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from: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 18 June 2012

to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European  
Union

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**COMMISSION STAFF WORKING DOCUMENT**

**DAE-Scoreboard 2012**

**COMMISSION STAFF WORKING DOCUMENT**

**DAE-Scoreboard 2012**

**Country Chapter (Part 2) -2011 Telecommunication Market and Regulatory  
Developments**



EUROPEAN COMMISSION

Information Society and Media Directorate-General

Electronic Communications Policy

**Implementation of Regulatory Framework**

18 June 2012

**SPAIN**

**2011**

**Telecommunication Market and  
Regulatory Developments**

This report is a Commission Services working document, issued as part of the Scoreboard 2012:

[http://ec.europa.eu/information\\_society/digital-agenda/scoreboard/](http://ec.europa.eu/information_society/digital-agenda/scoreboard/)

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## SPAIN

### 1. MAIN MARKET AND REGULATORY DEVELOPMENTS:

#### BEST PRACTICES AND CHALLENGES

##### Development of the sector

In a context of economic crisis in Spain over the past year, the **revenues** in the electronic communications sector have decreased from €38.613 millions in 2009 to €37.273 millions in 2010, representing a decrease of telecom revenue growth of -3,5% for the 2009-2010 period. However, in spite of this decrease of revenues and the overall context of economic downturn, **investment** in the sector has experienced a 3,8% investment growth in 2010 compared to the previous year, increasing from €3.946 million in 2009 to €4.095 million in 2010. Spain is among the Member States which have experienced investment growth in the sector representing the 4<sup>th</sup> largest percentage of investment in the sector in 2010. (*Section 3*)

In October 2011 the fixed broadband penetration reached over 11 million lines in Spain. Mobile broadband has experienced an important increase in Spain over the past year with a penetration rate well above the reported EU average of 43,1%. In the **broadband** market, competition has lead to the market share of the incumbent (Telefónica) in fixed broadband to decrease for the first time below 50% threshold, from 52,4% in January 2011 to 48,4% in January 2012, although this is still above EU average. In the **fixed market**, the incumbent remains the leading operator although its market share for all types of calls by traffic volume has decreased over the past year to 58,5% as of December 2010, compared with 61,7% in December 2009 (-4,9%). In the **mobile market**, the market share of the incumbent's competitors has continued to grow over the past year with a reported market share of the mobile branch of the incumbent operator of 41,6% as of October 2011, and the market share of its competitors has been growing from 56% to 58,4%. There are at present 26 mobile operators in the Spanish market (4 MNO and 22 MVNO actually providing services out of 11 operators holding spectrum eligible the provision of mobile services). As a result of spectrum tenders carried out by the SETSI in 2011, there has been an increase of the overall number of operators in the Spanish mobile market. The mobile penetration rate in Spain as of October 2011 has continued to grow reaching 126%, from a penetration of 119% in October 2010 and significantly approaching the EU average of 127%. With regard to main regulatory developments relevant for all markets, the CMT has approved a comprehensive 3<sup>rd</sup> round regulatory action plan for 2012 which includes in particular the revision of mobile, fixed, broadband, leased lines, and broadcasting markets. (*Section 5*)

Spain continues to be one of the EU Member States with highest rates of fixed and mobile **number portability**. In July 2011, the CMT adopted the new procedures regarding the

implementation of the 1-day mobile number portability, in application of the amended Universal Service Directive, which are set to enter into force before June 2012. (*Section 7.5*)

#### Progress in broadband deployment and take-up

The deployment of broadband infrastructures is in a critical moment due to the situation of economic crisis and uncertainty in the demand side which can lead to operators to focus uniquely in areas with high investment return and limit their investment elsewhere, but investment in high speed networks continues. The incumbent operator (Telefónica) continued its investments in fibre in selected areas, and over the past year cable operators have upgraded their networks with DOCSIS 3.0 and by the end of year 94% of all their fibre-coaxial (HFC) connections were already capable of providing very high speed connections. The Spanish government has implemented over the past years an ambitious national broadband strategy (Plan Avanza) which has implemented, amongst others, a national strategy for the extension of broadband to rural and isolated areas (PEBA). The SETSI has announced adoption of a **Spanish Digital Agenda**, in connection with the DAE objectives, and replacing the Plan Avanza, which is expected to be approved in 2012. (*Section 4*).

#### Independence and effectiveness of the NRA

The division of regulatory functions between different national regulatory authorities persists, with the main responsibilities divided between the Telecommunications Market Commission (CMT) and the State Secretariat for Telecommunications and the Information Society (SETSI), responsible for electronic communications within the Ministry of Industry, Energy and Tourism. The March 2011 Sustainable Economy Law introduced changes affecting the sector regulators in Spain, including the CMT. The Spanish Government has announced plans to merge into a single regulatory authority (National Commission for Competition and Markets) the national competition authority (CNC) and all the sector specific regulators in Spain, including the CMT. (*Section 2*).

#### Implementation of the framework

Spain had not transposed the revised electronic communications framework before the deadline set by the legislator (25 May 2011) and infringements were launched in 2011. In March 2012, Spain transposed the revised electronic communications framework through the adoption of Royal Decree-law 13/2012 of 30 March amending the General Telecommunications Law (Law 32/2003). Following the infringement procedure, the telecoms charge case regarding the financing of the public broadcasting corporation (RTVE charge case) was referred to the Court of Justice in September 2011 (C-468/11). In February 2011 a reference for a preliminary ruling from the Spanish Supreme Court was requested to the CJEU regarding municipal taxes, in particular national legislation under which a fee may be required for the right to install facilities on municipal public land from operating undertakings which, without being proprietors of the network, use it to provide mobile telephony services (Cases C-55/11, C-57/11, C-58/11).

### Spectrum management

In September 2010, the Commission had launched infringement proceedings against Spain for failure to communicate the measures transposing the 2009 revised GSM Directive. In 2011, the GSM Directive has been transposed in Spain through the adoption of the Law 2/2011. Spanish authorities have carried out throughout 2011 as planned a large spectrum tender process for the 800 MHz, 900 MHz, 1800 MHz and 2.6 GHz bands (310 MHz in total). The spectrum was assigned through a combination of auction and comparative selection procedures and raised a final revenue close to €2 billion. In November 2011, the previous Government approved the final implementation plan for releasing the digital dividend. This plan is being reviewed and is to be approved by the new Spanish Government. (*Section 6*).

### Citizens and consumer protection

The first 116 number assignments (116111 for children helplines and 116000 for missing children) were implemented in 2010. (*Section 7.1*) 112 is the most used emergency number in Spain although knowledge of its availability as the EU-wide emergency number remains at 21%, as in the previous year, and still below EU average (26%). (*Section 7.2*). Key provisions on net neutrality were transposed in Spain in March 2012, and quarterly reports monitoring the quality of services are published by the SETSI (*Section 7.3*). Overall volume of user's complaints received by the SETSI has increased in 2011 although complaints' processing time has been reduced. Mobile telephony continues to represent the highest volume of the total users' complaints. (*Section 7.4*). Number portability continues to be used extensively and the CMT has adopted new rules for its implementation in 2012 (*Section 7.5*). A 1 Mbps functional access to the Internet within the scope of universal service has been adopted in Spain (*Section 7.6*). The ePrivacy Directive was transposed in Spain in March 2012 (*Section 7.7*).

## **2. NATIONAL REGULATORY AUTHORITIES (NRA)**

The division of regulatory functions between different national regulatory authorities persists, with the main responsibilities divided between the Telecommunications Market Commission (CMT) and the State Secretariat for Telecommunications and the Information Society (SETSI), responsible for electronic communications within the Ministry of Industry, Energy and Tourism. The March 2011 Sustainable Economy Law introduced changes affecting the sector regulators, including the CMT. The Spanish Government has announced plans to merge into a single regulatory authority (National Commission for Competition and Markets) the national competition authority (CNC) and the sector specific regulators in Spain, including the CMT.



The division of regulatory functions between different national regulatory authorities persists, with the main responsibilities divided between the Telecommunications Market Commission (CMT) and the State Secretariat for Telecommunications and the Information Society (SETSI), responsible for electronic communications within the Ministry of Industry, Energy and Tourism. The March 2011 Sustainable Economy Law (Law 2/2011) introduced changes regarding the regulators in Spain. It reduced the number of members of the board and established a mandate of 6 years non renewable. It also increased cooperation between regulators, voting procedures at board level, and established board incompatibilities. The SETSI has been reorganised following the appointment of a new Secretary of State for Telecommunications in January 2012 and the overall restructuring of the Ministry of Industry, Energy and Tourism. In 2011, the CMT adopted a comprehensive regulatory action plan for 2012. The SETSI has announced the adoption of a Spanish Digital Agenda in connection with the DAE.

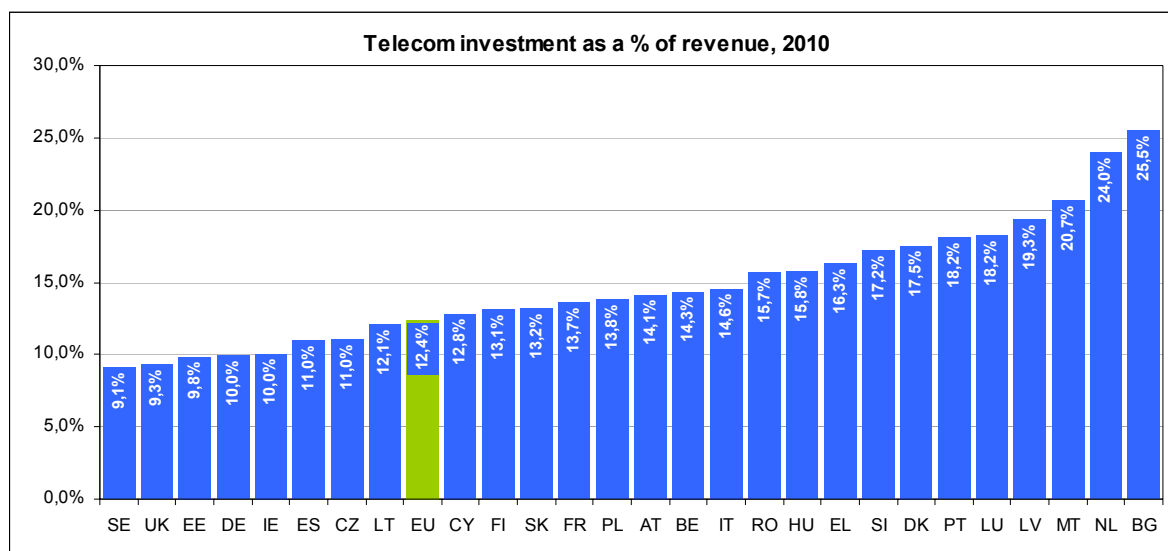
The Spanish Government has announced plans to merge into a single regulatory authority (National Commission for Competition and Markets) all the sector specific regulators in Spain. On 20 January 2012, an inter-ministerial working group was set up in order to analyze the situation of regulators in Spain aiming at exploiting synergies between the different regulators, simplifying the structure and functioning and clarifying the division of competences. On 24 February 2012, the Government announced its intention to present before Parliament a draft law for the reform of regulators in Spain. This draft law foresees the creation of a single regulator in Spain (the National Commission for Markets and Competition) merging the national competition authority (CNC) and the sector specific regulators such as telecommunications, energy, or postal services. The current reform plans therefore involve the integration of the CMT and the electronic communications regulatory activities into the new single national regulator. Several regulators and operators have expressed concerns regarding these developments in Spain.

On the 21 July 2011, the CJEU ruled on a referral from the Spanish Supreme Court on whether Spanish law correctly implemented the Directive 97/13/EC, on a common framework for general authorisations and individual licences in the field of telecommunications services, when using annual turnover as the basis for determining the fee for operators to cover the cost of monitoring and licensing of the telecoms regulator. The Court ruled that this fee may be calculated on the basis of a percentage of the gross operating income of the relevant year, and that it may be applied for the purpose of covering the cost of administration and implementation of the licensing work (C-284/10).

### **3. REVENUES AND INVESTMENTS**

In a context of economic crisis in Spain over the past year, the revenues in the electronic communications sector have decreased from €38.613 millions in 2009 to €37.273 millions in 2010, representing a decrease of telecom revenue growth of -3,5% for the 2009-2010 period.

However, in spite of this decrease of revenues and overall context of economic downturn, investment in the sector has experienced a 3,8% investment growth in 2010 compared to the previous year, increasing from €3.946 million in 2009 to €4.095 million in 2010. Spain is among the Member States which have experienced investment growth in the sector representing the 4<sup>th</sup> largest percentage of investment in the sector in 2010.



Revenues in the electronic communications sector have continued to fall over the past year from €38.613 millions in 2009 to €37.273 millions in 2010, representing a decrease of telecom revenue growth of -3,5% for the 2009-2010 period. Decrease of revenue in the sector in Spain in 2010 is thus higher than the EU average of -2,4% for the same period. Disaggregated analysis per electronic communications services shows that although decrease has affected all sectors in the Spanish market. Mobile has experienced the highest decrease (from €17.416 to €16.549 million) while fixed (from €12.603 to €12.105 million) and Pay TV (from €1.510 to €1.502 million) figures have been close to growth stagnation without substantive decreases. Overall sector revenues of the Spanish market represent €37.273 million out of the total for the EU of €327.111 million, and the Spanish electronic communications sector continues to be the 5<sup>th</sup> largest of the EU in terms of overall revenues. For 2011, it has been estimated a further decrease in revenues in the Spanish electronic communications sector of -3,7%<sup>1</sup>.

In spite of the overall decrease of revenues and the context of economic crisis, investment in the sector has experienced a growth in 2010, from €3.946 million in 2009 to €4.095 million in 2010 (3,8% investment growth in 2010), thus compensating the tendency of investment decrease reported in the previous year. Still investment growth in Spain is below EU average of 4,5%. Increase of investment is balanced in fixed and mobile services (from €990 million

<sup>1</sup> European Information Technology Observatory 2011; <http://www.eito.com/>

to €1.086 million in mobile sector investment; and from €1537 to €1650 million in fixed sector investment) while it has decreased in other electronic communications services (from €1420 to €1.358 million). The incumbent has contributed to this increase of investment in fixed (from €901 to €1.012 million) while investment in fixed by alternative operators has remained stable (from €635 to €638 million). Spain is among the Member States which have experienced investment growth in the sector representing the 4<sup>th</sup> largest percentage of investment in the sector in 2010, with EU total investment in the electronic communications sector growing from €39.148 to €40.414 million. With a sector revenue of €37.273 million and investment of €4.095 million in 2010, telecom investment as percentage of revenue is if 11,0%, slightly below the EU average (12,4% in 2010).

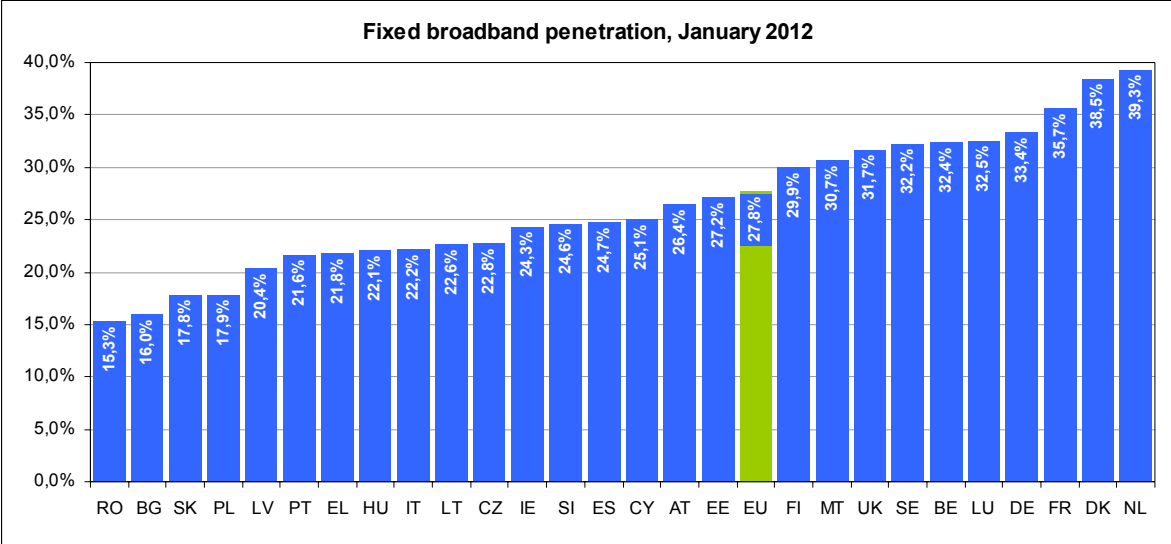
## **4. BROADBAND**

In October 2011 the fixed broadband penetration reached over 11 million lines in Spain. Mobile broadband has experienced an important increase in Spain over the past year with a penetration rate well above the reported EU average of 43,1%. In the broadband market, competition has led to the market share of the incumbent (Telefónica) in fixed broadband to decrease for the first time below 50% threshold, from 52% in January 2011 to 48% in January 2012, although still above EU average of 43% excluding resale and 45% excluding resale. Market share of new entrants increased respectively from 48% to 52%, still below EU average of 57%. In spite of the context of economic crisis and overall decrease of revenues in the sector, investment in high speed networks continued. The deployment of BB infrastructures is in a critical moment due to the situation of economic crisis and uncertainty in the demand side, but investment in high speed networks continues. The incumbent operator (Telefónica) continued its investments in fibre in selected areas, and over the past year cable operators have upgraded their networks with DOCSIS 3.0 and by the end of year 94% of all their fibre-coaxial (HFC) connections were already capable of providing very high speed connections. The Spanish government has implemented over the past years an ambitious national broadband strategy (Plan Avanza) which has implemented, amongst others, a national strategy for the extension of broadband to rural and isolated areas (PEBA). The new appointed Secretary of State for Telecommunications has announced the adoption of a Spanish Digital Agenda, in connection with the DAE objectives, and replacing the Plan Avanza, which is expected to be approved in 2012.

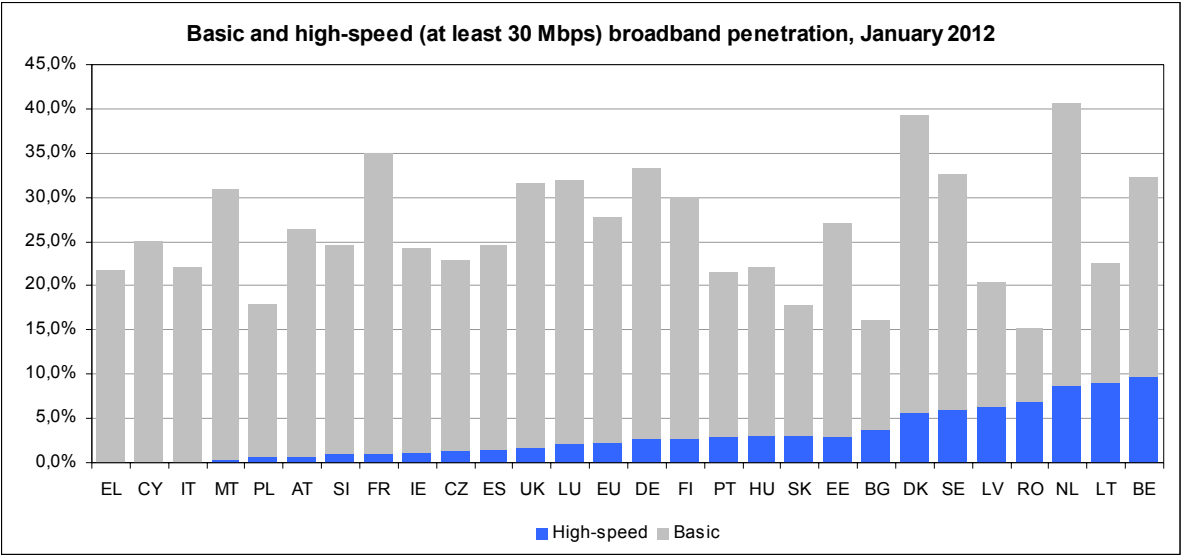
### **4.1. Market situation and Regulatory developments**

Fixed broadband coverage is almost 100% in Spain. Number of fixed broadband lines reached the 11 million threshold over the past year, from 10.892.519 in January 2011 to 11.385.326 in January 2012, the fifth largest in the EU. Fixed broadband penetration in Spain (lines per 100 inhabitants) increased 1 percentage point over the past twelve months and reached 24,7% in January 2012 (from 23,7% in January 2011). This is still below the EU average of 27,7% in January 2012. Nevertheless, broadband penetration per household in Spain is reported to be slightly higher than the EU average. Speed of progress in fixed broadband penetration over

the past year was of 1,0%, close to the EU average of 1,2% in the same period. NGA lines as a percentage of total broadband lines reached 18% in January 2012, above the EU average (12%) and NGA lines as a percentage of population reached 4% in January 2012 also above the EU average (3%).



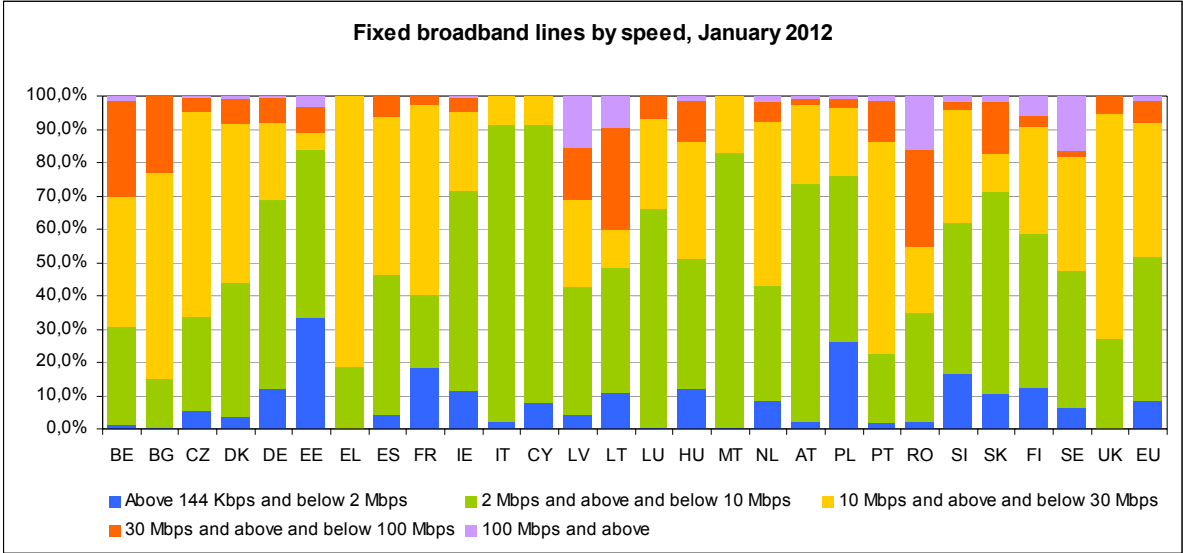
Source: Communications Committee



Source: Communications Committee

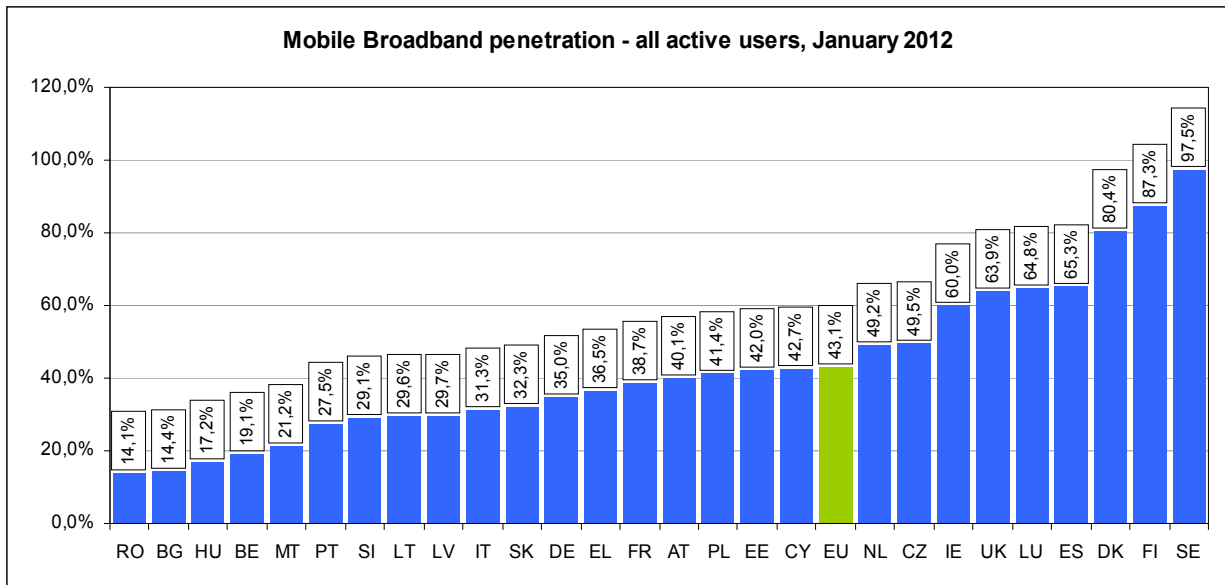
DSL remains the most common broadband technology with a market share of around 79%, followed by 18% of cable modem and 2% of other technologies as of January 2012, close to EU average figures of 76% for DSL, 17% for cable modem and 7% for other technologies..

As of January 2012, over 50% of fixed broadband lines by speed are of 10 Mbps and higher reaching a total of 53,8%, above the reported EU average, followed by 2 Mbps-10 Mbps speed (41,8%) and only 4,4% below 2 Mbps; compared to an EU average in January 2012 of 48,4% of 10 Mbps and above, and 43,4% between 2 Mbps and 10 Mbps, and 8,2% below 2 Mbps.



Source: Communications Committee

Mobile broadband has experienced an important increase in Spain over the past year with a reported penetration rate of 65,3% well above the EU average of 43,1%. The reported number of mobile broadband users reached 30.158.704 in January 2012. At the same time, number of mobile broadband users with dedicated devices (data service cards, modems, keys only) reached 3.065.742, the sixth highest in the EU, although with a penetration rate of 6,6% below EU average in the same period in January 2012 (8,1%).



Source: Communications Committee

Competition in the broadband sector led to the market share of the incumbent (Telefónica) in fixed broadband to decrease for the first time below 50% threshold, from 52% in January 2011 to 48% in January 2012. The incumbent's market share is still above the reported EU average of 43%, and the alternatives market share reached 52%, still below the EU average of 57%. Market share of new entrants increased respectively from 48% to 52%, still below EU average of 57%. The deployment of BB infrastructures is in a critical moment due to the situation of economic crisis, decrease of revenues in the sector and uncertainty in the demand side which can lead to operators to focus uniquely in areas with high investment return and limit their investment elsewhere, but investment in high speed networks continues. The incumbent operator continued its investments in fibre in selected areas, and over the past year, cable operators have upgraded their networks with DOCSIS 3.0 and by the end of year 94% of all their fibre-coaxial (HFC) connections were already capable of providing very high speed connections.

In April 2011, the CMT approved the new prices for wholesale access services prices on markets 4 and 5, including in particular the pricing set in the relevant reference offers (unbundling, bitstream, duct access). In November 2011, the CMT approved a new access offer for wholesale broadband (NEBA) in both copper and fiber connections, which will replace the current bitstream services and will allow from 2012 onwards alternative operators to provide their end customers with different and independent services from the incumbent's retail offers. However, the CMT will set at a later stage the prices for these services and operators regretted the uncertainty of the prices in view of the take up of this new service. As noted, the CMT modified the pricing terms of the ducts reference offer (MARCo) that implements the infrastructure access obligation at cost-oriented prices and on non-discriminatory and transparent conditions, which was imposed on the incumbent in the context of the market for physical network infrastructure access. Although the offer is fully operative and 7100 orders to 4200 Km of ducts have been provisioned, operators have reported some problems in the implementation of this remedy, which continues to mainly be

used for the connection of mobile base stations. The CMT had defined in 2010 a set of conditions for public administrations that provide electronic communications networks and services (Circular 1/2010). Operators have reported this positive development for the sector while at the same time requesting a more consistent implementation by the CMT. In October 2011, the CMT published a report on the competitive situation of the business segment. Alternative operators have requested more proactive measures regarding the competitive situation in this specific sector, which might be subject to specific review in the context of the market review processes to be undertaken by the CMT in 2012.

During 2011, the CMT continued to control the deployment of remote nodes examining them case by case according to their possible impact on local loop unbundling. Regarding LLU services, CMT has regulated in July 2011 a new procedure to manage customer-switching between operators, based on web services technologies and allowing full synchronization of LLU timing and tasks with the corresponding number portability procedures. Its implementation is expected for September 2012. As of October 2011, LLU monthly average cost per fully unbundled loop had increased to €8,99, still below the EU average (€9,70), while monthly average cost per shared access remains the same as in the previous year (€2,96) and is reported above EU average as of October 2011 (decreasing from €3,12 to €2,90).

#### **4.2. National Plans, private & public investments**

The Plan Avanza adopted in 2005 represented, according to SETSI figures, a total of €10.600 million in the period 2006-2010 for the development of information society. Broadband public aids have been implemented throughout 2011 in the context of the financing programme Avanza 2. Plan Avanza has included some other specific initiatives in key areas such as the plan for the extension of BB in Rural and Isolated Areas (PEBA). The Spanish national broadband plan has also implemented a multi-level governance collaborative model involving Autonomous Communities at regional level, local entities, public and private institutions and enterprises. Spain requested the OECD to conduct a Peer Review of Plan Avanza, the country's strategy for the advancement of the Information Society. The new appointed Secretary of State for Telecommunications has announced the adoption of a Spanish Digital Agenda, in connection with the DAE objectives, and replacing the Plan Avanza, which is expected to be approved in 2012.

### **5. VOICE AND OTHER ECOMMUNICATIONS SERVICES**

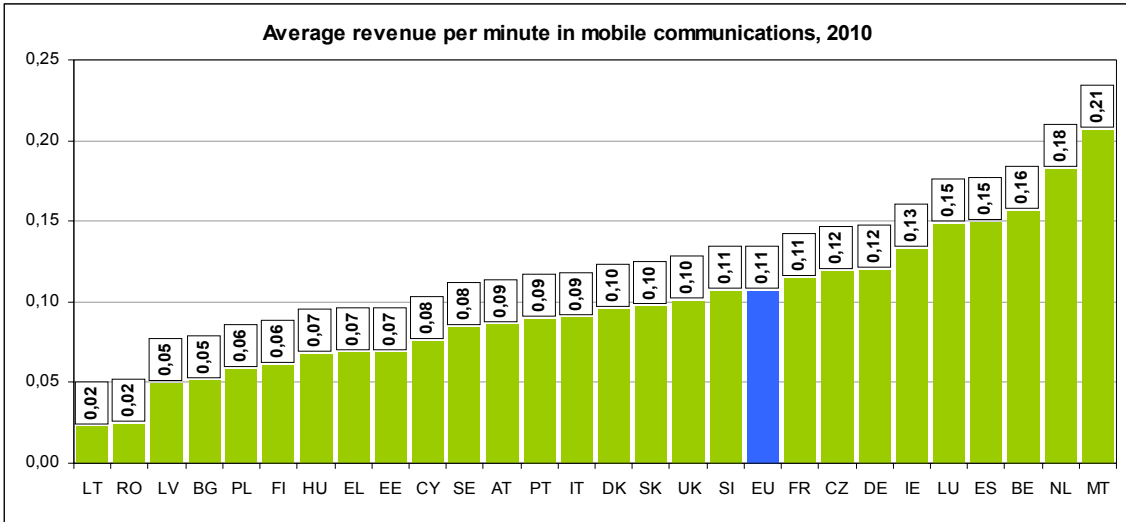
<p>The incumbent remains the leading operator in the fixed market although its market share for all types of calls by traffic volume has decreased over the past year to 58,5% as of December 2010, compared with 61,7% in December 2009 (-4,9%). In the mobile market, the market share of the incumbent's competitors has continued to grow over the past year with a reported</p>
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market share of the mobile branch of the incumbent operator of 41,6% and the market share of its competitors growing from 56% to 58,4%. There are at present 26 mobile operators in the Spanish market (4 MNO and 22 MVNO actually providing services out of 11 operators holding spectrum eligible the provision of mobile services). As a result of spectrum tenders carried out by the SETSI in 2011, there has been an increase of the overall number of operators in the Spanish mobile market. The mobile penetration rate in Spain as of October 2011 has continued to grow reaching 126%, from a penetration of 119% in October 2010 and significantly approaching the EU average of 127%. With regard to main regulatory developments relevant for the market, the CMT has approved a comprehensive 3<sup>rd</sup> round regulatory action plan for 2012 which includes in particular the revision of mobile, fixed, broadband, leased lines, and broadcasting markets.

## 5.1. Mobile services

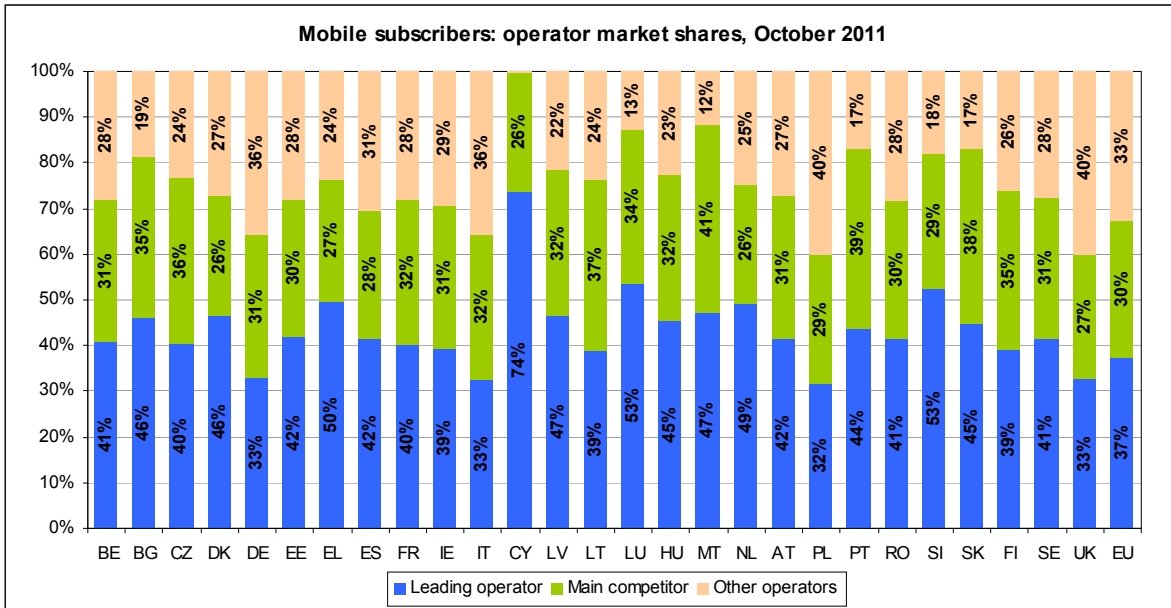
The mobile penetration rate in Spain as of October 2011 has continued to grow reaching 126%, from a penetration of 119% in October 2010 and significantly approaching the EU average of 127%. Total number of subscriptions has also grown from 55.103.909 to 58.193.173. Spain is the 5<sup>th</sup> EU MS in terms of total number of subscriptions corresponding to its demographic position. As of October 2011, the percentage share between prepaid (35%) and post-paid (65%), has remained almost stable over the last year (36% prepaid and 64% post-paid in October 2010). As of October 2011, the market share of the leading operator was of 42%, with its main competitor reaching a percentage of 28% and other competitors reaching 31%. The overall market share of competitors of the leading operator has continued to grow in the mobile sector (from 56% to 59%), although the market share of the leading operator is above the reported EU average of 37%. Total share of machine-to-machine SIM cards reached 4,2% in October 2011, above the EU average of 4,1%. Share of MVNO SIM cards in October 2011 reached 5,8%, one of the largest in the EU and well above the EU average of 4,1. There are at present 26 mobile operators in the Spanish market (4 MNO and 22 MVNO actually providing services out of 11 operators holding spectrum eligible the provision of mobile services). As a result of spectrum tenders which have taken place in 2011, there has been an increase of operators in the Spanish mobile market. No operator has yet invested in large scale LTE deployments, although some deployment was observed in Madrid and Barcelona. With regard to revenues, the average revenue per minute in mobile communications was of €0,15 in 2010, above the reported EU average of 0,11. For the same period, the average revenue per user (ARPU) in mobile communications was of €277, also higher than the reported EU average of €221 for 2010.



