOM also reviewed the last three wholesale markets, completing the first review round following Romania's accession to the EU.

ANCOM submitted to public consultation the new law on electronic communications between December 2010 and January 2011, which included the amendments transposing the revised EU regulatory framework. The proposal covered: the general authorisation regime, radio spectrum and numbering management, end-users' rights, Universal Service, measures the regulatory authority may adopt in view of fostering competition, and the sanctioning and control procedure.

ANCOM notified to the Commission the wholesale access markets and imposed obligations on the wholesale (physical) network infrastructure access market, whereas the wholesale broadband access market was not formally defined. In November 2010, ANCOM notified the wholesale terminating segments of leased lines. The measures were adopted by ANCOM decision 6/2011 of 7 January 2011 concerning wholesale terminating segments of leased lines market and decision 15/2011 of 10th of January 2011 concerning obligations imposed on the SMP operator.

According to its 2007-2010 strategy paper, ANCOM has not interfered in the emergence of bundled services, unless they have an adverse impact on competition. According to ANCOM,

¹ Emergency Ordinance No 22/2009 setting up the National Regulatory and Administration Authority for Communications - ANCOM ('Ordonanța de urgență a Guvernului nr. 22/2009 privind înființarea Autorității Naționale pentru Administrare și Reglementare în Comunicații'), Romanian Official Gazette no. 174/19.03.2009

in the context of the Romanian market, the benefits of this phenomenon outweigh the shortcomings, due to the strong incentivising effect on consumption.

In February 2010, a new memorandum of cooperation was signed with the national consumer protection authority aimed at improving the exchange of information, mutual support for dealing with complaints and for legal initiatives, conducting common controls and information campaigns.

In November 2010, ANCOM made public its proposed 2011 Action Plan, which included the assessment of the impact of the 900MHz frequency band use for the supply of 3G electronic communication services using UMTS systems, the implementation of the infrastructure law, modelling on efficient costs for a number of regulated services (including fixed and mobile call termination), the implementation of Universal Service and developing online applications to enable tariff transparency and quality of service.

NRA

In May 2010, an additional letter of formal notice was sent to Romania, prompted by the failure of the Parliament to translate the new emergency act into stable legislation. In addition, the Commission was concerned that the regime granting the Government a large discretion to restructure the NRA by way of emergency acts would not be consistent with EU law.² However, by approving the emergency ordinance, the Parliament has secured into stable law a regulatory framework capable of securing the independence of the NRA.³ The reply to the complementary letter of formal notice further confirmed the specific attention paid by Romanian authorities to a stable statute for the NRA over the past two years. The infringement proceeding was closed in November 2010.

In February 2010, the Government replied to the letter of formal notice committing to transfer all regulatory powers from the Ministry to the Telecoms regulator by May 2010, whilst preserving the ownership activities of the two companies providing telecoms networks and/or services.⁴ However, despite regular discussions on this issue, the rules on structural separation remained unchanged, so on 24 November 2010 the Commission decided to send a reasoned opinion to Romania⁵.

In November 2010, the Commission services requested that the Romanian authorities provide information on the impact of the legislative measures already passed or being planned in the context of the economic downturn on ANCOM, in order to assess their effects on compliance with the requirements of the Framework Directive.

² The Commission had sent a letter of formal notice to Romania in February 2009 regarding the lack of independence of the NRA (Article 3 of the Framework Directive), following the removal of its president and the instalment of a restructured regulatory authority by Emergency Ordinance in spite of a court order suspending the removal decision. In March 2009 that Emergency Ordinance was replaced by a new one, offering satisfactory guarantee for the NRA's independence.

³ Law No 113/2010 approving Government Emergency Order No 22/2009.

⁴ This second infringement proceeding was initiated by the Commission in October 2009 on grounds of lack of compliance with Article 3(2) of the Framework Directive, as it has not ensured effective structural separation of the regulatory functions provided for by Article 9(1) of the Framework Directive, from activities associated with ownership or control of undertakings providing electronic communications networks and/or services.

