

# DESI Report 2018

## Telecoms chapter

### ROMANIA

#### Market developments

##### 1. Competitive environment

Fixed broadband prices	RO-2016	RO-2017	EU-2017
Fixed broadband price index [values between 0-100]	85	87	87

Source: Commission Services based on Fixed Broadband Prices in Europe (Empirica). Digital Economy and Society Index 2018.

In 2016 telecom revenues totalled €3.33 billion, slowly growing in the past three years. Meanwhile, the retail broadband revenues steadily increased in recent years, reaching €0.83 billion in 2016 (€0.69 billion in 2015).

##### a. Fixed Markets

Fixed broadband market shares	RO-2016	RO-2017	EU-2017
Incumbent market share in fixed broadband	24.9%	23.2%	40.3%
<b>Technology market shares</b>			
DSL	22.3%	19.0%	64.2%
Cable	17.8%	17.9%	19.4%
FTTH/B	50.6%	54.5%	12.9%
Other	9.3%	8.6%	3.6%

Source: Communications Committee. Data as of July 2016 and July 2017.

New entrants' DSL subscriptions by type of access (VDSL excluded)	RO-2016	RO-2017	EU-2017
Own network	83%	83%	0.5%
Full LLU	17.5%	17.5%	72.8%
Shared Access	-	-	4.1%
Bitstream	-	-	14.7%
Resale	-	-	7.8%

Source: Communications Committee. Data as of July 2016 and July 2017.

The strong infrastructure-based competition in Romania, mainly in urban areas, is reflected in the indicators where the country's performance is outstanding, namely the fast broadband take-up. A significantly higher ratio of the total number of homes (53%) are subscribing to fast broadband ( $\geq 30$  Mbps) than the EU average of 33%. With almost three times as many subscriptions to ultra-fast broadband (43.8% of subscriptions to  $>100$  Mbps, second place in the EU), Romania largely outperforms the EU average of 15.4%. This is due to the large share of fibre deployment in the market. In the fixed broadband market, an alternative operator has the biggest market share by relying on FTTx infrastructure, and further increased its market share over 2017.

As the technologies' market shares suggest, the Romanian broadband market is characterised by platform-based competition, while there is marginal uptake of DSL subscriptions by new entrants. As of 31 December 2017, only 21 unbundled local loops were reported. Only very small alternative operators have 'legacy' DSL networks that were historically part of the

incumbent's network. With the incumbent's market share of DSL lines close to 100%, in 2017 the DSL subscriptions' share in the fixed broadband market by technology slid to 19%. While DSL uptake is insignificant, over 40 000 dark fibre circuits to the end-user were made available to other suppliers as part of commercial agreements.

Coverage	RO-2016	RO-2017	EU-2017
Fixed broadband coverage (total)	89%	88%	97%
Fixed broadband coverage (rural)	82%	83%	92%
Fixed NGA coverage (total)	72%	74%	80%
Fixed NGA coverage (rural)	34%	39%	47%
Ultrafast coverage (total)	no data	73%	58%
4G coverage (average of operators)	45%	72%	91%

Source: Broadband Coverage Study (IHS and Point Topic). Data as of October 2016 and October 2017.

In 2017 Romania continued to progress slowly towards achieving the Digital Agenda for Europe objectives. However, Romania's fixed broadband coverage stagnated around 88% in the past year and still lags behind other Member States (27th in the EU according to the Digital Economy and Society index). Broadband take-up reached 67% of households but was still below the EU average of 75%. Romania's urban-rural digital divide is best illustrated by the figures for next-generation access (NGA) coverage, where under 40% of rural areas are covered. Romania also lags behind on mobile 4G broadband coverage despite the leap from 45% in 2016 to 72% in 2017 (the EU coverage average is 91% of households, average/operator).

