

# SLOVAKIA

## MAIN MARKET DEVELOPMENTS

Despite the economic downturn, the Slovak electronic communications market performed relatively well, with intensifying competition at retail level. The number of fibre connections continues to grow, albeit at a slower pace. The infrastructure-based competition in broadband is gradually getting more pronounced. The ambitions of the large market players to become integrated operators providing converged services are becoming more visible. Their intention is to offer a full range of services on both fixed and mobile platforms, maximising the coverage potential and offering a multitude of products. Bundles are becoming more prominent in offers, although their take-up is still somewhat limited. The mobile penetration rate has continued to grow, as has the new mobile entrant's market share. Mobile data traffic is showing an upward trend, which is reflected in the further build-up of 3G coverage. The fixed voice market is still largely in the hands of the incumbent, although some competition is emerging, mainly from competitive infrastructure platforms.

The total revenue of the electronic communications sector for the year 2009 decreased by 5.1% to €2.1 billion, of which €1.4 billion came from the mobile sector and €458 million from the fixed sector. The reductions in revenues were most notable in the fixed sector, with a decrease in the annual growth rate of 25.8%, while the mobile sector remained fairly stable. Despite the general economic crisis, alternative operators significantly increased their investment activity during 2009, by 170.2% (€114 million) compared to the year before. Total investment in telecom networks decreased slightly by 3.7% in 2009 (€390 million), with a sharp drop of 26.4% reported by mobile operators (€133 million).

## REGULATORY ENVIRONMENT

### Main regulatory developments

At the outset of the reporting year, the Ministry of Transport, Construction, and Regional Development (hereinafter the Ministry) initiated preparations for a new Law on Electronic Communications intending to transpose the telecom reform package of 2009. To this effect, the Ministry held several workshops with the NRA (*Telekomunikacny urad Slovenskej republiky*, the TUSR) and industry to consult on specific implementation issues. National inter-service consultations on the draft law commenced in December 2010; with adoption by the Parliament tabled for May 2011. There may be a risk of running late with the transposition of the reform package, in particular where secondary legislation will need to be drafted to ensure full implementation of the revised rules.

Apart from efforts directed at the transposition of the revised framework, the Ministry has drafted a new national broadband strategy setting out the policy plans for broadband development, including the use of the digital dividend for mobile broadband, in view of achieving the broadband targets for 2013 outlined in the Digital Agenda for Europe. A new strategy for switchover to digital terrestrial broadcasting has also been prepared by the Ministry. Both draft strategies were submitted for Government approval in December 2010.

With the reviews of the fixed retail calls markets and the wholesale broadcasting market over, the TUSR has completed the revision of all markets listed in the former Recommendation for relevant markets. The NRA conducted a new market review for the wholesale fixed

termination market and proposed new symmetric price caps for MTRs. The NRA is re-assessing the review of the LLU market where the notification of results to the Commission was withdrawn in 2009. A public consultation on future use of 2.2-2.3 GHz spectrum in the Bratislava region was launched in October 2010.

## **NRA**

During the reporting year, the TUSR experienced another reduction in personnel, by 22 staff members, leaving 165 employees. This appears to be linked to general public administration staff cuts resulting from the cuts in the national budget. Such developments can create further challenges to a regulator that has already faced difficulties related to resources in personnel. The TUSR's financing is carried out from a specific subchapter in the budget of the Ministry. Although the regulator's budget increased somewhat in 2010, more financial resources could prove beneficial in improving its regulatory efficiency. The NRA continued to generate revenues for the state treasury with fees for the rights of use and administrative charges that highly exceeded the regulator's budget.

The regulator continued with the review of the relevant markets, albeit at a slow pace. More efforts are required to complete the second reviews of such key markets as the LLU and bitstream markets in a timely manner. In many instances, effective enforcement action and follow-up of the implementation of remedies is absent. The regulation imposed thus falls short of producing the expected effects. Further steps on the part of the NRA to improve the transparency of the regulatory measures and policy intentions would increase legal certainty and provide the appropriate level of predictability for market players.

The infringement proceeding against Slovakia regarding regulatory independence was closed in June 2010 after the relevant amendments to national legislation setting out the rules for dismissal of the chair and vice-chair of the NRA had become effective.

