SLOVAKIA

INTRODUCTION

The fixed broadband market growth has slowed down and the fixed broadband penetration rate is the lowest in the EU. DSL remains the main broadband platform where the incumbent maintains a significant market position, however, there are certain increasing signs of inter-platform competition. Mobile broadband services are growing in importance. The entry of a new mobile player has intensified the level of competition on the mobile voice market and is facilitating greater consumer choice and price reductions. The incumbent's position in the fixed market remains largely unchallenged. The largest mobile operator and the incumbent are continuing to roll-out FTTH infrastructure.

The regulator's efforts have been focused on the establishment of a price control mechanism intended to redress the ineffectiveness of previous price regulation obligations. However, the overall process of further market reviews has not progressed to a great extent, and the fixed markets as well as the wholesale broadband market are yet to open to effective competition. Carrier pre-selection and local loop unbundling is not taken up. Regulation on the bitstream market had been withdrawn by a court decision. Price regulation has been proposed for mobile termination rates with a new round of market analysis.

REGULATORY ENVIRONMENT

Main regulatory developments

In August 2008 the Slovak regulator Telekomunikačný úrad Slovenskej republiky (TÚSR) notified the Commission of the proposed price regulation obligation based on the results of the second round of the market review for the fixed wholesale call origination market.

Following an appeal from the incumbent, the Supreme Court suspended in February 2008 TÚSR's decision on determination of undertaking with significant market power (SMP) and remedies imposed on the wholesale broadband access market. Finally, in August 2008, the Supreme Court withdrew the decision of appeal and returned the matter to TÚSR for a second-instance internal decision. As a result, this key market was unregulated during the reporting period.

The NRA continued to take steps towards ensuring the transition from analogue terrestrial to digital terrestrial broadcasting. The NRA issued a new measure, effective from May 2008, detailing the conditions for digital transition. A call for tender for the first two digital multiplexes was initiated in August 2008. However, following a preliminary injunction issued in October 2008 by a district court prohibiting TÚSR from continuing with the tender process, the NRA cancelled the tender procedure in December 2008. A new call for tender is to follow early in 2009.

The ownership and management of the State's shareholding in the incumbent was transferred from the Ministry of Post, Transport and Telecommunications to the Ministry of Economy in January 2008.

Organisation of the NRA

TÚSR notes continuing difficulties related to budgetary and personnel resources. The regulator is financed from the budget chapter of the Ministry which provided for a partial modification of the regulator's budget. TÚSR stresses that budgetary constraints prevent the use of external consultants to assist with certain regulatory tasks. The regulator is constrained from acquiring good quality personnel, mainly due to salary differences between the public and private sector.

In November 2008, the Government approved a proposal to dismiss TÚSR's Chairman from office. The proposal was approved by the Parliament in December 2008. The reasons behind the proposal appear to be related to an alleged failure by the regulator to respect certain provisions of the national legal framework and to ensure a timely and appropriate transition to digital broadcasting. The Commission is following developments closely and will examine the implications of this matter with respect to the NRA's independence.

Decision making

The main regulatory focus throughout the reporting period appears to have been directed at the establishment of a price control mechanism methodology aiming to redress the lack of effectiveness of price regulation imposed in the first round of market reviews. The other principal focus of regulatory effort was directed towards facilitating the digital switchover process.

The SMP obligations imposed with regard to the retail fixed access markets remain unchanged following the second round of market reviews. Overall, the NRA has made little progress with the market review process. Only one draft measure, namely price regulation for the fixed wholesale call origination market, was notified to the Commission in 2008. The final price regulation measure was imposed in November 2008. The Commission welcomes the efforts to establish a detailed cost orientation methodology, although there is still a need for a more advanced market review process.

As regards the decision-making procedure following the second round of market reviews, the Commission notes that the NRA has not taken new decisions on SMP undertakings and remedies if intended remedies and SMP designations are the same as those established following the first round of reviews. Instead, decisions made after the first round are kept effective even after the second-round market review has been finalised. The Commission services are looking into this matter, especially with respect to implications for the right of appeal.

