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BULGARIA

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Telecommunication Market and Regulatory Developments

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BULGARIA

1. MAIN MARKET & REGULATORY DEVELOPMENTS: BEST PRACTICES AND CHALLENGES

• DEVELOPMENT OF THE SECTOR

The trend towards diminution of **revenues** from fixed (telephony, data and internet) and mobile services continued in 2010. However, in contrast to the preceding year, the total **investment** in the electronic communication sector increased at the end of 2010 by more than 44%. (section 3) In 2011, there were 605 players competing in the **broadband market**. The new entrants' market share continued to increase and in January 2012 reached 70% of all fixed broadband lines. The cable operators' market share remains stable with 14% of all active broadband lines. The alternative operators continue to use mainly non-DSL technologies. The take-up of incumbent's whole sale products is very limited. There is no competition in the DSL retail market since the incumbent exclusively offers DSL lines. A big obstacle for the development of infrastructure-based competition on the wholesale broadband market remains the deployment of illegal¹ aerial cables (section 4).

Whilst the fixed voice market is still dominated by the incumbent (BTC) with a market share by traffic volume of more than 92% in all types of calls at the end of 2010, the trend towards fixed to mobile substitution continued also in 2011. As regards mobile penetration in terms of dedicated data service, Bulgaria is with 3.5% still far behind the EU average of 8.1%. The bundling of fixed and mobile voice as well as triple-play has significantly increased. Despite attempts by the Communications Regulation Commission (CRC) to enforce its decision on regulated Mobile Termination Rates (MTR) for incoming international calls, none of the three mobile operators applies the given rates. (section 5)

In the context of **number portability**, the time needed for porting fixed and mobile numbers is seven working days. (section 7.5)

• PROGRESS IN BROADBAND DEPLOYMENT AND TAKE-UP

At the end of 2011, Bulgaria was still far from achieving the DAE target aiming at securing a basic broadband connection (in the order of 2 Mbps) for all EU households by 2013. Despite some minor increase, the fixed broadband penetration remains the second lowest in the EU. The divide between cable-enabled cities and uncovered rural areas remains particularly strong also in this year. At the same time, Bulgaria continued to be amongst the advanced Member States in the area of very high speed broadband with more than 20% of lines being at least 30Mbps. The investments of fixed alternative broadband operators in the deployment of infrastructure showed remarkable growth as compared to the preceding year. (section 4)

• INDEPENDENCE AND EFFECTIVENESS OF THE NRA

Overall, the independence of the National Regulatory Authority (NRA) seems to be ensured. However, there is no explicit legal provision concerning the prohibition of seeking and taking

¹ With respect to the Law on Electronic Communications (LEC)

instructions from any other body as provided for in the revised Framework Directive. (section 2)

- **IMPLEMENTATION OF THE FRAMEWORK**

In January 2012, Bulgaria notified the full transposition of the revised EU telecom framework which was due by 25 May 2011. The Commission accordingly closed the infringement procedure for non-communication. In September 2011, the Commission closed an infringement procedure against Bulgaria concerning the fixed number portability. At the end of 2011 there was one pending infringement procedure against Bulgaria for failing to comply with the legal requirements laid down in the EU legal framework as regards the allocation of the digital dividend.

- **SPECTRUM MANAGEMENT**

Bulgaria has not yet implemented Commission Decision 2008/477/EC on the harmonized use of the 2.5-2.69 GHz band the prolongation of which from a previous derogation expired at the end of 2011. In 2011, the national regulator granted 3 licenses within the 1800 MHz band. (section 6)

- **CITIZENS AND CONSUMER PROTECTION**

In December 2011, the CRC extended by one year the assignment of the harmonized number 116 000. The number 116 111 is operational in Bulgaria since November 2009. (SECTION 7.1) Although the emergency number 112 has been operational in Bulgaria for many years, the level of awareness of 112 as the European emergency number is rather low. (section 7.2) With regard to consumer complaints, a large proportion of complaints was based on problems related to the change of the major mobile operator's billing system (Mobiltel) (section 7.4). The process of launching a designation procedure for a universal service provider has further been delayed due to the recent LEC amendments and the forthcoming amendments of the implementing secondary legislation. For the same reason, a decision by the CRC regarding the compensation of the current designated universal service provider (BTC) for the years 2009 and 2010 is still pending. (section 7.6) No major issues on e-Privacy and Net neutrality were reported. (section 7.7)

2. NATIONAL REGULATORY AUTHORITY

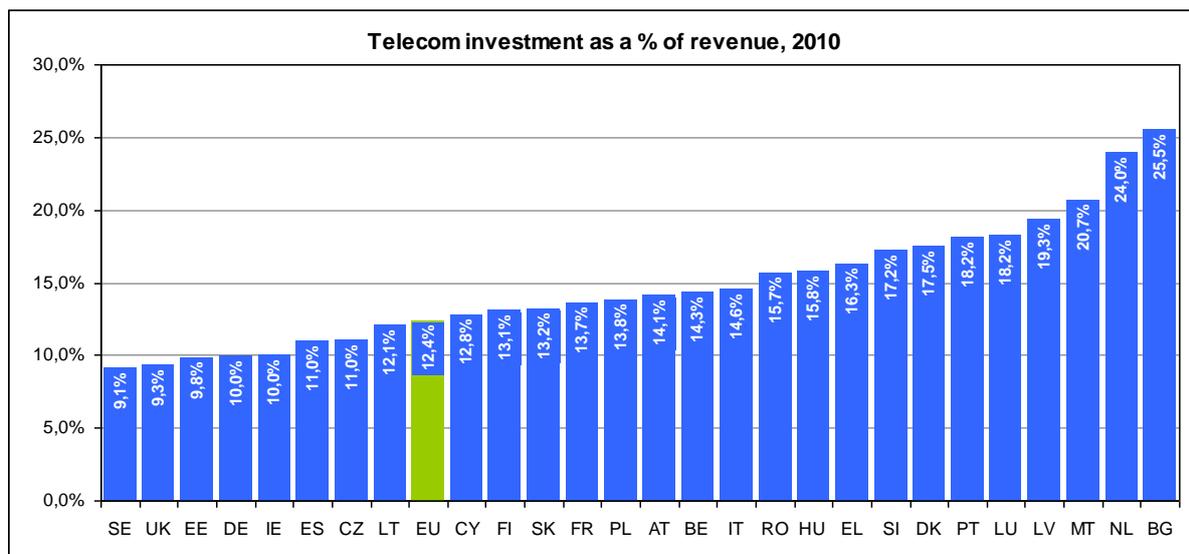
Overall, the independence of the National Regulatory Authority seems to be ensured. However, there is no explicit legal provision concerning the prohibition of seeking and taking instructions from any other body as provided for in the revised Framework Directive.

