

BULGARIA

INTRODUCTION

The mobile market is the most dynamic market in Bulgaria, with a high and increasing penetration rate, and three competing operators. In contrast, the fixed market is characterised by limited competition and the clear dominance of the incumbent. In the absence of regulatory measures following a market analysis, fixed alternative operators have, so far, not been able to develop their services significantly. Broadband penetration has increased but remains one of the lowest in the EU and, despite platform competition, it is still difficult for alternative operators to enter the DSL broadband market.

The Bulgarian authorities have endeavoured to ensure full independence and effectiveness of the Bulgarian regulator, to make the single European emergency call number 112 available nationwide and to implement mobile number portability. Regulatory activity has increased markedly, but its practical impact on the market seems to have been limited so far. The first market analyses, the main instrument for improving competition and increasing consumer benefits, were only notified at the end of 2008.

REGULATORY ENVIRONMENT

Main regulatory developments

Important secondary legislation such as the methodology for market analysis, and ordinances on numbering allocation, on quality requirements for universal service, on access and interconnection and on conditions for the provision of directory and telephone enquiry services was adopted in 2008. Geographic and non-geographic number portability, and carrier-selection and pre-selection were also developed through secondary legislation.

Several amendments to the Law on Electronic Communications (Закон за електронните съобщения, LEC) were still pending before the Parliament when this Report was drafted. Some of these amendments address the need to reinforce the independence and effectiveness of the Communications Regulation Commission (Комисия за регулиране на съобщенията, CRC), such as the competence with regard to approval of the market analysis methodology, more budgetary autonomy, a clearer distribution of responsibilities for scarce resources management, and new provisions providing for administrative sanctions. Other amendments have to do with strengthening the powers of the CRC Chairperson, proposing an extension of the Chairperson's mandate from five to six years and boosting his budgetary and human resources-related powers. Finally, other amendments address additional issues, such as the roaming regulation.

The methodology on rules and procedures for the analysis of markets was only adopted in March 2008. Bulgaria notified to the Commission the first market analyses, on wholesale fixed telephony and on mobile call termination, at the end of 2008. A public consultation on the fixed retail calls markets, and another one on the physical network infrastructure access (LLU) and the wholesale broadband access markets, were launched in December 2008. It is hoped that the adoption of the market analyses and the consequent implementation of regulatory measures will contribute to improving competition on all markets concerned.

Organisation of the NRA

Given the progress made in terms of the regulator's effectiveness and independence, the Commission closed in June 2008 the infringement proceeding which had been opened against Bulgaria. Firstly, the nominations to the CRC board were completed in December 2007. Secondly, the Chairperson of the State Agency for Information Technology and Communications (the executive power's body responsible for electronic communications) resigned from his post as a member of the incumbent's board at the end of 2007.

Financial and human resources of CRC have been reinforced. The CRC's budget proposal for 2009 has been approved by the Ministry of Finance on the basis of CRC's expected revenues and expenditure. The number of CRC staff will be maintained, unlike other State administrative bodies, not least for carrying out market analyses and putting in place effective monitoring mechanisms and remedies. It would seem that reinforcement of human resources could be of great help in overcoming the regulator's difficulties and catching up with the delays.

Decision-making

Generally speaking, CRC's effectiveness has improved after the completion of the nominations to the CRC board, in December 2007. The decision-making process has speeded up, allowing important regulatory decisions to be taken such as on number portability, and various contributions to draft secondary legislation have been made.

Nevertheless, significant delays were observed in important measures, the main one being market analyses. One reason for the delay in starting the market reviews appeared to be the long procedure for approval of the methodology by the Council of Ministers. A draft amendment to the LEC proposing to allocate this power to CRC was presented before the Parliament.

An amendment to the LEC pending before the Parliament would allow CRC to impose administrative sanctions on undertakings, in order to reinforce its effectiveness.