TÚSR has not yet initiated a comprehensive process of reassessment of the incumbent's reference offers. Prices and other practices, in particular as regards facilities collocation, remain an issue of concern for alternative operators. Specifically, carrier pre-selection (CPS) and wholesale access to unbundled local loop (LLU) are still not taken up in practice, and the remedies in place seem not to have efficiently addressed the competition deficiencies identified. To counterbalance this situation, the NRA has also used informal tools to exert pressure on the incumbent in order to achieve voluntary price adjustments and modifications of certain practices. Nevertheless, such an approach cannot compensate for the lack of formal action.

MARKET AND REGULATORY DEVELOPMENTS

Turnover and investment figures have increased compared to those of 2006. The total turnover of the telecommunications sector was €1.8 billion as of 31 December 2007. Revenue from the fixed market was €505.6 million, while mobile market revenues reached €1.2 billion. The revenue from the telecommunications market overall increased by almost 8% compared to 2006, totalling 3.4% of national GDP in 2007. The total value of tangible investments was €387.7 million, of which €177.9 million came from mobile operators, €54.4 million from fixed alternative operators (almost three times the figure for 2006), and €45.2 million from the incumbent operator.

There are signs of fixed and mobile convergence with two major players present both on the fixed and mobile markets. These operators are still the main investors in next generation network (NGN) infrastructure. The biggest mobile operator is concentrating on FTTH/G-PON (Fibre to the Home/Gigabit Passive Optical Network) deployment. The achieved coverage reported by the operator in November 2008 was 265 000 households (approximately 15% of households) with the target of reaching 30% of households in urban areas. Triple-play services are offered over its next generation network (NGN) network (broadband, fixed voice and IPTV). Additional areas might be covered using LLU in the future. The fixed incumbent, holding a 100% share in the second biggest mobile player, is directing its FTTH deployment efforts at 'greenfield' areas such new business centres. There has been no agreement concluded on duct sharing for NGN deployment between these two players.

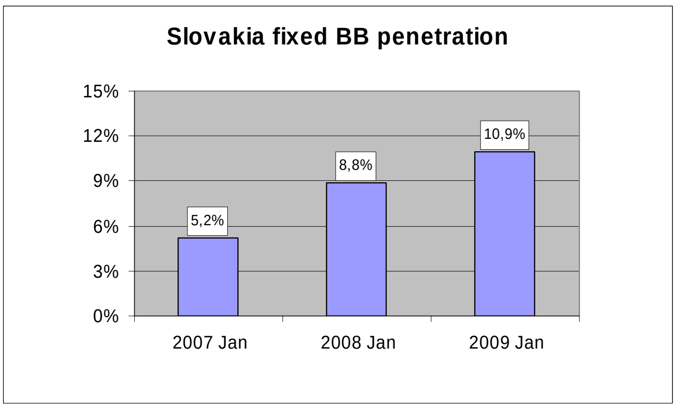
The number of providers offering bundled services has risen to nine for triple-play services (fixed voice, broadband and TV), and 17 for double-play services. These developments reflect the increasing efforts by local cable operators to offer broadband and fixed voice services.

Mobile broadband services have started to develop a role for broadband access. It appears that some customers regard mobile broadband services as a substitute product for fixed broadband access (especially those living outside main urban areas).

Mobile operators note intensifying competition between 3G offers with a trend towards increasing speed levels and declining retail prices. However, the development of 3G infrastructure has been limited and consequently there was only a minimal increase in coverage. The new entrant is testing 3G on a small scale using basic UMTS (Universal Mobile Telecommunications System) technology.

Broadband

Market situation



In 2008, the Slovak broadband market grew by 113 231 fixed retail broadband access lines, from 476 666 in January 2008 to 589 897 in January 2009. The fixed broadband penetration rate has increased by 2.1 percentage points, but at the rate of 10.9% as of January 2009 it is the lowest in the EU, well below the EU average of 22.9%. On the other hand, if broadband connections by households are compared, performance is improved to penetration of 35% of households against the EU average of 48%. Mobile broadband, with a high penetration rate of 14.9% (above the EU average of 13%), and reaching 4% in January 2009 for dedicated data services (above the EU average of 2.8%), appears to be an important means for gaining internet access.