⁵ The reply to the reasoned opinion received by the end of January entailed a set of measures that Romania adopted in the first semester of 2011. The Commission Services are currently assessing these measures.

ECONOMIC REGULATION

Broadband

Broadband plans

In relation to the use of structural funds a Committee was created in December 2010, that was consisting of representatives of the Ministry of Communications and Information Society, ANCOM, the Authority for the Coordination of the Structural Funds, the Management Authority for the operational programme, the Competition Council. The main task of this Committee is to develop an implementation model for the use of 84 mil EUR in the setting-up of broadband networks in underserved areas, by March 2011, and preparation of a related action plan.

Market situation (including NGA)

The fixed broadband penetration reached 14.0% in January 2011, compared to 13.1% in January 2010, but it still accounts for the lowest in the EU (the EU average stood at 26.6% in January 2011).

As regards the infrastructure used, the Romanian broadband market is characterised by platform based competition. The market share of the incumbent in DSL lines increased slightly, to 99.9%, but the incumbent's market share in total broadband lines remained below the EU average, (from 27.9% to 29.4%, compared to the EU average of 46.2%), despite a slight gain in market share. As of January 2011, 70.7% of the 2 999 761 active retail broadband lines were non DSL. The number of ISPs that were commercially offering high speeds has been growing rapidly. As a result, the data for January 2011 indicated that 21 700 connections offered speeds of up to 2Mbps, 1 167 700 between 2 and 10 Mbps and 1 811 002 connections were equal to or exceeded 10 Mbps. The market share of FTTH is considerably higher (3.1%) than the EU average of 1.8%.

Given the considerable market share of the incumbent, the take-up of LLU was still very low. It remains to be seen whether the obligations imposed in 2010 on the incumbent following the analysis of the wholesale (physical) network infrastructure access market, including lower caps, will facilitate the take up of these services.

Regulatory issues

In 2010 ANCOM reviewed the wholesale (physical) network infrastructure access market, imposing a full set of obligations on the incumbent's copper network. The Commission asked ANCOM, *inter alia* in its comments, to impose access to the incumbent's FTTH lines, to re-assess the need to mandate access to ducts, and to consider whether circumstances at national level may require extending the migration period from two to five years.

As regards wholesale broadband access, ANCOM found that the retail market for broadband Internet access was effectively competitive in the absence of *ex ante* regulation of wholesale broadband access. ANCOM considered therefore that regulating the WBA market in Romania is neither necessary nor justified given the high level of infrastructure-based competition (over the providers' own access networks) in the retail market, the availability of the unbundled access to the local loop, as well as the positive impact expected to be achieved following the introduction of cost-oriented tariffs for access to the local loop.

Mobile

Market situation

As of October 2010, the penetration rate of mobile telephone services showed a decline, to 113.6% (from 115.3% in October 2009). The majority of subscribers (56.7%) gave preference to pre paid subscriptions. In 2010, there were six active MNOs, of which the first two operators had a combined market share of 73%, albeit under constant decrease. Five MNOs were also offering fixed telephony services, two had both UMTS and GSM services, while one operator was only in possession of a UMTS licence. The average revenue per user of €90 remained the lowest amount in the EU, but the decrease (from €119) is proportionately lower than that of the EU average.

As of January 2011, there were 930 000 mobile broadband dedicated terminals and 2 891 000 mobile active users with access to dedicated data services via modems/cards and other active 3G users using mobile terminals.

Regulatory issues

From July 2010, the mobile termination rates decreased for 3 MNOs, as the last step of the glide-path established at the beginning of 2009, following the review of the market of mobile call termination on individual networks. In line with the ANCOM decisions, the average tariff imposed from 1 July on two of these MNOs decreased to 5.03 €cents/minute, from 5.67 € cents/minute. Furthermore, on the same date, the third MNO (that has only UMTS licence) reduced its average tariff charged for interconnection services from 6.4 € cents/minute to 5.67 € cents/minute. The first two market players continued to apply the 5.03 € cents/minute tariff.

The second round review of wholesale call termination on individual public telephone networks provided at mobile locations started in 2010.