Finally, it should be noted that part of the secondary legislation (e.g. regarding numbering) was issued by the State Agency for Information Technology and Communications (the executive power's body responsible for conducting state policy on electronic communications and media) and by the Council of Ministers (e.g. the market analysis methodology). Some of these aspects should fall under the responsibility of the national regulatory authority, CRC, which is the only NRA notified to the Commission. An amendment to the LEC has been proposed in order to clarify the attribution of competences and give full powers to CRC on these matters.

CRC decisions related to market analyses, remedies and settlement of disputes between operators stand while appeals are pending, unless decided otherwise by the Court, according to the LEC. No CRC regulatory decisions have been appealed this year. In the event that the planned market analysis decisions are challenged before the Supreme Administrative Court by some stakeholders, the CRC decisions will stand pending the appeal, and CRC will be able to implement them immediately, according to the LEC.

MARKET AND REGULATORY DEVELOPMENTS

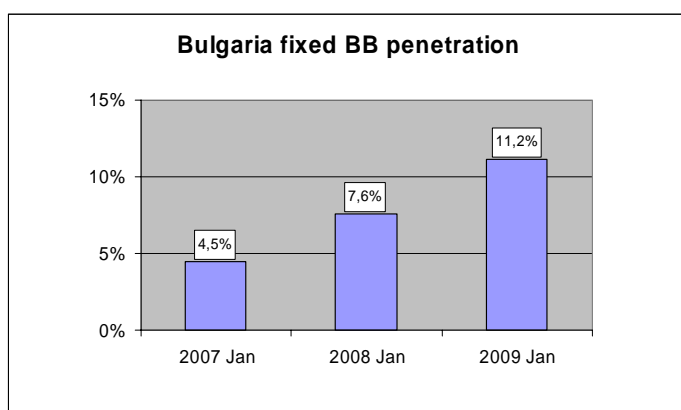
The total electronic communications turnover in Bulgaria has increased by 10.78% from the previous year (around €1 715 million at the end of 2007 compared to €1 548 million at the end of 2006), mainly due to increased revenues in the mobile sector, which accounted for €1 046 million (compared to €918 million in the previous year). The fixed sector has seen its revenues fall from €399 million to €370 million. The total value of investments followed the same trends and increased to 31.4% in 2007, which is the highest in the EU (EU average is 11.5%), reaching €538 million. €312 million came from mobile players and only €22 million investment came from fixed alternative operators, which already shows the strong position of the incumbent in the fixed market.

About 1% of the population subscribed to bundled offers, most of them double play (cable TV coupled with Internet access). The number of double play offers has however decreased, from 40 to 35, most likely to the benefit of triple play offers (cable TV, voice and data), which have increased from three to eight as of July 2008. No significant improvements have been detected from either a competition or a user perspective in the broadband and fixed markets.

Finally, the merger of the incumbent and the third mobile operator, which is its mobile arm, in September 2008, has been controversial among alternative operators, which accused the incumbent of cross-subsidising. The incumbent previously controlled 100% of its mobile arm's shares. CRC allowed the transfer of the mobile licences to the incumbent in August 2008. According to the case law of the Supreme Administrative Court, CRC has no power to force an undertaking to create a new legal entity as a precondition for allocating its licences, since CRC is statutorily provided with sufficient regulatory instruments to ensure fair competition, other than imposing such obligations. Even if some control measures are already imposed on the incumbent, rapid implementation of the necessary measures following the market analyses is essential in order to guarantee competition.

Broadband

Market situation



The market situation for broadband remains stable. The broadband penetration rate in Bulgaria (11.2% in January 2009, compared to 7.6% in January 2008) is still far below the EU-27 average (22.9% in January 2008), remaining one of the lowest in the EU, although it has moved one post from its last position in the previous year.