## **ECONOMIC REGULATION**

### **Broadband**

#### *Broadband plans*

The national public broadband development project launched under the auspices of the Government Office and Ministry of Finance is facing delays. The total amount of dedicated funding currently stands at €113 million (mostly from EU funds). The project design was revisited in 2010 with the principal outcome of shifting the focus to the financing of regional networks. The construction of networks and their operation is to be tendered out. A newly created National Agency for Network and Electronic Services, facilitating *inter alia* the development of eGovernment services, has initiated an update of white area mapping over the national territory. To this effect, broadband access is defined at 2 Mbps downstream and 512 Kbps upstream - both higher speeds than those used previously in the feasibility study.

The new draft of the broadband strategy developed by the Ministry sets the national broadband target of full coverage by 2013 at 1 Mbps. To achieve this, the strategy foresees the stimulation of broadband development on four levels: the development of competition on access networks via appropriate regulation, effective usage of digital dividend spectrum for mobile broadband services, support for network development from public funds (earmarking an increase of dedicated funding from the €113 million described above to €160 million), and

the stimulation of broadband demand by increasing digital literacy and better provision of content via eGovernment, e-Health and eLearning.

### *Market situation*

The fixed broadband market experienced reasonable growth in 2010. The total number of retail fixed broadband lines grew by 90 032 lines over a period of one year. The highest net gain was reached by WLL. Slovakia is still one of the better performers in the ratio of broadband lines over fibre. Despite the continuous increase in numbers, the fixed penetration rate of 16.5% of population is at the bottom of the EU scale and well below the EU average of 26.6%. On the other hand, the mobile penetration rate for dedicated data service cards/keys/modems of 6.6% of population is closer to the EU average of 7.2%. Mobile broadband use, including over smartphones via 3G, has remained important in providing Internet access. After a period of relative stagnation, all three mobile operators are expanding their 3G coverage (the latest entrant does not yet offer 3G commercially) and have declared an interest in the use of 4<sup>th</sup> generation mobile technology which is likely to start in 2012. The new mobile entrant has already carried out a first testing of LTE. The trend towards delivering faster broadband access lines continues with reductions in the proportion of low speed fixed broadband lines (above 144 Kbps and below 2 Mbps). The cable operator leads the market, offering speeds of 120 Mbps.

The fixed broadband market continues to experience intensifying inter-platform competition between the prevailing technologies of xDSL (43.6% of total retail fixed broadband lines), WLL (22.84%), cable (10.6%) and FTTH (9.9%). xDSL lines are provided almost wholly by the incumbent (97%) with very little progress being made in unbundling or bitstream take-up. Businesses are the main target customer groups for alternative operators using wholesale broadband access products and LLU. Even though the fixed broadband market has shown very little change in the new entrants' market share (57%), there is a notably strong presence of several local providers competing on their own infrastructure.

### *Regulatory issues*

The SMP undertaking introduced a series of changes to RUO conditions and procedures based on negotiations with access seeking alternative operators, rather than as a response to regulatory action taken by the NRA. These include reductions in charges, changes to collocation construction options and the simplification of certain administrative procedures. Ten collocation sites have been built so far by one alternative player, however, the negotiations on collocation appear burdensome due to the fact that the collocation sites used by the incumbent are owned by a third-party. The modifications of RUO conditions have not yet triggered a wider market response. The regulator is reviewing the LLU market again after the withdrawal of the notification to the Commission in 2009.

In August 2010, the SMP undertaking modified the RBO with certain price reductions, increase in capacity and an optional increase of download speed. Again, the changes introduced do not appear to have triggered further interest in the use of IP bitstream. Its take-up continues to be limited and its reference offer simply mirrors commercially available products. The ATM bitstream has still not been taken up. The main concerns of alternative operators with respect to interconnection (permitted only at one aggregation point for the whole national territory) - a lack of access at ethernet level and quality support - remain. The NRA intends to review this market in 2011. As the overall impact of the regulation imposed with respect to broadband-related markets appears to be very limited, careful consideration

and design of remedies including follow-up enforcement action needs to take place in the forthcoming market reviews to address the competition issues identified.