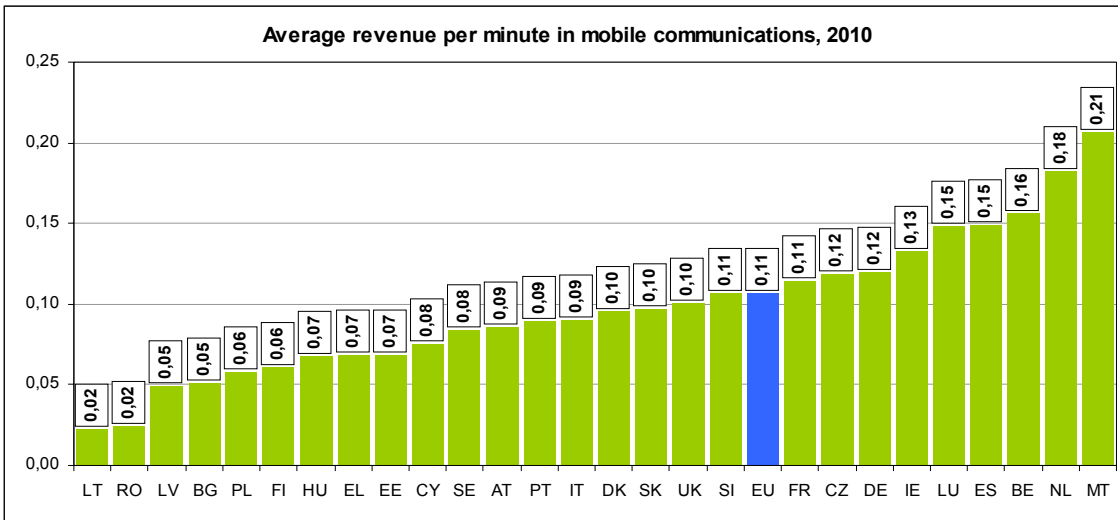


Source: Commission services

In February 2012, the CMT notified to the Commission the analysis on the market for mobile voice call termination (MTRs). The CMT proposed to designate the four Mobile Network Operators (MNOs) and the ten full MVNOs as having SMP and to impose on them an obligation for access, price control, non-discrimination and transparency. The CMT also proposed to impose on the MNOs an accounting separation obligation with respect to access and interconnection. The glide-path proposed was established from April 2012 to June 2014. The MTRs based on the recommended pure BU-LRIC was therefore to be reached on 1 January 2014 and to be equal to 1,09 Eurocents per minute. On the 5 March 2012, the Commission raised its serious doubts regarding CMT's plans to postpone by a year the introduction of MTRs in line with the Commission Recommendation. On the 30 March 2012, the CMT withdrew its original draft measure and notified new regulatory measures including a new glide path bringing the date forward to 1 July 2013. The CMT plans to review market 15 in 2012.



Source: Commission services



Source: Commission services

On the 4 January 2012, the Spanish national competition authority (CNC) initiated formal proceedings against three mobile operators in the Spanish market for possible breaches of competition law, in particular regarding the existence of an alleged price squeeze imposed on MVNOs when setting the prices for call origination and termination, compared to the retail prices for mobile calls in the enterprise sector.

In February 2011 a reference for a preliminary ruling from the Spanish Supreme Court was requested to the CJEU regarding municipal taxes, in particular national legislation under which a fee may be required for the right to install facilities on municipal public land from operating undertakings which, without being proprietors of the network, use it to provide mobile telephony services (Cases C-55/11, C-57/11, C-58/11).

## 5.2. Fixed

The incumbent remains the leading operator in the fixed market although the number of alternative operators offering public voice telephony through direct access increased to a total of 18. The percentage of subscribers using an alternate provider increased from 32,5% to 43,2% for both national and international calls as of July 2011, compared with an EU average of 38,8% for national calls and 39,6% for international calls. The incumbent's market share for voice services has generally decreased but remains higher than the EU average of 56,2%. Its market share regarding all calls by traffic volume decreased to 58,5% as of December 2010, compared with 61,7% in December 2009 (-5,1%). For national calls, the incumbent's market share continues to be higher (59,5% in December 2010 decreasing from 62,7% in December 2009) than that for international calls (40,9% in December 2010 compared to 45,0% in December 2009). Subscribers using an alternate provider has increased reaching an overall share of 43,2% for both national and international calls. Incumbents' market share in calls to mobile by traffic volume has slightly decreased from 65,4% to 64,1%. VoIP operators market share by traffic volume has decreased from 3% in 2009 to 2,4% in December 2010.

In March 2011, the CMT notified the new prices for the wholesale line rental service included in market 2. The revised reference interconnection offer (RIO) adopted in November 2010 and the revised reference wholesale leased lines adopted in December 2010 have been implemented throughout the last year. The CMT has convened a forum of operators to discuss evolution from TDM to IP interconnection, and is also working on a bottom-up model for fixed interconnection costs. For 2012, the CMT has announced a comprehensive fixed markets review;

## 5.3. Broadcasting

Digital switchover had already been successfully completed in 2010 which has allowed for the digital dividend spectrum to be assigned in 2011. With regard to market developments, according to the July 2011 figures, the household penetration rates for the different broadcasting services have remained stable: satellite TV (10,3%), cable TV (8,0%) and IPTV (5,0%), with a 0,4% decrease for satellite TV and 0,2% increase for cable TV. Household penetration rates in Spain are below EU average. IPTV household penetration of 5,0% as of July 2011 is below EU average of 8,1%. Cable TV household penetration of 8,0% is also below the EU average (27,5%). And satellite TV household penetration of 10,3% is below the EU average of 27,8%. Private TV broadcasters have substantially increased their advertising revenues following the suppression of advertising in the national broadcasting corporation (RTVE) reaching percentages of increase of almost 25% in spite of the context of economic crisis.

The national competition authority (CNC) has imposed a fine for abuse of dominant position in the DTT market. On the 24 November 2011 the CJEU rendered a judgment regarding the application by Spain of certain provisions relating to advertising of Directive

89/552, as modified by Directive 97/36. The CMT envisages to review (3<sup>rd</sup> round) the broadcasting market in the third quarter of 2012.

## 6. SPECTRUM MANAGEMENT

In September 2010, the Commission had launched infringement proceedings against Spain for failure to communicate the measures transposing the 2009 revised GSM Directive. In 2011, the GSM Directive has been transposed in Spain through the adoption of the Law 2/2011. Spanish authorities have carried out throughout 2011 as planned a large spectrum tender process for the 800 MHz, 900 MHz, 1800 MHz and 2.6 GHz bands (310 MHz in total). The spectrum was assigned through a combination of auction and comparative selection procedures and raised a final revenue close to €2 billion. The plan for the migration of all digital television services operating in the 800 MHz band to frequencies located outside of this band is being reviewed and is to be approved by the new Government.

The national frequency allocation plan (CNAF) had been revised by the SETSI in 2010 through ministerial order implementing the Radio Spectrum Decision and related Commission Decisions. In March 2011, ministerial order ITC/658/2011 was adopted introducing further modifications in the 2010 CNAF. In September 2010, the Commission launched infringement proceedings against Spain for failure to communicate the measures transposing the 2009 revised GSM Directive. In 2011, the GSM Directive has been transposed in Spain through the adoption of the Law 2/2011. In March 2011 the CJEU ruled on a reference for a preliminary ruling from the Spanish Supreme Court regarding the compatibility of Spanish legislation concerning spectrum fees with EU law (C-85/10).

As planned, the SETSI has carried out throughout 2011 a large spectrum tender process for the 800 MHz, 900 MHz, 1800 MHz and 2.6 GHz bands (310 MHz in total). Preparatory work and consultation procedures had been carried out throughout 2010. Spectrum caps had been established at 2x20 MHz below 1 GHz and 115 MHz above 1 GHz. The spectrum has been assigned through a combination of auction and comparative selection procedures open to all operators with the condition of being registered in the CMT and applying the principle of technological neutrality. In the comparative selection procedures conditions were established for the requirement of investment in infrastructures. With regard to the auction rules, a system of eligibility points, multiple rounds and activity rules was implemented and the reserve prices were determined on the basis of a comparative benchmarking study of similar processes at international level.

The auction took place in June-July 2011. Eleven operators were initially registered to participate in the auction. The final prices were in average of over 30% of the initial reserve prices defined in the auction rules. The final revenue raised was of €1.6 billion. A complementary spectrum auction was conducted in November 2011 in order to assign some residual spectrum which had not been assigned during the main auction. The combined 2011 spectrum tenders raised a total revenue close to €2 billion. Out of this total spectrum assigned

in 2011, 230 MHz would be available in 2011 (spectrum in 2.6 GHz, 1 800 MHz and part of the spectrum in 900 MHz bands) and the remaining by 2015.

The SETSI led the way for the completion by Spain the switchover to digital terrestrial television already in April 2010, well ahead of the EU target date of 1 January 2012. In March 2010, the government decided by Royal Decree to reallocate the 800 MHz band, a part of the spectrum used for broadcasting, as a "digital dividend" to support the deployment of wireless broadband access. Spain was among the first Member States to adopt such an ambitious plan on the basis of the EU Recommendation. The 800 MHz band was awarded in July 2011 as part of spectrum assignment process referred above. The plan for the migration of all digital television services operating in the 800 MHz band to frequencies located outside of this band is being reviewed and is to be approved by the new Government. The effective implementation of the plan is important in order to ensure the availability of the 800MHz band for its use for electronic communications services.

## **7. CONSUMER INTEREST**

### **7.1. 116 - Harmonised numbers for harmonised services of social value**

The first 116 number assignments (116111 for children helplines and 116000 for missing children) were implemented in 2010.

Following the first number assignments in the 116 numbering range in 2010 (116111 for children helplines and 116000 for missing children) no further assignments have been implemented in Spain. Several 116 numbers (116006 for crime victims; 116117 for non-urgent medical services; and 116123 for emotional support) are available to the public via internet in the SETSI website but so far no expressions of interest to provide the service have been received. Citizens' perception on the usefulness of a free Europe-wide single number for hotlines for missing children and for victims of crime is at the same level as the EU average with 68% according to the last Eurobarometer.

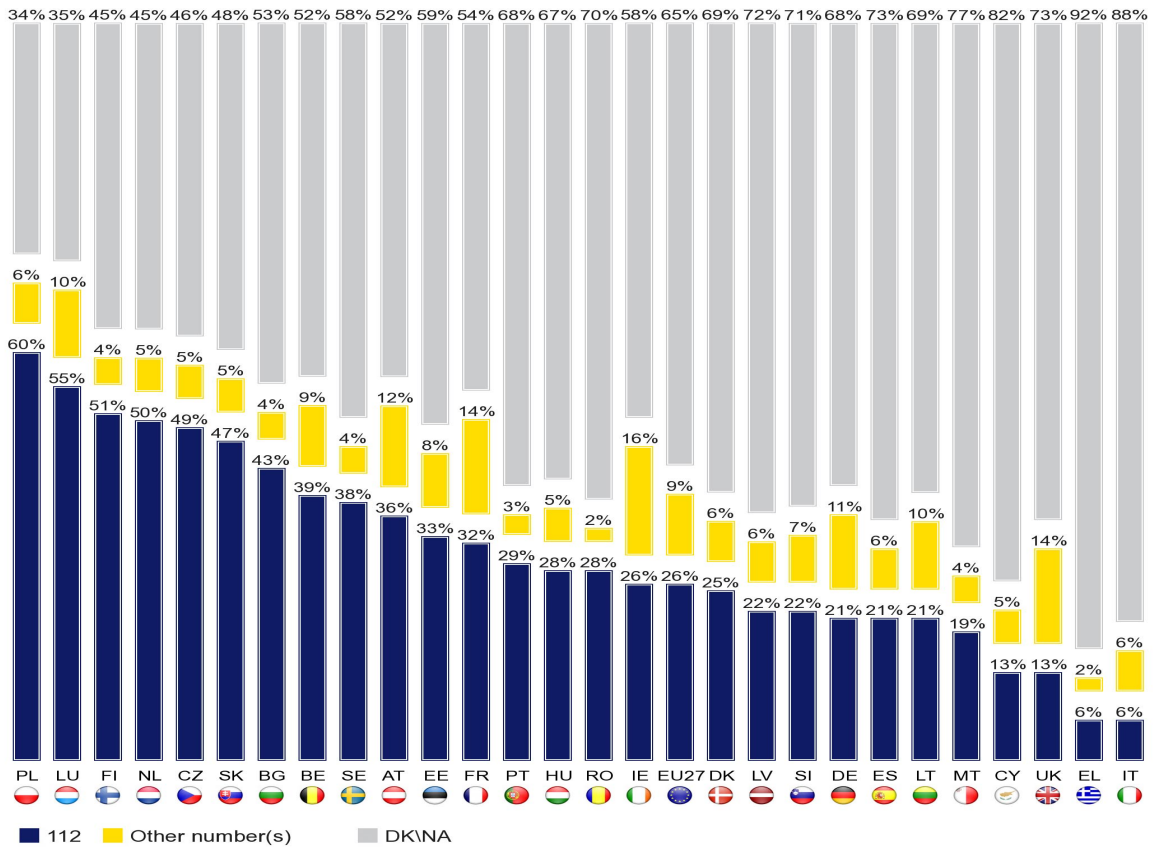
### **7.2. 112 - European Emergency number**

112 is the most used emergency number in Spain although knowledge of its availability as the EU-wide emergency number remains at 21%, as in the previous year, and still below EU average (26%).

**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 is the most used emergency number in Spain with 68% percentage of calls only to 112 in case of an emergency situation over the past 12 months according to the last Eurobarometer survey. Awareness about the use of the 112 number in case of emergency at national level has increased in Spain over the past year, from 61% to 65%.. Knowledge of the availability of 112 as the EU-wide emergency number has remained at 21%, as in the previous year, and still below EU average (26%). The 112 emergency services at national level is administered by the Autonomous Communities which have established the corresponding centres for the management of emergency calls and to which the emergency numbers at national level are connected.

**7.3. Net neutrality and Quality of Service**

Key provisions on net neutrality were transposed in Spain in March 2012, and quarterly reports monitoring the quality of services are published by the SETSI

In December 2010, the Senate adopted a resolution requesting the government to adopt specific legislative measures to guarantee the respect of net neutrality. Royal Decree-law 13/2012 adopted in March 2012 transposed into national legislation the key provisions on net neutrality of the revised electronic communications regulatory framework. The SETSI publishes a quarterly report monitoring the quality of the electronic communications services with the objectives of facilitating transparency, guaranteeing minimum levels of quality of electronic communications services, regulating the inclusion of these requirements in the contracts, and the inclusion of due compensation mechanisms. There is also a commission for the monitoring of the quality of service in the sector, with several constituted working groups, integrating representatives from the SETSI, operators associations, the US provider responsible, consumer protection authorities and regional government's representatives. The quarterly reports are available online.

#### **7.4. Consumer complaints, tariff transparency**

Overall volume of user's complaints received by the SETSI has increased in 2011 although complaints' processing time has been reduced. Mobile telephony continues to represent the highest volume of the total users' complaints.

In 2011, the Office for Telecommunications Customer Care of the SETSI received 37,534 complaints (an increase of 18.9% over 2010). However, it resolved 45,040 complaints throughout the year, 53% more than the previous year, thus absorbing the increase and reducing processing times. Out of the total number of complaints, 73% were resolved favourably to the user. As for the percentage sharing between the different electronic communications services, mobile telephony continues to represent the highest volume of the total users' complaints (53,5%), followed by voice and data packages (17,1%), internet access (16,3%), and fixed telephony (12,3%). Billing, contract cancelling and portability are the services subject to highest percentages of the complaints received. The National Institute for Consumers (INC) is also active in solving general consumer complaints. By initiative of the Ombudsman, a project has been launched in 2011 for the coordination of the different authorities to facilitate the understanding by the consumer of the relevant authority to be addressed in case of a dispute with an operator. To this end, a common guide for consumer protection in the sector of electronic communications has been prepared by the INC, AEPD (the data protection authority), SETSI and CMT participate in this project and the guide is expected to be adopted in 2012. In July 2011 the CMT adopted a resolution imposing sanctions on a large number of operators regarding the procedure for the supply of subscribers data for the provision of directories services.

#### **7.5. Number portability**

Number portability continues to be used extensively and the CMT has adopted new rules for its implementation in 2012.
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Spain continues to be one of the EU Member States with highest rates of fixed and mobile number portability. The percentage of fixed portability increased by 15,6% in 2011 to a total of 1.461.787 (January-September 2011). Regarding mobile portability, its increase was reported to be of 18,0%, from 3.506.891 to 4.139.514. Number portability in Spain has no cost for the consumer, whereas for the operators has only a cost in the case of fixed number portability. The reference wholesale price paid between operators per fixed ported number was lowered by CMT from 8.61 to 3.09 in a decision of February 2011. The average period for both fixed and mobile number portability has remained the same as in the previous years (5 days).

In July 2011, the CMT adopted the new procedures regarding the implementation of the 1-day mobile number portability, in application of the amended Universal Service Directive, which are set to enter into force before June 2012. The 1-day rule is applicable from the moment the agreement is signed between the user and the recipient operator. In January 2012, the CMT consulted the interested parties on the implementation measures with regard to fixed number portability in 2012 in view of its final entry into force before april 2013. Royal Decree-law 13/2012 adopted in March 2012 includes the consumer right to obtain compensation in case there is a delay regarding number portability.

## 7.6. Universal service

A 1 Mbps functional access to the Internet within the scope of universal service has been adopted in Spain.

The Law on Sustainable Economy adopted in 2011 introduced the establishment of 1 Mbps as functional access to the Internet within the scope of universal service (US). Implementation details regarding US were established through Royal Decree 726/2011. Royal Decree-law 13/2012 adopted in March 2012 has introduced further amendments regarding the inclusion of 1Mbps connexions within the scope of US including that the Government may update this speed in accordance with social, economical and technological developments and taking into account the services used by a majority of end users. In September 2011, the SETSI launched the tender procedure for the designation of the US provider in Spain for the period 2012-2016 for the following US elements: the provision of electronic communications from a fixed location and the connection to a public network to the provision of a telephone service available to the public through these connections, for all end-users regardless of their geographical location; the provision of public pay telephones; and the preparation and delivery to subscribers to public telephone services of the directory of telephone subscribers. Directory enquiry services were not included in the scope of the tender. In November 2011, the incumbent and its subsidiaries were designated as the US provider for the period 2012-2016 for all the elements included in the US. No other operator participated in the tender process.



The cost of the universal service provision under the newly adopted Spanish legislation has not yet been formally approved, but operators have expressed strong concerns that the extension of US scope may lead to higher costs to be financed by the sector. The CMT is in process of reviewing the methodology of calculation of the net cost, and operators have also expressed concerns regarding this methodology to be finally adopted and applied for the calculation of the US net cost in Spain. With regard to the current calculation of the US net cost and the determination of the operators entitled to contribute to the US fund, the net cost of the US obligation in Spain is amongst the highest in the EU. The net cost for 2008 had been estimated in €74,85 million. Operators have systematically appealed the different CMT decisions on US net cost calculation over the past years. . In September 2011, the CMT determined the three operators which have to contribute to the fund for 2008. In December 2011, the CMT determined the net cost for 2009 at a total of €46,78 million.

## 7.7. ePrivacy

The ePrivacy Directive was transposed in Spain in March 2012.

The ePrivacy Directive as amended by the Citizen's Rights Directive had not been transposed in Spain within the deadline set by the legislator (25 May 2011). An infringement procedure for non communication of transposition was launched in 2011. In March 2012, Royal Decree-law 13/2012 transposed the revised electronic communications framework into Spanish law, including modifications to the ePrivacy Directive. The telecommunications sector continued to be the most relevant for the data protection authority investigation both in term of preliminary investigations and as the sector with highest volume of sanctions in 2010. The Spanish Data Protection Authority (AEPD) has investigated throughout 2011 several cases concerning the electronic communications sector, in particular cases regarding non compliance with data protection rules by telecoms operators, security breaches in information society services, cloud computing implications for data protection and electronic communications activities with marketing purposes.

In November 2011, the CJEU ruled on a reference for a preliminary ruling from the Spanish Supreme Court dating from 2010 (cases C-468/10 and C-469/10) regarding the implementation of the ePrivacy Directive in Spain. The Spanish Court "Audiencia Nacional" requested in early 2012 a preliminary ruling to the CJEU in a regarding the interpretation of EU law in relation to the "right to be forgotten" on the Internet.



**EUROPEAN COMMISSION**  
Information Society and Media Directorate-General  
Electronic Communications Policy  
**Implementation of Regulatory Framework**

18 June 2012

# **FINLAND**

## **2011**

# **Telecommunication Market and Regulatory Developments**

## 1. FINLAND

### 1. Main market & regulatory developments : best practices and challenges

#### Development of the sector

While the competitive environment in Finland is intense, it is at the same time quite stable. The total **revenue** of the Finnish electronic communications sector has increased by 1.9% over the year and 13.1% of the electronic communications operators' turnover was spent on **investments** in 2010. – *Section 3*

The **broadband** market is the most rapidly developing and innovative market in Finland. While there had been much fixed to mobile substitution in recent years, in 2011 a still rapidly growing number of mobile broadband connections did not seem to have influenced the number of fixed broadband connections, and the majority of mobile broadband subscriptions were purchased alongside a fixed broadband subscription. Fixed broadband penetration at 29.9% was just above the EU average of 27.7%, while mobile broadband penetration (measured by use of dedicated data cards/modems/keys) reached 52.8% - the top result in the EU (with the EU average standing at 8.1%). The largest increase of broadband usage has been seen in mobile phones, where the penetration measured by all active users stood at 87.3% significantly exceeding the EU average of 43.1%. – *Section 4*

The **mobile telephony** market is characterized by keen competition at the retail level between three nationwide mobile service providers (Elisa, TeliaSonera and DNA) with their own GSM and UMTS networks, covering nearly 100% of the population, with the exception of certain sparsely populated areas, and one MVNO (TDC). The market shares of the three main players are respectively 39%, 35% and 26%. Mobile penetration has increased further to 163% in October 2011 (compared to 150% in 2010), thereby being well above the EU average of 127%. The growth in subscriptions can be attributed to the popularity of subscriptions exclusively used for data transmission.

As regards **fixed telephony**, in general the market is matured and continues decline gradually with only about 1% of the households having only a fixed telephone and respectively around 10.5% of the voice traffic initiated from fixed networks. The 2011 was a turning point in call services as the duration of an average phone call in the mobile network exceeded the duration of an average fixed-line call. Accordingly, many of the companies offering fixed telephony services have already announced the switch off of PSTN networks in the next 3-5 years. – *Section 5*

**Number portability** required five-days, no matter whether in mobile or in fixed. – *Section 7.5*

#### Progress in broadband deployment and take-up

The DSL technology has remained the leading technology in fixed broadband representing 70% of all fixed broadband connections. As operators continued actively to

invest in next generation access (NGA) solutions, the number of NGA lines has increased, now representing 25% of all fixed broadband lines. Broadband speeds are increasing in Finland, with some attractive offers in the market for new and faster broadband connections with download speeds 40 Mbps, 100 Mbps, 200 Mbps and 1Gbps via advanced technologies, especially in the biggest cities. However, the range 2 Mbps and below 10 Mbps were the most common bandwidth in Finland, used by 46.2% of all end-users. Finland is facing the challenge to review the aid scheme of the Finnish National Broadband Project to make the take-up of the aid more efficient. – *Section 4*

#### Independence and effectiveness of the NRA

The Finnish Communications Regulatory Authority (FICORA) is considered by the market players as an efficient and proactive regulator. However, it continues to face difficulties related to enforcement powers. – *Section 2*

#### Implementation of the framework

Finland was among the first EU Member States to transpose the revised EU regulatory framework for electronic communication into national legislation. The amended Finnish legislation is in force since 25 May 2011. No infringement proceeding was pending in 2011. – *ad hoc*

#### Spectrum management

By signing an agreement between Finland and Russia on the coordination of the 800 MHz frequency band the way for the construction of mobile networks using the digital dividend spectrum was finally opened. The Finnish Government has started preparations to auction the 800 MHz band with launching consultation on a draft Government spectrum-policy resolution. – *Section 6*

#### Citizens and consumer protection

With only one 116 number in Finland, availability of harmonised social service numbers remains limited. – *Section 7.1* On the other hand 112 is operating well in Finland and its awareness remains among the highest in the EU. – *Section 7.2*

In October 2011, FICORA published its opinion regarding minimum information requirements on the speed of broadband services in consumer contracts, aiming at facilitating the comparison of different broadband offers in the market. – *Section 7.4* The discussion on net neutrality was also fed by an order of the Helsinki District court on blocking access to the Pirate Bay. – *Section 7.3* As regards ePrivacy, the year 2011 was characterised in Finland by an increased number of serious information security breaches and hacking attempts. – *Section 7.7*

## **2. National Regulatory Authority (NRA)**

The Finnish Communications Regulatory Authority (FICORA) is considered by the market players as an efficient and proactive regulator. However, as noted by the regulator, it continues to face difficulties related to enforcement powers.

In 2011, following supervision activities and severe pricing issues identified in the market in 2010, FICORA has primarily focused on the development of new assessment principles for pricing, in particular for local loop and digital TV transmission services. While continuing with the supervision of remedies, FICORA also started a new round of market analyses on the markets for physical network infrastructure access (LLU), and wholesale broadband access. The NRA was also involved in handling the applications for state aid of the national broadband plan, the payment of this aid and monitoring the use of the aid.

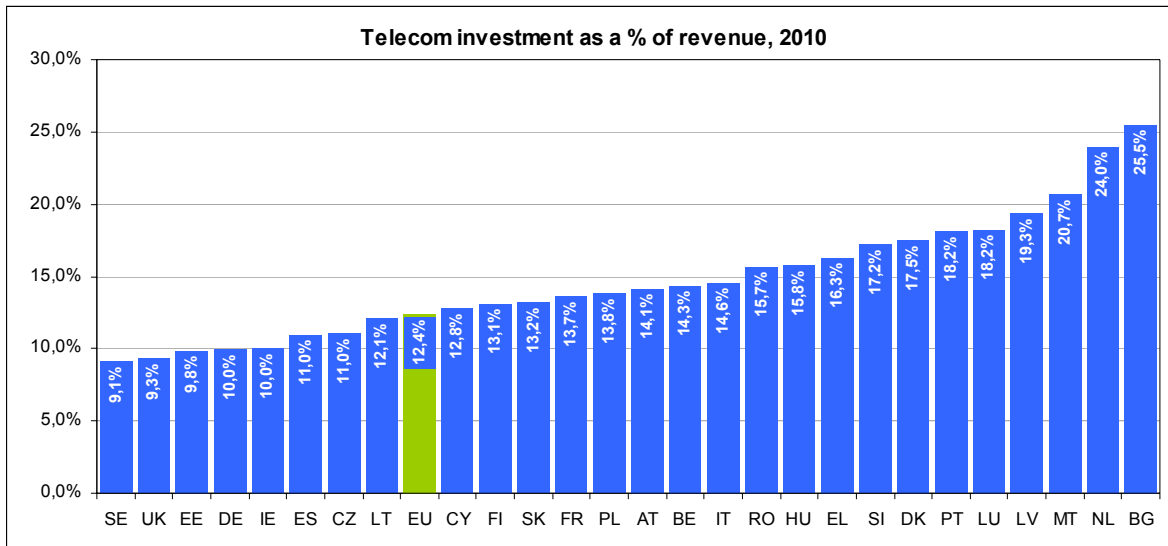
The NRA continues to face difficulties related to enforcement powers, as noted by the regulator. While the European Commission several times has invited FICORA to impose effective ex ante price regulation on operators, the regulator argues that the current legislation only allows the application of the cost-orientation obligation, with the possibility to impose ex-ante price caps in exceptional circumstances, thus limiting its tools to deal with pricing issues in the market.

By the end of 2011, there were 21 ongoing Court cases in the Administrative Court. In 2011, the Court gave decisions in 8 cases. In 5 cases the Court did not support FICORA's decisions or part of the decisions (including appeals, launched in 2008 against NRA's decision to publish separated accounts, and related to the interpretation of the concept of "business secret", and appeals, launched in 2009 against NRA's decision on significant market power on the market for physical network infrastructure access (LLU)). Of these cases 3 were remitted partly to FICORA for review.

Administrative charges to cover the operational expenses and running costs of FICORA, defined by the Ministry, have been quite stable, without any significant changes.

### **3. Revenues and Investments**

While the competitive environment in Finland is intense, it is at the same time quite stable. The total turnover of the Finnish electronic communications sector has increased by 1.9% over the year and 13.1% of the electronic communications operators' turnover was spent on investments in 2010.



Source: Commission services

The total turnover of the Finnish electronic communications sector was some € 4.82 billion as of 31 December 2010, which represents an increase of 1.9% since 2009. The fixed market, which generated €1.62 billion, registered a slight decline of 4.4% compared to 2009, whereas the mobile market, with €2.15 billion, registered an increase in revenues, up by 2.4% since 2009.

In 2010, 13.1% of the electronic communications operators' turnover was spent on investments. All in all, the total value of tangible investments was €630 million. While investments in mobile networks increased by 33%, from €150 million to €200 million, tangible investments in fixed networks underwent a significantly higher increase by 47.8%, from € 230 million in 2009 to €340 million in 2010.

There are four main market players. Furthermore, some market consolidation has taken place in 2011.

#### **4. Broadband**

The broadband market is the most rapidly developing and innovative market in Finland. While there had been much fixed to mobile substitution in recent years, in 2011 a still rapidly growing number of mobile broadband connections did not seem to have influenced the number of fixed broadband connections, and the majority of mobile broadband subscriptions were purchased alongside a fixed broadband subscription. Fixed broadband penetration at 29.9% was just above the EU average of 27.7%, while mobile broadband penetration (measured by use of dedicated data cards/modems/keys) reached 52.8% - the top result in the EU (with the EU average standing at 8.1%). The largest increase of broadband usage has been seen in mobile phones, where the penetration measured by all active users stood at 87.3% significantly exceeding the EU average of 43.1%.

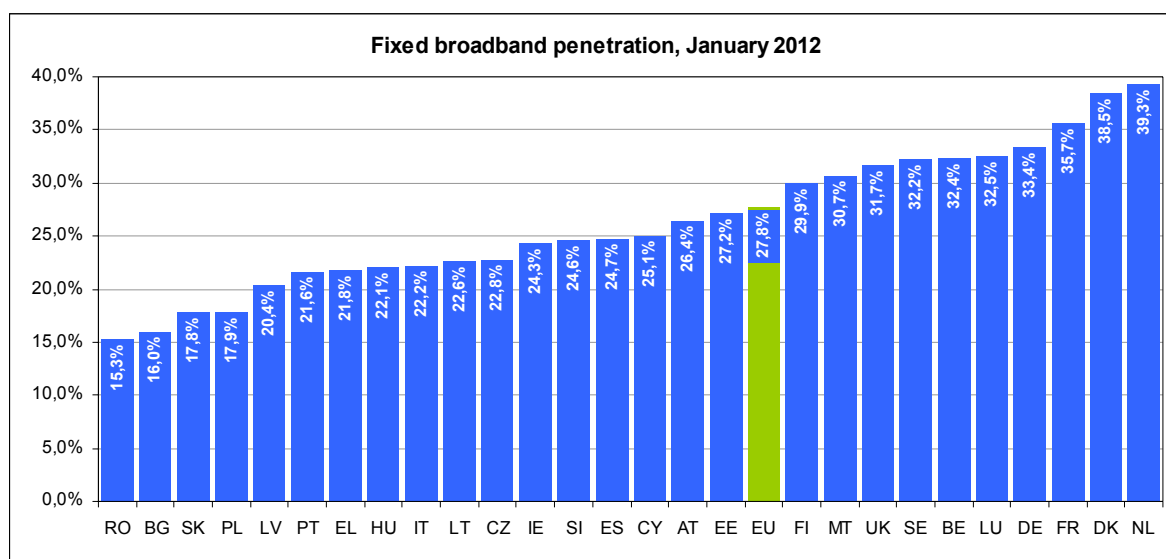
The DSL technology has remained the leading technology in fixed broadband representing

70% of all fixed broadband connections. As operators continued actively to invest in next generation access (NGA) solutions, the number of NGA lines has increased, now representing 25% of all fixed broadband lines. Broadband speeds are increasing in Finland, with some attractive offers in the market for new and faster broadband connections with download speeds 40 Mbps, 100 Mbps, 200 Mbps and 1Gbps via advanced technologies, especially in the biggest cities. However, the range 2 Mbps and below 10 Mbps were the most common bandwidth in Finland, used by 46.2% of all end-users.

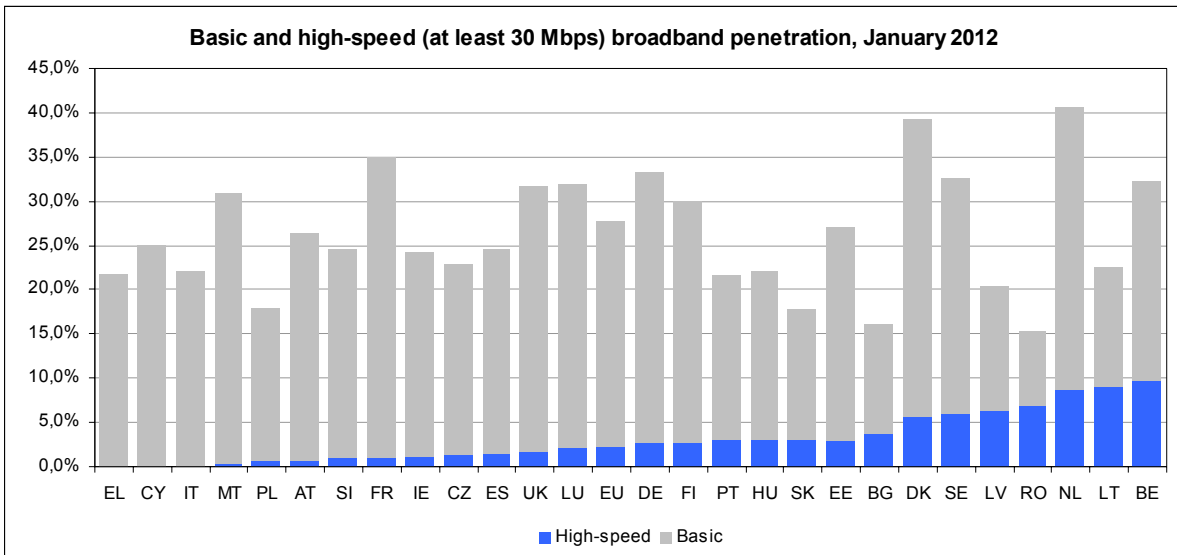
Finland is facing the challenge to review the aid scheme of the Finnish National Broadband Project to make the take-up of the aid more efficient.

#### 4.1. Market situation and regulatory developments

In January 2012, the number of fixed broadband subscriptions reached approximately 1.6 million, compared with 4.7 million monthly paid mobile broadband subscriptions. Fixed broadband penetration stood at 29.9%, which was just above the EU average of 27.7%, while mobile broadband penetration (measured by use of dedicated data cards/modems/keys) again increased and reached 52.8%, which is the top result in the EU (with the EU average standing at 8.1%).

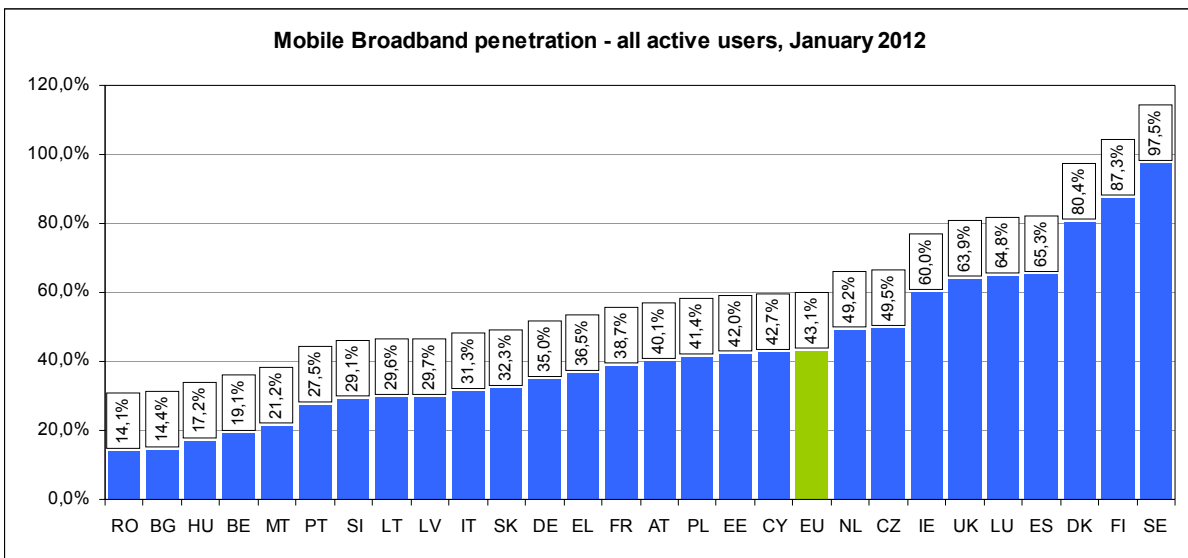


Source: Communications Committee



Source: Communications Committee

However, the largest increase of mobile broadband usage has been seen in mobile phones, where the penetration measured by all active users stood at 87.3%, which is among the highest results in the EU (the EU average is 43.1%). There are some 70 companies offering broadband services, including 28 local companies designated as operators with Significant Market Power (SMP).