Bulgaria's total number of broadband lines increased to 853 089 in January 2009, compared to 580 226 in January 2008, mainly because of the local area networks (LANs) offers. The broadband market is characterised by platform competition between LANs, cable operators, satellite and the fixed incumbent (through DSL). 70% of broadband lines were non-DSL, mainly owned by LANs (57% of the broadband lines), while the incumbent had 29% of the broadband lines by January 2009. Mobile broadband is starting developing with a penetration rate of 5.7% compared to 13% EU average, based on general usage, and of 0.5% compared to

2.8% (EU average), based on data cards, in January 2009. Nevertheless, there is no competition on DSL. The incumbent still held 97% of the market in January 2009, compared to 99% in January 2008. The share of DSL slightly increased (30% of the total fixed broadband lines in January 2009, compared to 28.2% in January 2008). It seems that, as a result of the changes in the market conditions for alternative DSL operators, the two unbundled lines through shared access are not available any more. So far, only one DSL offer in the market comes from an alternative operator, through bitstream, available only on the business market. It seems difficult for alternative operators to enter the DSL broadband market, due to high prices and access conditions.

Regulatory issues

The incumbent reviewed and reduced the prices of bitstream following a CRC decision, which imposed price restrictions in November 2007. Nevertheless, in the absence of an effective market analysis (a public consultation was launched in December 2008), alternative operators still claim the existence of a price-squeeze effect with regard to the wholesale reference offer and the incumbent's retail offer, and also have concerns about the slow delivery conditions. As a result, despite the signature of eight bitstream agreements, in May 2008, competition has not been brought to the market through this solution. Similarly, three LLU agreements have been signed with the incumbent but, so far, there are no broadband offers on the market based on them. According to CRC, operators are not inclined to use the incumbent's offer for unbundled access. Alternative operators claim that there is a problem as regards price squeeze and conditions of the reference unbundling offer.

An amendment to modify the definition of the local loop in the LEC, only covering the twisted metal pair, was ultimately not presented to the Bulgarian Parliament. This could hinder the imposition of access obligations to other types of networks by the regulator in the future, should market developments need it.

Mobile

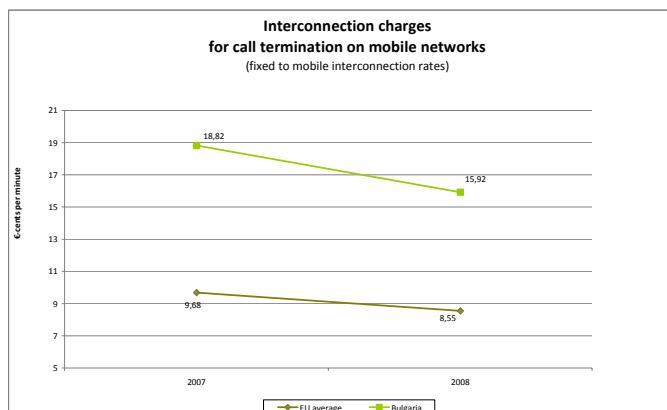
Market situation

The mobile market continued to represent the most dynamic market in Bulgaria. The mobile penetration rate remains one of the highest in the EU, 137% compared to the EU-27 average of 119% in October 2008, and has significantly increased from 123.4% in October 2007. The distribution of pre-paid and post-paid users was 51% and 49% respectively. The three mobile operators offer 2G, 2.5G and 3G services, and mobile broadband had a penetration rate of 1.7% (per 100 population) by October 2008. So far, mobile virtual network operators (MVNOs) have not expressed their interest in entering the market. The market share of the dominant operator has fallen from 51.04% in October 2007 to 49.47% in October 2008 (in terms of number of subscribers) to the benefit of the third one, whose share has increased from 10.03% to 12.25% in the same period, while the second operator maintained its position (38.28% in October 2008 compared to 38.78% in October 2007).

The Bulgarian authorities launched an auction procedure in June 2008 for the allocation of 1800 MHz frequencies, which failed, as the only applicant did not provide all the requested information. The EDGE coverage of the three mobile operators reaches 90% of the population. Finally, following the movements in the Greek market, where the German incumbent acquired 20% of the Greek incumbent's share in March 2008, the German undertaking took control over 25% shares of the second Bulgarian mobile operator, which was owned by the Greek incumbent.

Regulatory issues

In the absence of a market analysis in 2008, a glide path approved by CRC at the beginning of 2008, based on an agreement with the operators, made it possible to reduce fixed-to-mobile termination rates from €0.188 in October 2007 to €0.159 in 2008. This was still almost double the EU average on mobile termination rates, which stood at €0.0855 in October 2008. Mindful of this gap and the consequent need for a more significant reduction, CRC analysed the mobile call termination market accordingly and submitted its market analysis to the Commission by the end of 2008.