The NRA is an independent state body with legal personality. The functional and structural separation of the CRC is ensured by the Law on Electronic Communications (LEC). The recent amendments to the LEC do not foresee an explicit provision concerning the prohibition of seeking and taking instructions from any other body as provided for in the revised Framework Directive. The national regulator has a separate annual budget and the right to make once a year a proposal to the council of ministers for amendments regarding the administrative charges. In 2011, the national regulator introduced an electronic information system which is expected to facilitate the access of citizens and undertakings to the

administrative services of the authority. The decisions of the NRA are subject to an appeal before the Supreme Administrative Court. Every person who has a legitimate interest can appeal a decision. The average duration of a court procedure is between one and one and a half years.

3. REVENUES AND INVESTMENTS

The trend towards diminution of revenues from fixed (telephony, data and internet) and mobile services continued in 2010. However, in contrast to the preceding year, the total investment in the electronic communication sector increased at the end of 2010 by more than 44%.



Source : Commission services

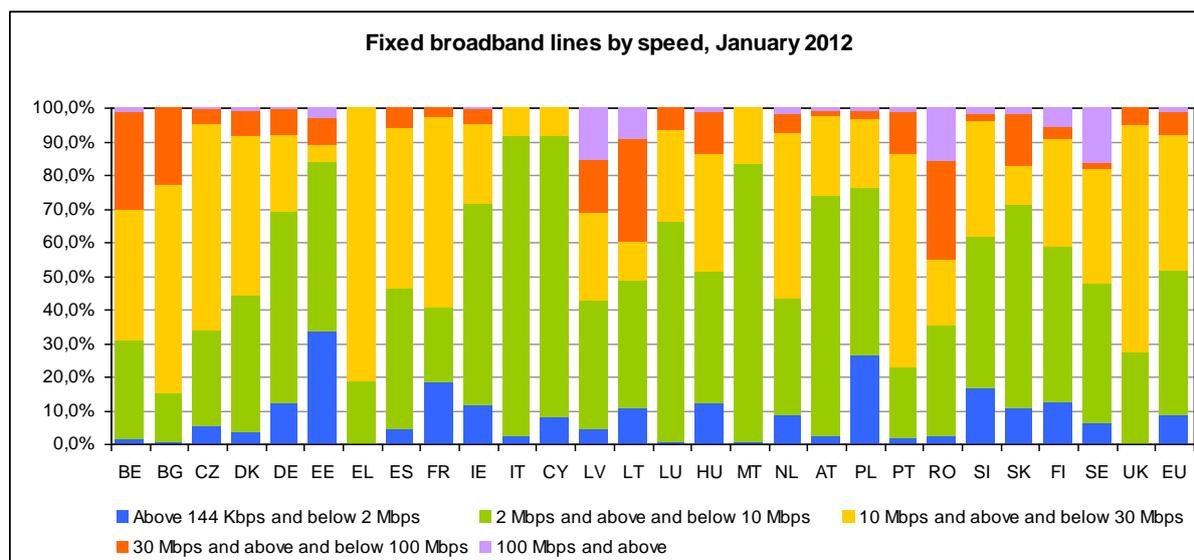
The total turnover of the Bulgarian telecommunications sector amounted to € 1.607 million at the end of 2010, a decline of 5.5% on the previous year. Fixed sector revenue was €353 million (€414 million in 2009), and mobile sector revenue was €1.038 million (€1.097 million in 2009). The total value of investment by fixed telecommunications operators (including the incumbent) was €240 million (compared to €93 million one year earlier) and €149 million by mobile operators.

4. BROADBAND

At the end of 2011, Bulgaria was still far from achieving the DAE target aiming at securing a basic broadband connection (in the order of 2 Mbps) for all EU households by 2013. Despite some minor increase, the fixed broadband penetration remains the second lowest in the EU. The divide between cable-enabled cities and uncovered rural areas remains particularly strong also in this year. At the same time, Bulgaria continued to be amongst the advanced Member States in the area of very high speed broadband with more than 20% of lines being at least 30Mbps. The investments of fixed alternative broadband operators in the deployment of infrastructure showed remarkable growth as compared to the preceding year. In 2011, there were 605 players competing in the broadband market. The new entrants' market share continued to increase and in January

2012 reached 70% of all fixed broadband lines. The cable operators' market share remains stable with 14% of all active broadband lines. The alternative operators continue to use mainly non-DSL technologies. The take-up of incumbent's whole sale products is very limited. There is no competition in the DSL retail market since the incumbent exclusively offers DSL lines. A big obstacle for the development of infrastructure-based competition on the wholesale broadband market remains the deployment of illegal aerial cables.