The investigation of the Commission against the incumbent operator for suspected breaches of the EU competition rules is ongoing. In December 2010, the Commission extended the scope of its investigation to include the incumbent's parent company.

## **Mobile markets**

### *Market situation*

The latest mobile market entrant continued to expand its subscriber base, reaching 13.4% of market share by subscribers. National roaming for voice and data continued where its network development has not yet been finalised. The mobile penetration rate increased to 107.9% of the population in October 2010 but does not yet appear to have reached saturation. The market shares of the leading mobile operator shrank to 48.4% by subscribers, while the market share of the main competitor remained relatively stable at 38.2%. Four simple resellers offer rebranded products of the mobile operators. MVNOs are not present. An increasing number of SIM cards are used for services other than voice communications, such as for example transport monitoring units, alarms, and other security systems.

The average price per mobile minute continued to decrease, to €0.11, close to the EU average of €0.10. The average annual revenue per user has dropped to €234, mainly due to competitive forces bringing down retail tariffs, the effects of the economic downturn, as well as reductions in mobile termination charges. The percentage of subscribers opting for post-paid contracts continued to grow and stood at 67.3% in October 2010.

### *Regulatory issues*

The asymmetrical MTRs applicable in October 2010 (€0.0635 for the larger players and €0.0768 for the new entrant), though following a downward trend, were still well above the EU average of €0.0546. In December 2010, the regulator notified to the Commission a proposal for new price caps for mobile termination applicable for the period of 1 February 2011 and 31 January 2012, based on benchmarking<sup>1</sup>. In contrast to the previously applied approach, the rates at the level of €0.0551 are now symmetrical. The relevant price decision was issued in January 2011, but is not yet effective due to an internal appeal. The Commission services welcome the NRA's intention to eliminate asymmetry and to use benchmarking. In this context, it should be noted that all draft price decisions should be notified to the Commission, and that the recommended FL-LRIC model should be fully implemented by the end of 2012.

### *Roaming Regulation*

All three mobile operators appear to have complied with the requirements of the Roaming Regulation. The new entrant has reported positive customer feedback to the roaming data cut-off limits. Besides the Eurotariff, alternative roaming packages are available. Special voice or data roaming packages for selected countries (neighbouring countries or popular holiday destinations) appear to be gaining in popularity.

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<sup>1</sup> The price caps are determined on the basis of simple arithmetic average of mobile termination charges in 15 reference Member States applying LRIC which may be other than the recommended one, but which take into account efficiency considerations.

## **Fixed market**

### *Market situation*

The fixed voice market shows little market dynamics. Even though the share of subscribers using an alternative operator for direct access has almost doubled, at 9.4% of all subscribers it remains very low. All alternative operators use their own proprietary infrastructure, while some also use CS (four out of ten) or LLU (one operator) to offer fixed voice services. Their impact on the market is however still somewhat limited. The target customer group is mostly the business sector. Alternative players offer fixed voice typically through bundles of triple play or double play services. The fixed incumbent merged with its mobile daughter company, creating a strong, integrated market player. The largest mobile player has launched new home product for fixed location (using mobile technology), and continues to offer fixed voice services to both the residential and business sectors over its fibre network.

Although the market share of alternative operators by traffic volumes has been gradually increasing, in particular as regards international calls, this has not yet been reflected in the market share by revenue, where the incumbent's position for all fixed calls remains unchallenged at 85.1% of revenues. The impact of VoIP operators on the fixed voice market is still rather low, at 8.4% of all fixed call minutes.

### *Regulatory issues*

In October 2010, the regulator notified the second round of market reviews for the former retail fixed call markets, thus completing the market reviews for those retail markets no longer listed in the current Recommendation for relevant markets. As the conditions of the three-criteria tests were not met, the TUSR will withdraw the *ex ante* regulation imposed in 2006.

The NRA notified the results of the second market review for the fixed wholesale termination market in July 2010. A full scope of remedies was proposed, including price regulation based on FL LRAIC, which is not yet the methodology set out in the Commission's Recommendation. Since the fixed termination rates in Slovakia are much higher than the EU average, there is a clear need for the TUSR to align its methodology with the recommended cost accounting principles, as well as to propose already in its forthcoming regulatory decision a reduction of price levels.