In terms of various platforms, DSL has 55.9% of total fixed retail lines, wireless local loops (WLL) 13.9%, FTTH 11% and cable 10.5%. DSL is still the technology with the highest net subscriber gain, followed by FTTH and cable. The new entrants' share of all fixed retail access lines grew by 2.8 percentage points to 48% in January 2009. However, taking into account the incumbent's unchallenged status on the DSL market with 92% of all DSL retail lines, the incumbent still holds a very significant position in the fixed broadband market overall. 64% of the fixed retail broadband lines deliver the speed range of 2-10Mb/s, while almost 14% deliver the speed range of 10 Mb/s and above.

National DSL coverage increased from 66% in 2006 to 73.9% in 2007, an increase of 7.9 percentage points. DSL coverage in rural areas reached 38.5%, which represents an increase of 8.5 percentage points compared to the previous year. The average national cable coverage was 24%, while the cable coverage in rural areas reached 0.2% in 2007. It should be noted that broadband access in rural areas is in some instances also available via other technological means, such as mobile broadband and WiMAX services.

LLU is not being taken up in practice. The NRA notes that this situation is partly caused by the ongoing consolidation process on the fixed market as the market players are not likely to go ahead with strategic decisions.

Regulatory issues

The average total monthly LLU cost fell in 2008 both per fully unbundled loop and for shared access, but the costs are still above the EU average. Price regulation is not imposed in this market although TÚSR continues to exert pressure to reduce prices, and as a result, the incumbent reduced prices with effect from June 2008.

Despite the price drops, there has been no progress towards LLU take-up. Lack of clarity regarding prices for collocation is considered to be the main obstacle in the LLU implementation process. The incumbent states that it has already addressed certain concerns of alternative operators in this respect. Negotiations on LLU are pending with one alternative operator.

The second round of review of the LLU market is in the final stages. The NRA signalled its intention to propose price regulation with a detailed cost methodology. The NRA expects such price regulation to resolve the issue of collocation prices.

A full set of remedies (access, transparency, non-discrimination, accounting separation and price regulation) was imposed on the wholesale broadband access market in April 2007. However, the NRA's decision on remedies was suspended by the Supreme Court in February 2008 and the matter was returned to the NRA later in August 2008. The grounds for this action appear to be procedural. As a result, this key market had been unregulated during most of the reporting period; a new second-stage administrative decision on SMP and remedies was taken by the NRA only in January 2009.

As LLU is yet to be taken up and bitstream regulation has only been recently imposed, clear detailing of the proposed remedies along with dedicated enforcement action by the regulator on reference offers should help to reduce the competition barriers identified.

Mobile markets

Market situation

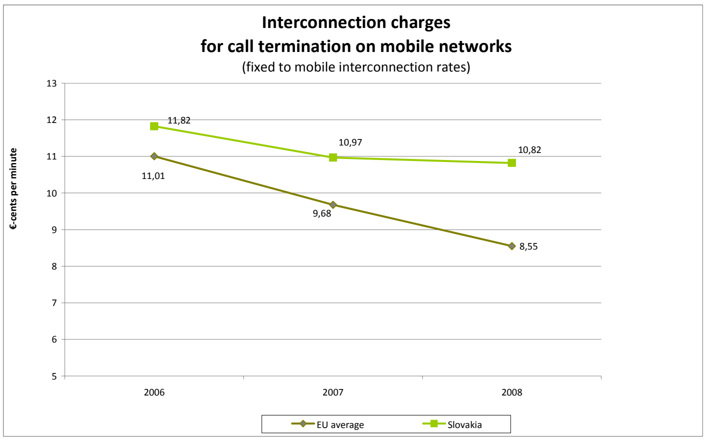
The entry of the third player is facilitating more intense competition on the mobile market. The competitive pressures appear to have started to trigger retail price falls, usually implemented in practice by adding extra minutes to post-paid offers of the two bigger operators, but more pronounced tangible effects of reinforced competition remain to be seen. At €0.16 per minute in 2007, the average mobile price per minute was slightly above the EU average of €0.14. The total annual average revenue per user at €258.7 in 2007 was slightly below the EU average of €282.5.

