

## HUNGARY

Note: This document is an excerpt from the Staff Working Document attached to the Communication 'Towards a Single European Telecoms Market – 13<sup>th</sup> Progress Report (COM (2008(153)). The Communication and the Staff Working Document, as well as the corrigendum of 28<sup>th</sup> May 2008 can be found on Europa at the following url address: [http://ec.europa.eu/information\\_society/policy/ecomm/library/communications\\_reports/annualreports/13th/index\\_en.htm](http://ec.europa.eu/information_society/policy/ecomm/library/communications_reports/annualreports/13th/index_en.htm)

### INTRODUCTION

In 2007, the Hungarian electronic communications market was characterised by significant market consolidation, take-up of mobile broadband services and an increase in innovative services such as IPTV. Despite high mobile and growing Internet penetration rates, the relatively low level of broadband penetration remains to be addressed. Although the number of fully unbundled local loops increased significantly in 2007, it is still very low compared to other Member States in the European Union.

Most of the regulatory progress is due to the results of the market analysis and amended legislation. The NCAH (National Communications Authority of Hungary) has actively helped to improve the technical and financial conditions relating to Reference Unbundling Offers (RUO), relatively low wholesale prices and mobile termination rates reaching symmetry as of 2009.

### REGULATORY ENVIRONMENT

#### Main regulatory developments

In the past two years, the Act on electronic communications has been amended several times, without these amendments being notified to the European Commission as required by the regulatory framework. Operators regret that the two latest major amendments to the Act on electronic communications have been carried out without any consultation of the market. As a result of the adoption of the Act CIX of 2006 amending the Act on electronic communications, the provisions on price setting without a market review have finally been removed; the two price setting secondary laws remain in force, contrary to what was announced in 2005. In July 2007, the Act LXXIV of 2007 on the rules of broadcasting transmission services and digital switchover (“Act on digital switchover”) was adopted. Its conformity with the regulatory framework is currently under examination.

Despite positive progress in the market, the presence and consolidation of a large number of alternative operators and considerable activity by the NCAH, the main incumbent still has a strong market position in certain segments of the market (fixed, mobile and ADSL), and the division of the fixed-line market into five local telecommunications operators (LTO) still results in regional asymmetry. However, this asymmetry is slowly diminishing, thanks to the recent consolidation of the market (the number of LTOs

decreased from five to three following various mergers in the fixed line market) and in-house integration efforts.

The NCAH developed a firm consumer protection approach in 2007 and made efforts to facilitate the local loop unbundling (LLU) procedure via market analysis, since effective LLU is considered to be one of the key components of competition in the sector.

### **Organisation of the NRA**

The regulatory tasks are divided between the NCAH and the Ministry of Economy and Transport (“Ministry”). The Hungarian State held a ‘golden share’ in the main incumbent despite the fact that all Hungarian electronic communications networks and service providers are private companies. The Ministry exercised ownership rights in respect of that golden share, which raised doubts as to its independence as stipulated by the Framework Directive. The Commission had launched infringement proceedings against Hungary's golden share regime and the Hungarian Parliament adopted the necessary legal amendment on 16 April 2007, abolishing the special rights of the State.

Following the amendment to the Act on electronic communications at the end of 2006, the NCAH became a government office and received certain powers in general policy-making and spectrum policy.

Regulatory tasks relating to the implementation of the Act on digital switchover are also covered by the NCAH.

Decisions of the NCAH appear to be systematically challenged before the appeal courts, although the number of appeals is on the decrease. Pending appeals may seriously reduce legal certainty and predictability in the market, as operators constantly point out that Hungarian courts are overburdened and final decisions rendered by a second instance court can take 2-3 years in some cases.<sup>1</sup> Some market players are concerned that the appeal courts often take decisions on the basis of procedural issues rather than on the merits of the case.

### **Decision-making**

In 2007, Hungary's major regulatory task was to start the second round of market analysis and to implement the results of the first round of market analysis.

With the notification of draft measures relating to the wholesale market for broadcasting transmission services in November 2007, the NCAH finally notified measures resulting from the last market analysis in the first round.

The NCAH found that there was effective competition in the wholesale markets for transit, trunk segments of leased lines and mobile access. All other markets were found to be non-competitive. The NCAH has taken final measures in all of the non-competitive markets notified in the first round, with the exception of the wholesale market for broadcasting transmission services notified to the European Commission in November 2007.

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<sup>1</sup> These long-lasting cases are the ones where the NCAH imposed detailed cost orientation remedies

At the same time, the NCAH has already started the second round of market analysis, and has already analysed all the listed markets with the wholesale market for broadcasting transmission services.