Source: Communications Committee

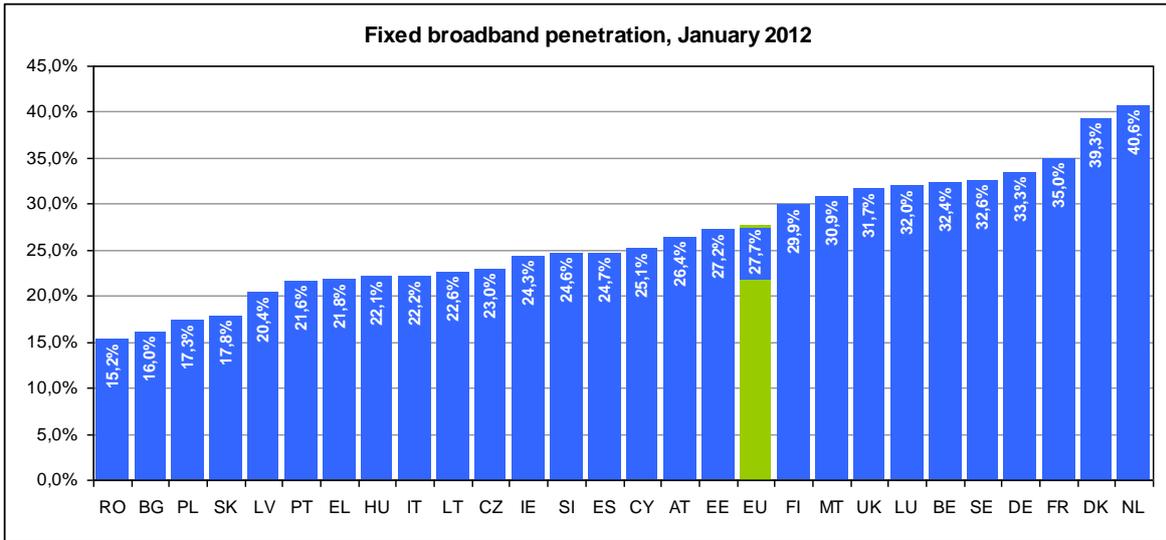


Source: Communications Committee

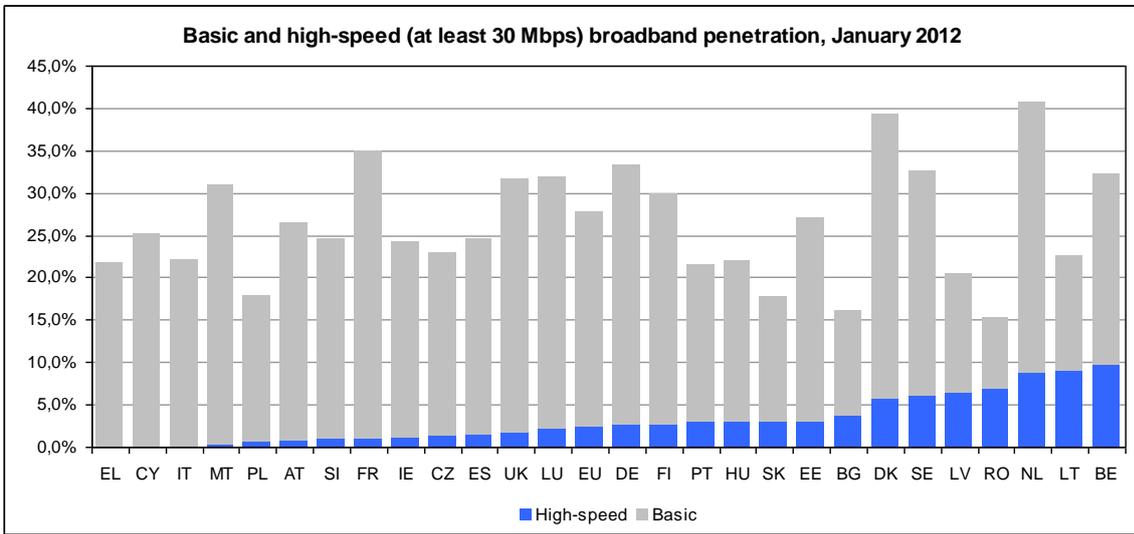
4.1 MARKET SITUATION & REGULATORY DEVELOPMENTS

The fixed broadband penetration rate in terms of population reached 16% in January 2012 (compared to 14.9% one year before) which remains far below the EU average of 27.7% (compared to 26.4% one year before). The total number of retail fixed broadband lines increased in January 2012 to 1 201 809 from 1 125 590 one year earlier. The incumbent holds only 30% of all fixed broadband lines. The broadband market remained fragmented, with 605 operators.

There is virtually no competition in the DSL retail market since exclusively the incumbent offers DSL lines in the Bulgarian telecommunication market. The share of DSL (in all active broadband lines) was 30% in January 2012 (30.6% in January 2010). The incumbent's retail DSL lines increased to 360 323 in January 2012. As of January 2012, the NGA lines reached 33% of the total number of broadband lines.