The mobile penetration rate has decreased slightly, to 98% in October 2008, due to deactivation of some SIM cards that were bought with the entry of the new operator and not used later. The market shares of individual operators based on the number of subscribers are approximately 55%/40%/5%. The new entrant continues to roll out its own infrastructure. The current coverage at the level of 80% of population is above the limit set in the licence conditions. It provides data services using EDGE (Enhanced Data Rates for GSM Evolution) and GPRS (General Packet Radio Service) technology.

The market underwent a further shift from pre-paid to post-paid customers, with 60% of subscribers now opting for a post-paid contract.

There are no mobile virtual network operators (MVNO) present in the market.

Regulatory issues



Price regulation was not imposed in the first round of market review for the wholesale mobile call termination market. Mobile termination rates for 2008 (slightly asymmetric) were therefore negotiated commercially. The national average is €0.1082, which is above the EU average of €0.0855 for 2008. Negotiations for 2009 onwards have been concluded by the two major mobile operators between each other and with the other fixed operators, while the new entrant has not reached an agreement yet with any of the major mobile players. A dispute settlement mechanism on setting new termination rates was initiated by the new entrant in December 2009. The NRA has not issued a decision in this regard so far. All three players maintain interconnection between their networks.

In the ongoing second round of market review, the NRA proposes an imposition of price control for all three mobile operators. The results of the new market review are yet to be notified to the Commission.

The new entrant criticises the ineffectiveness of the dispute mechanism for mast sharing, especially since the time conditions linked to its GSM licence require prompt solutions.

Roaming

All three mobile operators appear to have complied with the price cap reductions for voice services required by the Roaming Regulation. The retail voice roaming prices were set under the required price cap. In this way, the operators were trying to avoid the risk of effectively increasing the roaming prices when the national currency changed to the euro in January 2009. One of the mobile players reduced data roaming rates from June 2008.

Fixed market

Market situation

Fixed line penetration is at 21.1% of the population and 44.3% of households. The penetration level has stabilised after a period of continuous decline from 2002-2006. About 26% of total outgoing voice traffic being carried over fixed lines in 2007.

The process of market consolidation continued in 2008 with further acquisitions. Bigger alternative players provide their voice services via CS (Carrier Selection), and partially via their own infrastructure. Wholesale line rental (WLR) is not offered by the incumbent. Despite the fact that the incumbent also offers carrier pre-selection (CPS) and its conditions are set in the reference offer, alternative operators show no interest in providing telephones service via CPS. Instead, so-called ‘dialers’ are used to avoid pre-dialing by customers. The alternative operators appear to be focussing on the business segment of the market, targeting mostly new business developments. The total number of voice over IP (VoIP) operators offering public telephony services has almost tripled compared to 2007. These players are mostly small local cable operators offering double-play or triple-play services.

The overall position of the incumbent on the fixed voice retail market remains largely unchallenged. With an 8% market share by retail revenue, the overall impact of the alternative operators on the retail fixed voice market remains fairly insignificant.

Regulatory issues

The second round of market reviews for the former fixed retail access markets was finalised in 2007. However, upon completion of the review process in February 2008, the NRA issued no new decisions on the final measures resulting from the analyses. Instead, notices informing the operators of the SMP findings were published on the website of the NRA in February 2008. These notices also informed the market players of the fact that the SMP determination and remedies imposed in the first round of the review remain effective via formal validity.

The NRA carried out a second round of market review for the fixed wholesale call origination market in 2007. In addition to the remedies already established, the NRA proposed new price regulation. WLR was not included in the scope of remedies as invited by the Commission in its comments. However, in a similar manner to the approach taken with regard to the retail access markets, SMP findings and remedies other than price regulation were not determined by a new decision of the NRA based on this new analysis. The decision on the price regulation methodology (FL-LRIC) became effective in November 2008, decreasing the applicable average origination rate by 34% down to the level of the termination rate. The NRA expects that such price cuts will in turn trigger an increase in competition through CS use.

The incumbent has appealed to the Supreme Court against the decision on price caps and subsequent change of the reference offer for the fixed wholesale call termination market. While the Court's decision is pending, the decision on price caps has been suspended, but the SMP decision and other remedies in this market remain in place. The average interconnection prices for call termination at peak times are above the EU average, but it should be noted that the peak time in Slovakia is a shorter period than in other Member States.