Some operators opposed CRC's initial regulatory proposals, which included a significant cut in mobile termination rates and asymmetry for the third operator during the public consultation, as well as a glide path for aligning fixed-to-mobile to mobile-to-mobile termination rates. The market analysis was notified to the Commission by the end of 2008. It proposed a less ambitious cut in mobile termination rates and symmetry for all operators. The alignment of fixed-to-mobile and mobile-to-mobile termination rates was to be achieved by July 2009. The termination rates are proposed to be reduced through a glide path ending in July 2010 at the level of €0.076. The Commission services were analysing this notification when this Report was drafted.

Roaming

The second mobile operator has allowed its pre-paid users to make outgoing roaming calls only since August 2008. The first operator offers different roaming packages and special tariffs. The charging method used by all mobile operators for roaming is on a per-minute basis. Bulgaria had not yet adopted, when this Report was drafted, the necessary provisions allowing the imposition of fines on operators who do not comply with the Roaming Regulation. An amendment to LEC on this issue was presented to the Parliament. The Commission services are looking into this matter.

Fixed

Market situation

The fixed market has not experienced any significant improvements since last year and presents the same features of monopoly. The lack of competition seems mainly due to the problems encountered by operators for interconnection and high termination rates. Even if there were 18 operators reported as offering services in this market, and 13 operators as offering VoIP services by July 2008, the incumbent still had 95.78% of the market share in terms of revenue by January 2008, slightly down compared to 97% on January 2007. The market share of VoIP was 2.83% by January 2008.

Carrier selection (CS) and carrier pre-selection (CPS) were available for international and long-distance but still not for local calls for most of 2008, and only one operator provided CPS. The CRC decision adding calls to mobile networks to CS and CPS was confirmed by the Supreme Administrative Court, but so far this service has not been made available. By

July 2008, 4% of subscribers were using alternative operators for national calls, while 3.8% were using them for international calls, owing to the fact that they have been reported as having lower prices than the incumbent.

Regulatory issues

Secondary legislation on the provision of and conditions for carrier selection (CS) and carrier pre-selection (CPS) was adopted in November 2008, introducing the opportunity to use CS for local calls. A draft Ordinance for interconnection was expected to complete the implementation of effective interconnection and access.

The lack of secondary regulation for interconnection has been an obstacle for the development of services to users and competition in Bulgaria in 2008. All alternative operators have in fact reported problems in reaching interconnection agreements with the incumbent regarding the provision of CS for calls to mobile networks, even after the CRC decision on the reference interconnection offer, appealed by the incumbent, was confirmed by the Court in February 2008.

The market analysis on wholesale fixed telephony, notified to the Commission by the end of 2008, proposed a reduction of the fixed termination rates through a glide path ending in July 2010. Alignment of mobile-to-fixed and fixed-to-fixed termination rates was to be achieved by 1 July 2009. Further reductions of the fixed termination rates are proposed through a glide path ending in July 2010. The Commission services were analysing this notification when this Report was drafted.

Broadcasting

Market situation

Cable operators and satellite operators respectively provided 1.22 million and 232 722 households with TV services in January 2008³⁸. The plan for the deployment of digital terrestrial television (DTTV) in Bulgaria was approved by the Council of Ministers in January 2008. However, the deployment of DTTV has been delayed. The planned channels for six national and 27 regional digital broadcasters will not be allocated until the revised Radio and Television Act is enacted. Moreover, a large part of the spectrum needed is currently used for security and defence purposes. Cable operators are nevertheless investing in digitalising their own channels.

The future use of the digital dividend generated by the switch-off of analogue broadcasting has still not yet been decided. The government is studying the possible future use of the 782-862 MHz band for wireless broadband applications once this band is released from the current defence purposes, which is not expected before 2015.

³⁸

Data on analogue and digital terrestrial TV not available.