Source: Communication Committee



The broadband market could be characterised as rather mature, with approximately 88%<sup>2</sup> of the households having either a fixed or a mobile broadband connection. In 2011, 21% of households had both a mobile broadband and a fixed broadband subscription, compared to 12% a year ago. About 28% of households have only a mobile broadband subscription, and some 48% of all households had merely a fixed broadband subscription, down from 61% a year ago.

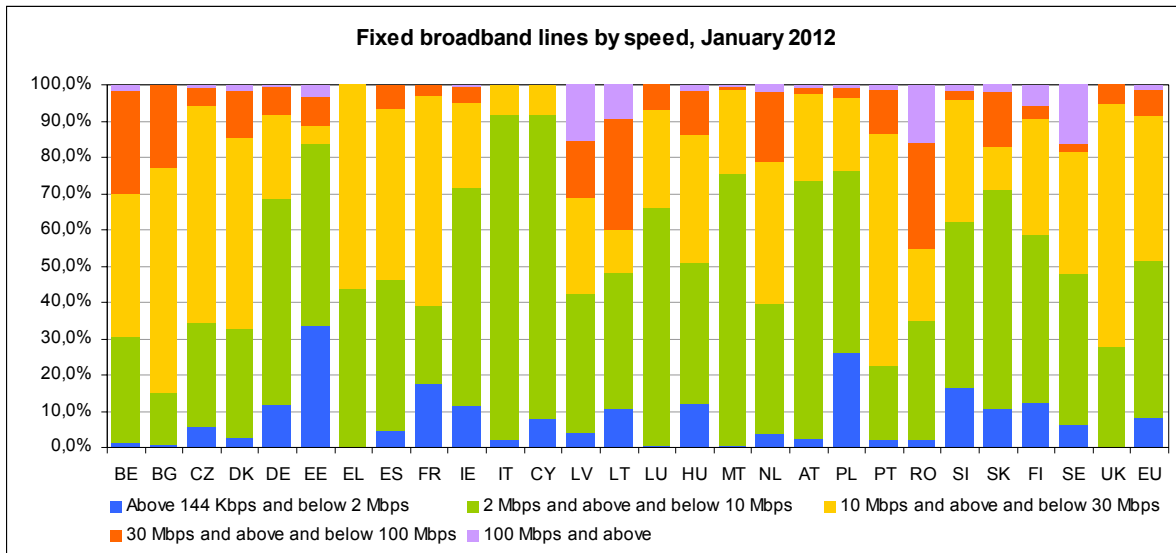
The DSL technology has remained the leading technology in fixed broadband with 1 125 400 connection lines, representing 70% of all fixed broadband connections. As operators continued actively to invest in next generation access (NGA) solutions, the total number of NGA lines as a % of total fixed broadband lines was 25% in January 2012.

The low demand for bundled offers was noted by operators, which mainly offer bundles of fixed broadband and mobile broadband services, and bundles of fixed broadband and IPTV services. There is no demand on the market for bundles including fixed telephony services.

Broadband speeds are increasing in Finland, with some attractive offers in the market for new and faster broadband connections with download speeds 40 Mbps, 100 Mbps, 200 Mbps and 1Gbps via advanced technologies, especially in the biggest cities. In January 2012, approximately 665 340 subscriptions had download speeds of 10 Mbps or above, which correspond to 41.4% of the Finnish broadband subscriptions, whereas this figure was 8.6 percentage points lower in January 2011. However, this is still below the European average of 48.4%. The range 2 Mbps and below 10 Mbps was the most common bandwidth in Finland, used by 46.2% of all end-users. 3.6% of total subscriptions used a speed of 30-100 Mbps and 5.6% used a connection speed of 100 Mbps and above. Industry reported a relatively low demand for very high speed products.

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<sup>2</sup>



Source: Communication Committee

### *Regulatory issues*

In December 2011 the Finnish NRA, FICORA, launched new assessment principles on pricing of local loops (metallic) and of digital television transmission services, giving the operators information on how regulated prices and their cost orientation would be assessed by FICORA. The biggest change in these recommended, non-binding pricing assessment principles is that capital costs/network assets are defined using historical costs/book values, instead of current costs like previously. The new principles were found necessary since network access still is considered to be a bottleneck, and the regulator identified severe pricing problems with regard to LLU prices. According to FICORA this change will probably lead to a reduction of the high access prices of SMP operators. To implement the latter change there is a one year transitional period until 1 January 2013. The monthly average total cost for full LLU (€14.37) was the highest in the EU, while the EU average was €9.71 in October 2011.

The regulator initiated a new round of market analyses regarding the markets for physical network infrastructure access (LLU), and the market for wholesale broadband access. With almost 280 000 LLU connections the LLU market is still relevant for competition, and the regulator intends to continue with ex-ante regulation on this market. Moreover, due to existing pricing issues in this market, FICORA may consider to impose ex-ante price caps on copper loops. Possible new remedies for fibre local loops will depend on the outcome of the analysis of the LLU market.

### *Rights of way and facility sharing*

In December 2011, Finnish consumers were suffering severely from a heavy storm, which blacked out thousands of households and power cuts caused serious disturbance to mobile phone and other telecommunications connections. This prompted the Ministry of Transport and Communications to boost the cooperation between different infrastructure owners and municipalities as regards the coordination of the construction of infrastructure to put cables to the ground. In addition, the Ministry is facilitating a mapping exercise of networks. In Finland, the ducts are mainly owned by the municipalities.

#### **4.2. National Plans, private & public investments**

The Finnish government is committed, as part of the National Broadband Project, to providing 100 Mbps access to 99 per cent of the population by 2015. The aim of this project, focusing on fibre, is to ensure that end users are no further than 2 km from an access point of a 100 Mbps network. According to this plan, 95 % of high speed coverage will be reached by competitive market forces while the last 5 % of the population coverage (about 130.000 households) will need public funding, at least in part. The total cost of this measure is estimated at €200 million. The operators, to be selected through a public call for tenders, will bear at least 1 third of the total costs to build the networks, while the public aid would amount to two thirds, i.e. €132 million during the years 2010-2015. It will consist of financing by government (€66 million), co-financing from the European Agricultural Fund for Rural Development, EAFRD (€ 24.6 million) and financing by local municipalities (€ 40 million). In order to promote superfast 100 Mbps broadband demand and its sale, tax deductions - so-called "domestic help credits"- have been extended in 2009, to include installations of communication connections to those end-users paying for last mile subscriber connections by themselves. Taxpayers may deduct up to €3000/person of labour costs accrued<sup>3</sup>.

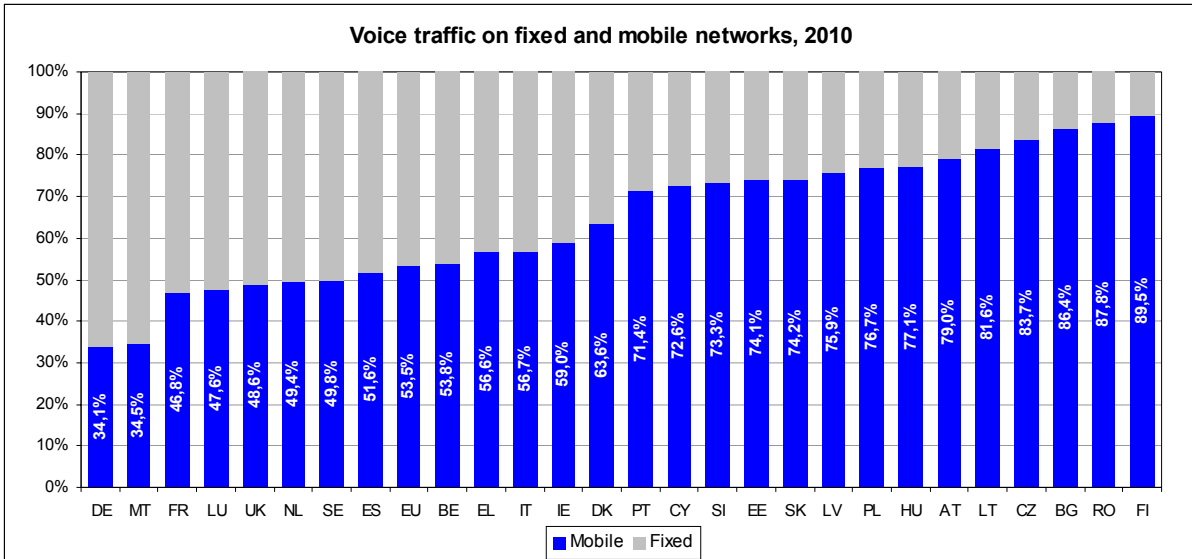
However, the financing scheme approved by the Commission in December 2009 is currently under review. A number of smaller entities have shown interest however often seeking additional loan guarantees by public authorities, not necessarily funds, to secure their investment into projects. Traditional operators, unexpectedly occurring marginal players in the process, have questioned the technological neutrality of the project, which is focusing on fibre, and noted that the project would have been more effective if wireless solutions were possible.

#### **5. Voice and other eCommunication services**

The mobile telephony market is characterized by keen competition at the retail level. As regards the fixed voice market, in general the market is matured and continues decline gradually with only about 10.5% of the voice traffic initiated from fixed networks.

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<sup>3</sup> Since 2012, this figure has been decreased to 2000€/person.

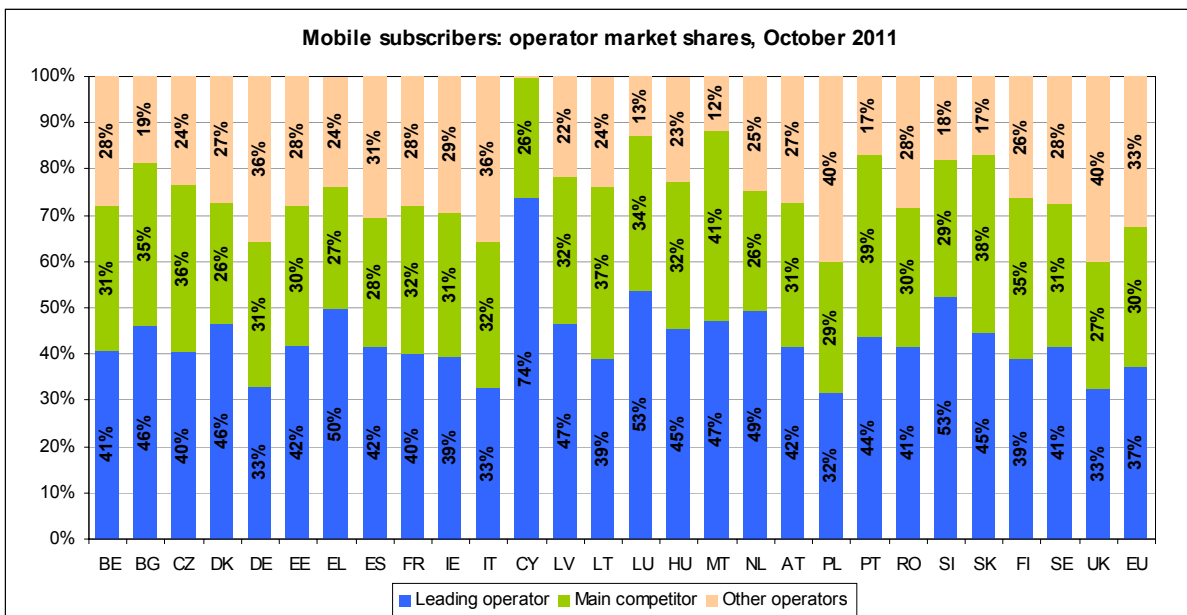


Source: Commission Services

### 5.1. Mobile services

In Finland, there are three nationwide mobile service providers with their own GSM and UMTS networks, covering nearly 100% of the population, with the exception of certain sparsely populated areas, and one MVNO is active in the market. The market shares of the three main players are respectively 39%, 35% and 26%. There is traditionally a high share of post-paid services in the Finnish mobile market, with a market share of 90.1%. Mobile penetration has increased further to 163% in October 2011 (compared to 150% in 2010), thereby being well above the EU average of 127%. It could be noted that the growth in subscriptions was mainly accelerated by the popularity of subscriptions exclusively used for data transmission.

#### Operators' market shares at EU level, October 2011



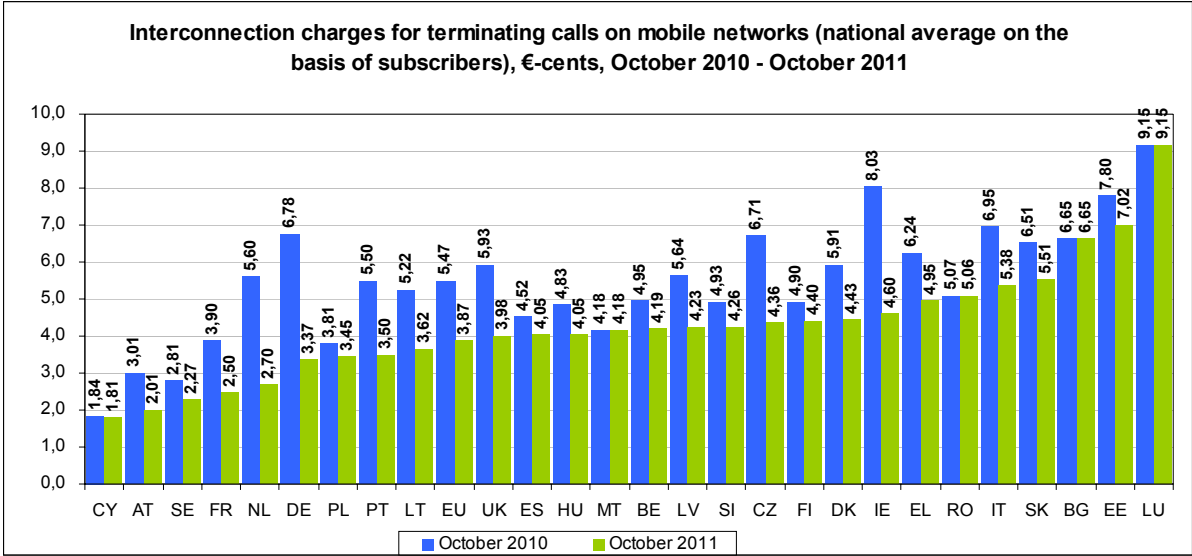
Source: Commission Services

FICORA notified the last analysis and remedies on the market for mobile voice call termination in May 2006, and designated three established operators as SMP operators. In May 2008 a mobile virtual network operator was designated as SMP operator in the provision of voice call termination services in its mobile network. As FICORA does not have the power to control ex ante the level of mobile termination rates (MTR), in practice the termination rates were to be negotiated between undertakings and FICORA controls the cost-orientation and non-discrimination of MTRs ex post on a case-by-case basis. To assess the cost-orientation, FICORA applies the FIFAC model (FIFAC =FICORA Fully Allocated Cost Model), which produces estimates of cost-oriented MTRs.

In both cases the Commission invited FICORA to closely monitor the development of MTRs applied by the operators and, if necessary, to intervene and impose effective ex ante price regulation. Since then FICORA has not carried out any review of the market for mobile voice call termination, even though the EU regulatory framework refers to the three-year intervals of market analyses.

According to the NRA, the applicability of the present model for cost allocation (FIFAC) will be reassessed, and most likely a new model will be developed, since the technology change and developments in the market require new assessment principles. The MTRs applied by the market players are symmetric and gradually decreasing (4.4 €cents in 2011 and 3.82 €cents from 1 December 2011, whereas the EU average as of October 2011 was 3.87 €cents). They are to be further reduced down to 2.8 €cents from 1 December 2012 to the end of 2013.

**Mobile termination rates by member states, October 2010-October 2011**



Source: Commission Services

## *Roaming*

The latest amendments to the Roaming Regulation have been implemented on time with price levels close to the price ceiling.

### **5.2. Fixed**

With about 1,08 million fixed voice subscriptions at the end of June 2011 (compared to 1.22 million at the end of 2010) and with only about 1% of the households having only a fixed telephone, the Finnish fixed voice market is continuing to decrease fast. The decrease of call minutes has been approximately 14% and the decrease of the number of calls has been approximately 8% since 2010. Over 50 companies are offering fixed telephony services in the market, while some of them have already announced the switch off of PSTN networks in the next 3-5 years. 2011 was a turning point in call services as the duration of an average phone call in the mobile network exceeded the duration of an average fixed-line call. About 10.5% of the voice traffic is from fixed networks and 89.5% on mobile networks.

### **5.3. Broadcasting**

Terrestrial television has been digital for a number of years in Finland. In July 2011, approximately 46% of households received TV broadcasting via cable TV and 45% via terrestrial TV. The other platforms, like satellite and IPTV platforms, with market shares of 5% and 4% respectively, were mainly supplementary to cable and terrestrial TV platforms. One mobile operator commenced broadcasting business by acquiring one of the largest cable TV companies and started building a new terrestrial DVB-T2 network containing three multiplexes.

The Finnish Government is agreed on a revision of the financing model for the Finnish Broadcasting Company YLE. According to this from 2013 onwards, YLE's public service broadcasting is to be funded from the state budget. A public broadcasting tax will be introduced in this regard, linked to a person's earned income. The necessary legislative changes will be implemented in spring 2012. Currently, 90% of YLE's operations are funded from the television fee, which is collected by FICORA from all TV users.

## **6. Spectrum Management**

An agreement between Finland and Russia on the coordination of the 800 MHz frequency band was signed in August 2011, opening up the way for the construction of mobile networks using the digital dividend spectrum. The Finnish Government intends to auction 800 MHz frequencies.

A border coordination agreement between Finland and Russia was signed in August 2011. This agreement is significant for the sector, since the 800 MHz frequency band is a key to the provision of broadband services in sparsely-populated areas. It has opened up the way for the construction of mobile networks using the digital dividend (DD) spectrum (800 MHz). The agreement includes limitations to ensure that the Russian aeronautical radio-navigation systems will not suffer from interference in the border area. In accordance with the agreement, Finnish operators may roll-out mobile networks with full coverage at the distance of 55 kilometres from the Russian border. In some cases the base station may be built at the distance of 12 kilometres from the border and customers may use terminal devices at the distance of four kilometres from the border. The Finnish NRA granted the first radio licences for the testing of LTE networks in the beginning of July 2011.

At the end of 2011, the Finnish Ministry of Transport and Communications held a national consultation on a draft Government spectrum-policy resolution proposing that mobile communication frequencies in the 800 MHz band be granted through an auction process. The amount of frequencies in the band totals 2 x 30 MHz, and the purpose is to auction these as six pairs of 2 x 5 MHz. According to the draft one actor could be granted a maximum of four frequency pairs (2 x 20 MHz)<sup>4</sup>. One frequency band will be required to cover a higher percentage of the population than the rest, namely 95% in three years and 99% in five years, while the others would be required to cover 97% of the population in five years. It is expected that the auction could be held during 2013.

The associated legislative amendments will be implemented afterwards, as currently spectrum auctioning is allowed only for 2.6 GHz band. This would be the second frequency auction in Finland, following the one for 2.6 GHz in 2009. Currently wireless microphones are also used in the 800 band.

Currently three main market players hold frequency licenses in 900 MHz, 1800 MHz, 2.1GHz and 2.6 GHz bands.

## **7. Consumer Interest**

### **7.1. 116 - Harmonised numbers for services of social value**

As of November 2011, only one harmonised number for harmonised services of social value -

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<sup>4</sup> On 29 March 2012, the Finnish Government issued the final resolution deciding that frequencies in the 800 MHz band will be granted in a spectrum auction. The amount of frequencies available totals 2 x 30 MHz, and the frequencies will be auctioned as 2 x 5 MHz frequency pairs. One actor could be granted a maximum of three frequency pairs (2x15 MHz). Thus, operators will have access to a sufficiently broad frequency band that will enable them to offer mobile connections up to 26 Mbps.

116111 (Child helplines) - was operational in Finland.

As of November 2011, only one harmonised number for harmonised services of social value - 116111 (Child helplines) - was operational in Finland. 116006 (Helplines for victims of crime) - has been assigned to the service provider, but the operational date is yet to be decided. As has been indicated by the NRA, if no applications to provide a service for 116 000 (a hotline for missing children) will be submitted in the near future, a decision will be taken about an assignment to make it operational. Other harmonised numbers for the provision of harmonised services of social value are also available, but have yet to be assigned.

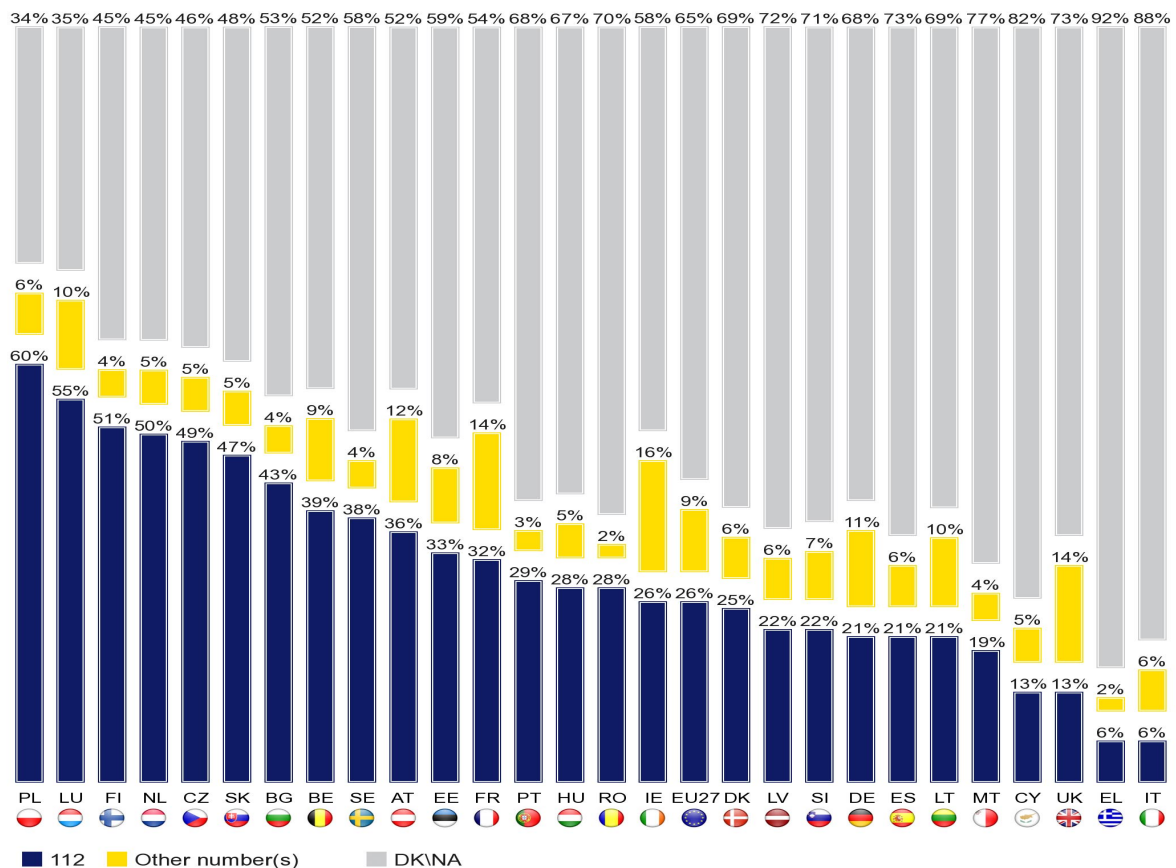
## 7.2. 112 – The European Emergency number

112 is operating well in Finland and its awareness remains among the highest in the EU.

### 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



Finland is among seven EU Member States where 112 has become the main national emergency number, and is promoted as the number to be used to contact all emergency services (i.e. police, fire and ambulance). According to the Eurobarometer survey on “The European Emergency Number 112”<sup>5</sup>, 95% of the Finnish people would call 112 in the event of an emergency in their own country, and 51% of the Finnish people know that 112 can be used to call emergency services anywhere in the European Union. SMS services are expected to be available for disabled users to contact emergency from 2015.

The 112 Day, celebrated on 11 February, is a national emergency number theme day, dedicated to prevention on safety, with various events organised in many locations all over Finland. It also serves to spread awareness of the 112 number as an EU-wide emergency number.

### **7.3. Net neutrality & quality of service**

With the opinion of FICORA on minimum information on the broadband speed in consumer contracts and the order of the District Court of Helsinki to prohibit access to The Pirate Bay, the discussion on net neutrality was quite intense.

In October 2011, FICORA published its opinion regarding minimum information requirements on the speed of broadband services in consumer contracts, aiming to facilitate the comparison of different broadband offers in the market. The opinion is implementing an amendment to the Communications Market Act, which requires that consumer contracts on broadband services must include information on the range of data transmission speeds for the broadband access service offered. FICORA provides separate methods for defining the data transmission speed for both - fixed and mobile broadband. Fixed-line connections have been assigned minimum requirements for the average data transmission speed, which should be at least 50 per cent of advertised maximum speed, or an unambiguous minimum cap for the connection speed should be indicated, which has to be at least 40 per cent of the maximum speed. As regards mobile broadband, up-to-date coverage maps and the information on how different network technologies affect the connection speed should be available.

Because of strong increase of mobile broadband traffic, the market players have announced that traffic shaping activities would be put in place.

In October 2011, the District Court of Helsinki ordered one mobile operator, under the penalty of a fine, to prohibit access to The Pirate Bay, a copyright-infringing content provider. The case was initiated by the Copyright Information and Anti-Piracy Centre on behalf of IFPI Finland. The court decision says that the operator must remove the Pirate Bay service's domain names from the operator's servers and block traffic to the IP addresses that the service

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<sup>5</sup> [http://ec.europa.eu/information\\_society/activities/112/docs/report\\_2012.pdf](http://ec.europa.eu/information_society/activities/112/docs/report_2012.pdf)

uses. The operator has appealed the decision to the Helsinki Court of Appeal, which restricted the enforcement order to domain names ending with .fi. IFPI has also issued similar petitions concerning other operators.

#### 7.4. Consumer complaints, tariff transparency

Several initiatives in the field of consumer protection, like prohibition of automatic continuation of fixed term contracts by a new fixed term and telemarketing of mobile phone subscriptions, as well as accidental subscriptions to unwanted mobile content services, were undertaken by the Consumer Agency in cooperation with other stakeholders in 2011.

In 2011, the majority of the 841 complaints made to the Consumer Advisory Services concerned mobile subscriber connections, followed by complaints regarding Internet, TV channels and mobile content services.

The Finnish Consumer Agency, in cooperation with other stakeholders undertook several initiatives in the field of consumer protection in 2011. The Consumer Agency, the Ethical Committee for Premium Rate Services (MAPEL), mobile operators and FICORA have together been searching for means to improve the position of consumers confronted with accidental subscriptions to unwanted mobile content services. It was agreed that the subscription would be effective only upon confirmation by SMS by the consumer, and the message of the service provider should also state the monthly price of the service. Furthermore, automatic continuation of fixed term contracts by a new fixed term is now prohibited by law as of May 2011. In addition, a prohibition of telemarketing of mobile phone subscriptions is in the pipeline, by the end of 2011 the issue was under investigation by Ombudsman.

#### 7.5. Number portability

As regards **number portability**, no matter whether in mobile or in fixed, it required five-days.

465 300 mobile numbers were ported in the first nine months of 2011, a small increase since last year, while 62 080 fixed number porting transactions were registered between January and October 2011, compared with 34 966 transactions a year earlier. The time taken to port the number in Finland, no matter whether fixed or mobile number is 5 days, compared with the EU averages of 15 days for fixed numbers and of 10 days for mobile.

Since May 2011, there is more flexibility in number portability in Finland. According to the amendment to the Communications Market Act, it is now possible to port a number to another operator even if the fixed-term subscription has not expired. The monthly fees related to the old agreement must, however, be paid until the fixed-term agreement period expires. FICORA has also updated its regulation on telephone number portability, which provides that porting a number of a prepaid service is possible only if the user is registered and identified as the subscriber of the service.

In order to clarify the porting procedure, FICORA has published a set of porting instructions on its website. As regards the loss of service requirements, according to the adopted rules the time between the closing of the old subscription and opening of the new one may not exceed 10 minutes in mobile subscriptions and 60 minutes in fixed subscriptions.

## 7.6. Universal service

After extending the universal service to broadband services, there have been some discussions to increase the functional internet speed, but also widen the scope of the obligation.

Finland, along with other seven Member States, has extended universal service to basic broadband services from 1 July 2010. 1 Mbps has been identified as the minimum download speed and is achieved via universal service obligation. Furthermore, there have been some discussions in Finland not only to increase the functional internet speed, but also widen the scope to cover summer cottages. As noted by the operators, universal services have not been highly demanded service among the customers as commercial services have satisfied the customer needs.

The removal of landlines and the fulfilment of universal service obligation via mobile and satellite based solutions was questioned by some operators, as such may not always be reliable due to e.g. latency or dependency on weather conditions.

One operator contested the designation decision in the Supreme Administrative Court of Finland, which dismissed the operator's claim on the suspension of enforcement of the decision while the case is pending.

The regulator considers re-analysing the designation decisions in 2012 taking into account latest market developments.

A Governmental decree to safeguard basic communications services for disabled users entered in force in January 2012. A videoconference with a minimum 512 Mbps symmetrical data speed should be available for hearing-impaired users and users having speech problems. Furthermore, hearing-impaired users and users having speech problem are also entitled to a connection that enables them to send and receive text messages in order to contact emergency services.

The decree also safeguards the interests of visually impaired people by securing their right to a clear and easy access to customer service of a universal service connection. An invoice and a detailed specification of the invoice concerning the universal service connection must be submitted to visually impaired people in a clear and readable form. FICORA will give new decisions on universal service by the end of 2012 in which the requirements of the decree will be taken into account.

## 7.7. ePrivacy

As regards ePrivacy, the year 2011 was characterised in Finland by an increased number of serious information security breaches and hacking attempts.

The responsibilities of FICORA include supervising the compliance with the Act on the Protection of Privacy in Electronic Communications, in particular as regards the processing of identification data, whereas the Data Protection Ombudsman supervises the processing of personal data.

The national information security authority at FICORA - CERT-FI (Computer Emergency Response Team FICORA) - publishes quarterly an overview of the most significant threats to information security aiming to support companies and organizations to improve the management of information security. The year 2011 was characterised in Finland by an increased number of serious information security breaches and hacking attempts, including against big international companies and banks, and received a lot of publicity. The data stolen in those break-ins was posted publicly on the internet. The information systems at training firms and various online services were used as the sources of hacking. In addition, Finnish bank customers were targeted by malware and phishing sites to monitor the activities of the users of online banking services, and use the codes entered by the user of an online banking service to verify bank transfers.

The trustworthiness of internet's certificate system has been tested on those occasions. The cases have drawn the attention to the certificate providers' information security level, as well as the weaknesses in the system in general. CERT-FI has coordinated the patching of several software vulnerabilities.

The Safer Internet week is held annually in February in cooperation of more than 30 administrative authorities, organisations and corporations and coordinated by the FICORA. The main theme of 2011 was 'Online Privacy' and various events related to the theme were organised all over Finland.



**EUROPEAN COMMISSION**  
Information Society and Media Directorate-General  
Electronic Communications Policy  
**Implementation of Regulatory Framework**

18 June 2012

**FRANCE**  
**2011**  
**Telecommunication Market and  
Regulatory Developments**

2.

### 3. FRANCE

#### 1. MAIN MARKET & REGULATORY DEVELOPMENTS:

#### BEST PRACTICES AND CHALLENGES

#### 4.

##### Development of the sector

Both **revenues and investment** of the electronic telecommunications sector increased in France during the year 2011. Between 2009 and 2010, the growth in revenues generated by the electronic communications sector increased by 0.9%. The investment over revenue ratio in the French telecom over 2009 to 2010 was 13.7%, above the EU average of 12.4%, and the investment growth amounts to 24.2%, well above the 3.2% EU average. (*Section 3*)

The **broadband** penetration rate in France, which stood at 35% in January 2012 compared to 32.9% in January 2011, is well ahead of the EU-27 average and places France in third position in the EU. France increased the total number of broadband lines to 22.747 million in January 2012, compared to 21.261 million in January 2011. As of January 2012, France Télécom had a 42% market share in broadband lines which represents a slight decrease in comparison with January 2011 (42.4%). (*Section 4.1*)

In the **fixed market**, the incumbent's market share (France Télécom) remains robust, although it decreased between December 2009 and December 2010 from 53.7% to 50.8% in terms of traffic volume. The market share of VoIP operators on fixed calls (by volume of traffic) has increased from 47%, as of December 2009 to 54.8% in December 2010, still much higher than the EU average of 23.1%. The main event in the **mobile market** during the reporting period is the entry of a fourth mobile operator (Free) in January 2012. The present operators (eg. Orange and SFR) prepared for the expected increased competition by launching cheaper offers without any minimum duration of contract. However, these offers were not widely marketed, and were only available via Internet. The mobile penetration rate, which stood at 99% as of October 2011, is still well behind the EU-27 average of 122.7%. The main mobile network operator's market share in metropole (Orange) equalled 40% in at the end of third quarter 2011, while its main competitor's amounted to 32% and other competitors' equalled to 28%. The French regulator reports specifically an increase of MVNOs market shares from 7,5% to 11,3%. (*Section 5*)

In terms of **number portability**, as of October 2011, the average time for the porting of a fixed number as well as a mobile number was one day, while the EU average for mobile stands at 2.5 days and 3.8 for fixed numbers. The total accumulated volume of ported mobile numbers increased from 1.566.830 in 2010 to 2.288.629 in 2011. The total accumulated volume of ported fixed number increased from 1.834.900 in 2010 to

1.887.830 in 2011. (Section 7.5)

### Progress in broadband deployment and take-up

At the end of 2011, France was moving towards achieving the DAE target aiming at securing a basic broadband connection (in the order of 2 Mbps) for all EU households by 2013. In December 2011, the Prime Minister reported that 95% of the actions envisaged by the Digital Plan 2012 ("*France numérique 2012*", launched by the Government in October 2008) had been implemented or were in the process of being implemented. This includes the objectives of making broadband access (at a minimum speed of 512 kbit/s) for less than €35 per month available to 100% of the population, transition to digital terrestrial television, development of production and offers of digital contents, renewing of governance and of the ecosystem of the Digital Economy in France. In November 2011, the digital strategy for 2020 was presented by the government in a document called "Digital France 2012-2020: results and perspectives" (« *France numérique 2012-2020 : bilan et perspectives* »). During 2011, ARCEP elaborated on the determination of the cost of making FTTH available to all residential and business subscribers in France. In line with its aim to increase the capacity of existing copper networks, ARCEP issued a non-binding recommendation in June 2011 on the modalities of implementation of projects aiming at increasing the capacity of the existing copper network through access to the incumbent's local sub-loop, by local authorities and their private partners. (Section 4.2)

### Independence and effectiveness of the NRA

While a reform of the French NRA was contemplated in the beginning of 2011, with the establishment of a "*Commissaire du Gouvernement*" within the regulator, the organisation of the French NRA finally remained unchanged. (Section 2)

### Implementation of the framework

France transposed the revised EU regulatory framework<sup>6</sup>, which was due by 25 May 2011, in April 2012. While a major part of the revised regulatory framework was transposed by the "*Ordonnance n° 2011-1012 du 24 août 2011 relative aux communications électroniques*" in June 2011, the secondary part of the transposition was transposed by way of two decrees<sup>7</sup> in the first quarter of 2012.

In March 2011 the Commission decided to refer France to the European Court of Justice in pursuit of the infringement case launched in January 2010, concerning the charge of 0.9% imposed from 2009 on the electronic communications operators' turnover.