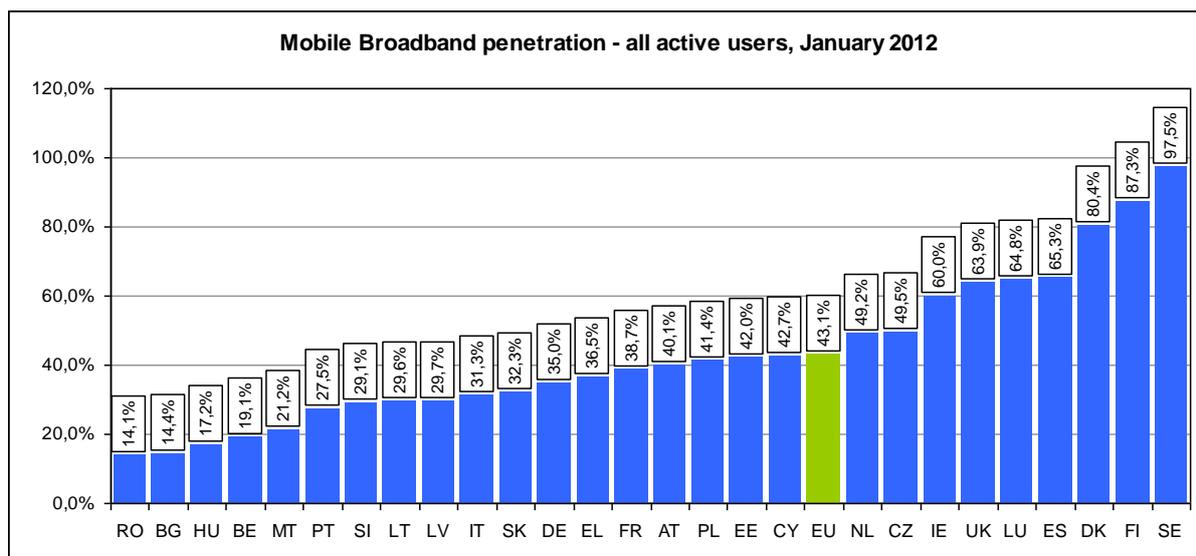


Source: Communications Committee



Source: Communications Committee

In January 2012, about 85.5% of all fixed broadband lines operated at download speeds exceeding 10Mbps and about 22.8% of all broadband lines had download speeds above 30Mbps. Cable operators are often the major broadband provider in rural regions. Their market share remained stable with 14% of all active broadband lines. The continuing lack of commercial interest for the incumbent's DSL-based wholesale access products (unbundled or bitstream) deprives this segment of competition. In January 2012, only six undertakings had an agreement for bitstream access with the incumbent.



Source: Communications Committee

The mobile broadband penetration rate was 14.4% in January 2012 (the EU average was 43.1%). The share of mobile broadband subscribers using a dedicated data service device (card, key and modem only) reached 265 000. In comparison to the EU average of 8.1% on mobile penetration as regards dedicated data services, Bulgaria is far behind with 3.5%. In 2011, three out of four WiMax (4G) operators left the market and currently only one is active with competitive offers, including bundles.

As far as the market regulation is concerned, the CRC, following a notification in December 2010, adopted in February 2011 a decision regarding the analysis of the market for wholesale (physical) network infrastructure access and the market of wholesale broadband access under the EU regulatory framework. The relevant markets were defined as susceptible to *ex ante* regulation. The obligation was imposed on the incumbent to provide access to and use of certain network elements and associated infrastructure including full and shared access to the loop and sub-loop. The incumbent was required to apply cost-oriented tariffs, according to a BULRIC- model that is expected to be developed at the end of April 2012. For the transitional period, the incumbent has to apply the current cost-oriented system. The Commission invited CRC to extend the scope of the cost-orientation remedy to dark fibre infrastructure and to all items allowing local loop and sub-loop unbundling, thus aligning CRC's regulation with the NGA Recommendation. Furthermore, the Commission asked CRC to closely monitor developments on broadband markets, in particular the degree of consolidation, as a result of market exits or mergers, and the implementation of the Bulgarian legislation with respect to aerial cable. Should the market consolidate in the timeframe of the market review and strong alternative operators emerge on the national market or in some clearly identifiable geographic areas characterized by inter-platform competition, CRC is invited to review its analysis even before the end of the current review period.

According to the CRC, the interests of the alternative operators are mainly towards the use of the incumbents' passive infrastructure (ducts). In this context, many of the alternative operators continued to complain about the incumbent's slow and complex procedure regarding infrastructure access.

The retail broadband competition based on alternative technological platforms, especially LANs and cable-TV networks, is very fragmented. A big obstacle for the development of the infrastructure-based competition on the wholesale broadband market remains the deployment

of illegal aerial cables by operators using the LANs technology platform. The persistent widespread existence of illegally deployed cables does not only handicap the development of a level-playing field but also facilitate illegal content distribution. With the recent amendments to the LEC, the control over the legal requirements regarding the deployment of aerial cables and imposition of penalties shall be carried out only by the Directorate for National Constructing Control (DNCC). As a result, the national regulator lost its competence to control and impose penalties in this context. The amendment aimed at eliminating the overlapping of competences of both authorities, which had been the case before.

Another serious obstacle for the broadband deployment are the complex procedures for issuing construction permits and the fragmented national legal framework in the area of rights of way. Alternative operators complained about significant delays in the administrative procedure. Although in the course of the transposition of the revised EU regulatory framework, the competent authority is obliged to take a decision within six months, the future implementation of the provision remains questionable.

As regards co-location and sharing of network and facilities, Bulgaria transposed the relevant provision of the amended Framework Directive by empowering CRC to impose symmetrical obligations as regards facilities sharing in order to pursue public policy objectives such as town and country planning without, however, making reference to the principle of proportionality. A new provision in the LEC entitles undertakings providing electronic communications to use for their purposes the existing infrastructure for distribution of electricity, gas and water and the drainage systems. In this context alternative operators complained about unreasonable high prices charged by the power suppliers and lack of state intervention in this regard.

4.2 NATIONAL PLANS, PRIVATE & PUBLIC INVESTMENTS

In February 2012, the Ministry of Transport, Information Technology and Communication elaborated an updated draft of the National Broadband Strategy and of an Implementation Plan. The adoption of both drafts is expected in April 2012.

