

SLOVAKIA

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INTRODUCTION

The broadband market shows signs of inter-platform competition. However, the incumbent's position in the DSL section remains unchallenged. The level of competition on the mobile market has risen considerably, with a new entrant launching its commercial service at the beginning of 2007. The fixed market has remained in the hands of the incumbent, while the largest mobile operator entered the fixed market with a substantial roll-out of FTTH infrastructure.

The NRA has been active in completing the process of imposing remedy obligations in the markets analysed in the first round of market reviews. It has also initiated a second round of reviews. However, the regulation currently in place in some markets does not so far appear to address the competition deficits fully and effectively. The reference offers of the incumbent contain conditions that are not accepted by the other market players, and as such are not conducive to achieving the results intended by the regulation.

REGULATORY ENVIRONMENT

Main regulatory developments

By 2006, the Slovak regulator, TÚSR, had completed the analysis of 16 markets defined in the previous Recommendation. Throughout 2007, it has continued to impose remedies on those remaining markets analysed in the first round of market reviews which were found not to be effectively competitive, and where the remedies have not yet been applied. A second round of market reviews has been initiated for five markets (based on the previous Recommendation) and the Commission has received three notifications. A new notification of the wholesale market of trunk segments of leased lines was withdrawn again.

The Ministry of Culture, in cooperation with the Ministry of Transport, Post and Telecommunications (hereinafter referred to as "the Ministry"), has drafted a new Digital Broadcasting Act which took effect in May 2007. The Act establishes national rules for the transition from analogue to digital broadcasting and sets out the procedures for broadcasting in digital format only. An amendment to the Electronic Communications Act, effective from December 2007, concerns *inter alia* the transposition of the Data Retention Directive. The amendment furthermore specifies the provisions relating to regulation of the relevant markets, prices, numbering and financial penalties (by raising

the maximum limits). The latest numbering plan issued by the NRA takes account of the Commission's Decision on the 116 range of harmonised numbers.

Organisation of the NRA

TÚSR appears to be facing continuing difficulties due to lack of resources, in the areas of both personnel and finance. The NRA is funded out of the Ministry's budget. There has been no progress with the mechanism for appeals against decisions made by TÚSR. An administrative appeal against a first-instance decision therefore still results in an automatic suspension of the decision's effects. The Commission is examining the mechanism's compatibility with the EU regulatory framework. Given that first-instance decisions are always appealed, the entry into effect of regulatory decisions is delayed in every case.

A structural separation of the regulatory function of the Ministry in the area of universal service financing and frequency allocation table was not ensured from its ownership and management of 34% of the incumbent's shares throughout the reporting period. The Commission had addressed the issue via an infringement proceeding. The Slovak authorities took corrective measures to address the issue in December 2007. As a result, the shares were transferred to the Ministry of Economy in January 2008. The infringement proceeding in this regard was closed shortly thereafter.

Decision making

The NRA continued to complete the process of imposing remedy obligations in the markets that had been analysed during the first round of market reviews. Throughout 2007, new remedies were introduced for the markets for the minimum set of leased lines, fixed transit services, wholesale broadband access and broadcasting transmission services. A full set of remedies, including price regulation, has thus been imposed on the markets for fixed wholesale termination, fixed wholesale transit, wholesale broadband access and broadcasting transmission services. The NRA has also been closely involved in the monitoring and subsequent lowering of interconnection prices charged by the incumbent.

TÚSR has been working on the second round of market reviews. In this regard, it has initiated analyses for five markets. Market analyses for both fixed retail access markets and the fixed wholesale call origination market have already been notified to the Commission. The Commission notes that the remedies proposed for the retail markets do not differ from the remedies imposed in the first round. As the original remedies do not appear to have been fully effective in resolving the competition issues on the markets in question, the regulator has been invited, in the context of the Commission's comments, to reconsider whether the scope of the remedies as proposed, especially regarding price control mechanisms, is sufficient to address the issues at stake. Similar comments were already made to TÚSR with respect to remedies imposed in these markets in the first round of market reviews.