### Spectrum management

With regard to spectrum management, the 2.6 GHz band and the 800 MHz band were

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<sup>6</sup> Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 OJ L 337, 18.12. 2009, p.11 and Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 OJ L 337, 18.12.2009, p.37

<sup>7</sup> " *décret n° 2012-436 du 30 mars 2012 portant transposition du nouveau cadre réglementaire européen des communications électroniques*" and "*décret n° 2012-488 du 13 avril 2012 modifiant les obligations des opérateurs de communications électroniques conformément au nouveau cadre réglementaire européen*".

auctioned in 2011. Experiments were carried out by the French authorities on potential interferences of the frequencies in the 800 MHz band from DTTV frequencies. This risk was confirmed in a limited number of cases. (*Section 6*)

#### Citizens and consumer protection

Availability of 116 harmonised numbers can be improved in France, as well as awareness levels which remain very low at 6%.. (*Section 7.1*) The level of awareness of 112 in France is quite low with 32%. 112 is not the historical emergency number. (*Section 7.2*) Following the publication of its ten recommendations in September 2010, ARCEP launched two public consultations in December 2011. One aims to gather information on the technical and pricing terms governing the interconnection market, while the other presents ARCEP's draft guidelines for the monitoring of the quality of Internet access on fixed networks. (*Section 7.3*) France was especially active in 2011 in the promotion of consumer protection, with a bill reinforcing the rights, protection and information of consumers, including those of the sector of electronic communications. (*Section 7.4*) No major issues on Universal Service and e-Privacy were reported. (*Sections 7.6 and 7.7*)

## 5. 2. NATIONAL REGULATORY AUTHORITY

While a reform of the French NRA was contemplated in the beginning of 2011, with the establishment of a "*Commissaire du Gouvernement*" within the regulator, the organisation of the French NRA finally remained unchanged.

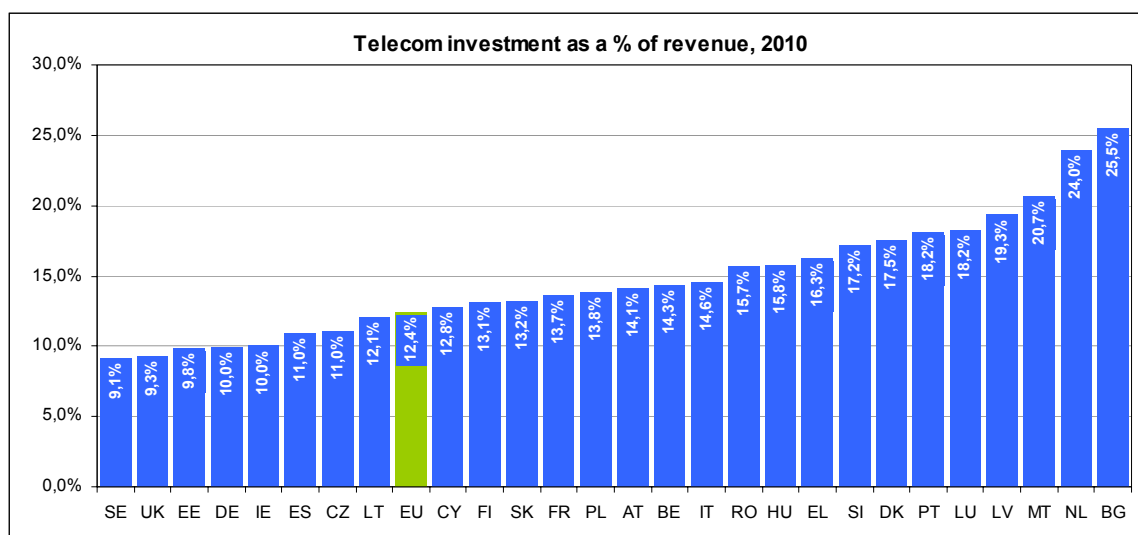
In the beginning of 2011, the Government tabled an amendment aiming at establishing a "*Commissaire du Gouvernement*" within the national regulatory authority (*Autorité de régulation des communications électroniques et des postes* – ARCEP). The European Commission expressed its concerns about the possible impact of such an amendment on ARCEP's independence and impartiality which are expected to be further strengthened under the revised European Union regulatory framework. The Senate voted against this controversial proposal.

The French NRA issued five substantial dispute resolutions during the reporting years decisions. They concerned the rules for the deployment of fibre networks in very densely populated areas, including tariff thresholds imposed on the incumbent.

## 6. 3. REVENUES AND INVESTMENTS

Both **revenues and investment** of the electronic telecommunications sector increased in France during the year 2011. Between 2009 and 2010, the growth in revenues generated by the electronic communications sector increased by 0.9%. The investment over revenue ratio in the French telecom over 2009 to 2010 was 13.7%, above the EU average of 12.4%, and the investment growth amounts to 24.2%, well above the 3.2% EU average.





Source:

Commission

Services

Between 2009 and 2010, the growth in revenues generated by the electronic communications sector increased by 0.9%. It increased by 1% between 2011 and 2012. The total revenues acquired in the electronic communications sector in France throughout 2010 increased slightly to around €53.213 billion from around €53.677 billion recorded at the end of 2009. The total value of annual tangible investments in electronic communications networks in France has increased from €5.899 billion in 2009 to €7.329 billion in 2010. The investment over revenue ratio in the French telecom over 2009 to 2010 was 13.7%, above the EU average of 12.4%, and the investment growth amounts to 24.2%, well above the 4.5% EU average.

From 2011, the top 19.6% value added tax rate applies to the entirety of a triple-play bundle (previously, the reduced rate of 5.5% applied to TV services that represented up to 50% of the price of a bundle), which led to an increase in the prices of bundled offers. At the end of 2011, amendments were tabled that would extend the tax on distribution of television services to all services that allow reception of TV, including Internet access services. French operators expressed concerns about the increasing tax burden on the electronic telecommunications sector in France.

In March 2011 the Commission decided to refer France to the European Court of Justice in pursuit of the infringement case launched in January 2010, concerning the charge of 0.9% imposed from 2009 on the electronic communications operators' turnover. The Commission's views is that the tax is incompatible with Article 12 of the Authorisation Directive, which provides that administrative charges should only cover the administrative costs for management, control and enforcement of the authorisations. The proceeding was pending as at the end of 2011.

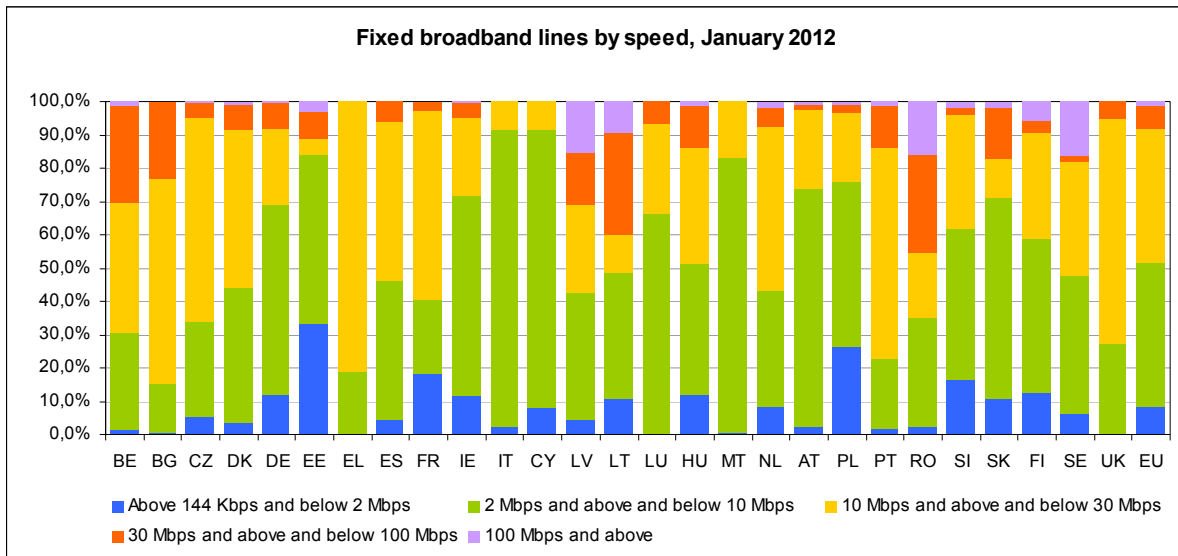
## 7. 4. BROADBAND

The **broadband** penetration rate in France, which stood at 35% in January 2012 compared to 32.9% in January 2011, is well ahead of the EU-27 average and places France in third position in the EU. France increased the total number of broadband lines to 22.747 million in January 2012, compared to 21.261 million in January 2011. As of January 2012, France Télécom had a 42% market share in broadband lines which

represents a slight decrease in comparison with January 2011 (42.4%).

At the end of 2011, France was moving towards achieving the DAE target aiming at securing a basic broadband connection (in the order of 2 Mbps) for all EU households by 2013. In December 2011, the Prime Minister reported that 95% of the actions envisaged by the Digital Plan 2012 (*“France numérique 2012”*, launched by the Government in October 2008) had been implemented or were in the process of being implemented. This includes the objectives of making broadband access (at a minimum speed of 512 kbit/s) for less than €35 per month available to 100% of the population, transition to digital terrestrial television, development of production and offers of digital contents, renewing of governance and of the ecosystem of the Digital Economy in France. In November 2011, the digital strategy for 2020 was presented by the government in a document called *“Digital France 2012-2020: results and perspectives”* (*« France numérique 2012-2020 : bilan et perspectives »*). During 2011, ARCEP elaborated on the determination of the cost of making FTTH available to all residential and business subscribers in France. In line with its aim to increase the capacity of existing copper networks, ARCEP issued a non-binding recommendation in June 2011 on the modalities of implementation of projects aiming at increasing the capacity of the existing copper network through access to the incumbent's local sub-loop, by local authorities and their private partners.

**Fixed broadband lines in the EU Member States by speed [start with the penetration graph]**

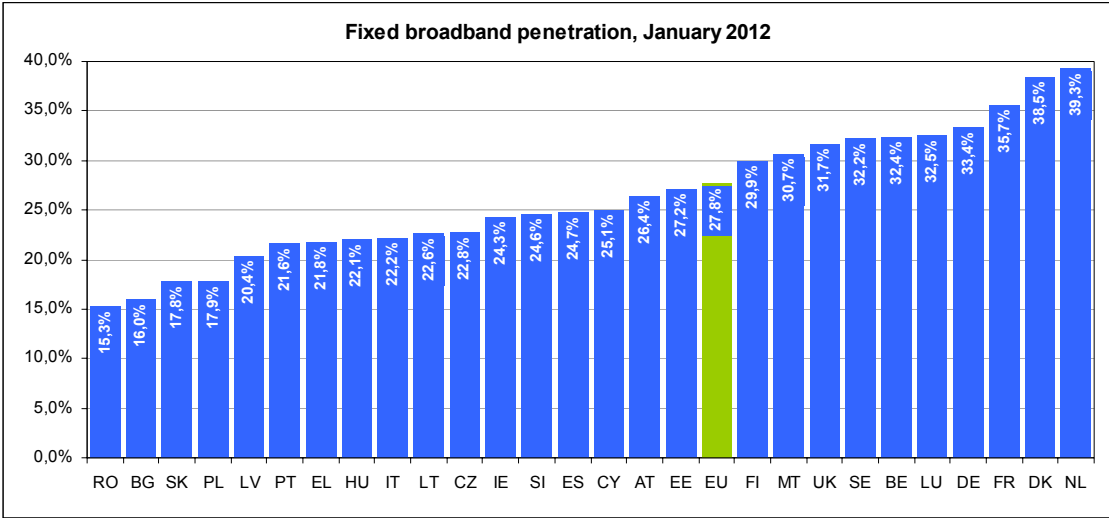


Source: Communications Committee

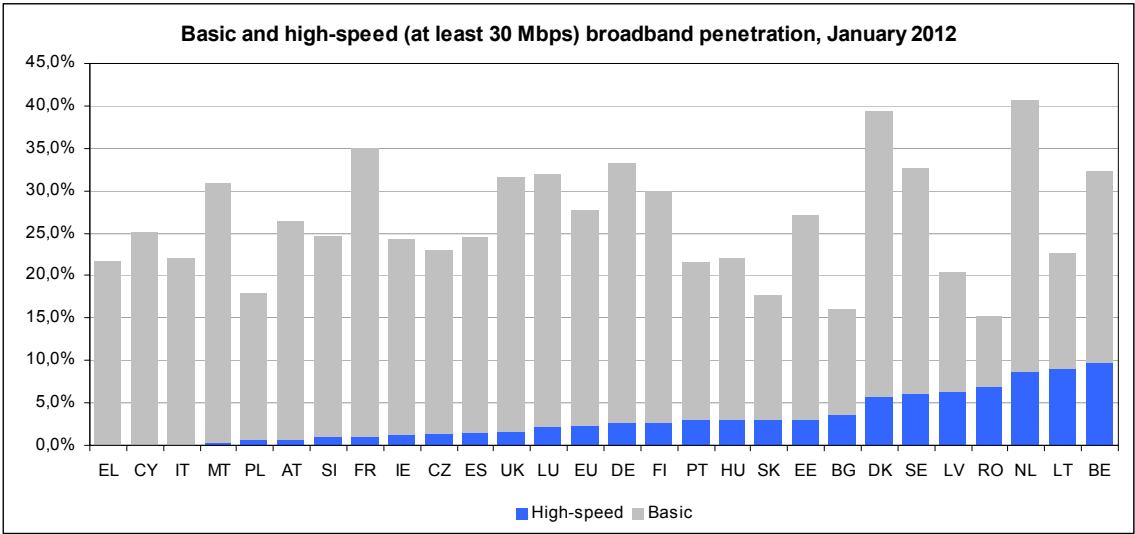
**4.1 Market situation & Regulatory developments**

The broadband penetration rate in France, which stood at 35% in January 2012 compared to 32.9% in January 2011, is well ahead of the EU-27 average (27.7% in January 2012), thereby placing it in third position in the EU. France increased the total number of broadband lines to 22.747 million in January 2012, compared to 21.261 million in January 2011. As of January 2012, the incumbent had a 42% market share in broadband lines, which represents an increase of 1% in comparison with the previous reporting exercise. The DSL market share decreased slightly between January 2011 and January 2012, from 93.1% to 92% and the number of DSL lines amounted to 20.982 million. The incumbent's market shares in DSL lines represented

45% in January 2012, in comparison with 46.7% in January 2011. The mobile broadband penetration rate calculated on the basis of dedicated service cards/modems/keys only stands at 4.9% in January 2012, still significantly lower than the EU average (8.1% in January 2012).

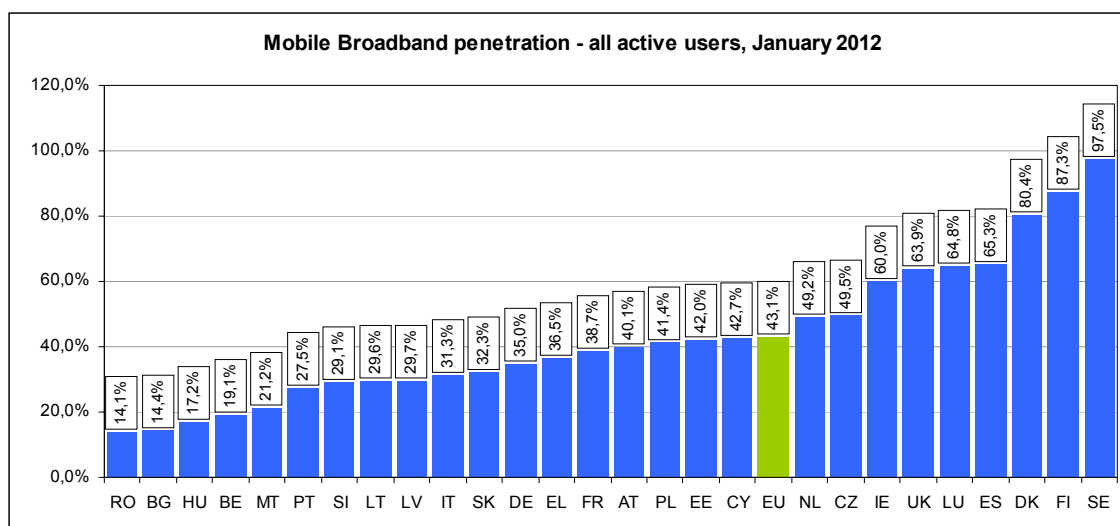


Source: Communications Committee



Source: Communications Committee

As of January 2012, eligible households for fibre to the home (FttH) amounted 1 475 000 including 200 000 subscribers. These 200 000 FttH subscribers are among the 665 000 NGA connections subscribed in the country. Cable network operators still account for the large majority of very high speed broadband clients.



Source: Communications Committee

ARCEP adopted, in June 2011, decisions on its third review of the markets for wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location and for wholesale broadband access. ARCEP designated the incumbent as having significant market power (SMP) on both broadband markets and imposed on it the full set of remedies with regard to its copper lines. However, only access to ducts and civil engineering infrastructures were imposed in relation to the incumbent's fibre infrastructure and ARCEP discarded in particular the imposition of fibre unbundling and fibre-based bitstream. For fibre regulation, ARCEP relies on the symmetrical regulation adopted by the end of 2009 and 2010 and on the co-investment agreements. The European Commission commented that in its Article 7 comment letter regulation of co-investment by way of symmetrical measures must not have the effect of circumventing SMP regulation, and that the regulation of co-investment by way of symmetrical measures lacks certain details (especially for access terms and pricing conditions) which are necessary for legal certainty. ARCEP envisages carrying out a mid-term market analysis 18 months after the entry into force of the said decisions, to assess whether symmetrical measures need to be complemented by additional asymmetric remedies. As part of its decision on the market for wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location ARCEP imposed on the incumbent the obligation to give access to its local copper sub-loop (FttC) based on a pro-competition regulatory framework

In 2011 and in January 2012, ARCEP complemented its regulation concerning densely populated areas. It defined specific conditions for the deployment of fibre, as well as the sharing of network elements between operators, with respect to subareas with low housing density and to buildings smaller than 12 residential or business units.

In line with its aim to increase the capacity of existing copper networks, ARCEP issued a non-binding recommendation in June 2011 on the modalities of implementation of projects aiming at increasing the capacity of the existing copper network through access to the incumbent's local sub-loop, by local authorities and their private partners. As part of its decision on the market for wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location ARCEP moreover imposed on the incumbent the obligation to publish specific technical and pricing conditions for access to its local copper sub-loop.

In November 2011, ARCEP submitted to the Parliament a report on the costs of the local copper loop of the incumbent and its evolution during the transition from copper to fibre. Through various technical measures, ARCEP intends to prevent an increase in LLU rates and therefore of DSL broadband, in the short and medium term because of the decrease of customers on the copper network. In a draft decision submitted to public consultation in late 2011, ARCEP envisaged a reduction in the amortisation period of copper cables, and an extension of the amortisation of civil engineering infrastructure. A small decrease in the price of copper LLU was expected for the beginning of 2012, and the incumbent published the new LLU rate (€8,80 instead of €9,00) in January 2012.

During 2011, ARCEP elaborated on the determination of the cost of making FTTH available to all residential and business subscribers in France. The resulting cost model will help to evaluate the cost of deployment in a limited geographical area and thus serve local authorities and other stakeholders as a tool for making decisions in relation to new projects.

In July 2011 France notified its complementary analysis of the leased lines market concerning the connections to and from the Caribbean island of St. Barthelemy, where one operator controls the only underwater cable to the neighbouring island of St. Martin. The decision was then adopted in September. Market is declared relevant for *ex ante* regulation and one operator is identified as significant market power operator.

ARCEP's decision on the market for wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location market 4 of June 2011 extended the obligations bearing on the incumbent to provide access to its civil infrastructure to poles and aerial networks, as the latter can be useful for fibre deployment especially in rural areas. Furthermore, access pricing by the number of active users in less dense areas should encourage pooling resources.

According to the 2009 Law on the Reduction of the digital divide, builders must inform local communities of works in the public domain when they are of a significant duration. Local communities are obliged to provide this information to operators. Upon a reasoned request from a local community or an electronic communications operator, the builder is required to accommodate the electronic communications ducts in its infrastructure. According to operators, however, the actual works do not usually correspond to operators' projects.

## **4.2 National Plans, private & public investments**

In December 2011, the Prime Minister reported that 95% of the actions envisaged by the Digital Plan 2012 ("*France numérique 2012*", launched by the Government in October 2008) had been implemented or were in the process of being implemented. This includes the objectives of making broadband access (at a minimum speed of 512 kbit/s) for less than €35 per month available to 100% of the population, transition to digital terrestrial television, development of production and offers of digital contents, renewing of governance and of the ecosystem of the Digital Economy in France. In addition, the digital strategy for 2020 was presented by the Prime Minister in a document called "Digital France 2012-2020: results and perspectives" (« *France numérique 2012-2020 : bilan et perspectives* ») in November 2011.

In 2011, the Commission decided that the measures envisaged by the French national ultra-fast broadband programme which was published in June 2010 were in compliance with EU's State aid rules. In 2011, operators started to declare their fibre deployment plans, which inter alia helped to distinguish areas eligible to public aid. Private operators expect to reach 60% of

French households with fibre by 2020. The three most important alternative operators signed bilateral co-investment agreements with the incumbent concerning deployment in less dense areas in 2011 and the beginning of 2012. One of the agreements aims to avoid a duplication of networks where two operators have expressed the intention to deploy in the same areas. In such a case, different territories will be covered by a different leading operator, while the other operators will co-invest. The French Competition Authority expressed several informal recommendations in order to safeguard competition while ensuring good coverage, e.g. that the leading operator should cover the combination of what the two operators intended to cover. Under other agreements, alternative operators would co-invest by buying access to their clients who will be covered by fibre deployed by the incumbent. The direct involvement of municipalities in fibre deployment was however not clear to all operators.

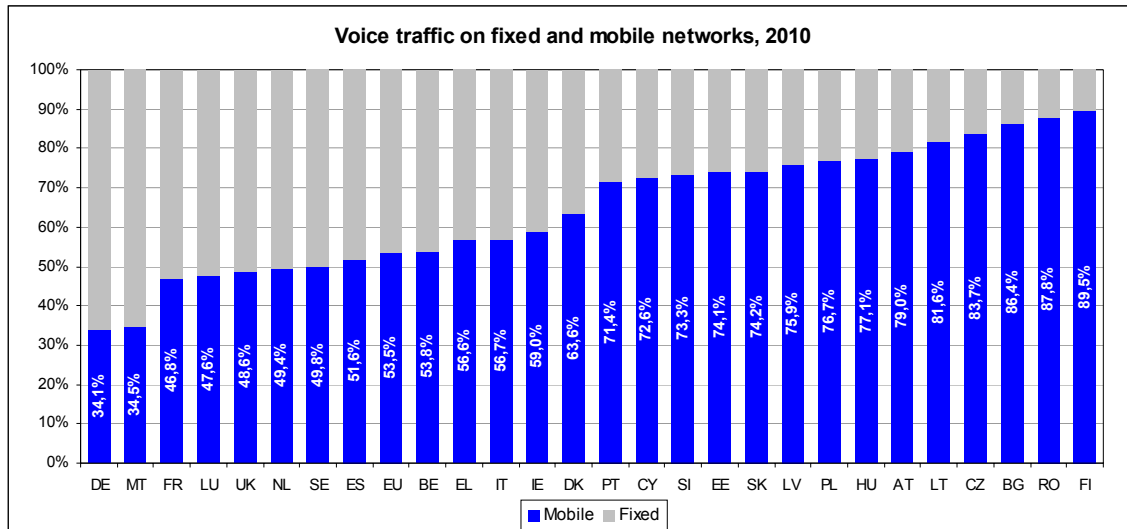
Different funding initiatives coexist in France. In July 2011, the Government, who is aiming at a very high speed coverage of 70% of the French population by 2020 and 100% of the population by 2025, opened a call for tenders for funding up to €900 million euros of public initiative networks in less dense areas. A public funding of €2 billion for NGA in total should be available through the national credit programme (le *Programme des investissements d'avenir*). However, no decision was taken in 2011 on how the fund for the Digital Development of the Territory, which was established by the 2009 Law on the Reduction of the digital divide in areas where the private deployment of NGA networks will not be feasible, will be financed.

## 8. 5. VOICE AND OTHER ECOMMUNICATIONS SERVICES

In the **fixed market**, the incumbent's market share (France Télécom) remains robust, although it decreased between December 2009 and December 2010 from 53.7% to 50.8% in terms of traffic volume. The market share of VoIP operators on fixed calls (by volume of traffic) has increased from 47%, as of December 2009 to 54.8% in December 2010, still much higher than the EU average of 23.1%. The main event in the **mobile market** during the reporting period is the entry of a fourth mobile operator (Free) in January 2012. The present operators (eg. Orange and SFR) prepared for the expected increased competition by launching cheaper offers without any minimum duration of contract. However, these offers were not widely marketed, and were only available via Internet. The mobile penetration rate, which stood at 99% as of October 2011, is still well behind the EU-27 average of 122.7%. The main mobile network operator's market share in metropole (Orange) equalled 40% in at the end of third quarter 2011, while its main competitor's amounted to 32% and other competitors' equalled to 28%. The French regulator reports specifically an increase of MVNOs market shares from 7,5% to 11,3%.

In the meantime ARCEP worked on a model for the determination of the cost fixed call termination based on the Commission's Recommendation on the Regulatory Treatment of Fixed and Mobile Termination rates in the EU.

## 5.1 Mobile services



Source: Commission services

### Market situation

The mobile telephony revenues slightly increased from €26.210 billion in 2009 to €26.468 billion in 2010. The average revenue per user in 2010 amounted to €389, well above the EU average of €221.

The mobile penetration rate, which stood at 99% as of October 2010, is still well behind the EU-27 average of 127%, but is up from 93% as of October 2009. This may be explained by the relatively small share of pre-paid users in the mobile market in France (25.8% of SIM cards as of October 2010). A sharp increase in data traffic continued throughout 2010. The volume of SMS sent monthly from one SIM card increased by 54.3% to 140 SMS per month in September 2010 compared to September 2009 thanks to unlimited offers by all three operators. The mobile market overall grew by 1.9% in terms of revenues over the year 2009.

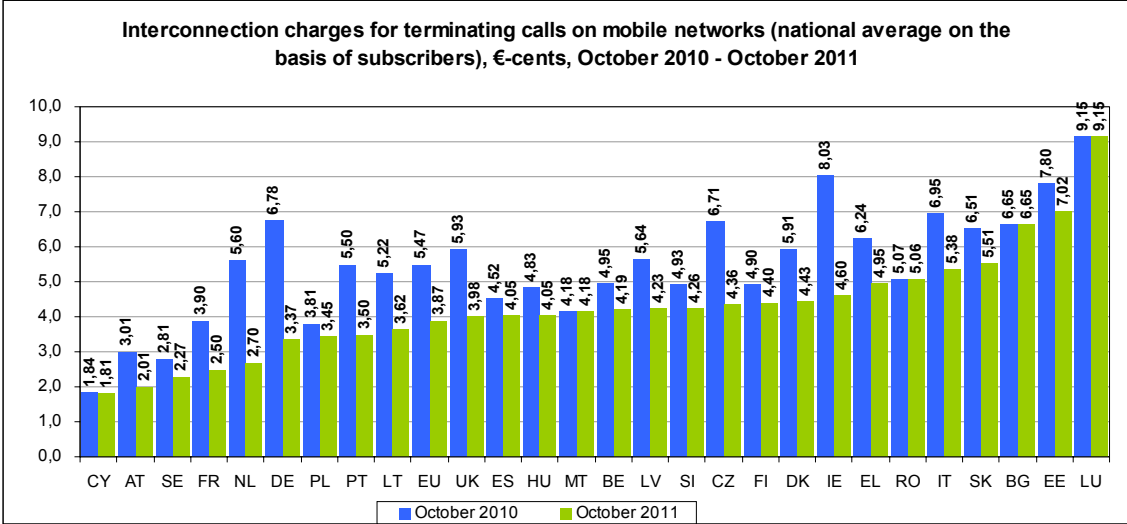
The main mobile network operator's market share in metropole equalled 40% in at the end of third quarter 2011, while its main competitor's amounted to 32% and other competitors' equalled to 28%. The French regulator reports specifically an increase of MVNOs market shares from 7,5% to 11,3%. It became possible to implement the model of a full MVNO in France, the first agreements having been signed at the beginning of 2011. Since then, all successful candidates for the 4G licences in the 800 MHz band, and all but one in the 2.6 GHz band made commitments to host full MVNOs on their networks. Three full-MVNOs were preparing their market entry for 2012.

In March 2011, the new entrant concluded a 2G and 3G national roaming agreement with the leading mobile network operator. At the end of 2011, ARCEP confirmed that the fourth mobile operator succeeded in meeting its obligation to cover 27% of the population by the end of 2011. The present operators prepared for the expected increased competition by launching cheaper offers without any minimum duration of contract.

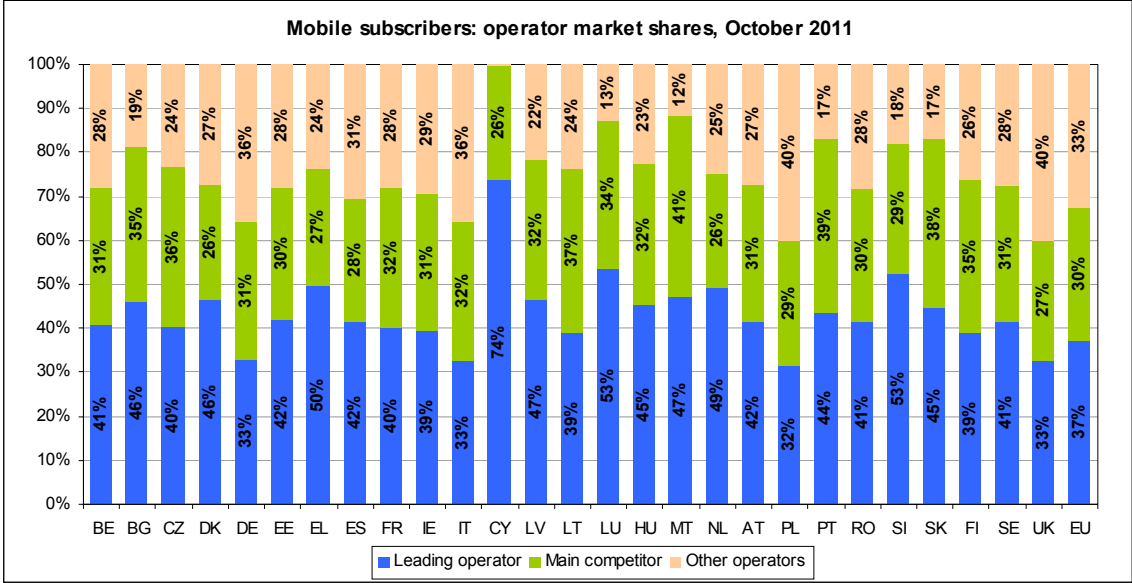
However, these offers were not widely marketed, and were only available via Internet. Operators also included mobile services under more advantageous conditions within

quadruple play offers. Nevertheless, in the beginning of 2012, a consumer association launched a complaint about the incumbent's quadruple-play offer before the *Autorité de la concurrence*. The complaint pointed to unclear termination conditions, and the incumbent's failure to guarantee the portability of both fixed line and mobile numbers.

**Mobile termination rates by member states, October 2010-October 2011**

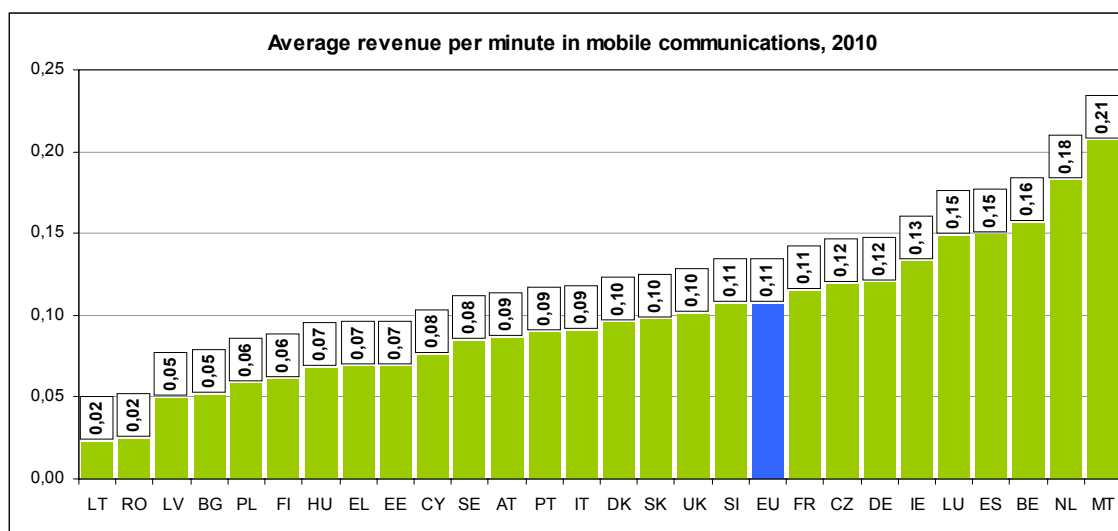


Source: Commission services



Source: Commission services





Source: Commission services

### *Regulatory issues*

The end of asymmetry in ceiling tariffs of mobile voice call termination, referred to in the 2007 Recommendation<sup>8</sup>, was implemented on 30 June 2011. As envisaged in its decision on the third review of the said market of November 2010, the regulator adopted in May 2011 new symmetrical ceilings for the existing mobile network operators, for the period between July 2011 and December 2013. The symmetrical tariffs will reach a cost-oriented level of incremental costs on 1 January 2013, at 0,8c€/mn, among the lowest in Europe. In December 2011, ARCEP launched a public consultation on its draft decision on termination rates for the fourth 3G operator and two new full-MVNOs. The draft measure proposed a light asymmetry in favour of new entrants, until the end of 2013 and has been notified to the Commission in March 2012.

In May 2011, the Commission launched infringement proceedings against France concerning ARCEP's decision on the SMS termination market of July 2010. The decision contained a 'reciprocity reserve', which allowed French operators to charge rates higher than the regulated ones when a foreign based operator charges higher rates than the regulated French operator. In July 2011, ARCEP amended the said decision and deleted the problematic clause, allowing the Commission to close the infringement proceeding.

The fourth 3G operator challenged before the *Conseil d'Etat* the obligation to pay the full price of the 800 MHz and 2.6 GHz licence upfront, before the launch of operations on the frequencies in question. The case was withdrawn by the operator after the allocation of 2,6 GHz frequencies.

### *Roaming Regulation*

<sup>8</sup> Commission Recommendation of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (notified under document number C(2007) 5406)

No particular problems were reported in 2011 concerning the implementation of the revised Roaming Regulation. In most cases, the retail prices were set at or very close to the maximum level indicated by the Regulation.

## 5.2 Fixed

### *Market situation*

The incumbent's market share remains robust, although it decreased between December 2009 and December 2010 from 53.72% to 50.8% in terms of traffic volume. The market share of VoIP operators on fixed calls (by volume of traffic) has increased from 47%, as of December 2009 to 54.8% in December 2010, still much higher than the EU average of 23.1%.

In terms of total call volume, the proportion of fixed voice traffic vis-à-vis mobile continued to decrease, and represented 53.2% of voice traffic throughout 2010 compared to 53.8% in the previous year.

### *Regulatory issues*

Following two public consultations, ARCEP published in April 2011 the technical and economical model for the determination of the cost of fixed call termination of an efficient generic fixed operator. Based on the Commission's Recommendation on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU, the model is based on a bottom-up modelling approach using long-run incremental costs (LRIC). ARCEP used the model for its decision adopted in July 2011 on the third review of markets 1, 2 and 3.<sup>9</sup> The incumbent was designated as the SMP operator on the three markets and each alternative operator was designated as an SMP operator on the call termination markets. Interim caps on call termination tariffs provide a transition to the level of the incremental cost of a long term generic effective operator, to be reached in January 2013. The Commission recalled ARCEP that, in principle, terminating operators should normally recover their costs from non-regulated retail services offered in competitive markets and not from another regulated wholesale market (e.g. origination market). Furthermore, the Commission invited ARCEP to specify clear migration rules in order to encourage a timely migration towards IP interconnection. The regulator launched multilateral works on the setting of the timing and conditions for a timely transition to the new interconnection architecture, which will be implemented from 2013.

Competition intensified in 2010 with regard to bundled offers combining television, broadband and fixed telephony and increasingly also mobile services. As of July 2011, 29.4% of the population used bundled offers, compared to 27.4% as of December 2009. Quadruple play offers became more plentiful in 2011 as operators sought to secure new clients before the arrival of the fourth mobile operator on the market. Mobile operators launched low cost offers under dedicated brands. However, these offers were not widely marketed and are only available via Internet. Fixed operators are increasingly active in the mobile sector and vice versa.

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<sup>9</sup> Markets (1) for access to the public telephone network at a fixed location for residential and non-residential customers, (2) for call origination on the public telephone network provided at a fixed location in France and (3) for call termination on individual public telephone networks provided at a fixed location in France.

### 5.3 Broadcasting

#### *Market situation*

The switchover to digital terrestrial TV (DTTV) on the whole territory of France (metropolitan and over seas) was completed on 29 November 2011. As a result, the frequencies of the digital dividend were freed and partly reallocated to mobile telecom services thanks to a larger use of isofrequency planning for digital television services (SFN). According to the National Broadcasting Regulator CSA (*Conseil supérieur de l'audiovisuel*) DTTV now covers 97.3 % of the metropolitan population (which is slightly more than the analogue TV). In addition two offers have been provided over satellite since 2007 to complete the coverage obligation.