On the broadband market 653 operators provide fixed broadband internet access, of which 27 by cable network, 164 by fibre, 161 by radio, 5 by xDSL and 516 by UTP/FTP cable. There has been a steady growth in fixed broadband connections over recent years, reaching 4.62 million in July 2016.

In the first half of 2017, 25 new entrants were registered to provide fixed broadband services through optical fibre, radio or UTP/FTP access technologies. 73% of the households are covered by ultrafast broadband (with speeds above or equal to 100 Mbps).

The NRA found evidence of increasing fixed-to mobile substitution in the retail market for access to fixed telephony services. Considering the total number of subscriptions for telephony services (fixed and mobile), the share of mobile subscriptions was of 75%, as of 30 June 2017. On 30 June 2017 there were 31 suppliers of telephony services through VoIP, while 19 suppliers offered managed VoIP services. The number of managed VoIP lines as of 30 June 2017 was 2.2 million of which approximately 12% were business users. The total managed VoIP-originated traffic represented 47 % of the total voice traffic through fixed networks in the first half of 2017.

## b. Mobile market

Mobile market	RO-2016	RO-2017	EU-2017
Market share of market leader	40%	40%	35%
Market share of second largest operator	29%	30%	28%
Number of MNOs	5	5	-
Number of MVNOs	1	2	-
Market share of MVNO (SIM cards)	0.4%	0.2%	-

Source: Communications Committee. Data as of October 2016 and October 2017.

There are six mobile operators offering voice services in the Romanian market, while seven operators provide mobile broadband internet access services.<sup>1</sup> One national roaming agreement is in place. By the end of 2017, one mobile network virtual aggregator (MVNA) and four mobile virtual network operator (MVNO) agreements were submitted to ANCOM. Passive network sharing agreements are in place between all mobile network operators and one includes a utility company.

<b>Mobile broadband prices [EUR/PPP]</b>	RO-2016	RO-2017	EU-2017
Least expensive offer for handset (1 GB + 300 calls basket)	€9	€21	€24
Least expensive offer for tablet and laptop (5 GB basket)	€20	€10	€17

*Source: Mobile Broadband Price Study (Van Dijk and Empirica). Prices expressed in EUR/PPP, VAT included. Data as of February 2016 and February (handset) 2017 - July (tablet-laptop) 2017.*

Overall, mobile broadband price trends changed since last year<sup>2</sup> in Romania. The price levels vary compared with the EU average depending on the device on which broadband is used: the offer for the least expensive 1 GB+300 min calls service is still below the EU average (21 EUR/PPP versus 24 EUR/PPP) while the least expensive offer for tablet and laptop for a 5 GB service significantly decreased well below the EU average (10 EUR/PPP versus 17 EUR/PPP).

The average revenue per minute in voice mobile communications was €0.0143 in 2016. For the same period, the average revenue per user in mobile communications was €7.7.

## **Regulatory developments**

### **2. Supporting measures for deployment and investment in high-speed networks**

#### **a. Spectrum**

In Romania 73% of the spectrum harmonised at EU level for wireless broadband has been assigned.

Starting with 26 June 2017, ANCOM conducted a public consultation on awarding new rights of radio spectrum use in the new harmonised WBB bands, i.e. 694-790 MHz (the 700 MHz band) and 1452-1492 MHz (the 1.5 GHz band), as well as in the sub-bands not awarded during the selection procedures held in 2012 and 2015 for the 800 MHz (one block of 2x5 MHz), 2.6 GHz (8 blocks of 2x5 MHz) and 3400-3600 MHz bands (2x10 MHz and 2x15 MHz).

The 700 MHz band is already available at national level for WBB communications services, but it can only be used efficiently if the band is not used for digital terrestrial television on the territory of neighbouring countries, whether Member States or non-EU countries.