## **Broadcasting**

### *Market situation*

Terrestrial analogue broadcasting was the most prominent platform for the receipt of a TV signal, followed by cable and satellite TV. IPTV is still a marginal product offered usually in a bundle with broadband access service. Besides the provision of IPTV, the largest mobile player has indicated it will offer satellite TV services, which, together with the use of wholesale broadband access and its own converged fixed voice product, would allow for fixed triple play coverage similar to that of the incumbent.

### *Regulatory issues*

The results of the three-criteria test of the wholesale broadcasting market were notified in April 2010. Since the conditions for warranting further *ex ante* regulation were not met, the NRA withdrew in June the remedies imposed following the first market review.

The switch-off of analogue broadcasting commenced in September 2010. An information campaign to this effect is ongoing. A new strategy for a complete switch-over prepared by the Ministry sets out the details of the procedures for parallel broadcasting and analogue switch-off. The Commission has approved Slovakia's intended financial support for low income citizens in need for the purchase of digital TV receivers, as well as the financial support for broadcasters in parallel transmission.

## **HORIZONTAL REGULATION**

### *Spectrum management*

The frequency bands 900 MHz<sup>2</sup> and 1800 MHz covered by Commission Decision 2009/766/EC and GSM Directive (for 900 MHz range) have been designated for the provision of terrestrial electronic communication services, by relevant changes to the national frequency allocation table and the national plan for frequency utilisation. While UMTS usage is now allowed in both frequency bands, its practical application for the two larger mobile players would require a redistribution of channels in order to create coherent 5 MHz blocks.

In October 2010, the TUSR carried out a public consultation on the future use of the 2200 MHz – 2300 MHz frequency band. The regulator plans to assign further spectrum in this band on the basis of individual requests, with the exception of the Bratislava region, where a public tender will be organised in the first half of 2011. The 2.6 GHz frequency band is planned to be used for LTE while maintaining the principle of technological neutrality. The tender process to this effect is scheduled for 2011. The public consultation on the future use of the digital dividend (in the 790-862 MHz frequency band), carried out in Spring 2010 by the Ministry, confirmed the intention to use this spectrum for the development of mobile broadband services. However, the fact that the provider of digital multiplexes holds the licence for this spectrum until 2015 may delay the process.

Individual licences of the larger mobile operators for the use of 900 MHz, 1800 MHz and 450 MHz (the later valid only for one player) spectrum are expiring in August 2011. For the 900 MHz and 1800 MHz part of spectrum in particular, the regulator has considered two options for the way forward: a new selection procedure or prolongation of the licence conditional to creating coherent 5 MHz blocks. However, at the end of the reporting period, no decision had been made. Although the TUSR started a public consultation to this effect in February 2011, including the question of making the frequencies available for the provision of terrestrial electronic communication services, a more timely approach to policy decision would greatly enhance the level of legal certainty and market predictability for all stakeholders involved.

According to information available to the Commission, not all of the necessary preparation has been made in Slovakia 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.

### *Administrative charges*

Administrative charges are set out by the NRA and apply to all undertakings providing electronic communication networks and/or services on the basis of general authorisation. All payments received, including fees for the rights of use of frequencies and numbers that are set apart from administrative charges, are channelled to the state budget. In its annual report, the regulator publishes financial figures on total income and spending. However, since the

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<sup>2</sup> The 900 MHz band is covered also by the revised GSM Directive 2009/114/EC.

apportionment of administrative charges in the NRA's total income cannot be clearly derived, this raises concerns as to the transparency of the process as well as to the link between the administrative charges raised and the annual budget received.

## **THE CONSUMER INTEREST**

### **Consumer complaints**

In 2010, the TUSR received 135 update by NRA cases of consumer complaints. The most frequent sources of concern were billing, in particular of bundles, and quality of service.

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

At present, the NRA monitors quality of service parameters with respect to the provision of universal service obligations. A new project team of NRA is working towards specifying quality of service parameters applicable to all electronic communication providers.