Roaming Regulation

According to ANCOM, all operators which have offered roaming services under the Roaming Regulation have fully implemented the necessary changes in their billing systems in order to comply with all requirements of the new Regulation. One operator has chosen to apply a volume limit, while the others have opted for financial limits. The biggest two operators are offering numerous volume or financial limits, but in both cases the €50 limit represents the lowest choice available.

A smaller mobile operator was offering lower tariffs than those regulated: €0.28/minute for outgoing calls, €0.12/minute for incoming calls and €0.08/SMS sent. The largest mobile operators offered alternative roaming packages in addition to the Euro-tariff, as well as special data roaming tariff plans and extra-options, including tariffs with inclusive traffic per day or per month, along with special tariffs for extra-traffic.

Fixed

Market situation

In July 2010, 40 alternative fixed operators used their own infrastructure to provide access to fixed telephony services. Romania accounted for one of the highest percentage of subscribers using an alternative provider for direct access (41%), both for national and international calls. In 2010, there were 21 operators providing CS services, and 2 operators providing CPS. As for VoIP services, 36 operators offered managed services, and 10 operators offered unmanaged services. The market share of VoIP operators on fixed calls showed a slight decline from 24% to 23%. 4.5% of alternative operators are using fully unbundled local loops, including shared access, in order to provide fixed telephony services (from 5.9% as of July 2009).

Regulatory issues

The second round review of wholesale call termination on individual public telephone networks provided at a fixed location was starting in November 2010.

Broadcasting

Market situation

As of July 2010, there were 3.4 million cable subscribers (47.4% penetration rate). At the same time there were 2.3 million subscribers to direct-to-home (DTH) satellite networks and 10000 to IPTV services. The total number of subscribers to audio-visual programme retransmission services fell, registering decreases in both the number of cable subscribers and DTH subscribers. Although the number of IPTV subscribers has shown rapid growth, these services held only a 0.2% share within the total number of subscribers to audio-visual programme retransmission services.

Romania postponed the Analogue TV Switch Off date to 2015, amending the Strategy on the digital switchover adopted in 2009, on grounds relating to additional time required to implement this project during the economic downturn, without consulting ANCOM.⁶ Consequently, the comparative tender procedure launched by ANCOM in July 2010 for the first two of six planned national multiplexes was called off. The Commission services are closely following this process.

Regulatory issues

Following the SMP designation in 2009 on the broadcasting transmission market, the monopolistic provider of analogue transmission services for public broadcasters was imposed price control and cost-orientation obligations. ANCOM adopted fully distributed cost methodology on the basis of historical cost accounting as its costing model in 2010 and the first results are expected from the SMP operator by June 2011.

HORIZONTAL REGULATION

Spectrum management

In March 2010, Romania opened up the 900 MHz and 1800 MHz GSM bands to UMTS services based on the revised GSM Directive⁷. Consequently, three active mobile telephony providers, already holders of GSM licences in this band, were able to provide 3G services based on these licences. Soon after, one of the three announced the launch of UMTS services, whereas another announced plans to do so from 2011. ANCOM has not yet carried out the examination required by the GSM Directive to assess whether the existing assignment of the 900 MHz band to the competing mobile operators is likely to distort competition in the mobile markets concerned. This could be part of the refarming process, which is due to include also the 3.4 - 3.6 GHz band, since in 2011 two GSM licences are due to expire. The Commission services are following this process.

Implementation of spectrum decisions

In 2010, the National Frequency Allocation Table was updated⁸ to address several issues raised by the Commission services in May 2010. On the same occasion, Commission Decisions 2010/166/EC (MCV) and 2010/267/EC (790 – 862 MHz harmonisation) were also implemented. Commission Decision 2006/771/EC as amended by Decisions 2008/432/EC and 2009/381/EC has not yet been fully implemented due to use of the 403-404 MHz sub-

⁶ Government Decision No 833/2010.

⁷ Decision of the President of ANCOM No 168/2010.

⁸ Approved by the Order of Minister of Communications and Information Society no. 701/2010, available on www.ancom.org.ro.

band by licensed nationwide private mobile radio networks, operated by the national company which is managing the national hydrographical system.