Overall, it appears that a more pro-active and comprehensive approach by the NRA towards regulation would be beneficial to advance the level of competition on the Slovak market. The regulation currently in place for some markets does not appear to have fully addressed the competition deficits as yet. Such an approach may, *inter alia*, facilitate the implementation of CPS, LLU and bitstream access, which the alternative operators have

so far not taken up and implemented in practice, even though the relevant reference offers have been made available. Reassessment of the incumbent's reference offers in terms of prices and other practices employed, in particular as regards facilities collocation, may assist in resolving the competition shortcomings identified in the market analyses.

MARKET AND REGULATORY DEVELOPMENTS

The total turnover of the telecommunications sector was €1.72 billion as of 31 December 2006. The revenue from the fixed market was €63.8 million, whereas the revenue from the mobile market reached €1.1 billion. The total value of tangible investments was €387.2 million, of which €41.4 million came from mobile operators, €20.8 million from fixed alternative operators, and €5.7 million from the incumbent operator.

The biggest mobile operator has made significant investments in the deployment of a new NGN network (FTTH), covering certain parts of all eight district cities plus three additional cities. The declared intention was to cover approximately 200,000 households (representing 9% of all households) by the end of 2007. The commercial services on the network were launched in September 2007 offering fixed voice telephony, broadband services and digital TV. The incumbent has announced significant investments in the development of an NGN network (FTTB and FTTH). As at the end of 2007 the network covered approximately 50,000 households.

Triple-play services (fixed voice, broadband and television) are offered by the fixed incumbent (IPTV) as well as by the biggest cable and mobile operator and several new entrants.

In 2007, four alternative operators established new access networks for the provision of voice, data and Internet services in the FWA 3.5 GHz band. The access points are available in all district and county cities (272 access points available).

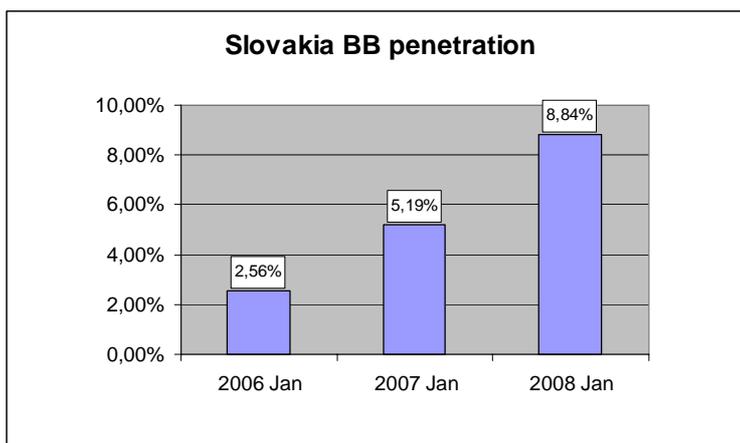
Broadband

Market situation

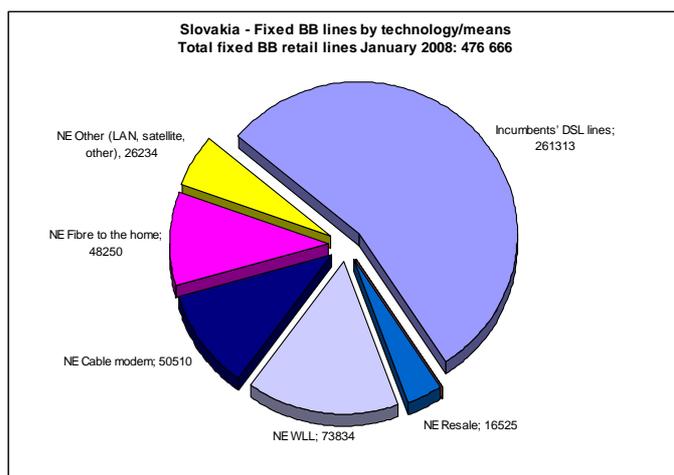
The total fixed broadband penetration has increased by 3.65 percentage points, but its current rate of 8.84% is still one of the lowest in the EU.