In an appeal of the incumbent concerning remedies related to the fixed wholesale transit market, the Supreme Court returned the matter back to the NRA for a new decision in October 2008. The Court did not suspend the effectiveness of the remedies prior to its decision on the appeal.

The retail market for the minimum set of leased lines was taken out by the NRA from the national list of relevant markets susceptible to ex ante regulation in March 2008, hence the remedies set for this market are no longer applicable. This has been done without any analysis or notification to the Commission. The Commission services are looking into the matter. The incumbent had previously appealed at the Supreme Court against the obligations imposed on this market.

TÚSR has initiated the three-criteria test for the former fixed retail markets for local and/or national calls, and international calls, as well as for the former wholesale markets for the fixed transit and broadcasting transmission services. Nevertheless, the results still remain to be notified.

Overall, the remedies imposed on the market to date do not appear to address the competition shortcomings efficiently. The fixed market is yet to open to effective competition and consumer choice.

Broadcasting

Market situation

In the TV broadcasting market, terrestrial transmission provides services to 15.2% of households over population. For terrestrial transmission, the estimated share of digital and analogue transmission is 2.4% and 12.8% of households over population respectively. Cable TV holds a strong position with 14.6% of subscribers over population, followed by satellite TV with 10.4%.

While pilot terrestrial digital TV broadcasting continues, a regular digital broadcasting service has not been launched yet. There are several urban geographical areas with a high level of triple play competition which includes IPTV or HDTV. However, the take-up of IPTV remains rather low at 0.54% of households over population.

Regulatory issues

The national strategy for the digital switchover is based on a gradual phasing out of analogue broadcasting. The Ministry is in the process of preparing a proposal to the Government on subsidies for digital equipment.

A call for a DVBT (Digital Video Broadcasting-Terrestrial) tender was launched by TÚSR for two commercial multiplexes. The deadline for submissions was 20 November 2008. The licences for the first two multiplexes (single operator) using the MPEG-4 (Moving Picture Experts Group 4) standard were expected to be issued at the beginning of 2009. The terms of the tender specified that the service will have to be commercially launched within one year with a minimum coverage of 40% of the population. However, the tender process came to a standstill after a preliminary injunction to block the tender was issued by Bratislava District Court in October 2008. After the dismissal of the chairman in December 2008, the NRA cancelled the tender altogether. A new tender procedure has not been initiated yet.

The NRA noted difficulties with availability of frequencies for digital broadcasting; for example, frequencies for multiplexes such as DVBH (Digital Video Broadcasting-Handheld) will only be available after 2012.

Horizontal regulation

Spectrum management

A tender for 870 MHz frequencies launched in 2008 was won by the biggest mobile operator. The spectrum assigned is to be used via CDMA (Code Division Multiple Access) technology to provide complementary services for the existing 3G offer.

An informal public consultation on the future use of the digital dividend spectrum under preparation by the NRA is planned to be published in the first half of 2009.

Numbering

The EU harmonised numbers 116 000 and 116 111, reserved for missing children hotlines and child helplines respectively, have been assigned to UNICEF Slovakia. The biggest mobile operator is the network provider for both services.

Implementation of spectrum decisions

The Slovak authorities have notified the full implementation of the following Radio Spectrum Harmonisation Decisions adopted by the Commission (Decisions 2005/513/EC, 2005/928/EC, 2006/771/EC, 2006/804/EC, 2007/131/EC, 2004/545/EC, 2005/50/EC and 2007/98/EC). Implementation of Decision 2007/344/EC on the harmonised availability of information regarding spectrum use, which ensures accessibility of the radio interface specifications on the EFIS database, as well as Decision 2007/90/EC is still under way.

THE CONSUMER INTEREST

Tariff transparency and quality of service

Both fixed and mobile operators apply the same tariff range system for premium rate services, thus allowing customers to recognise the tariff level of numbers dialled. The particular tariff levels are set through commercial negotiations with content providers based on their selection of a concrete tariff range.

An interactive web-based price comparison tool is not available on the market. Mobile operators are cooperating on the implementation of the Framework Code of Conduct on Safer Mobile Use by Children.