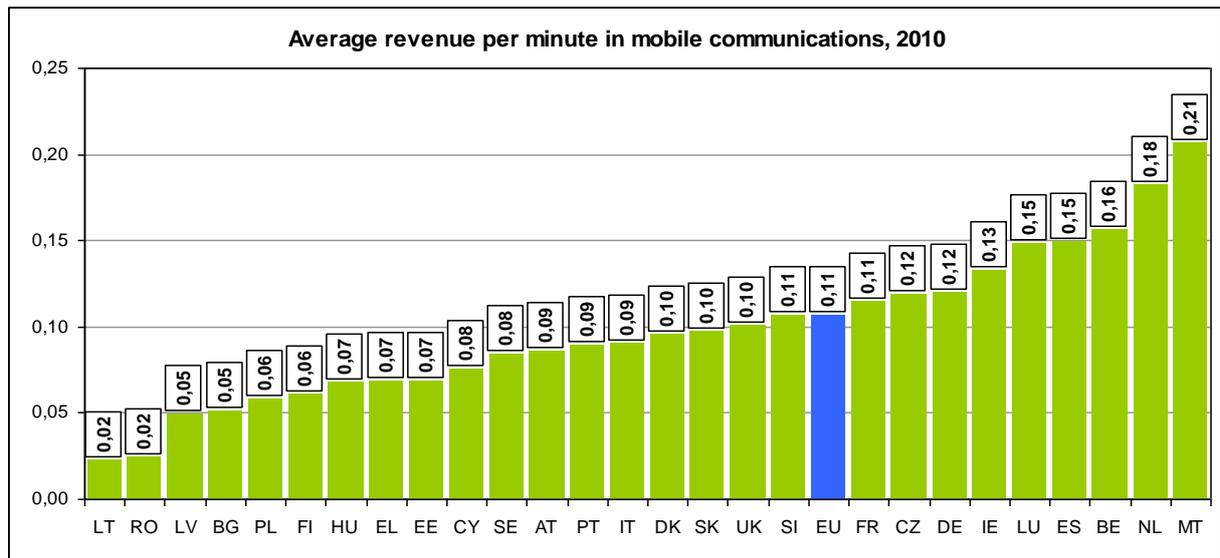
Some progress was made on a governmental project for the development and operation of a broadband access network in less urbanised and rural areas

5. VOICE AND OTHER E-COMMUNICATION SERVICES

Whilst the fixed voice market is still dominated by the incumbent (BTC) with a market share by traffic volume of more than 92% in all types of calls at the end of 2010, the trend towards fixed to mobile substitution continued also in 2011. As regards mobile penetration in terms of dedicated data service, Bulgaria is with 3.5% still far behind the EU average of 8.1%. The bundling of fixed and mobile voice as well as triple-play has significantly increased. Despite attempts by the Communications Regulation Commission (CRC) to enforce its decision on regulated Mobile Termination Rates (MTR) for incoming international calls, none of the three mobile operators applies the given rates.

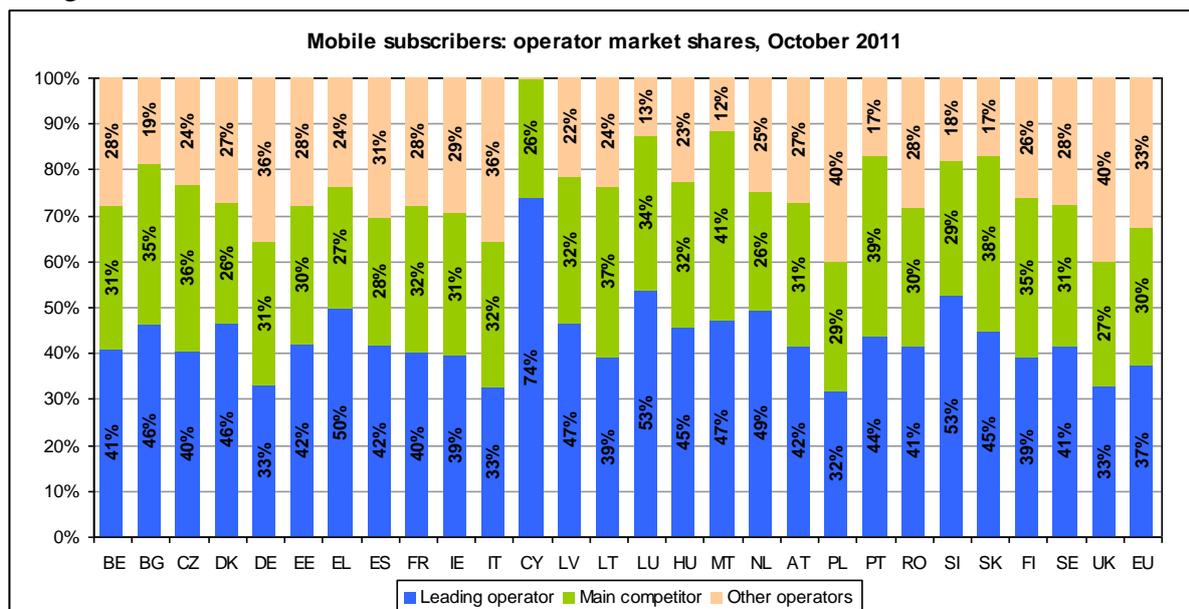
5.1 MOBILE SERVICES

The mobile penetration rate in October 2011 increased to 144.8% (from 134.4% in October 2010). The proportion of post-paid mobile users increased to 68%. The number of pre-paid mobile subscribers declined to 32% from 35% in 2010. For 2010, mobile services accounted for 65% of all revenues and 36% of total investment in the e-communications sector. The average revenue per user for the same year dropped to €77 (down by 26% compared to one year earlier).