### **Number portability/switching**

The total amount of ported numbers continued to grow, in particular with regard to mobile numbers. The changes to number portability procedures introduced by the NRA in 2009 seem to be appreciated by providers. Although not a part of the new decree, wholesale prices decreased substantially, standing now at €10 for fixed porting and €5 for mobile. The retail charges for fixed porting are €4.8, and for mobile €6.6 and €7.9<sup>3</sup>. The absence of a central database for fixed ported numbers appears to be the main source of concern, leading to difficulties in communication with the increasing number of operators. As for mobile porting, the process has been simplified to a recipient operator-lead one-stop-shop. It takes 5 working days to port a fixed or mobile number.

### **Net neutrality**

Slovakia is still at a very early stage in the net neutrality debate; market operators declared that they have not placed any constraints in traffic management that have lead to the blocking of VoIP calls over mobile networks.

### **Universal service**

The project team dealing with quality of service is also working towards revising the scope of universal service obligations where further reductions are expected with regard to the number of required public payphones. Universal service has been provided by the incumbent operator since 2006. Its designation of universal service obligations for an indefinite time period without appropriate means for re-opening the designation procedure raises concerns as to compliance with the non-discrimination principle. The ability of the national authorities to review the status of universal service in the light of national conditions and market developments for the purpose of re-assessing the scope of universal service obligations may be questionable. The draft law transposing the revised framework appears to be addressing at least some of these concerns. The national authorities do not plan to include broadband-related obligations in the scope of universal service.

At the end of the reporting period, the finalisation of the net cost calculations for the years 2005-2006 and the assessment of unfair burden was pending. The delays were caused mainly

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<sup>3</sup> For two larger mobile players; no retail charges are applied by the smallest mobile operator.

by appeals. The administrative proceedings on the net cost calculations were returned by the second instance (appeal) body back to the first instance body, followed by a protest by the General Prosecutor initiated on account of the designated undertaking. In February 2011, the NRA concluded that the cost of universal service provision for the said years as claimed by the designated undertaking did not represent an unfair burden, taking into account the following factors: the market share by revenue and by subscribers, ARPU, and the profits generated. The NRA carried out the unfair burden assessment on the basis of the costs claimed rather than on the net costs (which have not been calculated). The NRA's decision is not yet final as it may be subject to an internal appeal. Potential contributors to universal service funding have not been parties to the administrative proceedings. The NRA has not consulted on its findings nor made known in advance the net cost calculation methodology. The process of universal service financing would certainly benefit from an overall increase in transparency.

### **European emergency number 112**

The Ministry of Interior has continued with vigorous actions towards advancing the functioning of 112. One of the priorities was the improvement of caller location information, in particular with respect to calls from mobiles. On the basis of new primary legislation, national authorities may now request more precise information using the latest technological solutions. Both push and pull systems are used in a two-step process. Cell information is first pushed automatically (SS7 signalisation) and then followed by a pull procedure.

As regards raising awareness of 112, the communication approach has been modified, from large scale campaigns to targeted action to specific groups of end-users. For example, an e-book on first aid, teaching children how to use rescue services, is now available in schools. Education on 112 use is perceived as very important given the high proportion of hoax calls (around 50%), in particular from SIM-less phones. According to the latest special Eurobarometer survey, 57% of the Slovak citizens already recognize 112 as the number to call for emergency services from anywhere in the EU

Actions are underway to improve the functioning of emergency services. Educational programmes are offered for emergency service operators to expand their language capacities (the main foreign languages provided are English, German, Hungarian, Polish and Ukrainian). Further work has been carried out towards understanding the needs of disabled end-users in accessing emergency services, in particular those who are hearing-impaired. In this regard, the Ministry of Interior is developing a methodology for an emergency SMS solution.

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

Two of the harmonised numbers for services of social value are operational: the hotline for missing children and the child helpline. The largest mobile player has been reported as covering the telecommunications costs of providing the service.

### **e-Privacy**

Legal intercept was at the forefront of discussions related to data protection. In June 2010 the Slovak Constitutional Court delivered a ruling on the financing of legal intercept. The current method of financing, where operators themselves have to bear the costs of legal intercept, was found contrary to the law. The draft law on electronic communications contains provisions reflecting the Court's findings.