In general, the work of the NCAH in 2007 was considered by market players to have been rather efficient. However, concerns are still voiced as to the non-imposition of wholesale line rental (WLR) by the NCAH and non-imposition of the obligation to negotiate access with mobile virtual network operators (MVNO).

Market players are concerned about the very short consultation deadline (20 days) set by the law for submitting comments on the draft NCAH decisions, the large number of often burdensome and incoherent data requests from the NCAH and the lack of transparency of certain decisions. More intensive cooperation was observed between the NCAH and the Office of Economic Competition (the NCA) since the NCA takes part in the project management committee for the market analyses.

In general, electronic communications operators are concerned that NCAH decision-making in the course of dispute resolutions is very slow. Nevertheless, in 2007, the NCAH rendered its decisions in all four dispute resolutions within the time limit set by law (45 days, which can be extended once by up to 15 days).

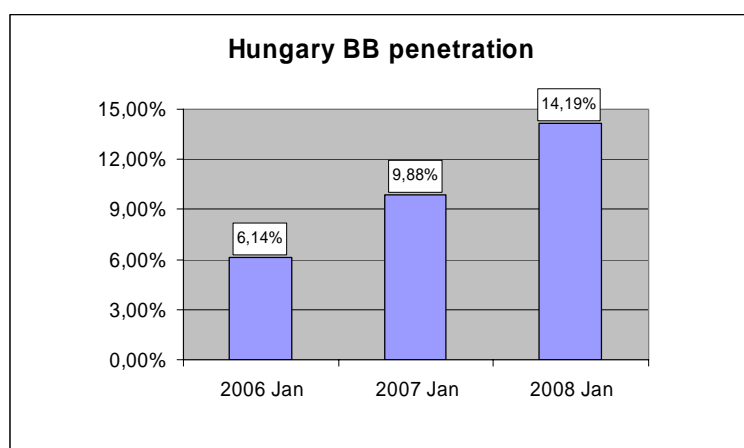
## MARKET AND REGULATORY DEVELOPMENTS

Investment in the Hungarian telecommunications networks totalled €75.32 in 2006, of which LTOs, alternative operators and MNOs invested €6.41 million, €4.79 million and €4.11 million respectively; the Hungarian telecommunications sector generated €829.28 million in revenues during the same period.

Market players take the view that, with the increasing level of consolidation of the Hungarian electronic communications market and the take-up of triple play and mobile broadband services, convergence of services is the main regulatory challenge in Hungary.

### Broadband

#### *Market situation*



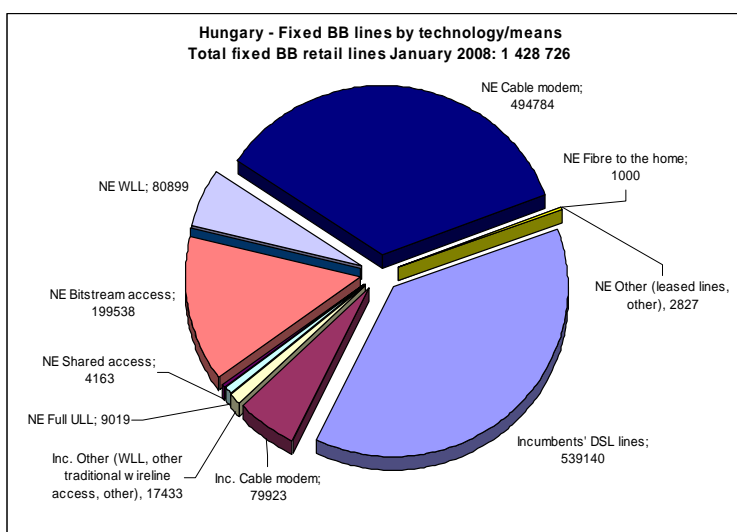
Broadband penetration increased to 14.19% in January 2008 (from 9.88% in January 2007), which is still below the EU-27 average, whereas Internet penetration exceeded 39% by the end of 2007.

According to the data of the Hungarian Central Statistics Office (KSH), the number of Hungarian Internet subscriptions amounted to 1.57 million in the second quarter of 2007, a 36% increase in comparison with the same period in 2006. The use of broadband Internet access was

roughly 18 times higher than dial-up or ISDN over the same period. Of the 334 ISPs, 25 cover roughly 90% of subscribers to Internet services.<sup>2</sup>

In Hungary, roughly two thirds of broadband lines are based on ADSL and one third on cable; the fixed incumbent operators have 44.5% of the broadband lines market. Both cable and ADSL operators offer triple play services.