DTT is still the leading television platform in France. The French regulator reports that 61% of the metropolitan TV households were equipped with that reception means by the end of 2011<sup>10</sup>, compared to 60.2% the year before. IPTV – defined as television over ADSL or FTTH in France – is now the second television platform. The household penetration slightly increased in 2011 with a 36.8% rate, in comparison with 36% in 2010. At the same time, Satellite TV has slightly decreased from 25.2% in July 2010 to 24.8% in July 2011. Cable has also decreased from 11.1% in July 2010 to 10.2% in July 2011.

In France, TV services are often bundled to internet access subscriptions within “multiple play” offers. Within these offers, TV services may be provided over ADSL, cable or satellite<sup>11</sup>. According to ARCEP, 58% of internet access subscriptions in France were bundled with TV subscriptions by the end of 2011

As stakeholders did not find an agreement about the relevant business model to develop mobile broadcasting (*télévision mobile personnelle*), the project has still not been launched.

In 2011, the Commission sent a reasoned opinion to France regarding the award of right to obtain compensatory digital channels to historical private broadcasters, at the occasion of the complete switch-off of the analogue broadcasting. In October 2011 the Government announced the upcoming abolition of the compensatory channels. However, the necessary legislative measure was not taken at the end of 2011 and the infringement proceedings were therefore still pending. In the meantime, the regulator CSA launched a call for candidates for six new free-to-air high definition DTTV channels in the new multiplexes R7 and R8. Six new channels have been chosen on 27 March 2012. All usage authorisations are expected to be delivered by the regulator to these channels by the end of May 2012. and the commercial launch is expected to begin by the end of 2012 with a coverage objective of 25% of metropolitan population, and to be achieved in 2014 with a coverage objective of 95% of metropolitan population.

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<sup>10</sup> Observatoire de l'équipement des foyers pour la réception de la télévision numérique, <http://www.csa.fr/Etudes-et-publications/Les-observatoires/L-observatoire-de-l-equipement-des-foyers-pour-la-reception-de-la-television-numerique>

<sup>11</sup> Satellite TV bundled with internet access over ADSL is especially sold for households without sufficient ADSL bandwidth.

After a first public consultation on the digitization of radio services in 2009, the CSA launched in March 2011, a second public consultation preceding a call for candidates for terrestrial or hybrid terrestrial/satellite digital radio services in the L band (1452-1492 MHz) in November 2011. The licences are expected to be awarded by the end of 2012. In 2011, trials were also conducted in band III (174-225 MHz) and the CSA launched a call for tender in Paris, Marseille and Nice for which licences will be awarded by the end of 2012 to the radios which will be selected.

## 9. 6. SPECTRUM MANAGEMENT

With regard to spectrum management, the 2.6 GHz band and the 800 MHz band were auctioned in 2011. Experiments were carried out by the French authorities on potential interferences of the frequencies in the 800 MHz band from DTTV frequencies. This risk was confirmed in a limited number of cases.

The regulator formally launched a 4G spectrum auction in June 2011, by defining the selection procedure and the assignment conditions, and proceeded in two stages - auction of the 2.6 GHz band in September 2011, and of the 800 MHz band in December 2011. The assignment criteria that complemented the reserve price motivated the candidates to commit themselves to hosting full MVNOs on their networks (for both 2,6 GHz and 800 MHz auctions), and to stringent obligations of sub-regional coverage (specifically for 800 MHz auction). The proceeds of both auctions (€936 million and €2.639 billion, respectively) exceeded the reserve price. Concerning the 2.6 GHz band, all four mobile network operators secured a frequency block and all but one undertook to host full MVNOs. Concerning the 800 MHz band, only the three already active operators secured one or two frequency blocks and made commitments both in terms of hosting full MVNOs and of extra coverage obligations. Finally, according to the auction modalities, the fourth operator will have the right to obtain roaming in designated priority deployment areas (i.e. sparsely populated regions), on the frequencies of the operator that obtained two blocks in the 800 MHz band.

Operators expressed their concerns about potential interferences of the frequencies in the 800 MHz band from DTTV frequencies. The French authorities carried out experiments that confirmed this risk in a limited number of cases. The costs of avoiding interference will be borne by the operators which will also have to reimburse to the authority responsible for frequencies (ANFR) for the cost of collecting claims for interference. The amount of these costs will be capped at €2 million a year. The risk of interference is reflected in the reserve price of the licence, where the lot that borders the DTTV frequencies was cheaper than the other lots of the same size.

Regarding Mobile Satellite Systems (MSS), the general rules on enforcement of conditions and regulations apply. A long term individual right of use was granted to one of the selected operators under the Decision 2008/668/EC for MSS components and terminals in 2010, and a twelve-month authorisation was granted to the same operator in 2011 for CGC components.

## 10. 7. CONSUMER INTEREST

### 7.1 116 – Harmonised numbers for services of social value

Availability of 116 harmonised numbers can be improved in France, as well as awareness levels which remain very low at 6%.

Out of the 116 range, the 116000 number was assigned in France to the service for missing children, while the 116111 number was assigned to a helpline for children. Only the former was operational as at the end of 2011.

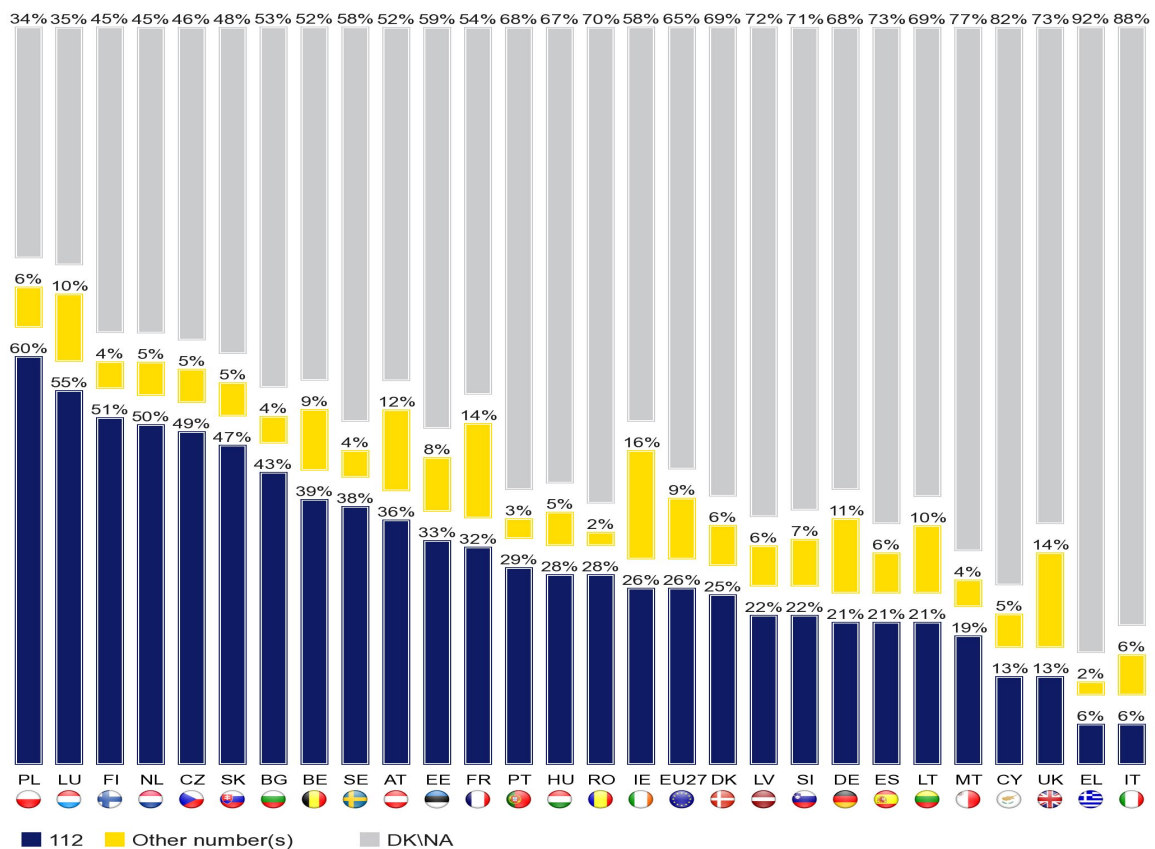
### 7.2 112 – European Emergency number

The level of awareness of 112 in France is quite low with 32%. 112 is not the historical emergency number.

#### 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

French population's knowledge of 112 as the EU-wide emergency number amounts to 32%, placing the country in the 12<sup>th</sup> position in the EU. In September 2011, France launched an emergency number 114 for deaf and hard of hearing, which is accessible by fax and SMS. The project was still in an experimental phase and aims to enable a total conversation in a few years' time.

There seems to be a persistent issue with the location of callers to the 112 number. The method used for the time being depends on the caller's operator, and can be time consuming in some cases. The authorities, together with relevant stakeholders, were working on a harmonised web based solution that will provide an "automatic pull" location method for all operators in less than a second. This automated solution is expected to be set up by a ministerial regulation in 2012.

### 7.3 Net neutrality & quality of service

Following the publication of its ten recommendations in September 2010, ARCEP launched two public consultations in December 2011. One aims to gather information on the technical and pricing terms governing the interconnection market, while the other presents ARCEP's draft guidelines for the monitoring of the quality of Internet access on fixed networks.

The prevailing opinion of the French authorities is that the provisions transposing the 2009 EU reform package as they were adopted in France are a sufficient safeguard for net neutrality for the time being. This includes among others the ability for the NRA to settle disputes between internet services providers and content and application providers, as well as the reinforcement of an objective of non-discrimination between internet services providers and content and application providers. A specific bill on net neutrality was rejected in March 2011 by the *Assemblée Nationale*. Notwithstanding this, a report on network and Internet neutrality presented by a cross-party parliamentary working group in April 2011, recommended adopting specific legislation on net neutrality.

Following the publication of its ten recommendations in September 2010 and the works announced, ARCEP launched two public consultations in December 2011. One aims to gather information on the technical and pricing terms governing the interconnection market, while the other presents ARCEP's draft guidelines for the monitoring of the quality of Internet access on fixed networks.

Besides, the government and ARCEP are leading a working group with ISPs and users' representatives, which will result in a framework for transparency on traffic management practices.

During 2011, fixed operators with more than 100,000 subscribers continued to publish, on their website, quarterly results of the measurements of the quality of their services. ARCEP published an annual and comparative synthesis in March 2011. In February ARCEP published its yearly report on the quality of service of mobile network operators, which now also provided information on 3G data services, including a direct comparison of operators.

#### 7.4 Consumer complaints, tariff transparency

France was especially active in 2011 in the promotion of consumer protection, with a bill reinforcing the rights, protection and information of consumers, including those of the sector of electronic communications. However, the bill voted in first reading by the *Assemblée Nationale* and the Senate in 2011 shall lapse following the renewal of the *Assemblée Nationale* in June 2012. ARCEP published its first index of prices of mobile services in France.

In February 2011 ARCEP published 23 recommendations, which aim to ensure that consumers are able to make an informed choice when subscribing to a service, as much in terms of the nature and the quality of the services on offer, as their price, and to facilitate provider switching. According to a consumer association, complaints related to transfer of lines during moving represents close to half of all the complaints in the sector.

In April 2011, the largest association of French operators voluntarily created Pacitel, a list on which consumers can subscribe their phone number if they wish to be excluded from marketing lists of member companies. The French authorities started a reflection on a piece of legislation making this arrangement obligatory.

In December 2011, one of the two chambers of the Parliament adopted the bill reinforcing the rights, protection and information of consumers, which includes several provisions on the sector of electronic communications. For example, operators would be required to distinguish, on invoices, the price of services and of the handset. Operators selling handsets coupled with services would be obliged to offer also services with no minimum period of contract commitment, and to provide handsets separately under non-disqualifying conditions. Furthermore, ARCEP would make available an interactive price guide to compare operators' offers. Finally, in July 2011, ARCEP published its first index of prices of mobile services in France, finding that prices decreased by 2.8% annually between 2006 and 2009.

#### 7.5 Number portability

In terms of **number portability**, as of October 2011, the average time for the porting of a fixed number as well as a mobile number was one day, while the EU average for mobile stands at 2.5 days and 3.8 for fixed numbers. The total accumulated volume of ported mobile numbers increased from 1.566.830 in 2010 to 2.288.629 in 2011. The total accumulated volume of ported fixed number increased from 1.834.900 in 2010 to 1.887.830 in 2011.

As of October 2010, the average time for the porting of a fixed number was ten days, and three days for mobile numbers, which both are above the EU-27 average. The wholesale price of porting is €8 per number for fixed numbers while no charge is applied for mobile numbers

The total accumulated volume of ported mobile numbers, which was 1.566.830 from September 2009 to September 2010, was 2 288 629 from September 2010 and September 2011. . The total accumulated volume of ported fixed number increased from 1.834.900 to 1.887.830 over the same period.

The obligations relating to number porting including in the reformed EU regulatory framework is fully transposed into French law and the portability procedure is henceforth adapted to the new rules. In November 2011, a new system for porting mobile numbers designed under ARCEP's guidance was put in place. It aims to reduce the time needed to port a mobile number to three working days, and to keep the subscribers informed on the progress of the process. At the same time, the regulator held a public consultation on a new decision that would implement the new rules once transposed into French law. On the other hand, persistent problems regarding the porting of fixed numbers in directions other than from the incumbent remained unresolved.

## **7.6 Universal service**

No major issues on Universal Service were reported.

The Ministry of Economy, Industry and Employment launched in March and in September 2011 a project of two kinds of voluntarily offered social tariffs based on a labelling approach, which fall outside the scope of an imposed Universal Service obligation, and are not financed via a universal service fund. They include an offer of unlimited Internet at the speed of 512 Kbit/s together with unlimited national fixed telephony services for a maximum of €23 per month, as well as and an offer of mobile services, including 40 minutes and 40 SMS for a maximum €10 per month. Participating operators are free to decide whether they make the offers available to all subscribers or only to people with low revenues. Some consumers criticized the fact that the market was already offering several better priced products, without any label or revenue test.

## **7.7 ePrivacy**

No major issues on ePrivacy were reported

CNIL issued an informal recommendation on cookies, considering that the current capabilities of web browsers do not offer completely satisfactory solutions for the expression of user's consent. CNIL called on the developers of browsers to create new tools for the provision of information, and enabling a specific user's consent.

The French ICT sector's initiative Signal Spam, designed in partnership with the personal data privacy regulator CNIL, started discussions on transferring its know how to other countries. It allows users to install a plug-in that reports spam e-mails to CNIL which can then act against the largest spammers. Mobile operators provide a number that allows users to report and block for free the numbers that send out SMS spam.





**EUROPEAN COMMISSION**  
Information Society and Media Directorate-General  
Electronic Communications Policy  
**Implementation of Regulatory Framework**

18 June 2012

# **HUNGARY**

## **2011**

# **Telecommunication Market and Regulatory Developments**

## HUNGARY

### 11. MAIN MARKET & REGULATORY DEVELOPMENTS: BEST PRACTICES AND CHALLENGES

#### Development of the sector

In 2010, the Hungarian electronic communications sector saw a further decline in both revenues and investment, while at the same time was subject to a significant sector specific charge that is now being challenged before the Court of Justice. The total turnover of the sector decreased considerably in 2010 (by 3.1%), to around € 3.28 billion, and the recession for the sector for the second time could now indicate a certain trend. Mobile services recorded higher revenues (€ 1.957 billion) in comparison to fixed (amounting to € 929 million). The total investment of the sector recorded a steep decline of 26.9%, which might also be attributed to adverse regulatory environment created by the special tax on electronic communication services. Section 3

In the course of 2011, the increasing platform based competition and convergence has been marked by the increase in market share of VOIP and IPTV, the strong market position of cable operators in broadband and broadcasting, as well as the emergence of MVNO offers. Section 3

In 2011, the Hungarian broadband market continued to be influenced by infrastructure based competition and increasing bundled offers. Broadband penetration showed a further increase (to 22.1% as of January 2012), but still remained below the EU average (27.8%). Following the reorganisation in autumn 2011, in November 2011, the Ministry published a draft call for projects to finance broadband backhaul network developments.

For the past years, the Hungarian mobile market continues to show a rather stable market structure (the incumbent Magyar Telekom's subsidiary with 45.3% market share, and its competitors, Telenor and Vodafone with 32.0 and 22.7% respectively), whereas 2012 will see the entry into market of a fourth mobile operator. The Hungarian fixed telephony market has been characterised by the presence of local telephone operators that continue to hold a strong market position in their respective territories (88.4% market share for all types of fixed calls). The increasing pressure from platform based competition (primarily cable operators) can be illustrated by a considerable increase in market share of VOIP operators in fixed calls (from 13.4% to 18.0% in December 2010). The slight decrease of cable television continued in 2011, whose penetration declined from 55.6% to 54.7% as of July 2011, while satellite and in particular IPTV recoded growth rates of 17.2% and 82.3% respectively. Although penetration of IPTV is relatively low (4.8%), it might serve to create incentives for fibre deployment to match competitive offers of platform based competition. Section 5.1. - 5.3.

#### Progress in broadband deployment and take-up

As of January 2012, the proportion of NGA in total broadband (reaching 22%) has been more than double of the EU average (10%), partly due to intensive competition by cable offers. The use of broadband lines above 30 Mbps is above EU average, but Hungary needs to take

further actions to adhere to the DEA target of half of households subscribing to connections above 100 Mbps. Section 4

Following the discussion paper on the draft Digital Hungary Programme, in December 2010, the Ministry for National Development published a 5 year Digital Renewal Action Plan (2010-2014), followed by a detailed broadband development concept presented in March which was aligned to the Digital Agenda objectives. Following the reorganisation in autumn 2011, in November 2011, the Ministry published a draft call for projects to finance broadband backhaul network developments. However no broadband financing were made available in the course of 2011. Section 4

#### Independence and effectiveness of the NRA

Following the reorganisation of the government and the merging of the NRA (National Media and Infocommunication Authority) with the Media Authority (National Radio and Television Commission) in 2010, Hungary continued its legislative and regulatory efforts to proceed with relevant cases which encompassed both delays in the transposition of EU law and measures followed up by the Commission. By 2012, the NRA completed the third round of market analysis. Section 2

#### Implementation of the framework

Hungary transposed the revised regulatory framework on electronic communication only by the first quarter of 2012, as the legislative process was delayed by the change and reorganisation of government. Therefore, the Commission launched infringements against. In January 2012, following the adoption of the relevant primary and secondary legislation, Hungary concluded the transposition and notified the Commission thereof. In the light of this notification, the Commission closed the infringement procedure accordingly, but is still in the course of assessing the transposition, and will remain vigilant over the correct application of these rules.

#### Spectrum management

In the course of 2011, the administration in Hungary developed a new scheme for the frequency fee structure. The timeframe for the digital switchover has been postponed to 31 December 2012. Concerning implementation, the Commission services are following up a rising number of cases encompassing the auction for the new entrant mobile network operator and recent radio spectrum assignments for a number of regional radio stations. Section 6

#### Citizens and consumer protection

In addition to the two operational 116 helplines, the 116123 emotional support helpline has been assigned on 12 May 2011. Despite strong support by citizens, awareness levels for 116 numbers remained at low level. The single European emergency number 112 is operated alongside three historical emergency numbers. The number of respondents who would call 112 in Hungary decreased from 36% to 28% in 2012. Section 7.1 and 7.2

As in previous years, operators were fined for unfair commercial practices and consumer cases. The online price comparison toll operated by the NRA covers a wide range of services. Section 7.4

The Commission services are looking into the rules governing number portability, with

particular regard to the requirements on activation of numbers ported within one working day. Section 7.5

In the course of 2011 authorities did not resolve the ex lege situation as consequence of unilaterally mandating the services in 2008 and its annulment by the Constitutional Court in 2010. In addition, the Commission services are looking into the detailed rules on access to subscriber information for directory inquiry services. Section 7.6

## 12. NATIONAL REGULATORY AUTHORITY (NRA)

Following the reorganisation of the government and the merging of the NRA (National Media and Infocommunication Authority) with the Media Authority (National Radio and Television Commission) in 2010, Hungary continued its legislative and regulatory efforts to proceed with relevant cases which encompassed both delays in the transposition of EU law and measures followed up by the Commission. By 2012, the NRA completed the third round of market analysis.

Following the reorganisation of the government and the merging of the NRA with the Media Authority in 2010, amendments of the legislative package transposing the revised regulatory framework implied a transfer of portfolios from the Ministry to the NRA, followed by internal reorganisations within the Ministry (new state secretariat and a newly appointed minister). In the course of 2010, rules governing the status of the NRA President have been moved to the Media Act which has become a cardinal law in 2011 requiring a two third majority for its amendments.

According to the Media Act, the NMHH exercises its powers independently, and its powers cannot be revoked. In addition, new tasks can only be assigned to the NMHH by or on the basis of primary legislation. The president – whose term is nine years - cannot be instructed in the exercise of her powers and is granted an extensive protection from dismissal.

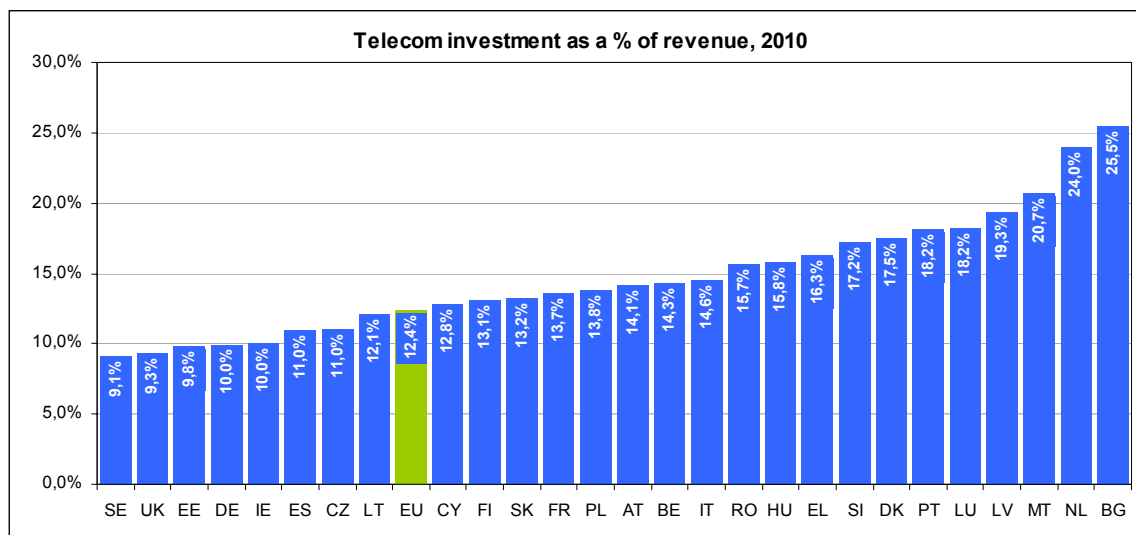
Following the 900MHz frequency auction, the Commission is looking into the consequences of the ownership structure of the new entrant with regard to questions of structural separation, as it appears that telecom matters and the ownership of national corporations (including all three members of the new entrant consortium) lie with the same Ministry.

Following the merger of the NHH and the Media Authority in 2010, the Media Council of the NRA had been acting as forum for dispute resolution between broadcasting transmission and content providers (TV channels), while at the same time, the national public TV channels are indirectly under the supervision of the Media Council. In the legislative package transposing the revised regulatory framework, Hungary adopted revised rules. The Commission services welcomed the swift reaction of the Hungarian authorities, but at the same time drew the attention to the importance of correct application of these rules.

On the basis of a formal complaint, the Commission services are looking into the implementation of the general authorisation scheme in Hungary with regard to requirements on establishment and guarantees to ensure that the general authorisation shall only contain conditions which are specific for that sector and are specifically set out in an Annex to the Authorisation Directive without duplicating conditions applicable by virtue of other national legislation.

### 13. REVENUES AND INVESTMENTS

In 2010, the Hungarian electronic communications sector saw a further decline in both revenues and investment (by 3.1% and 26.9% respectively), while at the same time was subject to a significant sector specific charge that is now being challenged before the Court of Justice. In the course of 2011, the increasing platform based competition and convergence has been marked by the increase in market share of VOIP and IPTV, the strong market position of cable operators in broadband and broadcasting, as well as the emergence of MVNO offers.



Source:

Commission

Services

While the Hungarian economy showed signs of a decline that was lower than in 2009, the total turnover of the sector decreased considerably in 2010 (by 3.1%), to around € 3.28 billion, and the recession for the sector for the second time could now indicate a certain trend. While the decline followed the pattern at EU level, this recession remained double the downturn registered at EU level (similarly to 2009). Mobile services recorded higher revenues (€ 1.957 billion) in comparison to fixed (amounting to € 929 million).

The total investment of the sector recorded a steep decline of 26.9%, which might also be attributed to adverse regulatory environment created by the special tax on electronic communication services.

As highlighted in the previous report, in October 2010, a “crisis tax” was introduced on three major sectors of the Hungarian economy: retail commerce, telecommunications services and energy distribution for three consecutive years on the basis of net revenue, as of 2010. According to the Commission, this tax, as far as the telecoms sector is concerned, is a charge imposed in violation of the EU regulatory framework for electronic communications. In addition, the tax scheme bears similarities to levies adopted by Spain and France, which were subject to infringement procedures on the same legal grounds. Therefore, the Commission services have been closely following this measure from its inception, and on 14 March 2011, the Commission launched infringement procedure against Hungary. In the light of the replies, the infringement procedure continued, and in March 2012, the Commission decided to take the next measure in the infringement procedure to refer Hungary to the Court of Justice.

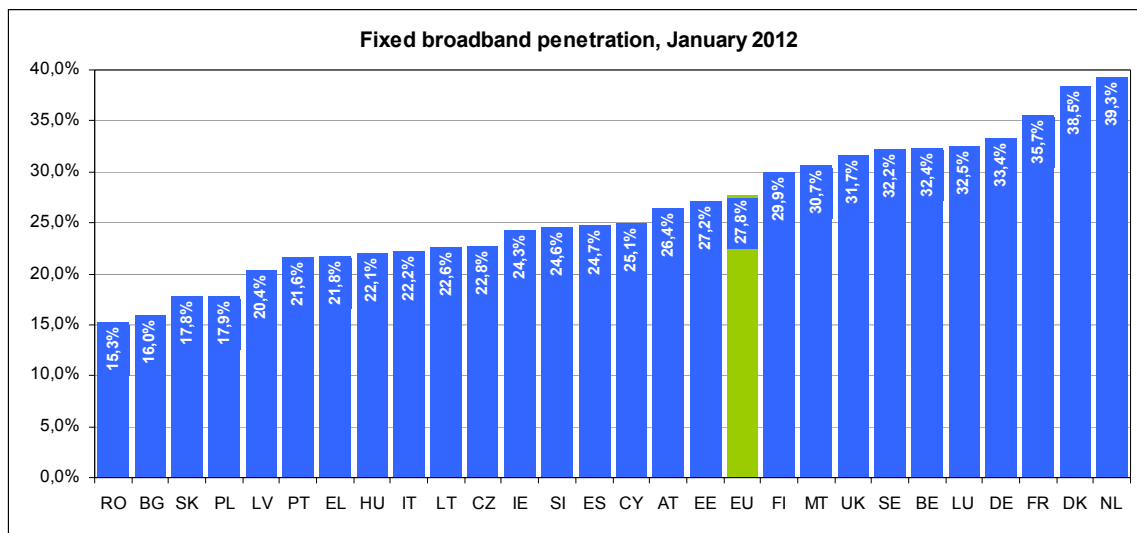
## 14. BROADBAND

In 2011, the Hungarian broadband market continued to be influenced by intensive infrastructure based competition and increasing bundled offers. Broadband penetration showed a further increase (to 22.1% as of January 2012), but still remained below the EU average (27.8%).

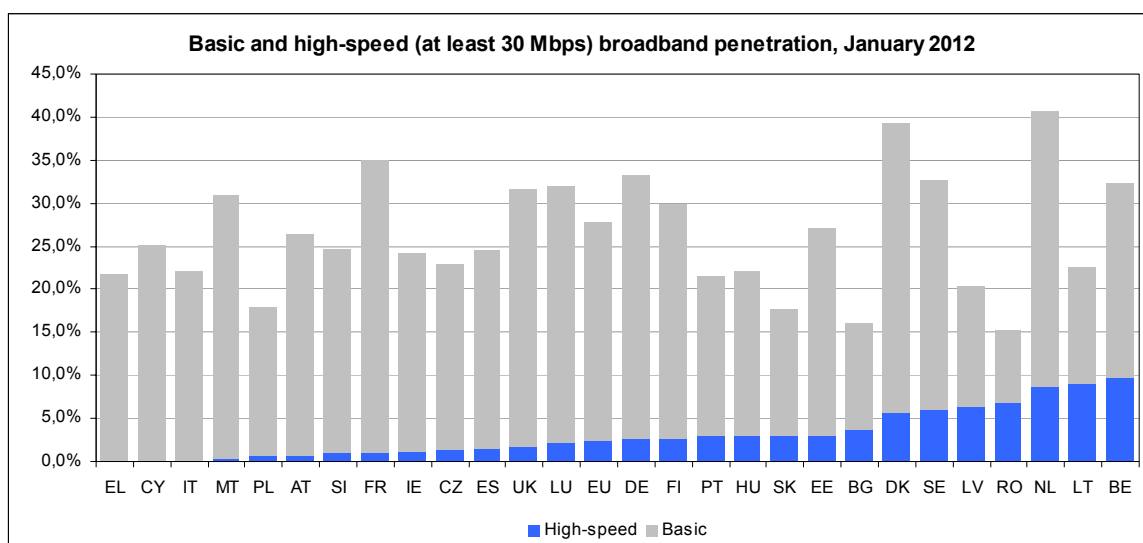
Following the reorganisation in autumn 2011, in November 2011, the Ministry published a draft call for projects to finance broadband backhaul network developments.

### 4.1 Market situation and regulatory developments

In 2011, the Hungarian broadband market continued to be influenced by intensive infrastructure based competition and increasing bundled offers. However, reversing from a long term trend, the incumbents are gaining market shares for the over cable operators.

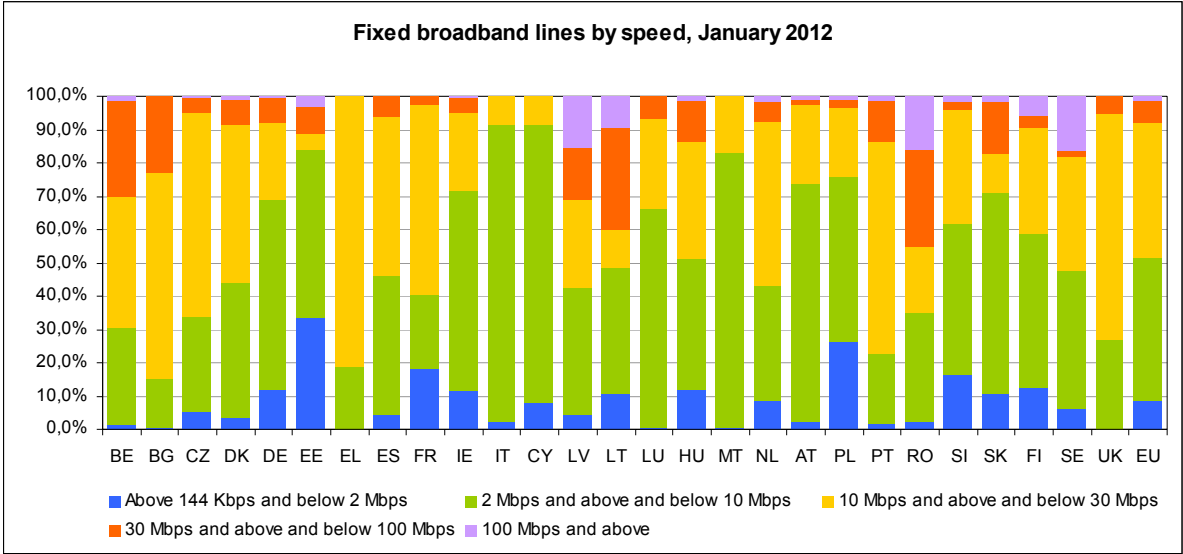


Source: Communications Committee



Source: Communications Committee

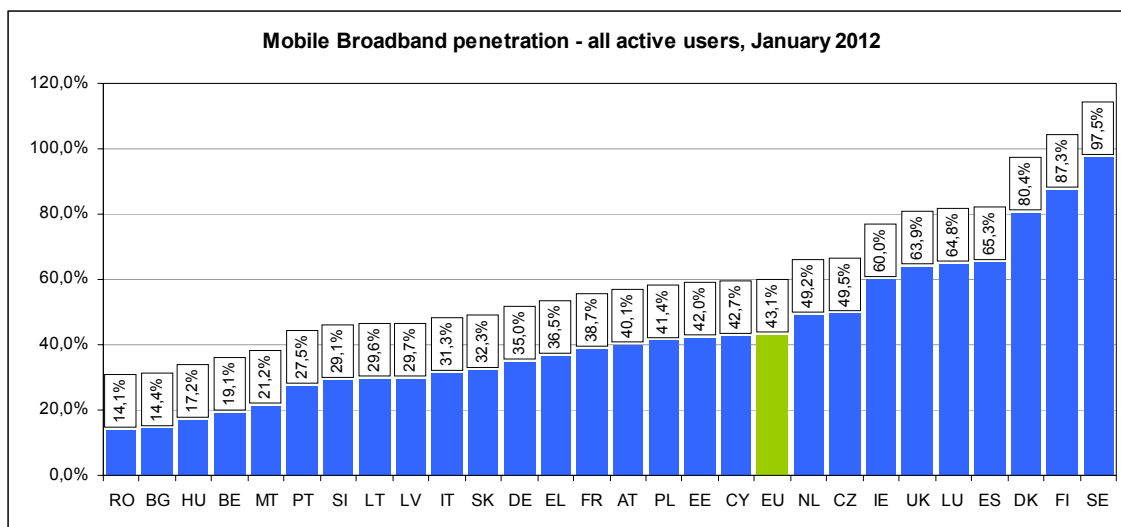
In comparison to January 2011, broadband penetration showed a further increase (to 22.1% as of January 2012), but still remained below the EU average (27.8%).



source : Communications Committee

The majority of 2.208.092 active retail broadband lines were non DSL (62%), while the market share of Cable (45%) reaching close to that of DSL (38%). The majority (49.0%) of broadband lines allowed a speed beyond 10 Mbps, the share of connections with speed beyond 10 Mbps is in decline but still at 39,1%, whereas connections under 2 Mbps were considerably lower (11.9%). As of January 2012, the proportion of NGA in total broadband (reaching 22%) has been more than double of the EU average (10%), partly due to intensive competition by cable offers. The use of broadband lines above 30 Mbps is above EU average, but Hungary needs to take further actions to adhere to the DEA target of half of households subscribing to connections above 100 Mbps.

By July 2011, the long term tendency of the incumbents' loss of market share in total broadband lines reversed, and showed a slight increase for the first time in a decade (from 40.2% in January 2010 to 41.0%), whereas the market share of the incumbent in DSL lines continued to increase 80.4% to 82.9%. While cable operators are showing signs of growth following consolidation and increasing market shares, service based competition, mainly bitstream operators are not often capable to climb up the ladder of investment.



Source : Communications Committee

As of January 2012, there were 533.124 mobile broadband dedicated terminal equipments and 1.714.784 mobile active users with access to dedicated data services via modems/cards and other active 3G users using mobile terminals, reaching 5.3% and 17.2% penetration respectively, remaining well below the EU average of 7.9% and 49.3%.

Following national consultations in December 2010, on 1 March 2011, NMHH notified to the Commission its proposals for the third round review of the market for wholesale physical network infrastructure access and the market for wholesale broadband access in. Following comments from the Commission, the final measures were adopted in May 2011. Concerning conditionality of duct access, the Commission requested NMHH to re-consider the extent of the proposed access obligations and to require the SMP operator to offer duct access alongside unbundled access to the fibre loop. Hungary did not follow the Commission's comment in this regard, with the reasoning that the proposed action was not deemed to be in line with the scope of the decision. Concerning access to backhaul services, the Commission expressed doubts about the appropriateness and effectiveness of the proposed backhaul access obligation. In this respect NMHH amended its final decision. Concerning the Lead time of wholesale NGA offer before retail services, the Commission services deemed the time period of 30 days proposed insufficient to ensure effective protection from non-discrimination. In response, the final measures foresee a 6 month notice period for SMP operators.