The broadband market appears to be showing signs of increased competition. The market share of new entrants by fixed retail access lines for all platforms

has increased from 34% in 2006 to 45.2% in January 2008. The new entrants provide broadband services mainly by WLL (15.6% of total fixed retail lines), cable (10.6%) and FTTH (10.1%). The biggest growth in access lines on the part of new entrants was for



WLL. Of all the technologies present, DSL lines experienced the most rapid growth in terms of the number of access lines.



The position of the incumbent on the overall broadband market is still very strong, at 54.8% of total fixed retail lines. At the same time, DSL technology, with a 58.3% share of the fixed retail market, remains the single most important platform providing broadband services. It is almost wholly in the hands of the incumbent (a 94% market share of all DSL retail lines), which maintains a relatively stable

position on the DSL market. Naked DSL has been available on the market since 2006. No progress has been achieved in terms of the provision of unbundled lines or bitstream access. No unbundling or bitstream agreement has been signed yet.

DSL coverage in rural areas is low: 29.5% compared to 65.7% at national level¹. However, in the context of broadband coverage it should be noted that broadband access in rural areas is also available by other technological means.

Mobile broadband services appear to be gaining in importance, especially when the low fixed penetration rate is taken into account. Flarion mobile broadband is offered by the smaller mobile operator. The larger operator has introduced a bundled offer of its fixed broadband over NGN network with its mobile broadband services.

Regulatory issues

Remedies in the form of transparency, non-discrimination, accounting separation, and access and interconnection, including co-location and facility sharing, were already imposed on the incumbent in 2005 following the analysis of the LLU market. Price regulation was not included. The prices for fully unbundled local loop and shared access fell significantly in 2007 as a result of pressure from the NRA, but remain above the EU average. Despite the falls in price, there has been no movement towards LLU implementation.

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. The reference offer was published in September 2007. Cost orientation is based on the historically allocated costs. The NRA took account of the Commission's comments, and the remedies thus include access at both IP and ATM level.

Despite the fact that the reference offers are available for both the LLU and bitstream access, none of the alternative market players has so far accepted them. The terms of

¹ Source: IDATE, October 2007, Broadband coverage in Europe. Figures as of 31 December 2006; coverage relates to percentage of population.

these offers are said to be commercially unacceptable in both cases. Amongst others, collocation appears to be a key issue, along with unclear pricing and complicated ordering processes. Given the importance of these key markets for further broadband development, the Commission advised the TÚSR in its comments to re-examine the existing reference offers so as to ensure effective implementation of the obligations imposed on the incumbent.

A new round of market analysis was initiated for the LLU market. The results have not yet been notified to the Commission.

Mobile markets

Market situation

There are three mobile operators present on the market. The third GSM market player launched its commercial services in February 2007. It provides both pre-paid and post-paid services, as well as data services. The new player has agreed a partial infrastructure sharing arrangement with the other two players. The entry of the new operator and the resulting competitive pressures appear to have facilitated an increase of more than 15 percentage points in mobile penetration, bringing it up to the current level of 101.6%.

All three mobile operators provide GPRS and EDGE services. Investment in 3G by the two commercial providers has slowed down, with the result that the coverage has increased only slightly compared to 2006. Both 3G operators use HSDPA and UMTS TDD technology for 3G provision. The 3G coverage of one of the operators has reached 51.1%, whilst the other operator has achieved coverage of 8%, focusing more on the provision of mobile broadband via Flash-OFDM technology (70% population coverage). The latter has merged the services it provides via 3G, Flarion, GPRS and EDGE into an interchangeable service in order to achieve greater coverage. This operator also provides for national roaming by the new entrant. The new entrant is expected to launch 3G services commercially at a later stage. There are no MVNO present on the market.

Regulatory issues

The mobile access market was assessed as being effectively competitive and therefore regulation is not imposed.