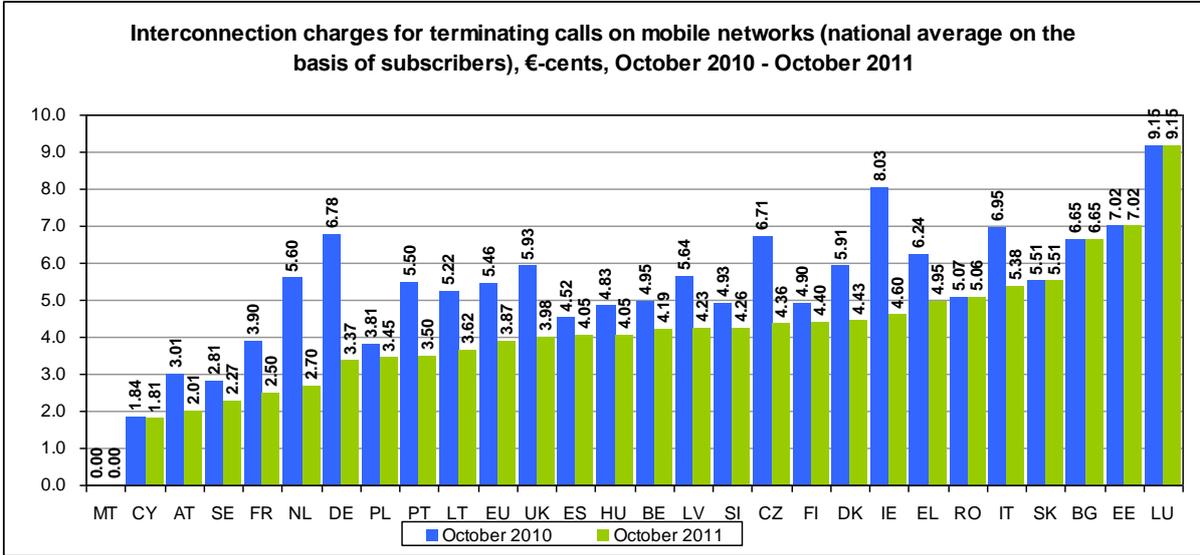
Source: Commission services

The market share of the major mobile network operator in terms of the number of subscribers decreased in October 2011 to 46% (from 52% in October 2010). Over the same period, the main competitor's market share increased from 33% to 35% whilst the third operator strengthened its market share from 15% to 19%.



Source : Commission services

As a result of a discussion between the Commission services and the CRC, the CRC has finally adopted a temporary decision in March 2011² that required all three Bulgarian mobile network operators to apply regulated MTRs to incoming international calls. This measure is applicable as from 1 April 2011 and remains applicable until a new regulatory decision based on the forthcoming market analysis on the mobile call termination market has been adopted. Despite imposed financial penalties by the regulator for non-implementation of the decision, the three mobile operators continue not applying the regulatory measure. The Commission services are looking into the matter.



Source: Commission services

Since July 2010 when the last step of a glide path adopted by the CRC in March 2009 (likewise for fixed termination rates) entered in to force, the MTRs levels remain at 6.65 €-cents per minute for peak traffic and 5.64 €-cents per minute for off-peak traffic. In October 2011, peak traffic MTR levels exceeded the EU average by 71%.

Following the Commission Recommendation on the regulatory treatment of mobile and fixed termination rates in the EU, CRC authorized an undertaking to elaborate the BULRIC mobile and fixed models which should be applicable as of 1 July 2013.

All mobile operators have implemented consumption limits as of 1 July 2011 as required by the Regulation and offer the Eurotariff for voice calls and SMS at levels close to the specified price caps. The major mobile operator is offering special roaming tariffs as an alternative to the Eurotariffs for example for people travelling to other Balkan countries. All operators offer combi-packages with defined price for certain amount of minutes or value of data.

5.2 FIXED

The incumbent's market share fell to 93.6% in terms of national calls by traffic volume (down from 95.1% in 2009) and increased to 79.7% (from 71.8%) as regards international calls by traffic volume. Overall, the incumbent's market share fell to 92.7% in terms of all types of calls by traffic volume in 2010 (down from 94.1% one year before).

In July 2011, 24.2% of the subscribers used an alternative provider for direct access to fixed services, which is 67.1% more than one year before. 24.2% of the subscribers used alternative

² Decision No. 320 of 24 March 2011

providers for national calls and 24.3% for international calls. In total, 21 undertakings offered fixed telephone services in December 2011 according to information provided by the CRC. The share of fixed voice traffic in the total voice traffic in 2010 dropped to 13.6%, which is a decrease by more than 17% compared to the previous year. Retail revenues from public fixed voice telephony decreased respectively by around 14.7%.

Bundled services offer increased significantly in 2011. At July 2011, the bundled offer penetration increased at 8.5% (by more than 123% compared to one year before). The double play penetration reached 6.7% and the triple play penetration 1.8%. According to the CRC, 81 undertakings placed bundled products in 2010, 72 of them were offering double-play services consisting of TV and internet access.

The analysis of the wholesale market for segments of leased lines is still pending.

5.3 BROADCASTING

With the amendments to the LEC from December 2011, Bulgaria introduced a new deadline for the switch-off of the terrestrial analogue broadcasting, 1 September 2013.

In May 2011, the Commission opened an infringement procedure against Bulgaria for failing to comply with the legal requirements laid down in the EU legal framework as regards the allocation of the digital dividend. As a result, Bulgaria amended some existing provisions in the LEC and introduced new provisions. In particular, Bulgaria removed the restrictions applied to foreign TV and Radio content providers related to the operating of digital terrestrial multiplex services and obliged the CRC to open a contest procedure for a new additional digital terrestrial broadcasting network with national coverage not later than 1 September 2013. Furthermore, Bulgaria committed itself to issue a new national plan for the introduction of digital terrestrial television broadcasting (DVB-T) till the end of March 2012.