As for the 470 - 694 MHz band (sub-700 MHz band), this band is in use for terrestrial digital television (DVB-T2). In February 2017 ANCOM completed the fourth auction launched in December 2016 for two Digital Terrestrial Television Multiplexes. Following the four

<sup>1</sup> One operator is majority owned (more than 50%) by a Mobile Network Operators operating in the Romanian market, therefore it is not counted in the table above as MVNO

<sup>2</sup> Based on the February 2016 price survey.

auctions organized so far, three national multiplexes have been awarded to the National Broadcasting Company, this company winning the free to air multiplex and two other multiplexes in the UHF band. Moreover, twelve regional multiplexes and three local multiplexes have been awarded.

### **b. National and EU investment in broadband**

For the 2014-2020 financial framework, the Romanian Operational Programme for Competitiveness (2014-2020) has earmarked €100 million from the European Regional Development Fund (ERDF), while the 2014-2020 Rural Development Operational Programme has allocated €25 million from the European Agricultural Fund for Rural Development (EAFRD).

However, the RoNet project to support deployment of backhaul networks in ‘white areas’ had ERDF financing of €57 million in the previous financing period but could only absorb €12.6 million by the end of the eligibility period (December 2015). Consequently, Romania re-allocated structural funds (€44.95 million from the ERDF) to finalise the RoNet project in the current financing period, ensuring broadband backhaul infrastructure for 684 localities. At the end of 2017 the authorities reported the reception of works in 212 localities while in 367 localities the works are finalized and ready for reception.

For a significant part of the remaining white areas, a grant scheme of €65 million (€55.45 million finances from ERDF) will provide support to private operators for deploying last-mile access infrastructure. A public consultation was launched in September 2017 by the Ministry of Communications and information society on the grant scheme. The state aid scheme is under preparation and the call is planned to be launched in the first semester of 2018.

ANCOM has well defined competences with regard to publicly financed broadband infrastructures. The conditions of open access to publicly financed network/infrastructure must be approved by ANCOM and it also has the power to monitor the conditions of open access. However, it is the funding authority that enforces penalties in the event of failure to comply with the open access obligations. ANCOM has the competence to draw up the ‘white areas’ map on the basis of the information provided by electronic communications network providers.

### **c. Implementation of the Broadband Cost Reduction Directive**

In July 2016 Romania notified the Commission the measures it had taken to transpose the Directive<sup>3</sup> into national law, specifically through Law No 159/2016 on the regime of physical infrastructure for electronic communications networks and laying down measures to reduce the cost of deploying electronic communications networks<sup>4</sup> (Infrastructure law). The respective infringement procedure was closed and the Commission is in the process of assessing the compliance of the transposition measures notified by Romania with the Broadband Cost Reduction Directive, in particular with regards to the setup of the single information point (SIP). Under the Infrastructure law ANCOM's decision to set up the SIP was due in October 2016. ANCOM adopted the decision on the establishment of the Single

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<sup>3</sup> Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks (OJ L 155, 23.5.2014, p. 1).

<sup>4</sup> *Lege nr. 159/2016 privind regimul infrastructurii fizice a rețelelor de comunicații electronice, precum și pentru stabilirea unor măsuri pentru reducerea costului instalării rețelelor de comunicații electronice.*

Information Point only in December 2017, as well as on the establishment of the conditions and modalities for sending information on the physical infrastructure of network operators.

The powers vested in the NRA by the Infrastructure Law could solve the bottleneck caused by the difficult permitting process for physical infrastructure roll-out. ANCOM is tasked with setting maximum tariffs for access to public property, based on the principle of justification and proportionality to the damage of the respective public property, and taking into account some tangible and intangible benefits. These tariff caps shall serve only as a reference limit in the negotiation of access conditions with state or local authorities. Currently, each local authority has its own permitting procedure and conditions that seriously hampers the deployment of telecom infrastructure. Although under the Infrastructure law the decision of ANCOM's president was due in April 2017, the maximum fees are still not determined.