Transparency, non-discrimination, accounting separation, and access and interconnection were imposed on the mobile call termination market in 2006. Mobile termination rates appear to be relatively low, even without price regulation. The Supreme Court ruled on the appeal by the smaller operator against the remedy, confirming the regulator's decision.

Roaming

All three GSM operators appear to have implemented the requirements laid down in the Roaming Regulation to a satisfactory level. The possibility for the NRA to impose penalties in this regard has been enshrined in national primary law by means of an amendment to the Electronic Communications Act.

Fixed market

Market situation

The fixed market has undergone significant consolidation, thereby reducing the number of effective market players. Alternative fixed operators are therefore less likely to go ahead with strategic decisions. At 21.7%, the fixed penetration rate is low. The incumbent's position on the market remains unchallenged, with 94.4% of the market share by retail revenue. The fixed alternative operators provide their services mostly via CS, leased lines or their own infrastructure, focusing in the main on the business segment of the market. New entrants do not offer voice services via CPS or LLU. Wholesale line rental is not available on the market. Only 1.7% of all subscribers actually use an alternative provider for direct access. Publicly available telephony services are provided by the biggest cable operator. VOIP services are offered by the biggest cable operator, other alternative fixed operators and the incumbent.

An important development has been the entry of the largest mobile operator into the fixed market. Commercial services over its new NGN network (FTTH) were launched in September 2007.

The State continues to own 49% of the incumbent's shares. The ownership and management of 34% of the state shares was transferred to the Ministry of Economy in January 2008. The National Property Fund owns the remaining 15% of the state shares.

Regulatory issues

All of the relevant markets for fixed telephony from the previous Recommendation have been assessed as non-competitive, with the incumbent having the SMP.

Access markets have been regulated by CS/CPS, non-discrimination and service unbundling since 2005. New analyses of these markets were notified to the Commission in August and October 2007. Apart from cost orientation of the interconnection for CS/CPS in the residential segment, the proposed remedies have not changed from those imposed in the first round of market reviews. However, the proposed price control can only be implemented by applying an appropriate methodology for cost calculation, which was not specified in the notification. Since the remedies imposed in the first round have not been effective in resolving the competition problems, it may be useful to reconsider the details of the proposed obligations.

On the fixed retail call markets, the remedies of non-discrimination, service unbundling and a ban on charging excessive prices were imposed in 2006. Remedies imposed in the market of the minimum set of leased lines in 2007 include price regulation.

As regards the fixed wholesale markets, a full set of remedies including price regulation (bottom-up FLRAIC) has been applied on the fixed call termination market since 2005. In 2007, the interconnection prices for terminating calls on the incumbent's network fell significantly (by 40% for peak time at local level, for example). Price regulation is not included in the set of remedies for fixed origination. The NRA notified a new analysis of this market in December 2007. The scope of proposed remedies includes cost-orientation on the basis of the FL LRAIC bottom-up model. In its comments, the Commission also invited the regulator to consider imposing a wholesale line rental remedy, which is not present on the market.

Again, given the continuing strong position of the incumbent on the fixed market, and in order to facilitate the opening of the market to effective competition, the Commission has advised the regulator to re-assess the conditions in the relevant interconnection reference offer to ensure an effective compliance with the obligations imposed.

Broadcasting

Market situation

Broadcasting is dominated by terrestrial transmission (53.2%), with an estimated share of 52% for analogue terrestrial transmission and 1.2% for digital terrestrial transmission. Cable is next with 28.6%, and satellite transmission with 17.5%. Only 0.1% of households receive national TV programmes via IPTV.

Pilot digital TV broadcasting continues to operate in three major cities and their neighbouring areas. Regular digital broadcasting is foreseen to begin in 2008-2009.

Regulatory issues

Access, transparency, non-discrimination, accounting separation, and cost orientation by FAHC were imposed on the broadcasting transmission services market in 2007.