The new law furthermore foresees the continuation of a contest procedure for the assignment of local analogue spectrum lots hold in 2009 where the CRC withdrew a spectrum lot for the Sofia area without any notice to the participants. According to the new provision, the spectrum lot in question has to be assigned to the undertaking which would have obtained it in 2009 if the spectrum lot had not been withdrawn. In January 2012, the CRC assigned the spectrum lot concerned.

As regards technology, significant growth can be noted for the satellite broadcasting services. In July 2011, the household penetration rate for that platform increased to 15.8% from 10.6% one year before). There is a slight increase to 43.3% for the Cable TV (from 41.5% in 2010).

With the recent amendments to the LEC, Bulgaria introduced a periodic review of must-carry obligations. According to the new provision, the CRC is obliged to examine the existing obligations at least once every five years. The next review is foreseen for 25 May 2013.

Stakeholders complained about a discriminatory treatment of operators of different platforms with regard to the imposition of must-carry obligations. According to the new amendments to the LEC, must-carry-obligations for broadcasting of the national and regional programs of the National Radio and Television free of charge are imposed on the cable and satellite network operators while operators of future DTB networks are obliged to provide these programs on

the basis of cost-oriented prices set up in the contracts between the network operators and the content provider. Furthermore, the Council of Media recently adopted a list with a number of commercial programs having must-carry statute only applicable to the DTB networks.³

6. SPECTRUM MANAGEMENT

Bulgaria has not yet implemented Commission Decision 2008/477/EC on the harmonized use of the 2.5-2.69 GHz band the prolongation of which from a previous derogation expired at the end of 2011. In 2011, the national regulator granted 3 licenses within the 1800 MHz band.

Bulgaria recently notified the implementation of Commission Decisions 2011/485/EU (on short-range radars in 24 GHz band) and 2011/251/EU (on 900 and 1800 MHz bands).

Bulgaria has not yet implemented Commission Decision 2008/477/EC on the harmonized use of the 2.5-2.69 GHz. By Commission Decision 2010/194/EU Bulgaria was granted a prolongation of a previous derogation from the above mentioned decision. As a result, Bulgaria has been authorized to postpone the implementation of Decision 2008/477/EC in North Bulgaria until 31 December 2010 and in South Bulgaria until 31 December 2011.

In 2011, the CRC carried out a competitive assessment in accordance with the revised GSM Directive on the existing assignments of the 900 MHz spectrum band with the conclusion that the spectrum has been allocated equally to the three competing mobile operators.

In the context of Commission Decision 2011/251/EU amending Decision 2009/766/EC on the harmonized use of the 900 MHz and 1800 MHz, the frequency licenses of all mobile operators were amended in order to fulfill the refarming requirements for both bands, in particular to allow the use of LTE and WiMAX technologies.

In July 2011, the CRC approved the transfer of individual rights to use radio frequencies to one of the mobile operators.

In November 2011, the regulator announced an auction procedure for the 3424-3466 MHz band.

In December 2011, the CRC granted one license for 2x5 MHz and two licenses for 2x8 MHz within the 1800 MHz frequency band for the use of GSM, UMTS, LTE and WiMAX technologies.

The Commission will monitor the implementation by Bulgaria of the provisions of the Radio Spectrum Policy Programme (RSPP)⁴ which require Member States to carry out the authorization process by 1 January 2013 in order to allow the use of the 800 MHz band for electronic communications services.

³ See: <http://cem.bg/cat.php?id=119>

⁴ Decision 243/2012/EU of the European Parliament and of the Council of 14 March 2012 establishing a multiannual radio spectrum policy programme

7. CONSUMER INTEREST

7.1 116 HARMONISED NUMBERS FOR SERVICES OF SOCIAL VALUE

In December 2011, the CRC extended by one year the assignment of the harmonized number 116 000. The number 116 111 is operational in Bulgaria since November 2009.

In December 2011, the CRC extended by one year the assignment of the harmonized number 116000 to a foundation having the purpose to set up a national hotline for missing children which must become operational by May 2012. The harmonized number 116 111 is a freephone run by the State agency for Child Protection. The helpline service is operational since November 2009.