Universal Service

The incumbent provides universal service for all designated elements, including special services for disabled users. The latest amendment to the Electronic Communications Act modified the previously broader definition of 'access at a fixed location' to 'a reasonable access at a fixed location'. TÚSR has decreased the density requirements for public payphones in larger cities.

At the end of 2007, the incumbent requested compensation from TÚSR for the provision of universal service during 2005 and 2006. The biggest potential contributors note that the amount requested greatly exceeds the figures expected. The NRA has extended the deadline for decision on the net cost until the end of September 2009. TÚSR intends to initiate a tender to select an external auditing company tasked with the net cost calculation. It should be noted that a compensation mechanism process should be transparent to all parties affected.

Following an audit by TÚSR on the printed comprehensive directories, a fine was imposed on the incumbent. The decision on the fine has been appealed. Directories and directory enquiry services are not provided by third-party service providers.

Number Portability

More than 90 000 fixed numbers were ported during the reporting period. Both the retail and wholesale prices for fixed number portability are high (€33 retail and €49.7 wholesale). From the customer's viewpoint, porting usually takes between 10 and 20 days. The NRA has proposed a shortening of the maximum porting time set in the secondary legislation to a new time limit of 5 days, with a view to entry into force in the first half of 2009.

An automatic solution for mobile number portability became available for the new mobile entrant in May 2008. Overall, the consumer interest in the mobile number portability facility has not taken off yet, and the total number of mobile numbers ported between October 2007 and October 2008 is low (10 893). The retail price of €13-20 charged by the two major players is relatively high; the new entrant does not charge any retail fee. An average time to port a mobile number from the customer's viewpoint is reported to be 14 days. The new entrant reports 20 days.

Wholesale prices for number portability are negotiated commercially.

Consumer complaints

Mobile operators note that most consumer disputes involve alleged billing mistakes. A dispute with an operator may further be taken to TÚSR. The consumer protection authority Slovak Commercial Inspection actively encourages consumers to use the available out-of-court dispute resolution mechanism. The regulator finds that subscriber contracts are a frequent source of disputes. TÚSR received 80 consumer complaints in the first half of 2008.

European emergency number 112

In July 2008, the European Court ruled that, by not ensuring in practice that authorities handling emergencies are, to the extent technically feasible, given caller location information for all callers to the single European emergency call number '112', Slovakia had failed to fulfil its obligations under the Universal Service Directive. The Commission closed the case in January 2009 as the caller location information is now provided by all mobile and fixed players.

All national emergency coordination centres have been upgraded with new technology that allows receipt of caller location information. At present, the fixed incumbent provides the national emergency coordination centres with up-to-date information through an online interface with its databases; the databases of the fixed alternative operators are updated manually on a quarterly basis but the intention for the future is to launch an automatic update. The provision of caller location information has now become a part of the national roaming arrangement provided for the new mobile entrant by the second largest mobile operator. This operator provides caller location by a push method (cell ID, including SIM-less cards and roaming customers). The other two mobile players use a pull method. The incumbent acts as an aggregator for the caller location provision.

In December 2008, the Ministry of Interior adopted secondary legislation aiming at further improvement of the quality of caller location information. It obliges the mobile operators to provide the most accurate caller location which is already offered as a commercially service, and further clarifies the obligation with respect to the national emergency coordination centres. The proposal also extends the obligation to SIM-less phones and allows the centres to create a black list of hoax callers. A hoax caller could, however, still be allowed a connection to the emergency services. The current law allows the possibility of fining the hoax caller; individual cases are investigated by the police.

The information campaign continues via TV, public training and schools. The Ministry of Interior has launched a new dedicated 112 information website.

Must-carry

On the basis of the latest amendment of the Law on Broadcasting and Retransmission of 2007, the Broadcasting Council has already granted two exceptions to the must-carry regime. Three applications were denied. There are no capacity constraints reported with respect to channels with must-carry status.

Data protection

Operators have expressed concerns about amendment of the general authorisation imposing an obligation to provide equipment for legal interception at the operator’s expense. The biggest mobile player appealed to the Supreme Court against an authorisation and won parts of the claim. TÚSR has already prepared a new authorisation proposal.