Regulatory issues

The Radio and Television Act should have been amended six months after the issuing of LEC, in November 2007, in order to ensure its compliance with the latter. Nevertheless, the new Law was still pending by the end of 2008.

Although the allocation of analogue TV frequencies was permitted until the end of 2008, a licensing proceeding launched in 2006 was finally set aside, since the preference was to wait for the pending Radio and Television Act and keep those frequencies for the digital switch-over.

Horizontal regulation

Implementation of spectrum decisions

Following the unsuccessful assignment procedure for 1800MHz frequencies launched in June 2008, another auction procedure, through secret bidding, was launched in November 2008. That second procedure also failed and CRC announced the annulment of the auction in December 2008, due to the lack of applications. In contrast, as regards 900MHz, preference was given to the distribution of the remaining spectrum among the existing mobile operators, on the grounds of their needs for more spectrum to modernise and develop their existing networks. This additional allocation seems to give those operators a considerable amount of that range of spectrum.

Bulgarian authorities have requested a derogation to Decision 2008/477/EC on harmonisation of the 2500-2690MHz frequency band for a transitional period until 31 December 2010, on the grounds of current national security use of this band. The ex-ERMES Decision (Decision 2005/928/EC) has not yet been implemented, as the radio frequency band 169.4-169.8125 MHz is currently still needed for national security purposes. The implementation of the Decision on availability of information regarding spectrum use (Decision 2007/344/EC) is still in progress. An amendment to secondary legislation was adopted in order to allow the implementation of Decision 2008/294/EC (MCA), and amendments in order to allow the implementation of Decisions 2008/432/EC (amending 2006/771/EC (SRD)) and 2008/671/EC (ITS) were still pending.

There are five WiMAX licences issued in the band 3400-3600 MHz, some of them offering fixed and Internet services.

Administrative charges

The Law on Electronic Communications establishes that the management of administrative charges falls under the responsibility of CRC, but it excludes those charges from the obligation for CRC to publish a statement on its income and expenditure from fees for right of use and fines. This provision raises concerns as to its compatibility with the EU Regulatory Framework, which requires explicitly the publication of a yearly overview of administrative costs and charges collected by the regulators, in order to verify if an adjustment of the charges is necessary. A reference to the collected administrative charges, as part of the regulator's revenues, is included in the CRC's annual report, which does not seem to allow that verification. The Commission services are looking into this matter.

Rights of way and facility sharing

Secondary legislation on rights of way, covering the dimensions, location and special regime for exercising the relevant rights, is still lacking. Also, a significant number of LANs and some other operators reportedly illegally access the incumbent's ducts or deploy their cables in the private domain (overhead cables between buildings). So far, no measures have been taken to overcome this situation, as half of the broadband connections are provided in Bulgaria by LAN operators and Bulgarian authorities appear to fear a negative impact that could lead to a decrease in the number of citizens with broadband access.

Nevertheless, a pending amendment of LEC would include the imposition of sizeable fines for network deployment in the air and the strengthening of CRC's powers related to the control over these networks. Those practices may be indirectly favoured by the absence of effective access solutions (such as bitstream, LLU and ducts access), which would allow operators to improve their offers to users.

Authorisations

It seems that a significant number of LANs are still operating without prior notification, which is contrary to the LEC. One of the reasons might be the fact that the previous Telecommunications Act, repealed by LEC, did not require Internet service providers to notify CRC, as is now the case under LEC. Clarification of the situation and increased control of the legal situation of LANs and their activities would bring fairer competitive conditions to the market. This could also have a positive impact on the control of some illegal content downloading and the payment of copyright by LANs.

THE CONSUMER INTEREST

Universal service

The universal service provider has not yet been designated in compliance with the current EU Regulatory Framework. In the meantime, the incumbent operator has the obligation (included in its 2005 licence) to provide universal service, according to the national legislation. Nevertheless, as no date has been announced for the new designation, the Commission services are looking into the matter.

The LEC establishes a condition for requesting the universal service compensation fund, when examining whether the net cost represents an unfair burden on the universal service provider. Under this condition the retail revenues of the universal service provider should be less than 80% of the total revenues of public telephone services. So far the incumbent has never applied for the compensation fund.