A new Digital Broadcasting Act took effect in May 2007. It sets out the legal provisions for the process of digital switchover and further broadcasting in digital format only. The current wording of the Act allows analogue broadcasting until the end of 2012. The NRA has prepared a technical plan for digital broadcasting and plans to launch tenders for multiplexes in the near future. The technical plan covers three national multiplexes for the transitional period until the end of 2012. There is only a limited set of frequencies available at the moment for the first multiplex that initiates the process of regular digital broadcasting.

Horizontal regulation

Spectrum management

The Slovak authorities have signalled the full implementation of the Radio Spectrum Harmonisation Decisions adopted by the Commission (Decisions 2005/513/EC, 2005/928/EC, 2006/771/EC, 2006/804/EC and 2007/98/EC). The implementation of Decisions 2004/545/EC, 2005/50/EC, 2007/90/EC and 2007/131/EC is under way. The NRA plans to implement these Decisions in 2008. Primary law provides for the possibility of secondary spectrum trading, subject to the approval of the NRA. So far, two approvals have been issued in this regard.

CONSUMER INTEREST

Universal Service

The incumbent was designated as the sole universal service provider in 2006. The current scope of the universal service covers all elements envisaged in the EU regulatory framework. In June 2007, the NRA gave new details of the provision of public payphones and special measures for disabled users. A further review of the other

elements is indicated for a later stage. Designation was set for an unspecified time period. However, any operator may request a re-evaluation of the universal service obligations.

The legislation provides for the possibility of universal service financing from a fund financed by contributions from the market players. The designated operator requested compensation for the first time in December 2007. The NRA is yet to take a decision on the existence of an unfair burden.

Number Portability

Once fixed number portability became available for all operators, the Commission closed the related infringement proceeding in June 2007. Fixed portability is based on bilateral agreements amongst operators, but is not a part of the RIO as such. Certain cumbersome procedures regarding customers' applications to port were abandoned by the incumbent following pressure from the regulator. The incumbent was fined for non-compliance with several requirements laid down by the NRA. As of October 2007, more than 91 000 fixed numbers had been ported.

Mobile number portability became available in 2006 for the existing mobile players. The number of ported mobile numbers continues to increase (it is currently over 10 000). The porting system in place is based on the specific customer data collected by the operators. In order for the new market player to take part, a solution had to be found to reconcile the different approaches to data-gathering by the established players and the new entrant. The NRA played an active role in the process. It is expected that mobile number portability will become fully available for the third player in the first quarter of 2008. It should be noted, however, that the current delays are preventing customers from enjoying the full benefits of this important tool of consumer choice. The porting itself may take up to 20 days.

European emergency number 112

The single European emergency number, 112, is accessible from both fixed and mobile phones. It is available free of charge from all publicly available telephone services, including payphones. When using payphones, it is not necessary to have any means of payment such as coins or cards.

112 calls are answered by the coordination centre for integrated rescue systems (eight centres located in each district city). The technical equipment of the coordination centres is currently being upgraded to minimize the response time to the point of emergency. This will enable faster and more effective help. The upgrade was due to be completed by the end of 2007.

Caller location information is only partially available from both the fixed and mobile networks. The Commission has referred Slovakia to the European Court of Justice in this regard. Full availability of caller location information is expected once the upgrade of all coordination centres is completed.

Citizens are informed about the existence and use of 112 via notices in payphones and in phone books. There are also regular information campaigns on this number on TV and in newspapers at national and local level. The Ministry of the Interior, in cooperation with

the Ministry of Health, has launched an information campaign called 'Get to know the 112 number and learn how to use it properly', which primarily targets schools.

Must-carry

An amendment to the Law on Broadcasting and Retransmission, effective from May 2007, aims at a better transposing of the requirements set out in the Universal Service Directive. The changes restrict the must-carry regime to cable retransmission operators only. The Broadcasting Council has been given the power to grant exemptions from the obligation to provide must-carry channels in a defined set of circumstances.

Data protection

An Amendment to the Electronic Communications Act was adopted, effective from December 2007, in order to transpose the Data Retention Directive.