A study on broadband availability showed that the DSL rural gap with national coverage is 12% in Hungary and that 77% of rural areas are covered by DSL.<sup>3</sup>



### Regulatory issues

As regards the wholesale broadband access market, the NCAH decided in September 2006 to set the wholesale prices on a “retail minus” basis for each operator found to have SMP on a given market so as to guarantee a minimum margin for retail service providers. As a result, wholesale prices decreased by between 2-51% (depending on the LTO) for a pack with 1 Mbps and average retail prices are below 5010 HUF (€20), with the cheapest broadband access below 2000 HUF (€8). Similar regulations will be imposed following the second round of market analysis.

After intervention on the part of the NCA, the five LTOs committed themselves to introducing and had actually introduced naked ADSL services both at retail and at wholesale level by summer 2007. By this commitment the NCAH has imposed an obligation on these operators to provide wholesale naked ADSL.

As regards the LLU market, the LTOs were designated as SMP operators and access and interconnection-related obligations were imposed on them. As a result, the one-off fees of the operators with SMP decreased in 2006 by between 66% and 82% while the monthly local loop charge fell by between 18% and 34% respectively. The average monthly cost of the fully unbundled local loop in Hungary is €9.54, slightly below the EU average (€10) whereas the cost for shared access (€5.1) is still well above the EU average (€3).

By January 2008, 9 019 local loops were fully unbundled (compared to 1 354 in January 2007) and 4 163 shared access were reported (3 070 in January 2007). Although this is a significant increase, this number is still low compared to other EU Member States. The NCAH emphasised that the importance of LLU for broadband access needs to be

<sup>2</sup> Second quarter of 2007

<sup>3</sup> Broadband coverage in Europe, 2007 survey. Data as at 31 December 2006

improved. The NCAH also imposed on operators with SMP the continuous transition of Internet service provision in the case of unbundled local loops.

A public consultation was held by the NCAH in June 2007 where both alternative operators and LTOs were able to share their views on the technical conditions of LLU and bitstream access in a bid to make LLU and bitstream offers more attractive. The views expressed by alternative operators during this public consultation are widely reflected in the market review notified to the Commission in November 2007. In addition, the non-discrimination obligation was tightened on the wholesale broadband access market by making it a breach of non-discrimination where the SMP operator applies a pay incentive system for managers and/or employees, the performance of the wholesale department and other (retail) departments are linked and therefore the managers and/or the employees of the wholesale department are motivated to protect the revenues and profitability of the retail department.

## **Mobile markets**

### *Market situation*

Hungary has three mobile network operators (MNOs) — the mobile division of the main incumbent and two Hungarian subsidiaries of foreign MNOs, with respective market shares in October 2007 of 44.08%, 34.85% and 21.07%. While the different MNOs' market shares remained basically the same (44.8%, 33.8% and 21.4% respectively in 2006) the number of subscribers increased in 2007. Mobile penetration reached 104.4% (95.4% in 2006), with 10.5 million subscriptions in 2007. The increasing number of post-paid subscriptions (37%) is evidence of increasing consumer trust.

Concession contracts for 2G frequencies (900 MHz) were extended with the two major MNOs in November 2007. For the 7.5-year extension of the licences, the two MNOs agreed to pay 10 billion HUF each (€9.5 million) and to invest a net 20 billion HUF (€19 million) each on developing their mobile broadband infrastructure further over the next two years. All MNOs have an UMTS licence (granted in 2004) and started 3G-related services in 2005. The fourth 3G licence has still not been granted in Hungary.

Mobile broadband take-up in 2007<sup>4</sup> was a major development in Hungary's electronic communications sector. Successful DVB-H, mobile television trials are being carried out, but effective mobile TV service provision can only start once licences are granted for the operation of one digital radio (T-DAB) and five digital TV free-to-air broadcasting networks (DVB-T), as one of the bundled DVB-T multiplexes is suitable for DVB-H (the technology depends on the winner of the tender). However, following the amendment of the Act on digital switchover in December 2007, the call for tender should be issued before 31 December 2008.

### *Regulatory issues*

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<sup>4</sup> Recent official data not available. In the second half of 2006, 60 000 mobile broadband subscriptions were reported out of 1 172 million broadband subscriptions (5.1%). The biggest MNO announced in August 2007 that it had more than 100 000 mobile broadband subscribers.

In 2005, all MNOs had been designated as operators with SMP in the wholesale mobile call termination market. On 4 October 2006, the NCAH decided to require MNOs gradually to decrease their MTRs following a specific glide path resulting in symmetry between operators and in cost-oriented MTRs by 1 January 2009 (at HUF 16.84 (about €0.06)). The glide path is applied as a new regulatory tool based on a bottom-up LRIC model. This decision has been applicable since 1 February 2007. The reductions at wholesale level also brought down retail fixed-to-mobile prices (9.64 €cents), which are slightly below the EU-27 average (9.87 €cents).