Directory services and directory enquiry services

The comprehensive directory and directory enquiry services, which have to be provided by the incumbent, are still not available in Bulgaria. The electronic format of the incumbent's directory for 2009 was approved by CRC in December 2008. As for the directory enquiry services, it seems that the incumbent only provides information to its own customers. The Commission services are looking into this matter.

An ordinance published in January 2008 transposed the provision of the EU Regulatory Framework that allows undertakings to provide directory and directory enquiry services, based on the transfer of databases in a fair, objective, cost-oriented and non-discriminatory manner.

Nevertheless, it would seem that, besides the non comprehensive directory enquiry service provided by the incumbent, only one mobile operator provides a directory enquiry service but only to its own subscribers. No significant improvements have been noted since last year in relation to the problems of interconnection between operators, which do not give access to these services in their networks.

Emergency services (112)

Due to the lack of availability of the single European emergency number 112, an infringement proceeding was opened against Bulgaria by the Commission in October 2007. As a result of the significant efforts undertaken by the Bulgarian authorities, 112 was made available in the whole of the national territory, for both fixed and mobile users, from October 2008. Six 112 territorial centres handle the calls and refer the caller location information to the appropriate service using the "push" method.

The provided caller location information relating to mobile users is currently the mobile network cell from which the call is made. An amendment to ECA has been proposed in order to increase the accuracy of the caller location to 100 metres in towns and one kilometre in rural areas. Mobile operators strongly oppose this draft measure, as they would bear the cost of installation and maintenance of the equipment. This amendment was still under discussion with the Bulgarian Parliament when this Report was drafted.

Another amendment under discussion with the Bulgarian Parliament proposed the imposition of severe fines for making hoax calls to 112, which seem to represent a very high share of the total calls to 112 (85-95%). A Law on the detailed implementation of the 112 national emergency system was adopted in November 2008.

Number portability

Mobile number portability has been available in Bulgaria since April 2008. However, only 13 180 mobile numbers had been ported by October 2008, which represents 0.13% of the total number of subscribers. This low figure seems to be partly due to the two-stop-shop system, which obliges users to go first to their own operator and then to the porting one, and hence makes the procedure cumbersome and slow, especially since the ten-day deadline, stipulated in national law, for porting the number runs only once the new operator has received the portability request.

As for fixed number portability, the Bulgarian authorities, in their Act of Accession, were allowed to postpone its implementation until January 2009. Nevertheless, the functional specifications for fixed number portability, prepared by CRC, also establish the two-stop-shop system and set a deadline of 25 days for porting the number. Furthermore, it seems that the technical conditions should be submitted to bilateral negotiation between operators, which may create additional difficulties. By the end of 2008, fixed operators had not come to an agreement on the conditions needed to implement fixed number portability. Functional specifications for non-geographic numbers have been prepared and adopted by CRC.

Must-carry

Must-carry rules apply so far on analogue broadcasted public channels. An amendment to the LEC has been proposed for establishing these obligations also on digital public television. Four channels are proposed to be designated as nationwide and should therefore be carried.

Consumer complaints and out-of-court dispute resolution

The number of consumer complaints increased significantly in 2008, with 400 complaints sent to the regulator, mainly concerning billing and quality of service. According to LEC, CRC is responsible for dealing with disputes between operators and consumers when there is a potential breach of the Law by undertakings as regards the general conditions for relations with the customers of electronic communications services and the content of these general conditions. CRC also examines any complaints related to electronic communications services from end-users.

Data protection

A new Ordinance on data retention was issued in Bulgaria in January 2008, setting out the procedures and information to be stored for the purposes of national security and the fight against crime. The data must be kept for 12 months. In December 2008, the Supreme Administrative Court annulled the provisions of the Ordinance laying down the rules for access to the retained data by the relevant authorities. The Supreme Administrative Court considered in particular that the provisions lacked clarity on how to guarantee the right to privacy. The retention obligation as such is, however, not affected by the Court's decision.