## 4.2 National plans, private and public investments

Following the discussion paper on the draft Digital Hungary Programme, in December 2010, the Ministry for National Development published a 5 year Digital Renewal Action Plan (2010-2014), followed by a detailed broadband development concept presented in March which was aligned to the Digital Agenda objectives. Following the reorganisation in autumn 2011, in November 2011, the Ministry published a draft call for projects to finance broadband backhaul network developments. However no broadband financing were made available in the course of 2011.

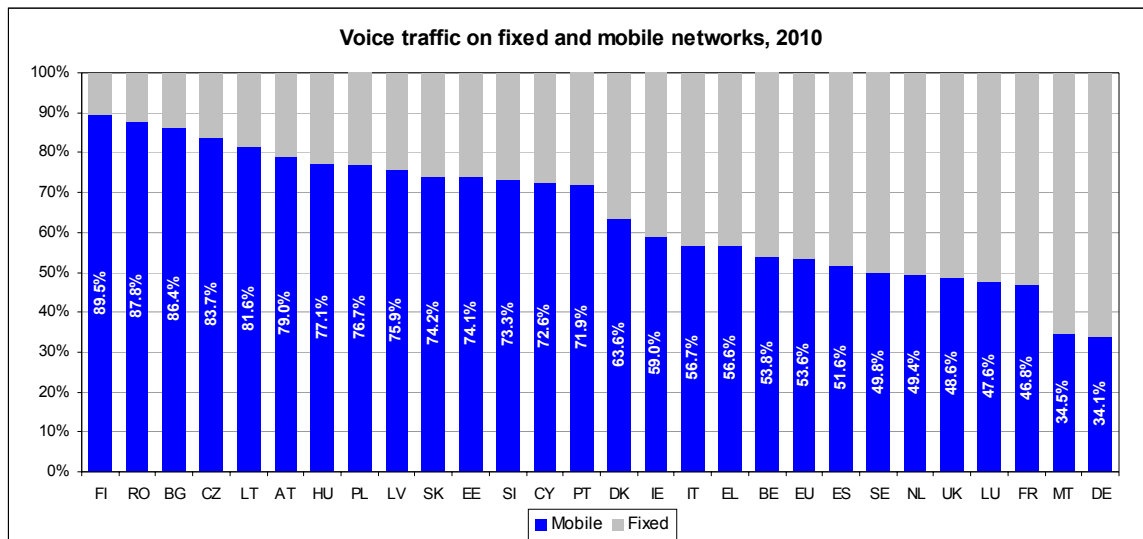
## 15. VOICE AND OTHER eCOMMUNICATIONS SERVICES

For the past years, the Hungarian mobile market continues to show a rather stable market



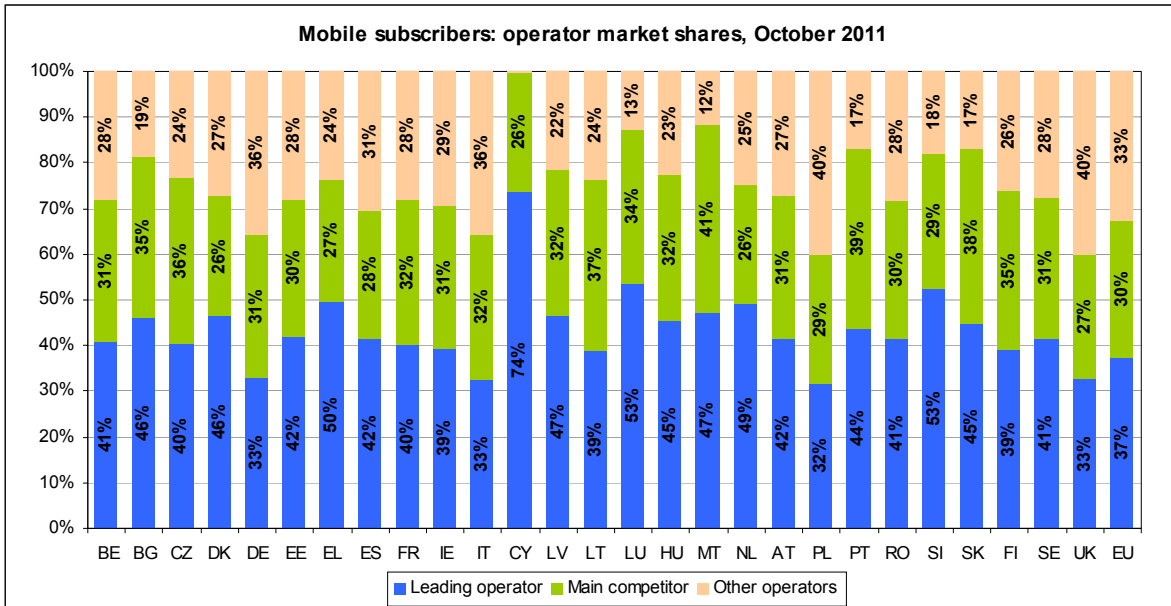
structure (the incumbent Magyar Telekom's subsidiary with 45.3% market share, and its competitors, Telenor and Vodafone with 32.0 and 22.7% respectively), whereas 2012 will see the entry into market of a fourth mobile operator. The Hungarian fixed telephone market has been characterised by the presence of local telephony operators that continue to hold a strong market position in their respective territories (88.4% market share for all types of fixed calls). The increasing pressure from platform based competition (primarily cable operators) can be illustrated by a considerable increase in market share of VOIP operators in fixed calls (from 13.4% to 18.0% in December 2010). The slight decrease of cable television continued in 2011, whose penetration declined from 55.6% to 54.7% as of July 2011, while satellite and in particular IPTV recoded growth rates of 17.2% and 82.3% respectively. Although penetration of IPTV is relatively low (4.8%), it might serve to create incentives for fibre deployment to match competitive offers of platform based competition.

## 5.1 Mobile services



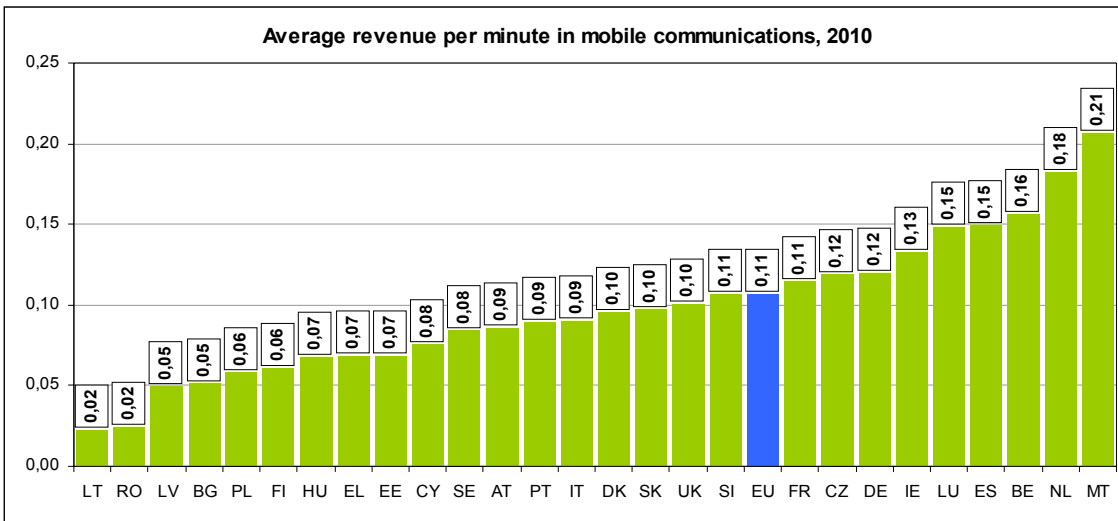
Source : Commission Services

For the past years, the Hungarian mobile market has been characterised by a rather stable market structure, the incumbent Magyar Telekom's subsidiary is achieving nearly half of the market (45.3% in October 2011), whereas the third operator (Vodafone) was gaining some ground (22.7%) on the others. In 2011, NMHH launched an auction for a new entrant, and there are signs of growth in MVNOs.



Source : Commission Services

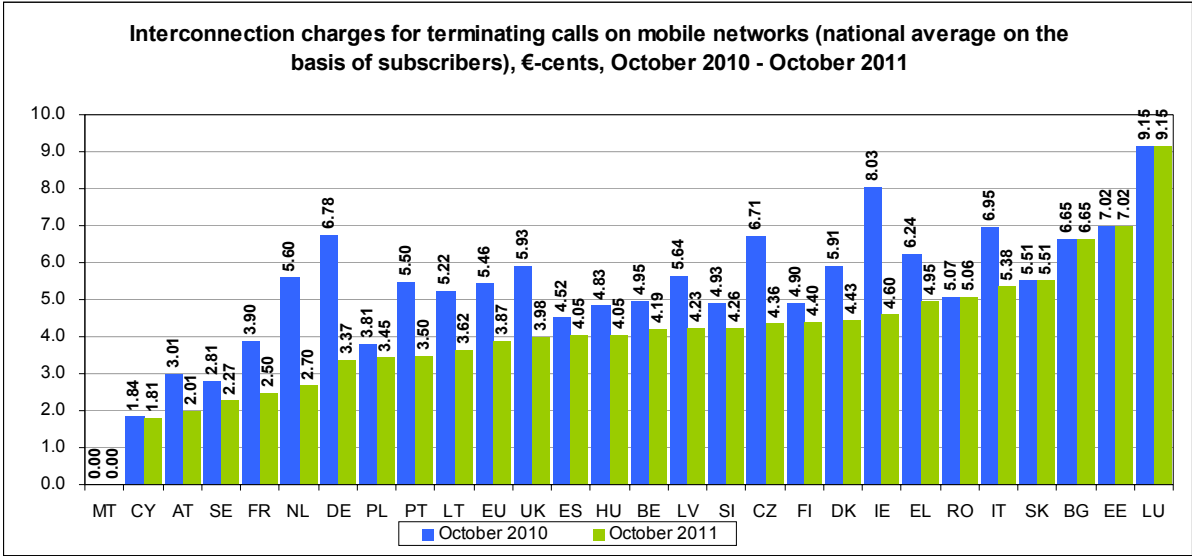
Mobile penetration rose to 110% with 11.002.974 subscribers as of October 2011, continued to show signs of growth, nevertheless it is fairly lower than the EU average of 127%. The number of pre-paid subscriptions decreased in 2010 (54% in October 2011), but remained above the EU average (of 50.0%). The average revenue per user decreased over the year from €175 in 2009 to €135 in 2010, and the 23% decrease is more than double of the 8% registered at EU level, while average revenue per minute (€0.07) is below the EU average of €0.11.



Source : Commission Services

In 2010, competitor MNOs increased their efforts to enter into agreements with other providers partly to match the bundle offers brought out by the incumbent. In 2011, a first full MVNO was announced, branded by one of the major retail commerce networks. By the beginning of 2012 MNOs launched commercial LTE services in Hungary. 3G services are widely available, but in order to benefit from the transposition of the GSM Directive, MNOs are in need of additional frequencies in the 900 band.

Following an unsuccessful frequency tender for a fourth mobile operator in 2009, a new auction was announced in August 2011 to allow the entry into market of a fourth operator and to allow access to further spectrum for incumbent operators inter alia to offer voice and mobile broadband services in the 900 MHz band. As a result of the Auction, a state owned consortium was awarded a complete set (2 x 2 x 15 MHz) of frequencies in the 1800 and 2100 MHz band and 5 MHz in the 900 MHz band with extensive access to roaming services applied to all incumbent operators.



Source : Commission Services

Following national consultation in February/March, on 20 May 2011, NMHH notified to the Commission the fourth round review of the wholesale market for voice call termination on individual mobile networks in Hungary. In its comments, the Commission urged NMHH to reconsider the proposed glide-path and align it with the deadline provided for in the Termination Rates Recommendation (i.e. 31 December 2012). The final decision was published on 23 August 2011. The decision took this comment into consideration.

**5.2 Fixed**

The Hungarian fixed telephony market has been characterised by the presence of local telephony operators that, following a course of a consolidation process, merged into three local incumbents (Magyar Telekom, Invitel and UPC). The largest regional operator is the original incumbent, whereas the second regional provider (by number of subscriptions) is owned by financial investors and the third by the leading cable company). These three regional fixed operators continue to hold a strong market position in their respective territories. On the basis of total call traffic, in December 2010 the three operators had 88.4% market share for all types of fixed calls (90.1% in 2009). However, the market share of fixed operators for international calls on the basis of total volume decreased considerably during 2010, from 85.6% to 71.7%. The increasing pressure from platform based competition (primarily cable operators) can be illustrated by a considerable increase in market share of VOIP operators in fixed calls (from 13% to 18.0% in December 2010), which is still below the EU average of 23.4%.

In the light of a national consultation held between February-March 2011, on 20 May 2011, NMHH notified to the Commission the third review of markets for call origination on the

public telephone network provided at a fixed location and for call termination on individual public telephone networks provided at a fixed location. For call origination NMHH identified three separate relevant geographic markets which correspond to the respective operating areas of the actual local incumbents designated as SMP. As to the geographic scope of the call termination markets, NMHH identified 37 separate relevant markets which correspond to the network of each fixed operator, each designated as SMP. In its comments, the Commission invited NMHH to consider fully aligning its cost accounting methodology with the recommended BU LRIC model by the end of 2012, to take full account of the Termination Rates Recommendation and to achieve symmetrical, cost efficient FTRs as soon as possible. The final measures were adopted on 23 August 2011. Following national consultation in September 2011, on 10 November 2011, NMHH notified to the Commission the wholesale market terminating segments of leased lines. In its market analysis, NMHH proposed to split the relevant overall market into two separate product markets, based on bandwidths: analogue leased lines and low bandwidth (up to 2Mbit/s) and digital leased lines above 2Mbit/s, and to designate Magyar Telecom (MT) as SMP in the relevant market. The final measures were adopted on 10 January 2012.

### **5.3 Broadcasting**

The slight decrease of cable television continued in 2011, whose penetration declined from 55.6% to 54.7% as of July 2011, while satellite and in particular IPTV recoded growth rates of 17.2% and 82.3% respectively. Although penetration of IPTV is relatively low (4.8%), it might serve to create incentives for fibre deployment to match competitive offers of platform based competition. Throughout 2011, digital terrestrial commercial and free to air DVB-T packages have been offered by the broadcasting transmission provider. The roll out and full benefits to citizens may be however hindered by the extended simulcast due to the delay of the analogue switch-off.

## **16. SPECTRUM MANAGEMENT**

In the course of 2011, the administration in Hungary developed a new scheme for the frequency fee structure. The timeframe for the digital switchover has been postponed to 31 December 2012. Concerning implementation, the Commission services are following up a rising number of cases encompassing the auction for the new entrant mobile network operator and recent radio spectrum assignments for a number of regional radio stations.

In the course of 2011, the administration in Hungary developed a new scheme for the frequency fee structure. The issues of the current scheme were already highlighted in earlier reports, as they were considered by operators as a major obstacle to network deployment. The NRA adopted a new decree on the frequency reservation and usage fee that entered into force on 1 April 2011.

The new Media Act amended the Act on the Rules of Broadcasting and Digital Switchover in December 2010 to introduce the possibility of delaying the analogue switch off to 31 December 2014 if certain objectives (that at least 94% of the population has access to the public service programmes via a free-to-air broadcasting service, and that reception devices required are available in retail sales) are not met. A latter amendment (in force from 1 January 2012) removed references to 2012, leaving 31 December 2014 as the single final deadline. However, the Commission has not yet been notified on how Hungary intends to meet the

requirements set out in the RSPP. (Article 6.4 of the Radio Spectrum Policy Programme (RSPP) requires 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.)

In August 2011, NMHH published an auction notice for 900 MHz frequency bands. The auction aimed to provide a possibility for entry to the mobile market for a new entrant (with options for other bands – 1800 and 2100 MHz – in addition to the 5 MHz in the 900 MHz band needed for its operation), and to extend the existing bands for existing MNOs, in particular, to ensure the establishment of contiguous blocks after a refarming procedure. Existing MNOs could provide both voice and 3G services in the 900 MHz range. In the light of the public consultation, the notice was amended and the submission deadline was extended to 8 December 2011. Three new applicants responded to the call, in addition to the three existing MNOs. Following the exclusion of two new entrants, a state owned consortium was awarded a complete set of frequencies in the 900 / 1800 / 2100 MHz bands, and the existing operators bid for 1 MHz blocks of frequencies.

Following the decision of the Authority establishing the result of the Auction, all existing operators submitted an appeal to the Authority, and after the confirmation of the decision regarding the result by the second administrative instance (the NMHH President), the decision was challenged before the administrative court. In the light of the requirements of the Authorisation Directive, the Commission is looking into the matter.

In the course of 2010, Hungary failed to communicate the measures transposing GSM Directive 2009/114/EC. Consequently, the Commission launched infringement proceedings for non-communication in September 2010. In the course of 2011, Hungary has taken a number of measures to transpose the GSM Directive, in particular to amend relevant decrees on spectrum and to amend the existing concession contracts. The NMHH Decree 1/2011 on frequency reservation and usage fees was published on 31 March 2011 and an amendment to the concession contracts of the three Mobile Network Operators was signed on 31 March 2011 and took effect on 1 April 2011. The remaining Decrees were finally amended and complete transposition was notified in July 2011. Therefore the Commission closed the infringement procedure.

## **17. CONSUMER INTEREST**

### **7.1 116 – Harmonised numbers for services of social value**

In addition to the two operational 116 helplines, the 116123 emotional support helpline has been assigned on 12 May 2011. Despite strong support by citizens, awareness levels for 116 numbers remained at low level.
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In addition to the two operational helplines (116 000 missing children hotline and 116 111 child helpline), the 116123 emotional support helpline has been assigned on 12 May 2011, and is operated by the Association of the Hungarian Telephonic Emergency Services since 1 July 2011.

91-97% of respondents to the Eurobarometer survey agreed that the 116 numbers are very or fairly useful. However, when respondents were asked whether they were aware that the organisation "Kék Vonal" operated 116 000 and 116 111 helplines in Hungary, just 12% of

respondents said they were familiar with either of these services, while 88% said they were unfamiliar with them.

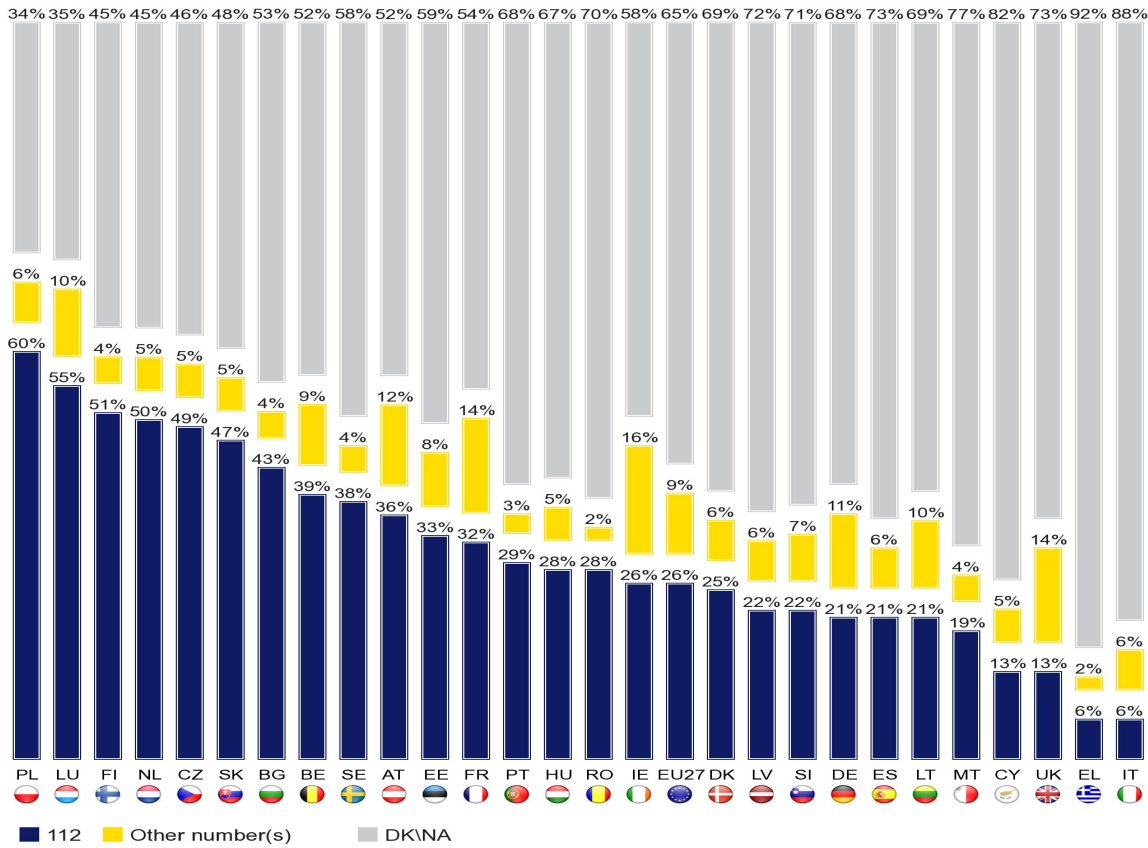
### 7.2 112 – European emergency number

The single European emergency number is operated alongside three historical emergency numbers for police, medical emergency and fire brigade. The number of respondents who would call 112 in Hungary decreased from 36% to 28% in 2012.

**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

The Eurobarometer survey of 2012 indicated a decrease on the number of respondents who would call 112 in Hungary from 36% in 2011 to 28% in 2012. More than one in four Hungarians (28%) had received information about 112 in the last 12 months but a relatively high percentage of Hungarians (30%, second highest among Member States) are of the view that citizens are adequately informed in their country.

### **7.3 Net neutrality and Quality of service**

The Commission services are not aware of cases where telecom operators would block VOIP traffic.

### **7.4 Consumer complaints, tariff transparency**

Operators were fined for unfair commercial practices and consumer cases. The online price comparison tool operated by the NRA covers a wide range of services.

In Hungary, three authorities are in charge of complaints relating to electronic communication services: the NRA, the Competition Authority and the Consumer Protection Authority. Among consumer protection measures, in June 2011, the NRA decided that the MNOs should cease to provide to their customers by mobile net packages which were activated by default and without proper information to subscribers. These packages entailed disproportionately high usage charges in comparison to other mobile net offers which must be specifically activated by subscribers. In order to facilitate the fulfilment of its decision and to help resolve subscribers' complaints, the NRA has concluded an agreement with the incumbent operator. In 2011, the Competition Authority imposed fines on mobile operators for unfair commercial practices.

For the past few years, the NRA has been maintaining an online database ([tantusz.nmhh.hu](http://tantusz.nmhh.hu)) on mobile, fixed-line, internet prices, cable television, multi-play (2-play/3-play) and roaming related applications in collaboration with operators.

### **7.5 Number portability**

The Commission services are looking into the rules governing number portability, with particular regard to the requirements on activation of numbers ported within one working day.

The new rules transposing the revised framework vests with the NMHH the adoption of specific requirements on number portability. NMHH adopted the implementing rules in January 2012. The transposing NMHH decree sets out a 23 hour timeframe for the technical porting of the number. In this respect however, Article 30 (4) sets out that subscribers who have concluded an agreement to port a number to a new undertaking shall have that number activated within one working day. On the basis of a first assessment, it appears that the revised rules are not fully in line with the requirements to allow the porting in one day from the conclusion of the agreement. The Commission services are looking into this matter.

Between January and September 2011, 76.525 fixed and 38.357 mobile numbers were ported in Hungary. The number of mobile numbers ported still remains very low (under 1%) in comparison to the number of subscribers in Hungary.

### **7.6 Universal service**

In the course of 2011 authorities did not resolve the ex lege situation as consequence of unilaterally mandating the services in 2008 and its annulment by the Constitutional Court in 2010.

The Commission services are looking into the detailed rules on access to subscriber information for directory inquiry service.

In 2004 all incumbent local telephone operators (currently three) were designated as providing universal services in their respective geographic areas. However, as the negotiations failed to achieve an agreement, service obligations were renewed annually by Ministerial decree of 2008. In addition, the Universal Electronic Communications Support Fund has not de facto functioned, as providers have not received compensation from the fund over the past few years. In August 2010, the Constitutional Court annulled, as of 31 December 2010, the Government Decree of 2008 that extended the expiring universal service agreements. The resulting ex lege situation needs to be resolved by the signing of the renegotiated universal service agreements, which was not done in the course of 2011.

The rules of the Act on Electronic Communication on access to subscriber information for directory inquiry service, in particular Article 146 transposing Article 25 USD entails a preferential treatment of the universals service provider, whereas Article 25 (2) set out a requirement to make available information on terms which are *inter alia* non-discriminatory. The Commission services are looking into this matter, as the relevant provision may hinder the entry into market of competitors, and secures the position of the incumbent on the market of directory inquiry services.

## 7.7 ePrivacy

No major issues on ePrivacy were reported

The revised rules of the ePrivacy Directive has been transposed into legislation, and the relevant rules of the Act on Electronic Communication have been notified to be amended accordingly.

As reported in the 2010 report, Act CLVII of 2010 on enhancing the protection public registries belonging to public digital assets excludes private entities from the processing of certain data of public interest, limiting the processing to public entities. The transition period for execution shall expire on 31 December 2011.





**EUROPEAN COMMISSION**  
Information Society and Media Directorate-General  
Electronic Communications Policy  
**Implementation of Regulatory Framework**

18 June 2012

# **IRELAND**

## **2011**

# **Telecommunication Market and Regulatory Developments**



## IRELAND

### **18. MAIN MARKET & REGULATORY DEVELOPMENTS :** **BEST PRACTICES AND CHALLENGES**

#### **Development of the sector**

The economic environment in Ireland remains challenging and has impacted all sectors of the Irish economy, including the communications sector. Despite ongoing decline of the total revenues of the electronic communications sector, the overall investments have experienced a modest growth of 0.3% which can be considered as a positive trend. (synthesis 3)

The growth in fixed broadband penetration is slowing down leaving the penetration (24.3%) below the EU average. As regards to competition the market share of the incumbent (Eircom) continued to decline modestly and stood at 44.6% compared to the EU average of 43%. DSL remains the most common broadband technology with incumbent (Eircom) being the leading provider. The share of non-DSL broadband lines has increased with most of the growth coming from cable broadband. Ireland has performed successfully on mobile broadband where penetration stood at 60% for all active users as of January 2012 compared to the EU average of 43.1%. Take-up of LLU remains below the EU average with prices among the highest in the EU. (first part of synthesis 4)

Mobile voice communication accounted for 59% of all voice traffic in Ireland in the reporting period. Four mobile network operators (Vodafone, o2, Meteor, Three) provide commercial third generation (3G) mobile services. The leading mobile network operator (Vodafone) has a market share of 39% (by subscriptions), while its main competitor (o2) has 31%. Fixed line voice markets have continued to decline over the year reflecting both the effects of the poor economic climate and structural changes in the markets. A number of relevant markets need to be reviewed. Termination rates are decreasing and ComReg is currently assessing the appropriate approach to regulation of termination rates in view of the EC's Recommendation on termination rates. (synthesis 5)

Number portability continues to be used extensively. The mobile number portability process is completed within one day and normally within 2 hours. (synthesis 7.5)

## **Progress in Broadband deployment and take-up**

In order to accelerate the roll out of next generation broadband the Minister for Communications, Energy and Natural Resources established the Next Generation Broadband Taskforce (NGBT) in June 2011. Ireland has completed the National Broadband Scheme in 2010 and has launched the Rural Broadband Scheme in 2011. Delivering such schemes on a national basis means that Ireland will meet the EU Commissions Digital Agenda for Europe target of having a basic broadband service available to all areas by 2013. (second part of synthesis 4)

## **Independence and effectiveness of the NRA**

In connection with the process of reorganisation and restructuring of public services in Ireland the Commission for Communications Regulation (ComReg) might be facing additional pressure on staff resources. (synthesis 2)

## **Implementation of the framework**

The revised regulatory framework for electronic communications was transposed into national legislation by means of the introduction of five new Statutory Instruments (Regulations) which came into force on 1 July 2011 and some amendments to primary legislation<sup>12</sup>. At the end of 2011, there was no pending infringement in Ireland.

## **Spectrum management**

The multi-band spectrum auction for the 800 MHz, 900 MHz and 1800 MHz frequency bands is expected to take place in the middle of 2012. ComReg's strategy for managing the radio spectrum for 2011-2013 was published in November 2011. ComReg has recently (2/2012) decided to extend the termination date of three MMDS licences in force in the 2.6 GHz band to April 2014. (synthesis 6)

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<sup>12</sup> Communications Regulation Act 2002 (as amended) and Broadcasting Act 2009

## **Citizens and consumer protection**

Availability of 116 harmonised numbers has been improved as the number 116 000 for missing children was recently assigned after lengthy process. (7.1) Citizens' awareness about the availability and use of 112 remains at the low level.(7.2) In the area of network neutrality, ComReg's focus has been mainly on transparency issues.(7.3) ComReg continues to provide a quality handling service to consumers. The complaints handled by ComReg in 2011 were mostly related to contractual and billing issues.(7.4) Public consultation on the scope and next designation of universal service provider was recently launched. (7.6) No major issues on ePrivacy were reported. (7.7)

### **19. NATIONAL REGULATORY AUTHORITY (NRA)**

In connection with the process of reorganisation and restructuring of public services in Ireland the Commission for Communications Regulation (ComReg) might be facing additional pressure on staff resources.

The Commission for Communications Regulation (ComReg) is responsible for the regulation of electronic communications services and networks, spectrum and numbering management, regulation of the emergency call answering service (ECAS) and, since 2010, the regulation of premium rate services (PRS).

The current number of ComReg employees is 122. ComReg is an active participant in the Public Service Agreement Process<sup>13</sup> and is committed to sharing resources with other agencies where possible and beneficial. There is also a moratorium on staff recruitment in place which may put additional pressure on staff resources and may have implications in particular for ComReg's ability to comply with its obligation to perform timely market reviews.

Although ComReg published an annual action plan, most of the telecommunications operators expressed a desire for greater predictability and certainty regarding ComReg's work programme and for better time planning of data gathering exercises.

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<sup>13</sup> Public Service Agreement 2010-2014 is plan of the government to restructure and reorganise Public Services in Ireland (including a reduction in numbers of public servants, a moratorium on recruitment, redeployment in the integrated public service, etc.)

Three of the mobile network operators (MNOs) expressed concerns relating to the current appeal process. Operators highlighted that taking a legal challenge against ComReg to the High Court can mean significant costs for operators and can be subject to delays. In that context, the MNOs would prefer if the Electronic Communication Appeal Panel (ECAP) that was in operation until 2007 were to be re-established.

The independence of the NRA is provided for by the legislative act<sup>14</sup> establishing the NRA and has been acknowledged by Government, in its “Government Statement on Economic Regulation<sup>15</sup>” issued in 2009. Nevertheless, under section 13 of the Communications Regulation Act<sup>16</sup>, the Minister may, in the interest of the proper and effective regulation of the electronic communications markets, “give such policy direction to ComReg as he or she considers appropriate” subject to a number of requirements<sup>17</sup>. ComReg shall comply with any such direction. The Department of Communications, Energy and Natural Resources (DCENR) has confirmed that policy directions respect the independence of the NRA and must be concerned with matters of policy rather than specific regulatory matters. The last set of policy directions were issued in 2004 and were preceded by a public consultation, as required by the legislation. The European Commission will monitor developments in this area.

## **20. REVENUES AND INVESTMENTS**

The economic environment in Ireland remains challenging and has impacted all sectors of the Irish economy, including the communications sector.

Despite ongoing decline of the total revenues of the electronic communications sector, the overall investments have experienced a modest growth of 0.3% which can be considered as a positive trend.

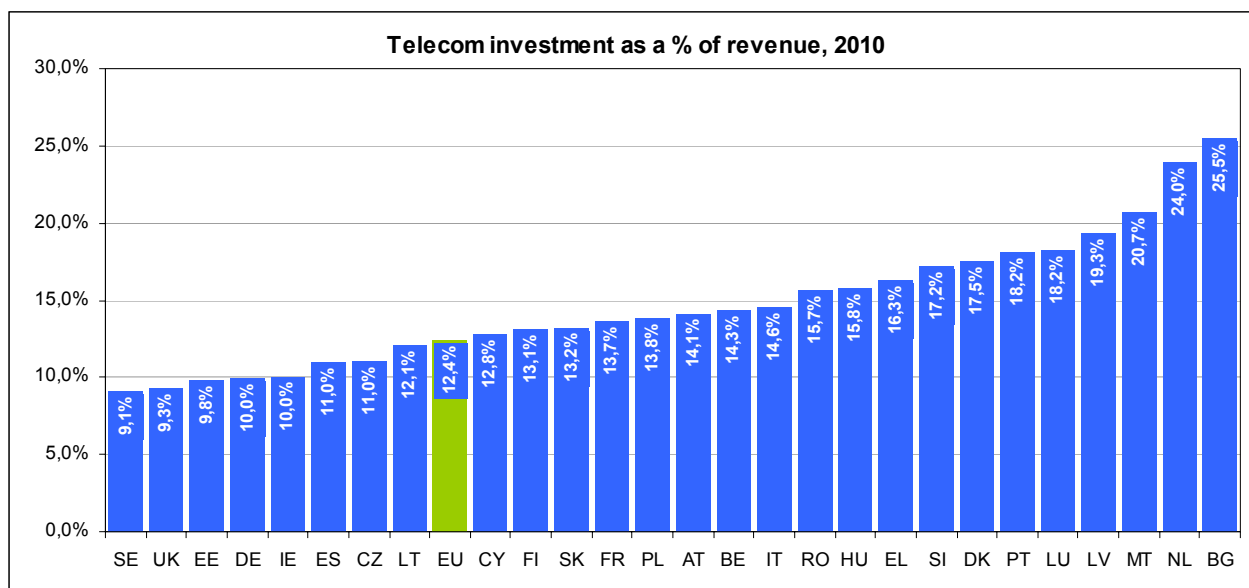
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<sup>14</sup> Section 11 of the Communications Regulation Act 2002

<sup>15</sup> [http://www.taoiseach.gov.ie/eng/Publications/Publications\\_2011/Government\\_Statement\\_on\\_Economic\\_Regulation.pdf](http://www.taoiseach.gov.ie/eng/Publications/Publications_2011/Government_Statement_on_Economic_Regulation.pdf)

<sup>16</sup> Communications Regulation Act 2002 (as amended)

<sup>17</sup> Requirements including (a) a requirement to publish a draft of the proposed direction, (b) an obligation to consider any responses to the public consultation and (c) a provision in the legislation prohibiting any direction addressed to any person or undertaking.



Source: Commission Services

With regard to the economic situation, GDP declined between 2007-2010 by 10% in real terms (18% in nominal terms). After this contraction it is estimated that Ireland's economy returned to modest growth of 0.9% in 2011<sup>18</sup>. GDP is mainly driven by exports while domestic demand continued to decrease due to fiscal consolidation and increasing unemployment. The ongoing EU-IMF financial assistance programme is supporting consolidation of the domestic economy..

The total revenues of the Irish electronic communications sector have been in decline over the last few years. The decrease to €4.43 billion as of 31 December 2010 represents a drop of 4.6% compared to the previous year. The fixed segment contributed roughly to the same extent as the mobile part of the market (€2.215 billion mobile, €2.2027 billion fixed).

Investments in the Irish electronic communications sector experienced a modest increase to €443 million as of 31 December 2010, which represents a growth of 0.3% compared to the previous year. This slight increase of overall investment was mainly driven by mobile operators and by the investments of the alternative operators. In contrast, there was a decline in the level of investment made by the incumbent in the fixed segment, which might be a consequence of the current financial situation of the incumbent. The incumbent announced early in 2012 the appointment of an interim examiner to address its long term debt issues. In June 2012 the incumbent successfully concluded the

<sup>18</sup> European Economic Forecast Autumn 2011

examinership and introduced a restructuring scheme, including debt reduction and new capital structure and shareholders<sup>19</sup>.

## **21. BROADBAND**

The growth in fixed broadband penetration is slowing down leaving the penetration (24.3%) below the EU average. As regards to competition the market share of the incumbent (Eircom) continued to decline modestly and stood at 44.6% compared to the EU average of 43%. DSL remains the most common broadband technology with incumbent (Eircom) being the leading provider. The share of non-DSL broadband lines has increased with most of the growth coming from cable broadband. Ireland has performed successfully on mobile broadband where penetration stood at 60% for all active users as of January 2012 compared to the EU average of 43.1%. Take-up of LLU remains below the EU average with prices among the highest in the EU.

In order to accelerate the roll out of next generation broadband the Minister for Communications, Energy and Natural Resources established the Next Generation Broadband Taskforce (NGBT) in June 2011. Ireland has completed the National Broadband Scheme in 2010 and has launched the Rural Broadband Scheme in 2011. Delivering such schemes on a national basis means that Ireland will meet the EU Commissions Digital Agenda for Europe target of having a basic broadband service available to all areas by 2013.