### *Roaming regulation*

All three MNOs are reported to have implemented the Roaming Regulation<sup>5</sup> on time. The tariffs were set close to the maximum ceilings both for receiving and for making phone calls within the Community.

## **Fixed**

### *Market situation*

The fixed market went through a consolidation process in 2007. The second largest LTO was taken over by the owner of the third largest LTO and the leading alternative operator. The fourth LTO merged into the main fixed incumbent, which in turn merged with its ISP in October 2007. As a result of these acquisitions and reorganisation efforts, there are three LTOs in the Hungarian fixed electronic communications market: the main and the second incumbents and the LTO belonging to the major cable operator.<sup>6</sup> The consolidation trend also continued with the acquisition of the main CS/CPS operator by the second LTO.

LTOs continue to occupy a strong market position in their respective territories. On the basis of revenues, as at 1 January 2007 LTOs had an 85.72% market share for all types of fixed calls (89.3% in 2006) plus 80.35% and 73.02% market shares respectively for calls to mobile and international calls. The market share of LTOs for international calls significantly decreased in 2007 (from 87.4% to 73.02%). Despite the regulatory obligations imposed under the first round of market reviews, competition in retail calls markets in Hungary has not developed significantly.

Fixed line penetration was 32.66% in 2007,<sup>7</sup> compared to 33.57% in 2006, while mobile penetration increased to 104.32% in October 2007 (95%<sup>8</sup> in 2006). Fixed voice traffic also continued to decrease in 2007.

Traditionally, new entrants in the fixed communications markets have been more active in the non-residential segment of the market, providing voice telephony services through carrier selection and pre-selection. Today, new entrants and LTOs clearly intend to widen

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<sup>5</sup> Regulation (EC) No 717/2007 of 27 June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC (OJ L 171 of 29 June 2007, pp. 32-40)

<sup>6</sup> Programme distributor, programme provider, telephony and internet service provider

<sup>7</sup> August 2007

<sup>8</sup> Data from September 2006

their scope of services to include fixed, mobile and broadband to both residential and corporate clients.

In 2006, cable operators entered the access market for fixed voice services and had attracted approximately 190 000 subscribers by September 2007.<sup>9</sup>

### *Regulatory issues*

The NCAH found that there was effective competition in the wholesale markets for transit (first and second rounds of market analysis) and trunk segments of leased lines (first round).

On 10 May 2006, the NCAH decided to reduce the fees of the five SMP operators for wholesale call origination and call termination by 11-34% (11% in the case of the nationwide incumbent). Moreover, the one-off fee for carrier selection was reduced on average by 50% and for number portability by 30-40%. In September 2007, the NCAH published its decision on the review of retail markets for access to the public telephone network at a fixed location for residential and non-residential customers. The decision maintains CS/CPS obligations on the five SMP operators as well as price regulation; WLR has not been introduced. As a new component in the NCAH decision, operators with SMP are not allowed to establish loyalty conditions (including the duration of the subscriptions) that are not proportionate to the advantages obtained by end-users.

Following the reductions in interconnection fees, charges for call termination on the incumbents' fixed network (single transit) (0.91 €cents) are slightly above the EU average (0.8 €cents).

The interconnection problem between one cable operator and the second LTO,<sup>10</sup> reported in the previous report, has still not been resolved. The NCAH intended to impose indirect interconnection on the wholesale market for fixed call termination by obliging SMP operators to hand over traffic originating on their networks to transit operators selected by a third party network for termination in the third party operator's network. However, the Commission took the view in its comments that this problem is not directly related to the termination market.

## **Broadcasting**

### *Market situation*

In Hungary, broadcasting transmission services are provided via several platforms: analogue terrestrial, cable, satellite, microwave, IPTV, DVB-T and DVB-H (in pilot phase).

National coverage of analogue terrestrial transmission is approximately 90%. The main television and radio transmission company was privatised in 2005 and resold in 2007. Approximately 55% of Hungarian households have a subscription to cable TV services. It is a very fragmented market, with approximately 400 service providers, but the two

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<sup>9</sup> Estimated on the basis of the number of subscribers of the four biggest cable operators (157 153)

<sup>10</sup> Refusal to send calls originating on the SMP operator's network via a transit provider to a third party network for termination.

biggest operators cover almost half of total cable subscriptions. Satellite broadcasting subscriber services are provided by two operators, one of them a new entrant on Direct to Home Sat TV services and rapidly gaining market shares.