Rights of way and facility sharing

The rights of way regime appears to continue to hinder the rolling out of networks. Some progress could be reported in relation to the adoption process of a law on electronic communications infrastructure, which should set up clear rules to be followed by local authorities when dealing with rights of way requests, in a fair, unitary and predictable manner. However, at the time of writing this report, this act had not yet become binding law.

As regards Netcity, part of the operators had particular concerns in relation to the tariffs, which may vary with the share of network and the time it was rented for, as well as in relation to the coordination and predictability of the future roll out plans. The transparency of the project appeared to have improved with the state of play and further plans for the project being placed on a dedicated website. Communication with operators could be improved further, particularly if the pace of the project is speeded up. The manager of the project, a private company, had still to be consulted in relation to any plans to roll out parallel networks. The Commission services are following the developments on these matters.

Administrative charges

In 2010 electronic communications providers were waived the obligation to pay the monitoring tariff as ANCOM was financed from other resources such as the spectrum tariff. In the process of implementing the revised EU regulatory framework, the legislation on the administrative charges imposed on providers of electronic communications will be reviewed to avoid any risk that charges which do not come under the scope of Article 12 of the Authorisation Directive are passed on to operators as administrative charges.

THE CONSUMER INTEREST

Consumer complaints

During 2010 ANCOM had received approximately 1129 complaints from consumers concerning terms of contracts, lack of compliance with them (27%), network/service failure or the quality of service (22%), billing issues (18%). There were also several complaints regarding the lack of compliance with Universal Service law requirements (such as the minimal clauses to be included in the contracts and the providers' obligation to notify end users when changing clauses in the contract). ANCOM requested that the relevant operators comply and sanctioned those that refused.

Specific problems that telecoms consumers faced were also reported by representatives of consumers, such as the lack of transparency, abusive interpretation of contractual clauses, discrepancies between the nominal and real speed of broadband connections, the abusive way unpaid debts were claimed and the locking of handsets to specific networks.

Tariff transparency and quality of service

In October - November 2010, based on the relevant legislation, ANCOM launched for public consultation a draft decision imposing the publication of a number of parameters assessing the quality of access to Internet services on all providers of such services. These parameters should include the time to provide Internet access, the fault repair time, the frequency of customer complaints related to billing and faults and their resolution time. Additionally, technical parameters should be published, such as data transfer speed, delay, delay variation and the packet loss rate. Major providers should also make available applications to measure

in real time the technical quality parameters for Internet access. This proposal was considered by the operators as excessive, difficult to implement and not really useful for end users. ANCOM on its part pointed out that the aim of the proposal is to enable consumers to compare the different offers available on the market and make an informed choice.

Number portability/switching

In May 2010, ANCOM lowered the (wholesale) porting tariffs. The maximum tariff the donor provider may charge the acceptor provider was set at €7.8 for each ported number included in the following categories: geographic numbers, location-independent numbers and non-geographic numbers (€13 previously). The decision established a maximum €5.6 for each ported number in the category of non-geographic numbers allotted for mobile telephone services (down from €11). About 340 000 numbers had been ported by October 2010. According to information provided by the NRA, porting telephone numbers took about 8.5 days on average whilst the maximum time allowed is 10 days.

Net neutrality

National legislation has not prevented the operators from blocking certain applications. The only legal obligations refer to transparency. The contracts between end-users must be transparent, whilst providers of publicly available electronic communications services have to specify, for example, the services provided, the service quality levels offered and the term for the initial connection. ANCOM may impose on telecoms operators an obligation to publish comparable, adequate and up-to-date information on the quality of the services they provide and it may define the service quality parameters to be measured and any other elements necessary for assessing the quality of the services offered, as well as the content, form and manner in which this information shall be published. In addition, in 2009 ANCOM recommended that operators make publicly available the upload/download capacity during peak hours, as well as the maximum upload/download capacity.