### **4.1 Market Situation & Regulatory developments**

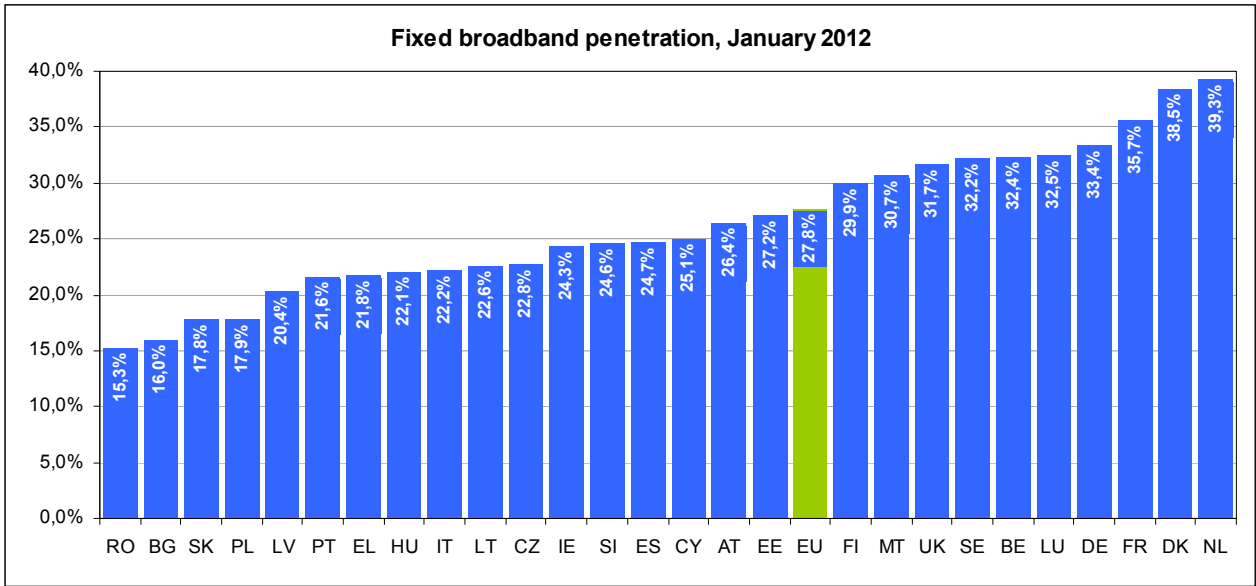
Fixed broadband penetration continued to grow, albeit with slowing pace, and reached 24.3% as of January 2012. This represents an increase in the penetration rate of approximately 1% in the reporting period. The market share of the incumbent continued to decline modestly and stood at 44.6% compared to the EU average of 43%. DSL remained the most common broadband technology with a market share of 67% with the incumbent as the leading DSL provider (65.4%). The share of non-DSL broadband lines has increased with most of the growth coming from cable broadband. Cable was the second most common fixed broadband technology with a market share of 24%, which is above the EU average of 17%.

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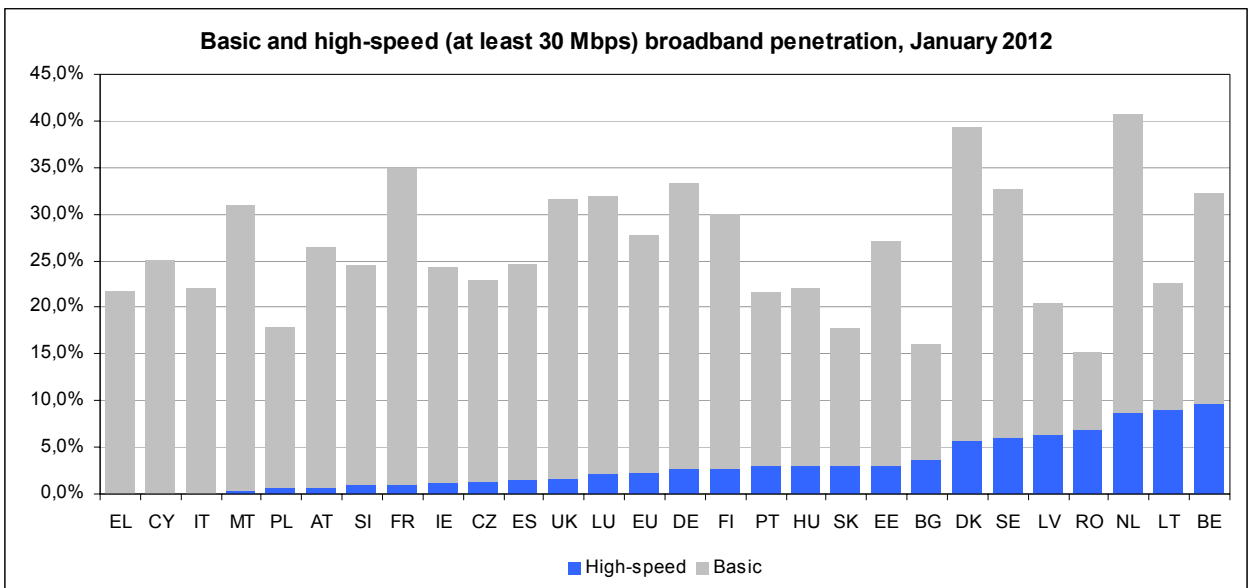
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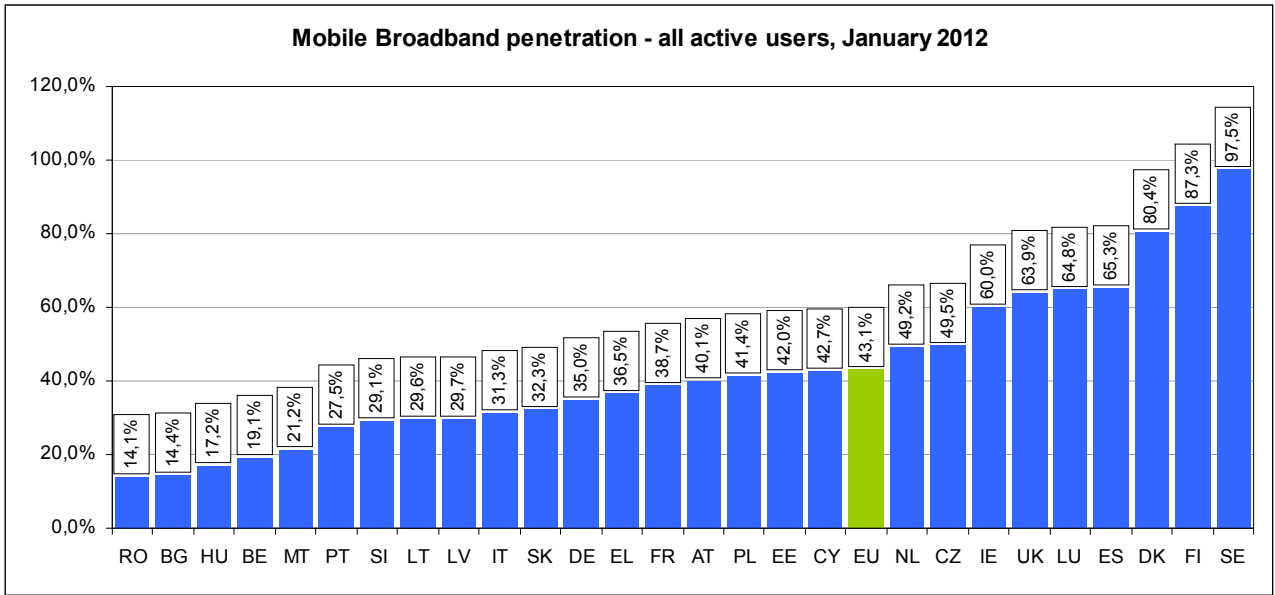


Source: Communications Committee



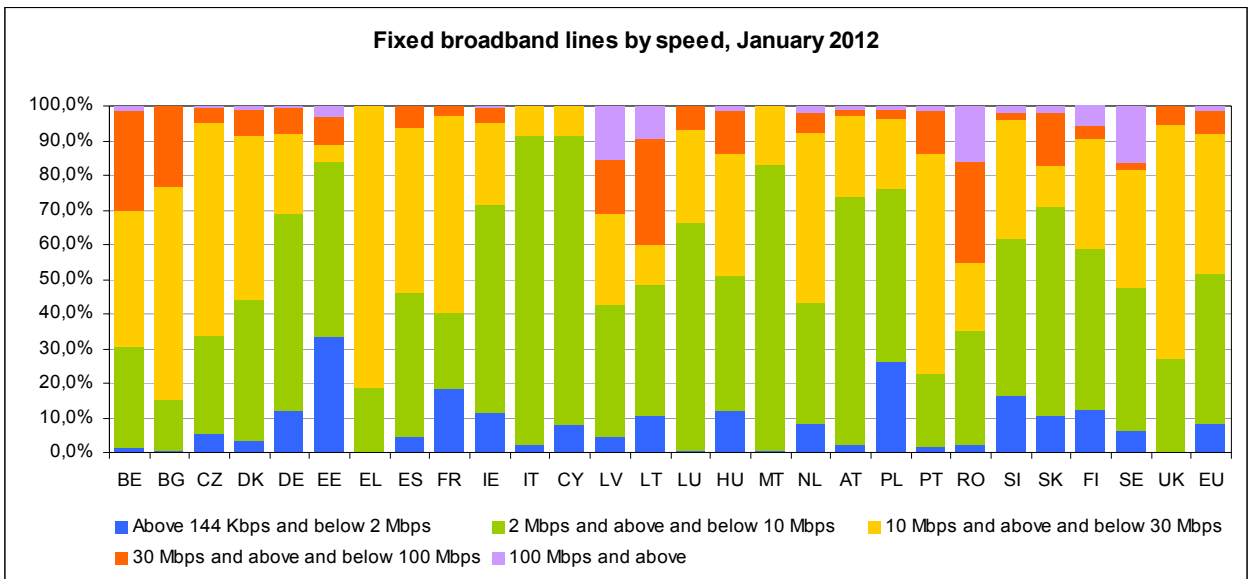
Source: Communications Committee

Ireland has performed successfully on mobile broadband where penetration stood at 60% for all active users as of January 2012 compared to the EU average of 43.1%. There has been a slowdown in the growth of mobile broadband use on large screens (dedicated data service cards, modems, keys) in general; nevertheless penetration of mobile broadband use on large screen remains high at 13.2%, compared to the EU average of 8.1%.



Source: Communications Committee

The most common speed delivered over fixed broadband lines is between 2Mbps and 10Mbps and accounts for 60% of all lines. While high speed broadband is increasingly available, the take-up of very high speed broadband lines is still limited. 4.3% of fixed broadband connections were at least 30 Mbps and only 0.4% were at least 100 Mbps, compared to the EU average of 7.2% and 1.3% respectively.



Source: Communications Committee

There is an increase in the take up of bundled services. Bundled offers (double play, triple play) are the favourite choice particularly in the residential market. The penetration rate of bundled offers reached 17.8% as of July 2011.

Following NGA related developments have been recently observed. The notable development relates to the launch of consumer broadband products with speeds of up to 100Mbps in certain areas of Dublin, it is expected to be available to approximately 610,000 homes by the end of 2012 using a DOCSIS 3.0 network (provided by the main cable operator). A further significant development was the announcement by the incumbent of an NGA pilot in Wexford, Sandyford and other exchange locations (involving 16,000 homes and businesses). The pilot allows the delivery of speeds of up to 150Mbps through fibre to the home (FTTH) and 50Mbps through fibre to the cabinet (FTTC). In July 2011 the incumbent announced its intention to upgrade the existing copper access network with a NGA rollout. Phase 1 aims to see upgraded infrastructure delivered to 100,000 premises by summer 2012. NGA roll-out will concentrate on the top 10 exchanges and focus on urban areas. The network will be based mainly on FTTC architecture, with 5-10% FTTH, and will offer a virtual unbundling product.

The leading mobile network operator completed the migration of its broadband customer base from the incumbent's bitstream service to one provided by an alternative operator using shared LLU lines.

In general, the number of unbundled lines (full LLU) remains below the EU average. For full LLU, only 5.4% of new entrants' DSL lines are fully unbundled compared to the EU average of 69.1%. For shared access the corresponding figure is 19%. Bitstream is by far the most common form of access at 75.7% of lines compared to 13.5% at EU level, as of January 2012.

The total average monthly cost for full LLU is €13.22 and for shared access €1.58. The price for full LLU is among the highest in the EU. An increasing take-up of unbundled services has been observed in the reporting period. This increase was driven by a significant take-up of shared access, while full LLU continued its declining trend.

ComReg has implemented wholesale access regulation with a decision in 2010 relating to the market for wholesale physical network infrastructure access and a further decision in 2011 relating to the wholesale broadband access market. The incumbent was designated with significant market power on the two relevant markets. The wholesale broadband access market includes a fibre network, whilst in the physical infrastructure access market only fibre loops offered by the incumbent as an upgrading of its existing network are included. ComReg has maintained and introduced a number of obligations on copper, which have now also been extended to fibre networks (access, transparency, non-discrimination, pricing control, cost

accounting and accounting separation). The remedies on copper networks have been further specified in detail, while no specific NGA remedies were imposed. In this context ComReg issued an additional consultation document and draft decision on the details of the NGA remedies in April 2012.

ComReg has also recently notified the measures relating to previously imposed pricing and transparency remedies in the wholesale broadband access market. They contain further specifications to the price control obligation for the current generation of wholesale broadband access. The draft measures also include amendments to the existing transparency obligation.

ComReg has also issued a decision on Key Performance Indicators (KPIs) to support the existing transparency and non-discrimination obligations imposed on the incumbent in a number of relevant markets. The incumbent has already published its first set of KPIs in November 2011.

#### **4.2 National Plans, private & public investments**

The rollout of the National Broadband Scheme (NBS), completed in 2010, provides basic broadband access to premises in those parts of the country where operators had been unable to offer services on a commercial basis when the Scheme was launched in 2008. The broadband service provided to customers in the NBS areas is primarily a mobile broadband service complemented with a satellite broadband service in remote areas. The service itself provides a minimum download speed of 1.6Mbps and a minimum upload speed of 1.2Mbps. These speeds will be increased to a minimum download speed of 2.3Mbps and minimum upload speed of 1.4Mbps by October 2012.

The Rural Broadband Scheme (RBS) was launched in 2011 to complement the NBS. The RBS aims to provide a basic broadband service to the small number of individual premises which are not capable, for technical or geographical reasons, of receiving a broadband service from existing service providers. It is expected that this Scheme will be fully rolled out by the end of 2012.

Ireland is one of the first countries to deliver schemes such as the NBS and RBS on a national basis. The combination of these State interventions and significant private investment means that Ireland will meet the EU Commissions Digital Agenda for Europe target of having a basic broadband service available to all areas by 2013.

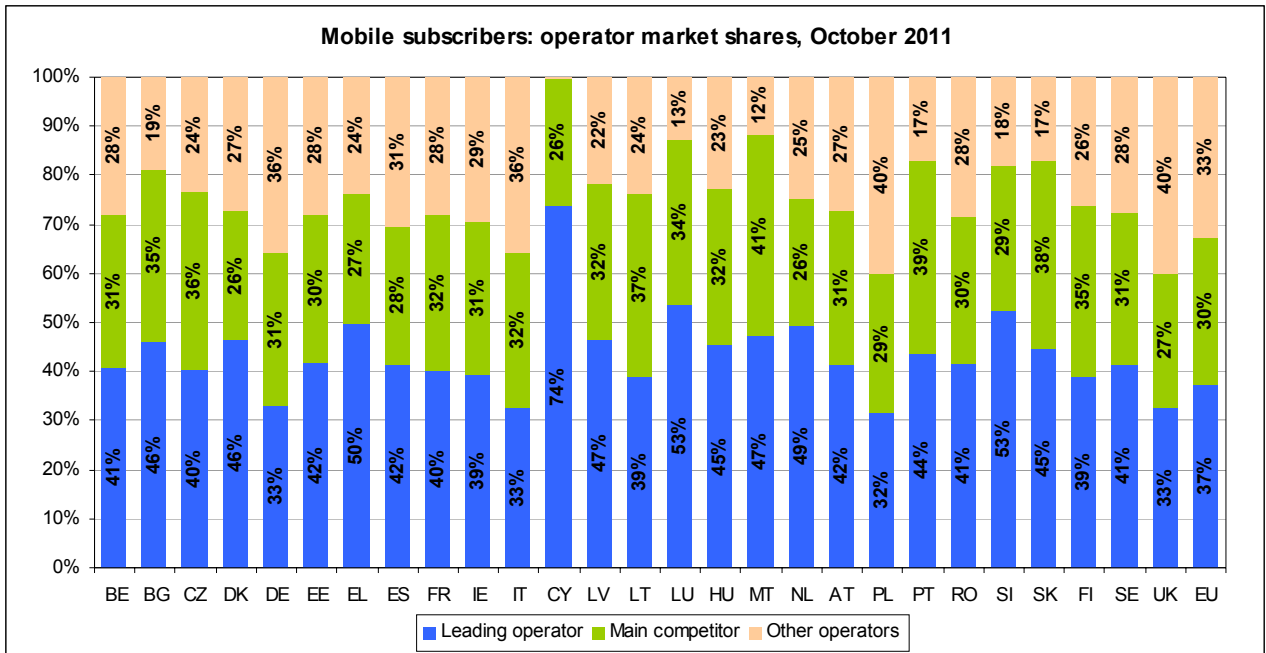
In order to accelerate the roll out of next generation broadband the Minister for Communications, Energy and Natural Resources established the Next Generation Broadband Taskforce (NGBT) in June 2011. The NGBT consists of the CEOs of the main telecommunications companies investing in the Irish market, a number of other service providers and is chaired by the Minister. The task of the NGBT is to formulate a set of recommendations to facilitate investment in next generation infrastructure. The work of the NGBT is mainly focused on a review of existing spectrum policy, the removal of barriers to infrastructure roll-out, demand stimulation, and the identification of targets deliverable on a commercial basis. It is expected that the NGBT will conclude its work during the second quarter of 2012.

## **22. VOICE AND OTHER ECOMMUNICATION SERVICES**

Mobile voice communication accounted for 59% of all voice traffic in Ireland in the reporting period. Four mobile network operators (Vodafone, o2, Meteor, Three) provide commercial third generation (3G) mobile services. The leading mobile network operator (Vodafone) has a market share of 39% (by subscriptions), while its main competitor (o2) has 31%. Fixed line voice markets have continued to decline over the year reflecting both the effects of the poor economic climate and structural changes in the markets. A number of relevant markets need to be reviewed. Termination rates are decreasing and ComReg is currently assessing the appropriate approach to regulation of termination rates in view of the EC's Recommendation on termination rates.

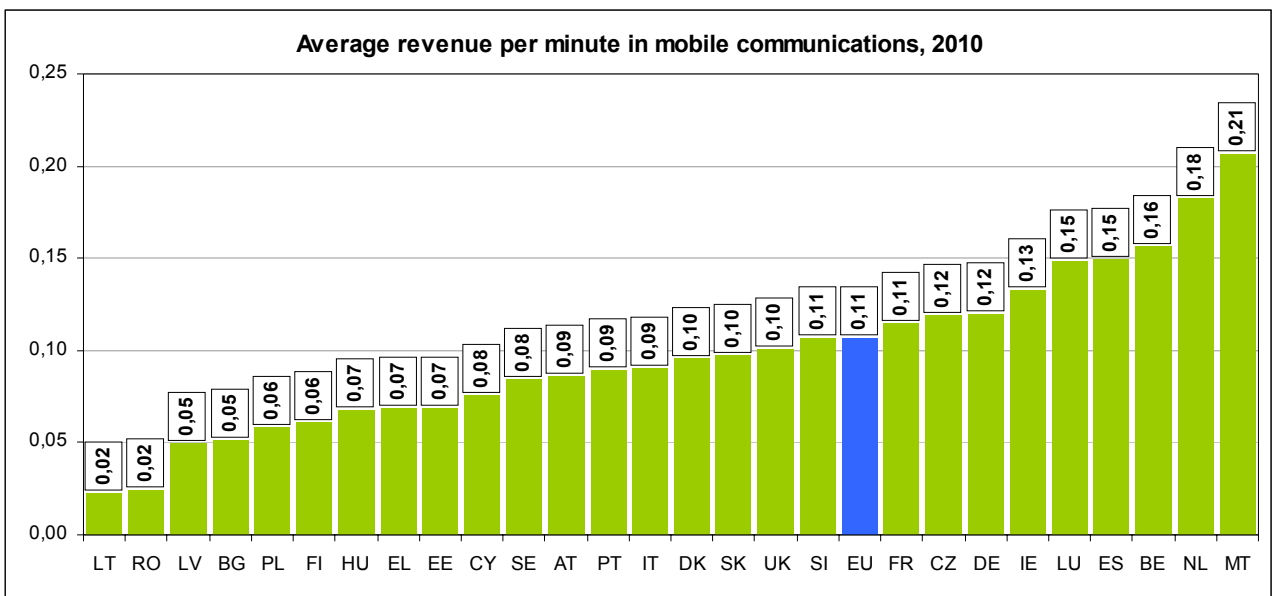
### **5.1 Mobile services**

The mobile penetration rate has increased from 114.2% in 2010 to 118.7% in 2011. All four mobile network operators provide commercial third generation (3G) mobile services. The leading mobile network operator has a market share of 39% (by subscriptions), while its main competitor has 31%.



Source: Commission Services

The average revenue per minute in mobile voice communication was at €0.13<sup>20</sup>, compared with the EU average of €0.11. Irish mobile average revenue per user (ARPU) remains among the highest in the EU at €316 compared to €221 at EU level, although it should be noted that usage levels are also higher in Ireland than the EU average. With regard to traffic volumes, mobile voice communication accounted for 59% of all voice traffic in Ireland.

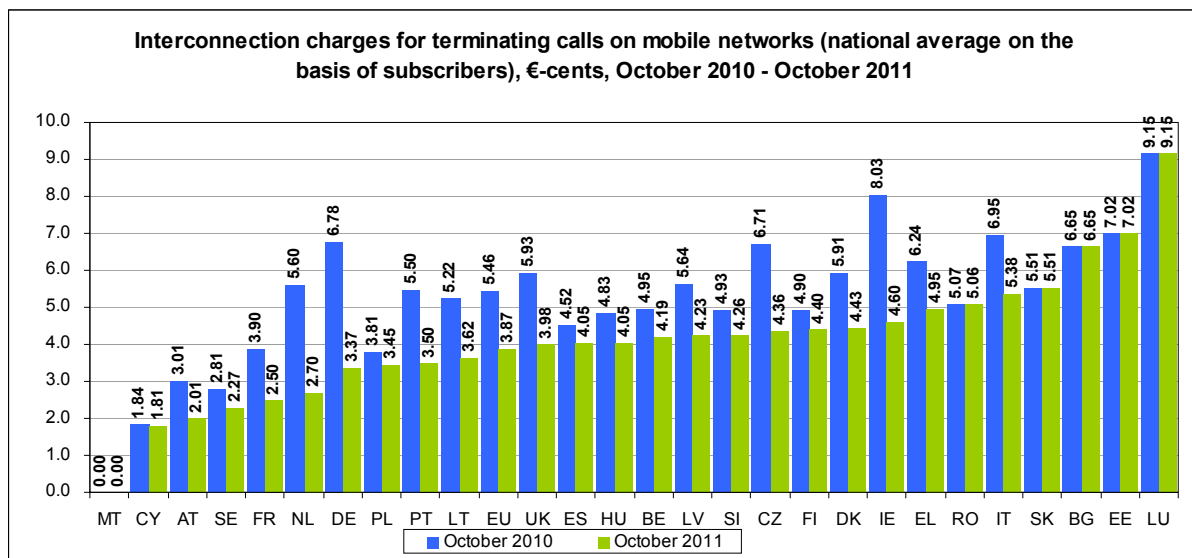


<sup>20</sup> Due to a definition change no comparison can be made with previous years.

Source: Commission Services

There are currently four mobile network operators and three MVNOs operating in the market. The nature of the MVNO arrangements differs ranging from resale to infrastructure based MVNO models. National roaming agreements currently exist between some of the mobile market players. Two operators entered into a network sharing agreement in April 2011. The agreement covers physical network and radio access network (RAN) sharing but does not involve spectrum sharing.

The average mobile termination rates (MTRs) were reduced between October 2010 and October 2011 significantly to the latest level of €0.046, however this remains still over EU average of €0.0387. The need to review the market for voice call termination on mobile networks and to regulate MTRs in accordance with the EC Recommendation on termination rates, instead of relying on voluntary commitments, is of utmost importance. In this context ComReg has confirmed that the data gathering and analysis phase of the market review is ongoing. It is expected that ComReg will conduct a public consultation on its preliminary view of this market in May 2012.



Source: Commission Services

ComReg is required and empowered to supervise and enforce the provisions of the Roaming Regulation (EC 544/2009). Following a detailed investigation, ComReg has found that the leading MNO had not complied with relevant provisions of the Roaming Regulation, in particular with the provision on the default spend cap. In December 2011, ComReg commenced High Court proceeding against this MNO. The proceedings were settled in January 2012. The High Court ordered the MNO to pay a financial penalty of € 400,000. The

MNO is further obliged to remedy the situation and to apply the default spend cap to those of its customers on data roaming plans who have not opted for an alternative financial limit.

## 5.2 Fixed

Fixed line revenue and traffic have continued to decline over the year reflecting both the effects of the poor economic climate and structural market changes. As of December 2010 voice traffic on fixed networks was around 41% of all voice traffic continuing the decreasing trend from the previous year (44.3%). The incumbent's market share (measured by traffic volume) in the fixed telephony market, taking into account all types of calls, was around 57.7% in 2010, which represents a fall of 3% from the previous year. Approximately 32% of subscribers used an alternative provider for voice telephony services as of July 2011, which is up 4 percentage points on the previous year.

Since the beginning of 2010, call origination and call termination rates were reduced by the incumbent by 15%<sup>21</sup> on average.

Market reviews of the markets for fixed call origination and call termination on fixed networks as well as for transit are currently underway. A consultation process is expected to commence in the second quarter of 2012.

The fixed call termination market was last reviewed in 2007. However, in September 2011 ComReg adopted a measure amending some of the remedies imposed in both the fixed call origination and termination markets. In particular, the existing price control obligation was complemented by a margin squeeze test and further specified the transparency obligation. ComReg intends to consult during 2012 on the appropriate pricing methodology which will take utmost account of the EC Recommendation on Termination Rates.

## 5.3 Broadcasting

Broadcasting revenues totalled almost €187 million as of December 2010. Overall, broadcasting revenues make up 4.2% of total electronic communications sector revenues in

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<sup>21</sup> Reduction by 8% from 1 April 2010 and further reduction by 7%, on average, from 1 January 2011. ComReg also secured a further 5% reduction to fixed origination and termination interconnection rates from 1 July 2012 resulting in a total reduction of 20% over the past two years.



Ireland. The household penetration of satellite TV remains among the highest in the EU and accounts for approximately 50.9%. The take-up of IPTV is marginal and stands at 0.1%.

ComReg is currently carrying out an analysis of the market for broadcast transmission services following an initial consultation on the three criteria test. A consultation process is expected to commence in the second quarter of 2012.

The legal basis for Digital Terrestrial Transmission (DTT) in Ireland is the Broadcasting Act 2009. ComReg has awarded two multiplex licences to RTÉ (Irish public service broadcaster) and four multiplex licences to the Broadcasting Authority of Ireland (BAI) for commercial DTT use. Licences in respect of the two public service broadcasting multiplexes were issued to RTÉ in December 2007 and in May 2011. The BAI process to award licences for independent multiplexes was concluded in 2010 without the award of a contract. Following the conclusion of a competition, the BAI concluded that it would not be feasible to introduce commercial DTT in advance of digital switchover (DSO).

RTÉ officially launched its DTT service on 26 May 2011 called "Saorview". It carries 8 Irish TV stations including all of the national terrestrial TV stations and some new RTÉ channels. It also carries 4 RTÉ national radio stations and 6 new RTÉ digital radio stations. The current DTT network is made up of 51 transmission sites and provides 97% population coverage (rising to 98% after DSO). "Saorsat", a satellite TV service unique to Ireland, was launched by RTÉ in March 2012 to cover the remaining 2% of the population who may not be able to receive its DTT signal.

To facilitate a smooth transition for TV viewers, analogue transmission will simulcast with DTT until analogue switch-off which is planned to take place on 24 October 2012 in conjunction with digital switch-over in Northern Ireland

ComReg has included the 800MHz (Digital Dividend) band as part of planned multiband-band spectrum auction.

### **23. SPECTRUM MANAGEMENT**

The multi-band spectrum auction for the 800 MHz, 900 MHz and 1800 MHz frequency bands is expected to take place in the middle of 2012. ComReg's strategy for managing the radio spectrum for 2011-2013 was published in November 2011. ComReg has recently (2/2012) decided to extend the termination date of three MMDS licences in force in the 2.6 GHz band to April 2014.

A multi-band auction for the 800MHz, 900MHz and 1800MHz frequency bands is planned for the middle of 2012. To date, ComReg have held a number of consultations related to the release of these bands. The process itself has been lengthy and the later addition of the 800MHz band into the process has also had an impact on the timing of the project.

ComReg has decided to release these three bands using a combinatorial clock auction. The first phase of the auction will determine the amount of spectrum that each successful bidder wins, the second phase determines at which location within a spectrum band each successful bidder will be located. To accommodate the current pattern of licence assignments, the spectrum will be auctioned across two time periods – February 2013-July 2015 and July 2015-July 2030. In order to facilitate competition, spectrum caps will be introduced.

ComReg has recently published its response to the public consultation and decision on the multi-band spectrum release. In this context, a final document (Information Memorandum) is being prepared.

ComReg has recently (2/2012) decided to extend the termination date of three MMDS licences in force in the 2.6 GHz band to April 2014. These licences are held by the main cable operator to provide TV distribution by means of MMDS<sup>22</sup> in the band.

In November 2011, ComReg published its Strategy for Managing the Radio Spectrum for 2011 – 2013. In this document ComReg signalled its intention to finalise the legislative framework for the introduction of mobility in the 3.6 GHz band and to make the subsequent changes to the current code of practice on domestic frequency co-ordination. ComReg plans to conduct a review of the band to ensure the best scheme is put in place post-2017 that will support future market developments. The review will not only address the 3.6GHz band, but also the 10.5GHz and 26GHz bands.

Concerning Mobile Satellite Service (MSS), Solaris Mobile Limited applied for a General Authorisation in the summer of 2011 and as a result the MSS portion of the service is now authorised in Ireland.

## **24. CONSUMER INTEREST**

### **7.1 116 – Harmonised numbers for services of social value**

Availability of 116 harmonised numbers has been improved as the number 116 000 for
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<sup>22</sup> Multichannel multipoint distribution service

missing children was recently assigned after lengthy process.

The number 116000 for missing children was assigned in January 2012 to the Irish Society for the Prevention of Cruelty to Children (ISPCC). Commencement of the service is expected in Q4, 2012. This is a positive move towards the operation of this service as this number was reserved and advertised since 2007 but the economic climate, concerns related to funding and a lack of expressions of interest to operate the number delayed the assignment of the number.

The number 116006 for victims of crime and 116111 for child helplines are fully operational. The number 116117 for a non-emergency medical on-call service has been reserved and advertised in the national press, but currently this number is not in service yet. The number 116123, which is dedicated to emotional support helplines, was allocated to the Samaritans in 2008, who are experiencing difficulties in raising funds and providing the resources to operate the service. Nevertheless the project is ongoing with operational services expected by the end of Q4 2012.

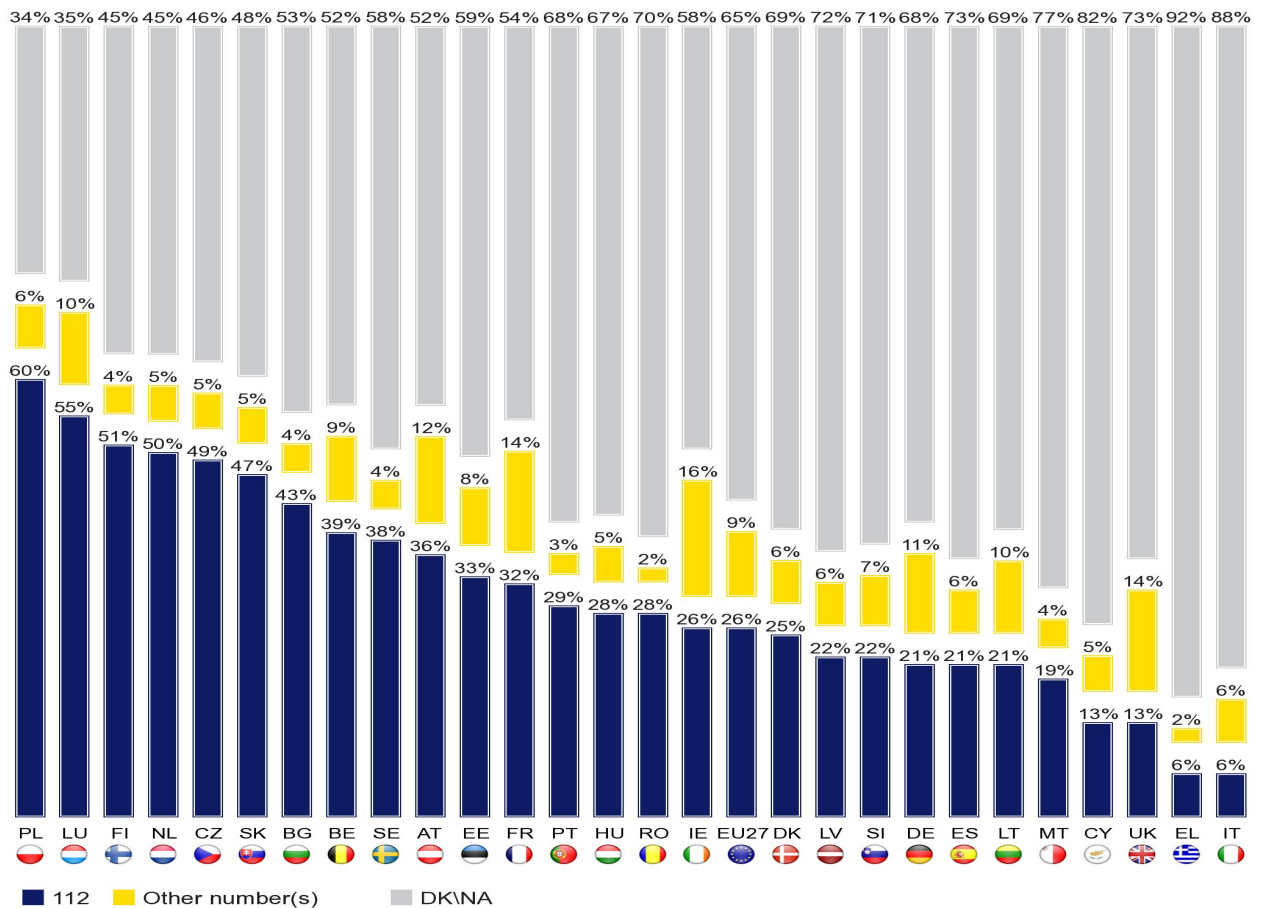
## 7.2 112- European emergency number

Citizens' awareness about the availability and use of 112 remains at the low level.

### 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

Since 2010, the Emergency Call Answering Service (ECAS) is provided by BT Ireland. ComReg is responsible for monitoring the quality of service of the ECAS and for reporting on the ECAS operational performance to the Minister for Communications, Energy and Natural

Resources. ComReg also reviews regularly the reasonable costs incurred by the ECAS provider and sets the maximum permitted call handling fee that the ECAS provider may charge. From February 2011 the call handling fee was adjusted at the level of €3.35 per emergency call. This was subject to a legal challenge mounted by one of the MNO but the action was settled and the maximum call handling fee remains as originally set. From 02/2012 to 02/2013, the call handling fee has been maintained at the same level.

According to ComReg, the volume of emergency calls was approximately 2.8 million in 2011 and the total costs of operating the ECAS is estimated to be approximately €10 million in 2011. The costs of running of the ECAS service are borne solely by industry (presenting network pays) and not by the State as in the most of the Member States.

Regarding awareness, while only 13% of Irish respondents<sup>23</sup> said they would call 112 in the event of an emergency in their own home country, 26% of respondents knew that they can reach emergency services from anywhere in the EU by calling 112. In order to raise awareness of 112, ComReg is running a dedicated 112 consumer website ([www.112.ie](http://www.112.ie)). Also an “SMS to 112” Pilot was launched in January 2012 by the Minister for Communications, Energy and Natural Resources to allow the deaf and hard of hearing community in Ireland to make contact with the emergency services in an equivalent way to voice communications. It is designed principally to serve this community but other citizens will be able to access the service as well.