Another provision welcomed by the industry at the time of the adoption of the Infrastructure law was the mandate given to ANCOM, the Ministry of Communications and Information Society (MCSI) and the Ministry of Regional Development and Public Administration (MDRAP) to establish through a joint decision technical norms for the design and development of physical infrastructures and electronic communications networks, as well as on the technical regulations on the design and development of constructions on which they are deployed. This measure was supposed to streamline the cumbersome authorisation procedures at local level and was supposed to be adopted by July 2017 the latest, under art 29.3 of the Infrastructure law. There is still no foreseeable date for the adoption of the technical norms.

ANCOM shall also establish recommended tariffs for access to various categories of physical infrastructure. These will serve as a reference in the negotiation of contracts to exercise the right of access to infrastructure but there is no indication as to when these will be published. In 2017, after more than one year from the entry into force of the infrastructure law, there were no signs of a significant increase of the number of agreements for infrastructure access. ANCOM expects that the publishing of the recommended access tariffs would boost the shared use of infrastructure.

The NRA was given responsibility for the new dispute resolution mechanism. In 2017 no dispute was brought before ANCOM under the Infrastructure law.

### **3. Regulatory function**

In 2017 the independence and regulatory capacity of ANCOM was severely tested. The Commission raised its concerns in 3 political letters by the Director General of DG CNECT in order to urge the Romanian authorities to ensure independence and regulatory capacity of the national regulator.

In April 2017, the NRA was in a decision making vacuum because of the lack of leadership after the voluntary resignation of the former president of ANCOM. Meanwhile, under the draft public sector budgetary remuneration legislation the NRA was under the threat to lose the adequate financial and human resources to carry out the tasks assigned to them under the regulatory framework (Art 3(3) of the Framework Directive).

The Romanian Government adopted Emergency Ordinance no. 33 of 27 April 2017 amending Emergency Ordinance no. 22 of 2009 on the statutory provisions of ANCOM with the purpose of changing the appointing authority of the President of ANCOM: instead of the President of the Republic this power was vested on the Romanian Parliament.

On 11 May 2017 a new president of ANCOM was appointed by the Romanian Parliament. In June 2017 ANCOM was exempted from the applicability of the public sector remuneration legislation. On 20 October the head of NRA resigned amidst accusations of mismanagement by the Parliamentary Committees of the Romanian Parliament.

On 8 November 2017 the former prime minister Sorin Grindeanu, was appointed by the Parliament to lead the NRA.

On 19 December 2017 the Emergency Ordinance no. 33 of 27 April 2017 was amended by the Romanian Parliament to allow the de jure dismissal of the leadership of ANCOM on the basis of the rejection of the yearly report on ANCOM's functioning by the Parliament, while no judicial control of the dismissal decisions is ensured. These amendments were adopted despite the warning of the Commission services that they could seriously undermine the independence of the National Regulatory Authority. The Parliament sent the Law of approval of Emergency Ordinance no. 33, with amendments for promulgation to the President of Romania. On 15 January 2018 the President of Romania contested in Constitutional Court the Law of approval of Emergency Ordinance no. 33, with its amendments, on the following grounds:

- a) Objective lack of emergency at the time of adoption of Emergency Ordinance no. 33
- b) Disregard of the principle of bicameralism
- c) Conflict with EU law, suggesting that the relevant question could be sent for preliminary ruling to the CJEU.

Since 2015 ANCOM deregulated markets 3a (wholesale local access) and 3b (wholesale central access) covered by the 2014 Recommendation.

On 5 October 2017, the European Commission launched an infringement procedure against Romania for significant delays, of over five years, of the analysis of the following markets: markets 1 and 2 of the 2014 Recommendation, market 4 of the 2014 Recommendation (initial due date in 2014); market 18 of the 2003 Recommendation (initial due date in 2012).