As the Media Act of 1996 (Media Act) prevented cable operators from providing broadcasting transmission services to more than one third of the Hungarian population, the European Commission had launched infringement proceedings against Hungary, which was referred to the Court of Justice in December 2006. The European Commission withdrew its action against Hungary in July 2007 after the latter had abolished the provision at stake in June 2007. As a result, consolidation of the cable market is likely to start.

With the entry into force of the Act on digital switchover, analogue switch-off must take place by 31 December 2011. A call for tender for the multiplexes (1 digital radio and five digital DVB-T networks, of which one is suitable for DVB-H) must be issued before 31 December 2008. Programme providers and operators with more than 300 000 subscribers in the TV broadcasting markets (de facto the two major cable operators) are excluded from this call for tender in order to avoid horizontal concentration and vertical integration in the market.

#### *Regulatory issues*

Hungary notified the Commission of the draft measures relating to the wholesale market for broadcasting transmission services in November 2007. The major television and radio transmission company was designated as operator with SMP and had price control imposed among other things.

### **Horizontal regulation**

#### *Spectrum management*

The radio spectrum harmonisation Decisions of 2004 and 2005 are reported to have been transposed in the National Frequency Plan, but some of the most recent (Decisions 2007/344/EC and 2007/98/EC) have not yet been fully implemented.

#### *Administrative charges*

The market surveillance fee cannot be higher than 0.35% of the previous year's annual net revenue derived from e-communications services. The exact rate is established by the Minister each year. This amount is set at 0.212% at the moment.

#### *Rights of way and facility sharing*

MNOs expressed concerns due to the increasing problems they have encountered as a result of municipalities refusing to install masts and antennas for 3G networks.

Following the annulment by the Hungarian Constitutional Court of several legal provisions of the Act on electronic communications, allowing expropriation by the NCAH and the registration of rights of way by the cadastre on private property in order to install e-communications equipment, where agreement could not be reached between

the owners and the operators, the Act on digital switchover amended the problem provisions.

## **THE CONSUMER INTEREST**

### **Universal Service**

In April 2004, each of the five LTOs was designated by the Minister of Informatics and Communications for 4 years as a Universal Service Provider (USP) and since then they provide the four components of the universal service in their respective geographical areas. Operators can benefit, in principle, from the Universal Electronic Communications Support Fund. For the years 2004, 2005 and 2006, the USPs' compensation requests were refused as net avoidable costs were not demonstrated.

### **Number Portability**

Between January 2004 and August 2007, a total of 217 514 fixed numbers were ported in Hungary, while between May 2004 and September 2007 a total of 180 268 mobile numbers were ported, accounting for 1.7% of total mobile subscribers in Hungary.

### **Consumer complaints**

In July 2007, the NCAH published the results of a survey of individual subscriber contracts concluded between almost a hundred service providers (fixed, mobile, Internet and programme distribution) and their subscribers. The NCAH found incompatibilities with the legal requirements in every service provider's contracts. Operators were therefore given 30 days to bring their individual subscriber contracts in line with national legislation. The NCAH will follow up on these measures in 2008.

### **European emergency number 112**

The European Commission sent a letter of formal notice to the Hungarian authorities in April 2006 since caller location information was not provided in practice to the Hungarian emergency authorities, either from fixed or from mobile networks. Following confirmation by the Hungarian authorities that the provision of caller location information by both fixed and mobile operators was technically feasible and is also provided in practice on request, the case was closed in June 2007. In addition, the Ministry adopted a Decree which provides that as of 1 December 2008 a push system will apply with regard to 112 caller location information.

### **Must-carry**

Following the adoption of the Act on digital switchover, new must-carry rules have applied since July 2007. "Dominant broadcasters", as defined by the Act, have to conclude a contract for up to forty television programmes, as defined in the Act, to transmit them to subscribers.<sup>11</sup> In addition, must-carry obligations are imposed on mobile TV service providers without taking into account whether a "significant number of end-

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<sup>11</sup> Economically and technically reasonable contractual offers in conformity with general contractual terms and conditions of the "Dominant broadcasters" (published beforehand) must be accepted within the limit of forty television programmes.

users of such networks use them as their principal means of receiving radio and television broadcasts”. The Commission’s services are examining conformity of the Act on digital switchover, in particular these provisions, with the regulatory framework.

### **Data protection**

The bill amending the Act on electronic communications designed to transpose the provisions of the Data Retention Directive was adopted by the Hungarian Parliament on 19 December 2007 and will enter into force on 15 March 2008.