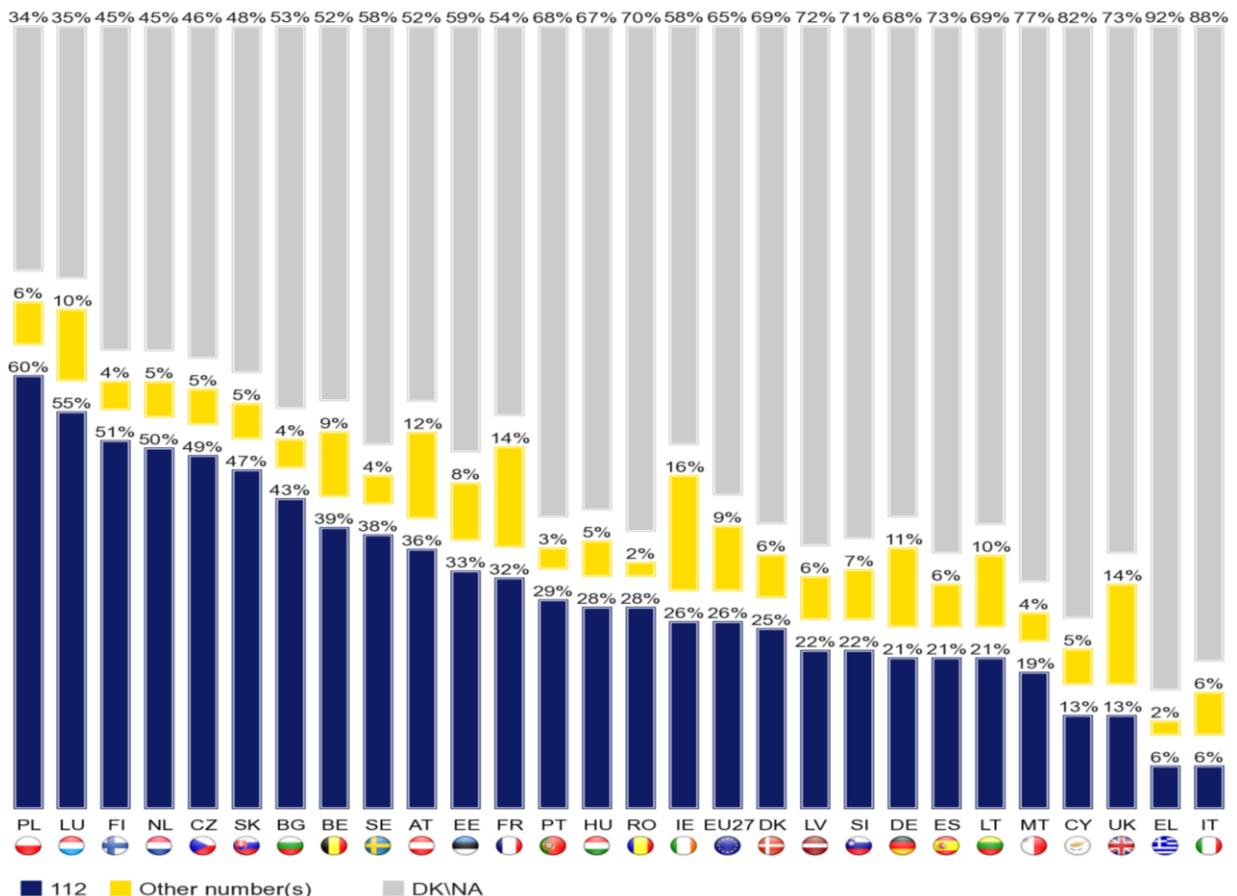
7.2 112 EUROPEAN EMERGENCY NUMBER

Although the emergency number 112 has been operational in Bulgaria for many years, the level of awareness of 112 as the European emergency number is rather low.

Awareness of 112 as the EU-wide emergency number:

Can you tell me what telephone number enables you to call emergency services anywhere in the European Union?

(Base: all respondents, % by country)



Source : Eurobarometer 2012

112 has been operational in Bulgaria for several years. Whilst 80% of the people know 112 is a number to call in case of emergency in Bulgaria, only 43% are aware that this emergency number can be called in other Member States.⁵ Since October 2011, all emergency calls to different emergency numbers have been redirected to the 112 operators. Bulgaria has still not adopted special provisions ensuring equivalent access to 112 for disabled users.

7.3 NET NEUTRALITY AND QUALITY OF SERVICE

Net neutrality was not reported to be an issue in 2011.

Net neutrality was not reported to be an issue in 2011. According to the recent amendments to the LEC, the CRC is empowered to define and impose minimum conditions for the quality of services on the telecom providers.

7.4 CONSUMER COMPLAINTS, TARIFF TRANSPERENCY

A large proportion of complaints was based on problems related to the change of the major mobile operator's billing system (Mobiltel).

Around 4600 complaints have been lodged at the NRA during the reporting year. A large proportion of the complaints are related to delays of invoices caused by the change of the major mobile operator's billing system. Another big proportion of complaints are related to non-availability of detailed invoices or alleged incorrect invoices. Further complaints referred to inadequate service provision, automatic renewal of contracts, problems on number portability and unsolicited calls.

7.5 NUMBER PORTABILITY

In the context of number portability, the time needed for porting fixed and mobile numbers is seven working days

In accordance with the new amendments to the LEC, the porting of numbers shall be carried out within the shortest possible time and the interruption of services should not exceed eight hours. The time needed for portability of fixed and mobile number is seven working days. From January till September 2011, 78 187 mobile numbers and 40 421 fixed numbers have been ported.

7.6 UNIVERSAL SERVICE

The process of launching a designation procedure for a universal service provider has further delay due to the recent LEC amendments and the forthcoming amendments of the implementing secondary legislation. For the same reason, a decision by the CRC regarding the compensation of the current designated universal service provider (BTC) for the years 2009 and 2010 is still pending.

⁵ Eurobarometer Flash survey on the European emergency number 112 (February 2012)

An act of secondary legislation⁶ obliges the CRC to issue a designation procedure for a universal service provider within one month after adoption of the analyses of the retail telephony markets. The recent amendments to the LEC and the secondary legislation as regards Universal Service slow down the process of launching of the designation procedure.

By virtue of LEC, the incumbent is the current universal service provider. In June 2011, the incumbent requested compensation for the net costs of providing universal service in 2010. In October 2011, the CRC opened a tender procedure for the selection of one undertaking which will carry out an examination of the incumbent's system for determination of the net costs and assessment of the net costs for 2009 and 2010. Due to recent amendments to the LEC, the procedure had to be cancelled and a new procedure for independent audit of the incumbent's system - in line with the amended legal provisions has been issued by CRC. This led to a further delay in the compensation procedure.

7.7 EPRIVACY

No major issues on e-Privacy were reported.

The recent amendments to the LEC introduced the data breach notifications requirements under the ePrivacy Directive. The Commission on Personal Data Protection was designated as a competent authority to receive notification from operators about security breaches. According to the relevant transposition provision on the storing of information or gaining of information already stored in the equipment of the user, the recipient should be provided with the opportunity to refuse the storage of or access to information instead of giving its consent as foreseen in the revised ePrivacy Directive. The Commission services are looking into the matter.

⁶ Ordinance No. 6 (SG No. 32, 2008)