Subsequently the Romanian authorities notified the analysis of the termination markets on 10 October 2017. In its notification ANCOM proposed to maintain the current symmetric FTR cap of 0.14 eurocents/min and symmetric MTR cap of 0.96 eurocents/min during the upcoming regulatory period. The Commission by its Decision of 9 November 2017 opened a Phase II investigation pursuant to Article 7a of Directive 2002/21/EC. The Commission expressed serious doubts that ANCOM's proposal to maintain the currently applicable FTRs and MTRs, which were set in 2014 on the basis of a cost model that is no longer up to date, meets the policy objectives and regulatory principles enshrined in Article 8(2) and Article 16(4) of the Framework Directive. The Commission also expressed concerns that the draft measure was not compliant with Articles 8(4) and 13(2) of the Access Directive and that it would create barriers to the internal market. Following the Commission's decision ANCOM withdrew the notification and re-notified the market analysis of the above markets on 17 November 2017. In its decision of 8 December 2017 the case was closed with the comments of the Commission that took note of the proposal to decrease both the FTRs and MTRs by way of transitional measures that can be quickly adopted and remain in place until a new LRIC model is finalised. The Commission urged ANCOM to start revising its cost model, so that the (soon to be adopted) transitional rates can be replaced by new cost-efficient rates

within the shortest time possible. On 22 December 2017 ANCOM launched a national consultation<sup>5</sup> that ran till 31 January 2018 on a transitory measure concerning the level of MTR to be applied until the new BU-LRIC model is finalised. The proposed<sup>6</sup> tariff of 0.84 eurocents/min. has been set on the basis of an EU benchmark of pure LRIC average as of July 2017.

On 14 November 2017 ANCOM notified the analysis of market for broadcasting transmission services mentioned above proposing the deregulation of the market. The Commission closed the notification with no comments on 13 December 2017.

In 2017, 101 IP interconnection agreements were submitted to ANCOM, of which 92 were IP transit agreements for voice services. Seven operators notified 91 IP international transit agreements. Large operators still require SS7 interconnection for voice termination. ANCOM imposed an IP interconnection obligation as a remedy on the fixed and mobile termination markets which will enter into force starting 1 January 2019, but not sooner than 6 months after issuing the national technical specifications. ANCOM is in the process of defining these national technical specifications.

#### **4. Consumer matters**

##### **a. Roaming**

ANCOM is vested with the necessary powers to enforce the provisions of the Roaming Regulation<sup>7</sup>. According to article 142 point 55 from the GEO no. 111/2011, non-observance of the obligations deriving from the regulations of the European Union in the field of electronic communications and terminal equipment, where the competence of monitoring and verification of the compliance with these obligations belongs to the national regulatory authority constitutes a contravention.<sup>12</sup>

On 30 June 2017 ANCOM granted a sustainability derogation to the MNO RCS/RDS S.A. on the basis of Articles 6 to 9 of the Commission Implementing Regulation (EU) 2016/2286. ANCOM allowed the operator to levy certain surcharges, in addition to the domestic tariffs, for the regulated roaming services provided to their customers within the EEA for a 12 month period.

ANCOM monitored the compliance of national operators with the RLAH rules as of their entry into force. There were no indication of increase in tariffs for domestic-only bundles before or after 15 June 2017.

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<sup>5</sup> <http://www.ancom.org.ro/formdata-269-49-348>

<sup>6</sup> The draft measure has been notified to the Commission (case RO/2018/2065). The Commission examined the notification and had no comments. See Decision C(2018) 1981 final of 26 March 2018.

<sup>7</sup> Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union (OJ L 172, 30.6.2012, p. 10), as amended by Regulation (EU) 2015/2120 and Regulation (EU) 2017/920.

Following the introduction of Roam Like at Home<sup>8</sup> (RLAH) in June 2017, Romanian subscribers consumed 3.7 times more voice and 7.8 times more data roaming services when travelling in the EU in summer 2017 compared to summer 2016.<sup>9</sup>

Certain retail offers were under the investigation of ANCOM in 2017:

Certain pre-paid retail offers by various operators in Romania were under the investigation of ANCOM in 2017. The roaming-enabled offers were sold at a higher price or with comparatively less benefits than the domestic-only offers. Following the intervention of ANCOM, the concerned operators corrected their offers and included additional volumes in the roaming offers with higher prices.