Two MNOs have blocked VoIP services in some way: one of them for prepaid cards and the other for specific subscribers. Whereas an Internet service provider applied a speed restriction if subscribers exceeded a certain usage limit. Taking into consideration the legal requirements in force, ANCOM investigated if consumers had been properly informed about these restrictions and concluded that operators have observed the transparency obligation.

Universal service

Based on the Universal Service strategy adopted by the Government in 2009, and following a public consultation on the scope of universal service in the first half of 2010, ANCOM launched for public consultation a new decision setting out the procedure to designate the universal service providers in October 2010. The amendments relate to providing universal access to the public telephone network at a fixed location, as well as better access to public payphones, to public telephony services for disabled people and the financing mechanism.

'Homezone' access services provided over mobile networks are seen as substitute solutions for access services provided at a fixed location over fixed networks. As regards public payphones, ANCOM reported a decrease of almost 90% during the last years in voice traffic mainly due to the extensive usage and easier accessibility of mobile handsets. Therefore the decision proposed that public phones be installed according to certain criteria, based on the requests addressed to ANCOM by local authorities which should provide free of costs locations and support the maintenance costs. Disabled users would benefit from information (contracts, invoices, etc.) adapted to their needs (larger fonts, Braille, special electronic formats) free of charge, access to emergency services via SMS or text relay, easier access to public pay phones, free access to directory enquiry services; these facilities would be funded by the Universal Service Fund. Finally, changes would be made to the financing mechanism

to render it compatible with the requirements of the Universal Service Directive⁹: the calculation of the net cost would take into account both the intangible benefits and the unfair burden incurred by the universal service providers. The draft decision proposed that functional Internet access be defined as an access service allowing a 'best effort' download of at least 144kbps.

Directory of subscribers and directory enquiry services have been finally made available since 31 October 2009, following the designation in June 2009 of the universal service provider for a two years period. However the comprehensive database is comprised of a limited number of subscribers, mainly users of fixed telephony services¹⁰, due to the modalities chosen by the operators to inform their subscribers and obtain their consent to be included in the directory database, pursuant to the requirements of the e-Privacy Directive.

European emergency number 112

112 has been the only national emergency number available in Romania and appeared to function properly. In November 2010, ANCOM and the representatives of industry agreed on the new measures meant to fight more effectively hoax and involuntary calls to 112 such as warning by SMS, redirection of calls for limited periods to an automatic interactive response centre before being transferred to a 112 operator, as well as improving the statistics to enable better assessment. Several measures to promote awareness of 112 have been taken by the national system administrator and, in addition, ANCOM has published a general information brochure on the Single National System for Emergency Calls. The recent Eurobarometer survey¹¹ indicated that in Romania, the majority of citizens (64%) were of the opinion that people are adequately informed about the existence of the European emergency number 112.

Harmonised numbers for harmonised services of social value (116)

The National Numbering Plan reserves the national numbering range beginning with '116' for harmonised numbers for harmonised services of social value. All existing five reserved numbers have been open to assignment. Two harmonised services of social value were operational in November 2010: the 116000 – hotline for missing children and the 116111 – child helpline. In April 2010, ANCOM published on its website the availability and conditions of assignment for two new reserved 116 numbers: the 116006 – helpline for victims of crime and the 116117 – non-emergency medical on-call service.

Must Carry

The must carry regime has reportedly been changed because it is becoming burdensome to all carriers, except those exclusively using radio spectrum, reaching in some cases 40% of the total programs carried. The Commission services are looking into this matter. In addition, must carry rules would gain additional importance in the context of the digital switchover process, as certain channels would have to be carried by the multiplexes available.

e-Privacy

The authorities have not yet adjusted national legislation transposing the Data Retention Directive pursuant to the decision of the Constitutional Court rendered in 2009.

⁹ Collecting contributions to the Universal Service fund would be resumed after the adoption of the new decision.

¹⁰ ANCOM has fined two providers of telephony services for not submitting the relevant data, and reduced the costs to be paid by the universal service provider for transfer of the databases of subscribers following on cost analysis.

¹¹ Eurobarometer Flash survey on the European emergency number 112 (February 2011)