According to ANCOM's assessment all operators complied with RLAH rules by 29 November 2017. ANCOM received approximately 150 roaming related complaints on the following issues:

- Domestic-only tariff plans (the domestic benefits are not available for roaming as the end users have expected)
- Surcharges applied by RCS & RDS as a result of the sustainability derogation requested by this provider
- FUP rules currently applied by providers (especially Vodafone) for roaming services (the rules, including those establishing the monitoring period, are not clear, burdensome means of proof of stable links etc.)
- New roaming options that offer much less traffic included than the domestic ones for the same tariffs;
- Data caps for roaming (lack of information, non-appliance of data caps).

#### **b. Net neutrality**

According to the notification sent by the Romanian authorities on 16 May 2016, ANCOM is vested with powers to enforce Regulation (EU) 2015/2120<sup>10</sup>. Non-observance of Articles 3, 4 and 5 of Regulation (EU) 2015/2120 triggers the application of sanctions pursuant to Article 143 of GEO Government Emergency Ordinance No 111/2011<sup>11</sup>.

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<sup>8</sup> Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union (OJ L 172, 30.6.2012, p. 10), as amended by Regulation (EU) 2015/2120 and Regulation (EU) 2017/920.

<sup>9</sup> Figures compare Q3/2017 with Q3/2016 retail roaming volumes according to the BEREC International Roaming Benchmark Report, April 2017-September 2017, published on 14 March 2018

<sup>10</sup> Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union (OJ L 310, 26.11.2015, p. 1).

<sup>11</sup> Article 143 of the Government Emergency Ordinance No 111/2011: Contraventions will be sanctioned:  
a) with fine ranging from RON 5 000 (€1 100) to RON 60 000, (€13 000) and, if there are repeated breaches, with a fine of up to RON 100 000 (€22 000);  
b) [...] for persons with a turnover exceeding RON 3 000 000 (€667 000), with fine of up to 2% of turnover, and, if there are repeated breaches, with fine of up to 5% of turnover.

### **c. 112**

Caller location information requirements are set out in ANCOM Decision 1023/2008, as amended. Caller location accuracy is based on the cell ID provided by the mobile network operator, or on the installation address if calls are placed via fixed networks. ANCOM's decision is adapted since 18 November 2016 to extend the scope of obligations on operators to handset handset-based caller location implementation. However, the Advanced Mobile Location is not yet deployed in the Romanian PSAP system. End users with disabilities may access emergency services through SMS to the 113 number while location is ensured for users of this service.

In April 2017 95% of Romanian citizens recognised 112 as a national emergency number and 71% as the European emergency number.

### **d. Universal service**

In 2017, an internal report of ANCOM on users' needs, that will be followed up in 2018, concluded that access to public payphones, directory enquiry services and directories of subscribers should be removed from the scope of the universal service obligations<sup>12</sup>. ANCOM will organise a public consultation in order to define the best-effort speed for “functional internet access”.

## **5. Conclusion**

Romania lags behind regarding both fixed and 4G coverage. The Romanian legislative framework, the Infrastructure law in particular, allows the removal of bottlenecks for broadband network deployment, in particular the cumbersome authorisation and permitting process at local level. A better coordination between national ministries, ANCOM and local authorities is needed to deliver outstanding secondary legislation that would ensure a streamlined assistance to operators interested to invest in broadband.

In 2017 the 5G consultation organised by ANCOM is seen as an important step for the organisation of the upcoming 5G auction.

The importance of an independent and effective national regulatory authority in a liberalised electronic communications market is paramount under EU legislation. The amendments adopted by the Parliament to ANCOM's statutory law in December 2017 are under scrutiny of the Commission services.

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<sup>12</sup> Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (OJ L 108, 24.4.2002, p. 51).