### **7.3 Net neutrality & quality of service**

In the area of network neutrality, ComReg’s focus has been mainly on transparency issues.

With regard to the measurement of broadband speeds, ComReg has established a project with the objective of developing and piloting a methodology and associated tool for measuring and publishing broadband speeds across a range of platforms.

### **7.4 Consumer complaints, tariff transparency**

ComReg continues to provide a quality handling service to consumers. The complaints handled by ComReg in 2011 were mostly related to contractual and billing issues.

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<sup>23</sup> Eurobarometer Survey on 112, [http://ec.europa.eu/information\\_society/activities/112/docs/report\\_2012.pdf](http://ec.europa.eu/information_society/activities/112/docs/report_2012.pdf)

ComReg is active in consumer empowerment focusing on measures enhancing the transparency of

tariffs and quality of service. During the period from December 2010 to November 2011, over 50 000 consumers contacted ComReg raising 33,000 issues, of which 20% were complaints. The top complaint categories related to contractual and billing issues.

Concerning tariff transparency, ComReg continues to operate and enhance its website [www.callcosts.ie](http://www.callcosts.ie) in order to enable consumers to compare the packages on the market and to assess which package offers the best value (in terms of price, features, services, etc.) for their specific usage. In order to raise awareness with respect to the potential harm of premium rate services, ComReg has launched a new dedicated website [www.phonesmart.ie](http://www.phonesmart.ie) which is aimed at children, teachers and parents.

During 2011, ComReg updated consumer guides on phone numbers and charges, complaints handling, mobile roaming and VoIP.

## 7.5 Number portability

Number portability continues to be used extensively. The mobile number portability process is completed within one day and normally within 2 hours.

In the period from January to September 2011 around 335 056 mobile numbers were ported, which represents an increase of 41.4% compared to the same period in the previous year. The mobile number portability process is completed within one day and normally within 2 hours. The wholesale charge for mobile number portability is approximately €2.

With regard to fixed number portability ComReg hosted a series of industry meetings to optimise inter-operator number porting processes. The authorised operators agreed on process changes to facilitate compliance with the requirements of the new regulatory framework. ComReg has been monitoring compliance with the revised times and also compensation provided by operators in respect of any delays in porting.

## 7.6 Universal service

Public consultation on the scope and next designation of universal service provider was recently launched.

The incumbent was re-designated as the universal service provider for a period of two years, until 30 June 2012.

ComReg is currently launching a public consultation on the scope and designation of the universal service provider for next time period. In terms of scope, particular items to be considered include payphones, directories and the definition of functional internet access. This consultation is expected to be completed soon as current designation will have expired in June 2012.

Since 2010 the incumbent has been running a Quality of Service Performance Improvement Programme with associated annual performance targets. For the period 2010/2011, the incumbent achieved 12 (out of 15) targets in relation to connections, fault occurrence, and certain fault repair targets. Because of failure to achieve all of the relevant targets the incumbent has paid a penalty of €115,000.

Regarding funding of the universal service, the incumbent withdrew its applications for funding of the net costs for years 2006-2008. The incumbent is expected to introduce an application for the years 2009-2010. ComReg has recently launched a public consultation on the cost sharing mechanism. The principles and methodologies for calculating the net costs have been determined in ComReg's 2011 decision.

## 7.7 ePrivacy

No major issues on ePrivacy were reported.

Responsibility for data protection and e-privacy issues falls to the Office of the Data Protection Commissioners in Ireland. The revised provisions of the ePrivacy Directive were transposed into Irish national law by means of the Statutory Instrument S.I.336/2011 (Privacy and Electronic Communications Regulations).

The Regulations transpose Article 5(3) of the ePrivacy Directive (“cookies provision”). In this regard, information – not just personal data - may not be stored on or retrieved from a person’s terminal equipment unless the individual has been given clear and comprehensive information about why this is being done and has given her/his consent. The Regulations do not prescribe how the information is to be provided or consent is to be obtained, other than this should be as user friendly as possible. It is envisaged that, where it is technically possible and effective, such consent could be given by the use of appropriate browser settings with clear communication to the user.





**EUROPEAN COMMISSION**  
Information Society and Media Directorate-General  
Electronic Communications Policy  
**Implementation of Regulatory Framework**

18 June 2012

# **ITALY**

## **2011**

# **Telecommunication Market and Regulatory Developments**

This report is a Commission Services working document, issued as part of the Scoreboard 2012:

[http://ec.europa.eu/information\\_society/digital-agenda/scoreboard/](http://ec.europa.eu/information_society/digital-agenda/scoreboard/)

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## ITALY

### 1. MAIN MARKET AND REGULATORY DEVELOPMENTS

#### Development of the sector

Revenues of the sector declined in 2011 by 1,5%<sup>24</sup>. The reduction of revenues affected the entire sector, including the mobile one; however in this latter case in 2010 the decrease of revenues did not affect the pace of investments that on the contrary increased. [section 2]

In 2012 growth of fixed broadband penetration slowed down. In this market the copper network still remains the key competitive factor, with a large predominance of DSL (98%) and almost 5 millions of unbundled lines. The market share of the incumbent (Telecom Italia) in the **fixed broadband** sector declined by 1pp in 2011 (53%, compared to EU average of 43%). The additional spectrum available for **mobile broadband** is needed to sustain the consistent increase of mobile data traffic, in particular in view of the significant increase of use of smartphones and tablets, while at the same time it may help to reduce the digital divide. [section 4.1]

The demand for **mobile voice** services appears dynamic as shown by the increase of already high mobile penetration (158,8%, increasing by 4 pp in 2011). Four network operators compete (Telecom Italia, Vodafone, each with 1/3 of the market, Wind and H3GItalia), together with 11 Enhanced Service Providers and one full MVNO (Noverca). Accordingly, **fixed voice** traffic consistently declines in favour of mobile, in line with the trend of the last few years. In both cases regulatory decisions entailing reductions of termination rates have been adopted in 2011, which could lead to significant changes with regard to the cash-flow between the two sectors in the next years. [section 5]

#### Progress in broadband deployment and take-up

At the end of 2011, Italy was moving towards achieving the DAE target aiming at securing a basic broadband connection (in the order of 2 Mbps) for all EU households by 2013, with a significant reduction of narrow-band connections and some funds available for rural areas. However the digital divide still affects 5% of the population. Moreover, progress in the deployment of high-speed (30 Mbps) and very high-speed broadband (100 Mbps) has so far been less encouraging, both in terms of coverage and take-up. In view of the forthcoming implementing measures of the national digital strategy and taking into account that additional EU structural funds were made available, the government is currently reviewing its strategy on NGA investments. [section 4.2]

#### Independence and effectiveness of the NRA

Legislation concerning the independent authority dealing with market regulation, *Autorità per le garanzie nelle comunicazioni* (AGCOM), was adopted in 2011, expanding its competences to other sectors and aiming at budget savings. [section 2]

#### Implementation of the framework

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<sup>24</sup> EITO – European Information Technology Observatory – 8 December 2011, p. 138.

At the end of 2011 Italy had not transposed the revised telecom framework after the deadline set by the EU Legislator (25 May 2011). A step forward was undertaken in December 2011, when the Parliament approved the law empowering the Government to adopt the legislative decrees needed to transpose the Framework, due for the first half of 2012. Given that final transposition measures were not adopted at the end of the reporting period, infringement proceedings concerning lack of notification of transposition measures of 2009 Reform Package were ongoing. However on 25 May 2012 the Government adopted the final transposition measures.

#### Spectrum management

While a significant portion of spectrum, including the digital dividend, is being made available for mobile broadband by means of a multiband auction and the material implementation of spectrum refarming, the process for the final assignment of rights of use for broadcasting is still on going. [section 6]

#### Citizens and consumer protection

Implementation of the 112 emergency number is still based on a temporary solution, which is subject to further improvements, and the awareness of the European 112 number remains the lowest in EU. [section 7.2]

Missing children helpline 116000 is operational. [section 7.1]

The adoption of tools aiming at enhancing transparency of conditions for end-users remains one of the main objectives of the NRA, which also completed an inquiry on traffic management techniques currently adopted by operators. [section 7.3].

In case of complaints brought in front of dispute settlement bodies, automatic minimum indemnities for breach of certain quality parameters have been set by the regulator. [section 7.4]

The delay in the determination of net-cost of the Universal service for past years is still significant [section 7.6]

The smooth functioning of fixed number portability was not yet fully ensured. [section 7.5]

The opt-out registry for unsolicited calls has been launched, but compliance of operators is still an issue that triggered several enforcement actions of the national data protection authority (*Garante della Privacy*). [section 7.7]

## **2. NATIONAL REGULATORY AUTHORITIES (NRA)**

Legislation concerning the independent authority dealing with market regulation, *Autorità per le garanzie nelle comunicazioni* (AGCOM), was adopted in 2011, expanding its competences to other sectors and in order to ensure budget savings.

The competences of AGCOM have been extended. Already established as a convergent regulator supervising both electronic communications and the provision of content, in 2011 it was also appointed as the regulator of the postal sector. Further competencies in the field of the protection of copyrights in the digital environment under the current framework are also under assessment.

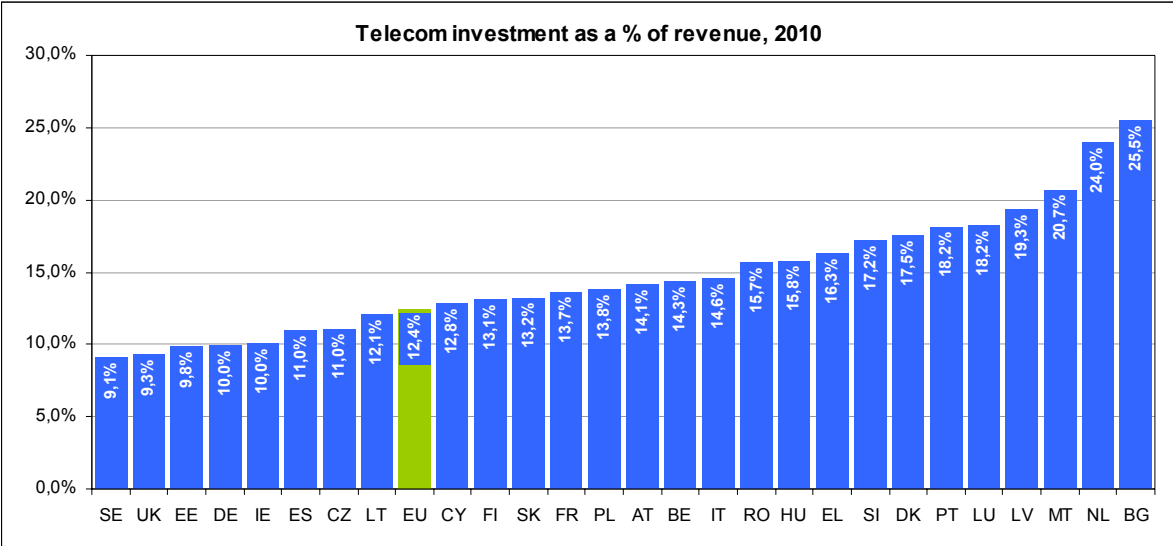
AGCOM has been included in general legislative measures imposing budget savings on all public administrations, including freezing and reduction of salaries, as well as budget constraints for specific institutional activities. Moreover the composition of the board has been streamlined, with a reduction from 9 to 5 members from next term starting in 2012. According to the Supreme Administrative Court, in view of its budgetary independence these savings should be assigned to the budget of the Authority, which is almost completely financed by the administrative charges levied on the turnover of authorised operators (1,8% for 2011).

Technical issues among operators concerning delivery, assurance and migration to an all-IP fixed networks, are regularly discussed, on a voluntary basis, in the context of OTA Italia, in addition to the general enforcement and dispute systems of AGCOM. So-called "regulation-by-litigation", via dispute settlement by AGCOM, is increasingly used for issues concerning economic conditions (21 cases open in 2011, compared to 14 in 2010).

The time needed for decision making has been improved, even if many operators stressed the need to improve the transparency of the planning of regulatory activities, in particular those concerning consumer protection issues, in order to reduce the risk of delays and to strengthen regulatory certainty.

**3. REVENUES AND INVESTMENTS**

Revenues of the sector continued to decline in 2011 by 1,5%<sup>25</sup>. Despite the economic downturn, in 2010 the decrease of revenues did not affect the pace of investments in the mobile sector that on the contrary increased.



Source: Commission Services

A reduction of revenues affected both the mobile and the fixed sectors, with an overall reduction of approximately € 800 million in 2010 compared to 2009 and a similar decreasing

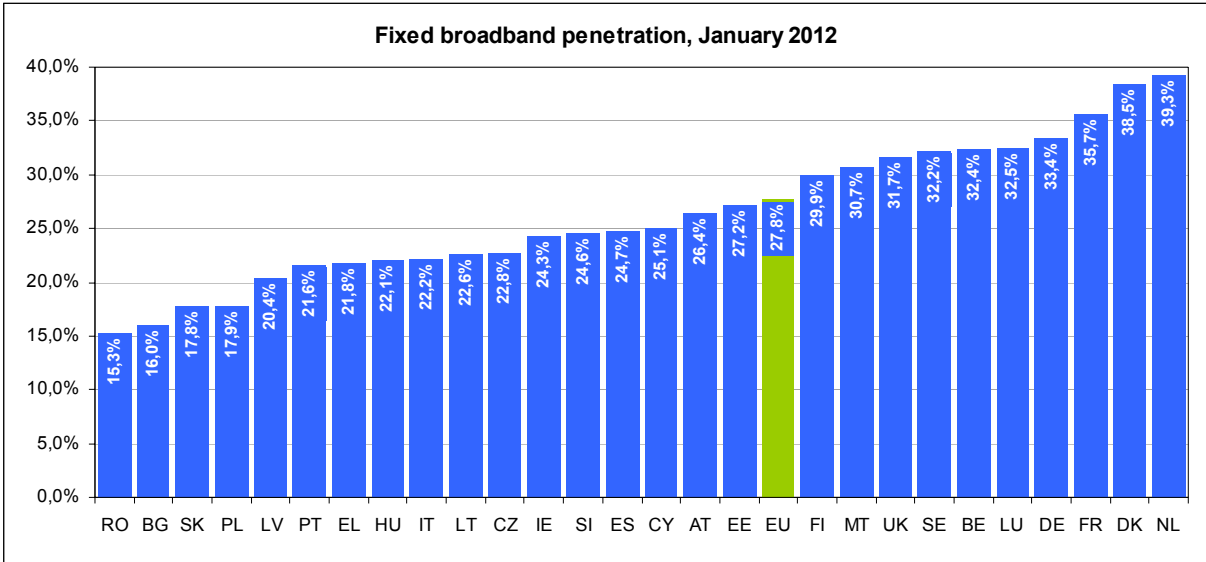
<sup>25</sup> EITO – European Information Technology Observatory – 8 December 2011, p. 138.

trend in 2011. In the case of the mobile sector the reduction, mainly due to a lower average revenue per user, is even more striking, given that, on the other hand, penetration and above all data traffic increased. Also investments slightly decreased overall (- 1,1%, at € 6,222 million in 2010), although the mobile sector goes in the opposite direction, with increased investments of some € 50million in 2010, compared to 2009.

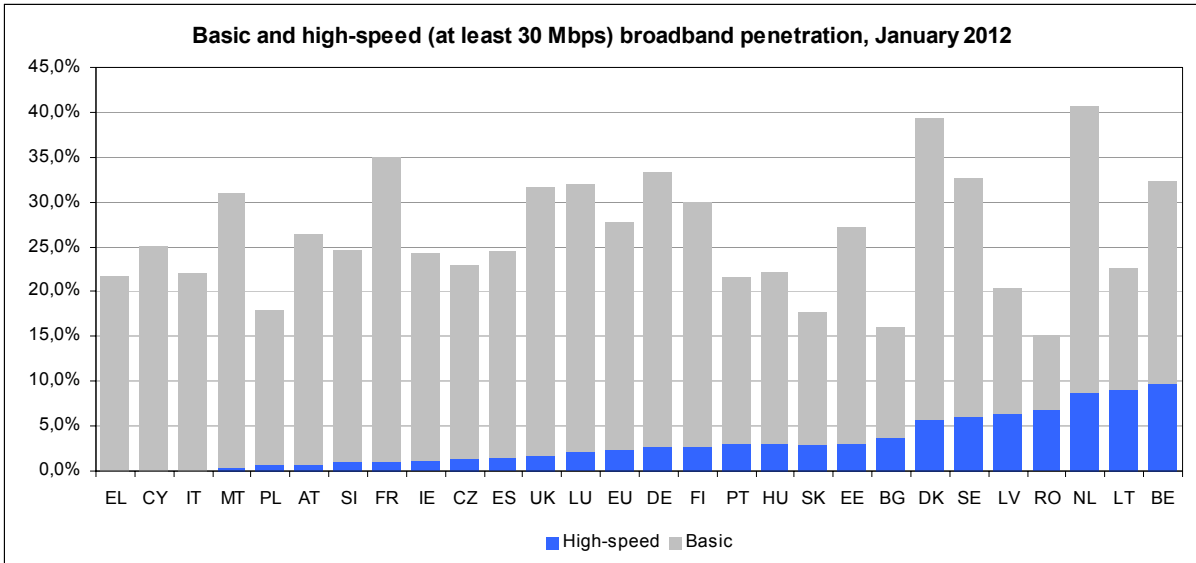
**4. BROADBAND**

In 2012 growth of fixed broadband penetration slowed down. In this market the copper network still remains the key competitive factor, with a large predominance of DSL (98%) and almost 5 millions of unbundled lines out of 6,2 millions lines of the alternative operators. The market share of the incumbent (Telecom Italia) in the **fixed broadband** sector declined by 1pp in 2011 (53%, compared to EU average of 43%). The additional spectrum available for mobile broadband is needed to sustain the consistent increase of mobile data traffic, in particular in view of the significant increase of use of smartphones and tablets, while at the same time it may help to reduce the digital divide.

At the end of 2011, Italy was moving towards achieving the DAE target aiming at securing a basic broadband connection (in the order of 2 Mbps) for all EU households by 2013, with a significant reduction of narrow-band connections and some funds available for rural areas. However the digital divide still affects 5% of the population. Moreover, progress in the deployment of high-speed (30 Mbps) and very high-speed broadband (100 Mbps) has so far been less encouraging, both in terms of coverage and take-up. In view of the forthcoming implementing measures of the national digital strategy and taking into account that additional EU structural funds were made available, the government is currently reviewing its strategy on NGA investments.



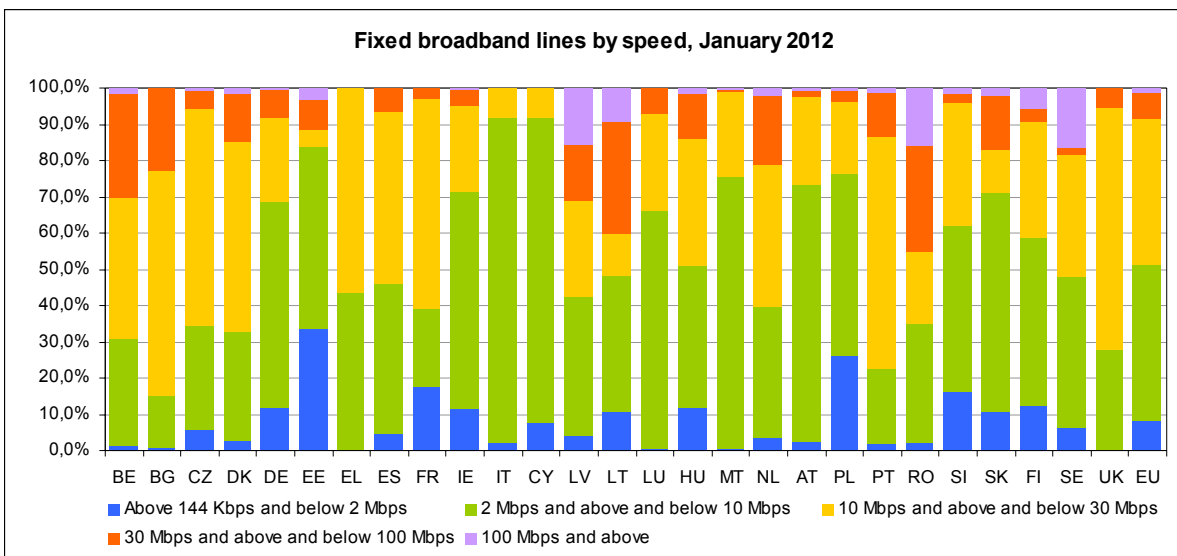
Source: Communications Committee



Source: Communications Committee

#### 4.1. Market Situation and Regulatory developments

With regard to fixed broadband, although still below the EU average (27,8%), the penetration rate slowed down and towards the end of 2011, for the first time it even decreased, leading to an overall annual increase of 0,6pp in comparison with 2011 (22,2% in January 2012). The incumbent's market share kept on slowly decreasing (53% in January 2012 from 54% in 2011, still above EU average at 43%). The predominant access technology remains DSL (98%). While as from January 2012 low speed lines below 2Mbps dramatically decreased (from 18,2% to 2,2%), speeds available in the vast majority of cases still remain below 10 Mps (89,6% of lines lies between 2 and 10Mbps) and only 8,2% are above it. Penetration of NGA lines is limited (2% of broadband lines, mainly in FTTH and concentrated in the Milan area).



Source: Communications Committee

As far as market regulation is concerned, in 2011 AGCOM has officially ascertained the compliance with the 2008 Undertakings and consequently closed the original sanctioning procedures against the incumbent<sup>26</sup>. However, it also decided to keep on monitoring the effectiveness of these measures at least until mid-2012, while in the meantime it adopted guidelines to improve the transparency of internal transfer charges which are applied between the retail and wholesale divisions of the incumbent. Moreover, during 2011 further commitments have been offered by the incumbent and put into consultation, in the context of two investigations launched by the antitrust authority (AGCM) in 2010 concerning alleged non-price discriminatory practices.

With copper LLU still representing by far the main access product for competitors with 4.880.248 unbundled lines, LLU monthly rental cost per line for 2011 increased, following the price path defined in 2010 (in 2011 set at € 9,02, with EU average slightly decreasing at € 8,62). In 2011 AGCOM also verified compliance with the quality requirements to be met in order to apply the new price for 2012 (set at € 9,28).

As far as NGA networks are concerned, in January 2012 AGCOM has adopted remedies on the incumbent. The European Commission commented on the first draft of the decision in May 2011, noting that end-to-end service is currently the only envisaged remedy equivalent to unbundling, given that the incumbent plans to adopt a point-to-multipoint (G-PON) network topology; moreover this obligation might be considered proportional and justified only as a transitional measure in view of the future feasibility of physical unbundling and on the basis of the future price methodology. In addition the Commission noted that the geographical differentiation of remedies on bitstream shall be justified on the basis of the criteria laid down in the NGA Recommendation, and that any substantive change of the regulatory obligations, including the specification of the price and the geographic scope of the obligations, shall again be subject to the consultation mechanism pursuant to Article 7. In its final decision AGCOM imposed a cost-oriented access obligation over the incumbent's passive access infrastructure (ducts and dark fibre) at different levels as well as on an aggregate basis (so-called end-to-end) subject to feasibility and reasonableness of requests in case infrastructures are not available<sup>27</sup>. In addition, AGCOM included the obligation to provide fibre LLU services at the local exchange level, where feasible. Finally the incumbent is obliged to provide advanced (Ethernet) bitstream services at the local exchange (VULA), under non-discriminatory conditions in general, and at a cost-oriented price, where a sustainable competition is absent according to AGCOM's periodic assessment<sup>28</sup>.

Further to the adoption of this decision, AGCOM has launched specific procedures concerning the determination of a cost model applicable to these regulated products, the assessment of the impact of new technologies (like vectoring) in view of the new investment

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<sup>26</sup> In June 2008 the incumbent proposed – according to Law 248/06 – a set of commitments mainly concerning fixed networks markets in the context of market analyses and infringement proceedings. Some of these commitments were also implemented as *ex ante* remedies on fixed wholesale access by Delibera 731/09/CONS.

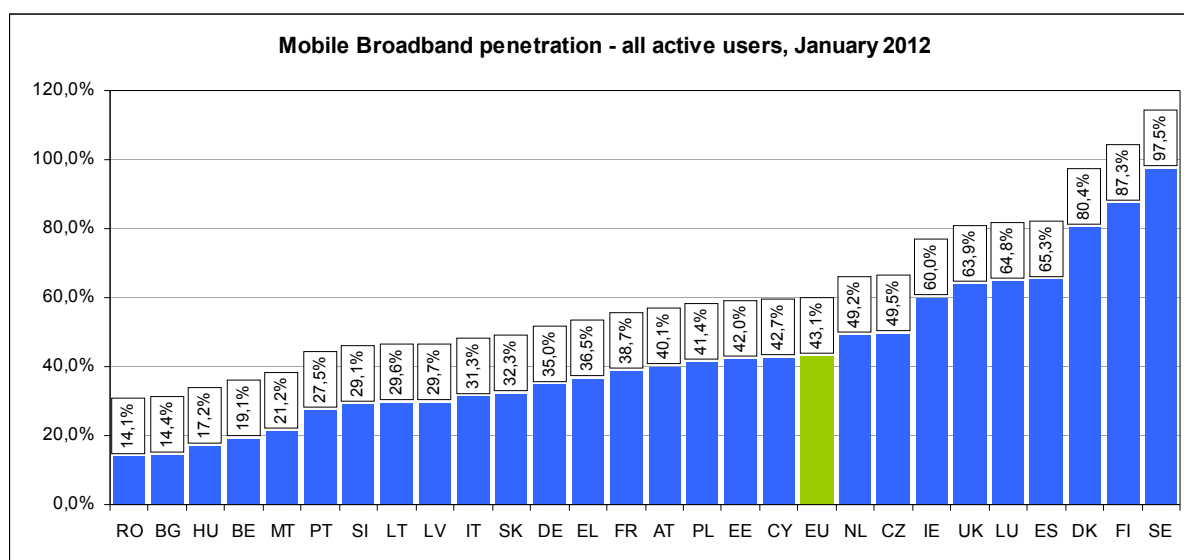
<sup>27</sup> Obligation of access to civil infrastructures foresees, *inter alia*, access to the terminating segment including in-building wiring (in case fibre is not available, access to copper terminating segment should be provided).

<sup>28</sup> The areas where bitstream services' prices are to be cost-oriented to costs are being defined in the context of an ongoing proceeding.



plans of the incumbent (see below) and the evaluation of the conditions for imposing symmetric obligations.

Moreover AGCOM adopted measures aiming at increasing transparency and synergies, with other public utilities, in order to optimise existing infrastructures and the planning of public works (such as duct mapping, transparent access conditions to passive infrastructure, sharing obligations, geo-referenced database of incumbent's passive infrastructure), even though some of these measures do not apply to the access network..



Source: Communications Committee

In contrast with the fixed sector, the penetration of mobile broadband is increasing at a higher pace in particular by means of smartphones and tablets (the number of all active users grew by approximately 3 millions, reaching 31,3% penetration, although below the EU average at 43,1%; accordingly, data traffic increased by 53,6%<sup>29</sup>), while the number of dedicated cards is the highest in the EU (6,1 millions), with a stable penetration rate at 10,2% (above EU average at 7,9%).

#### 4.2. National Plans, private & public investments

The original national plan, aiming at coordinating public and private intervention on fixed NGA networks (s.c. "Tavolo Romani") has been abandoned. The new Government is defining a comprehensive digital strategy involving both demand and supply<sup>30</sup> as well as a new global "Strategic Project" on NGA networks pursuant to Article 30 of Law 111/2011, put in consultation in December 2011 in view of its submission to the European Commission in 2012. In addition in 2011 Italy notified the European Commission a national digital plan to

<sup>29</sup> Data on traffic available on the 2011 IV quarterly TLC observatory of AGCOM, <http://www.agcom.it/Default.aspx?DocID=8451>.

<sup>30</sup> In February 2012 an interministerial committee has been set up (s.c. cabina di regia), in order to define the actions implementing a comprehensive national digital strategy in line with the DAE's objectives.

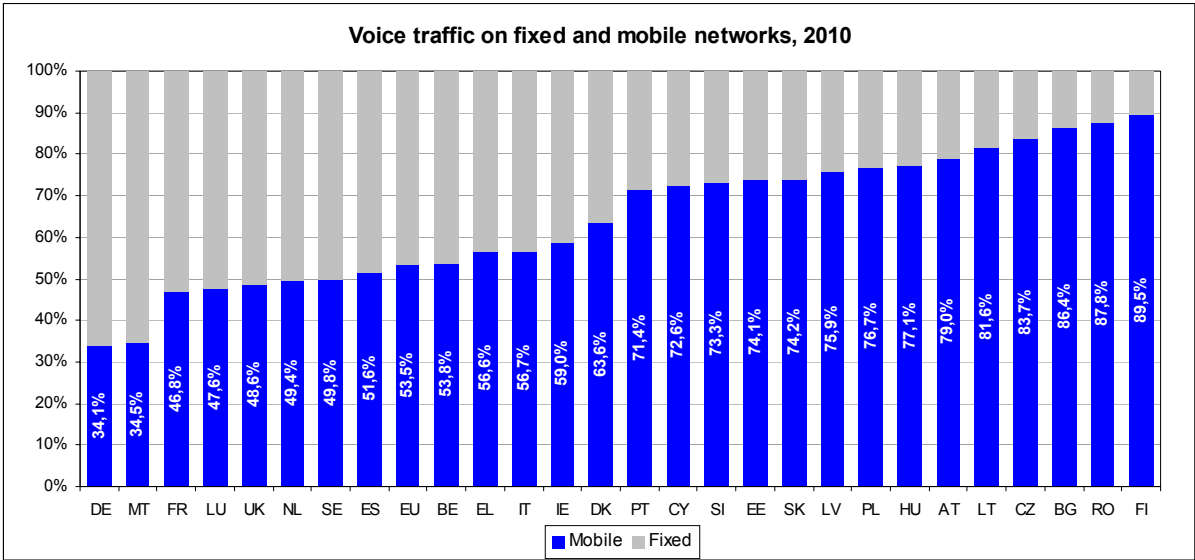
overcome the digital divide in rural areas, pursuant to Law 69/09. While part of the revenues yielded by the spectrum auction have not been made available for broadband roll-out in spite of the initial plans, other resources are being defined. Some € 69 million from the FEASR are being made available for the reduction of the digital divide in rural areas, while some structural funds of Regions in the South have been assigned to the reduction of digital divide.

Some market interest regarding a pure NGA-ready passive infrastructure, based on a multi-utilities strategy, exists in some areas of the North, in particular in Lombardia. A public-private partnership with the incumbent has been set up in the Province of Trento, in view of the deployment of a FTTH infrastructure. Following complaints by some alternative operators, this venture is currently under scrutiny by the Commission under State Aids rules.

On a national scale, the incumbent is unexpectedly reviewing its initial investment plans, in order to include the deployment of FTTC networks as an alternative to FTTH investments in some areas, with a view to extend the copper network life-cycle by means of innovative technologies such as vectoring, bonding and others.

**5. VOICE AND OTHER E-COMMUNICATION SERVICES**

The demand for **mobile services** appears dynamic, as shown by the increase of already high mobile penetration (159%, increasing by 4 pp in 2011). Four network operators compete (Telecom Italia, Vodafone, each with 1/3 of the market, Wind and H3GItalia), together with 11 Enhanced Service Providers and one full MVNO (Noverca). Accordingly, **fixed voice** traffic consistently declines in favour of mobile, in line with the trend of the last few years. In both cases regulatory decisions entailing reductions of termination rates have been adopted in 2011, which could lead to significant changes with regard to the cash-flow between the two sectors in the next years.

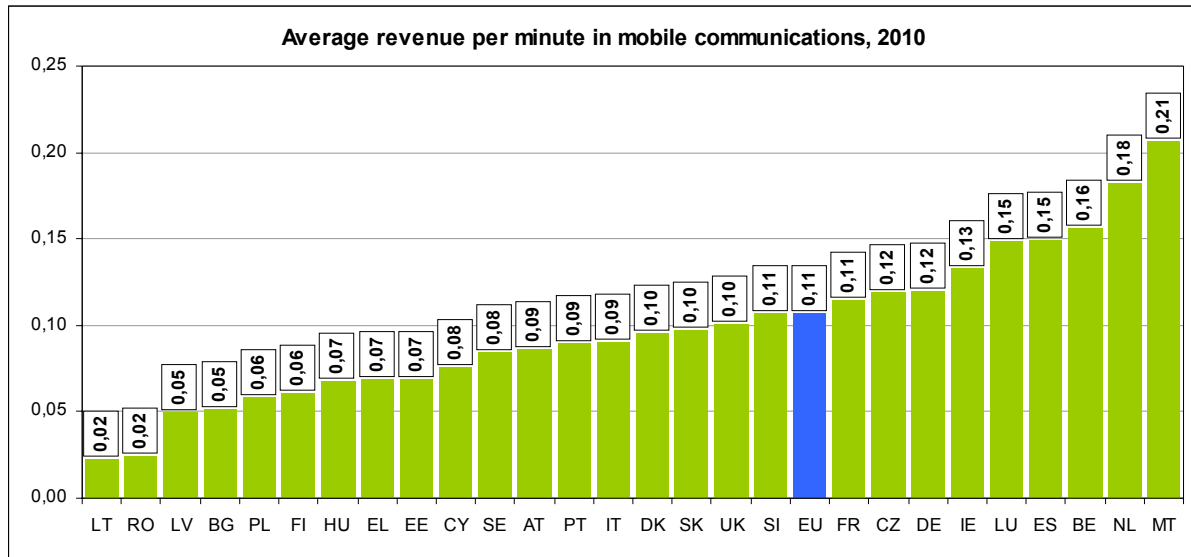


Source: Commission services

**5.1 Mobile services**

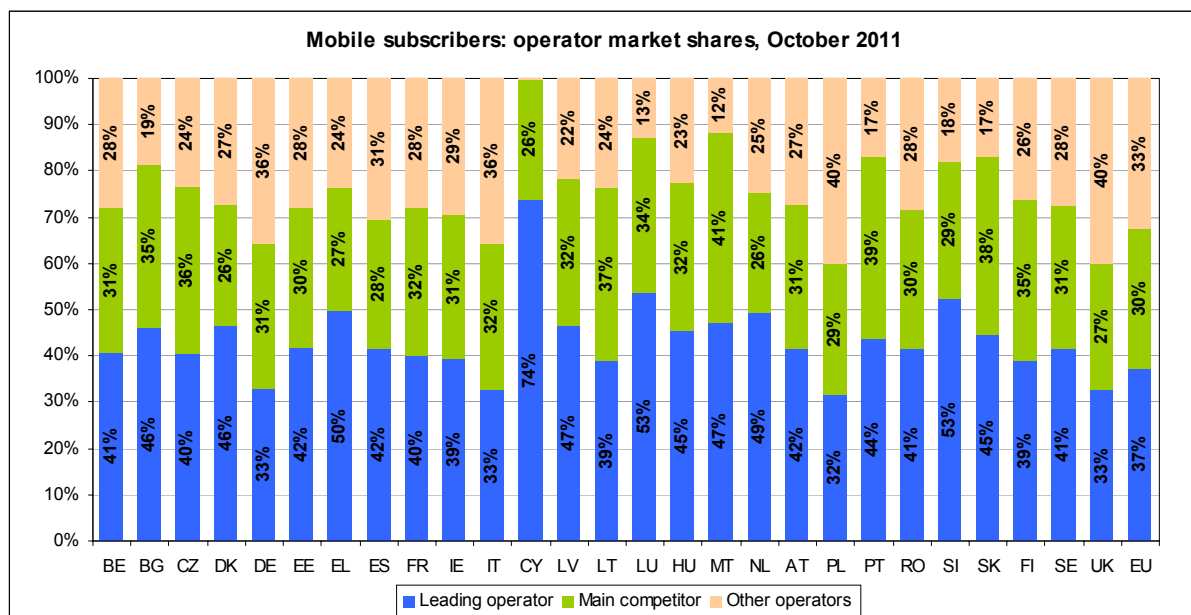
## Market situation

The Italian mobile market shows some constant peculiarities coupling a very high penetration rate (2<sup>nd</sup> in the EU with 159% in October 2011, rising by 4 percentage points since 2010) with a large predominance of pre-paid cards, which in total amount to 83% of the overall subscriptions. In 2010 the ARPU declined to 182€, below the EU average (at 221€), while average revenue per minute remained substantially stable (at 0,09 €) slightly below the EU average (0,11€).



Source: Commission services

As far as the market structure is concerned, it is quite stable with two main operators approximately holding 1/3 of the market each, a third one slightly increasing its market share (22.7%) and the fourth maintaining its position (9.5%) as for October 2011.



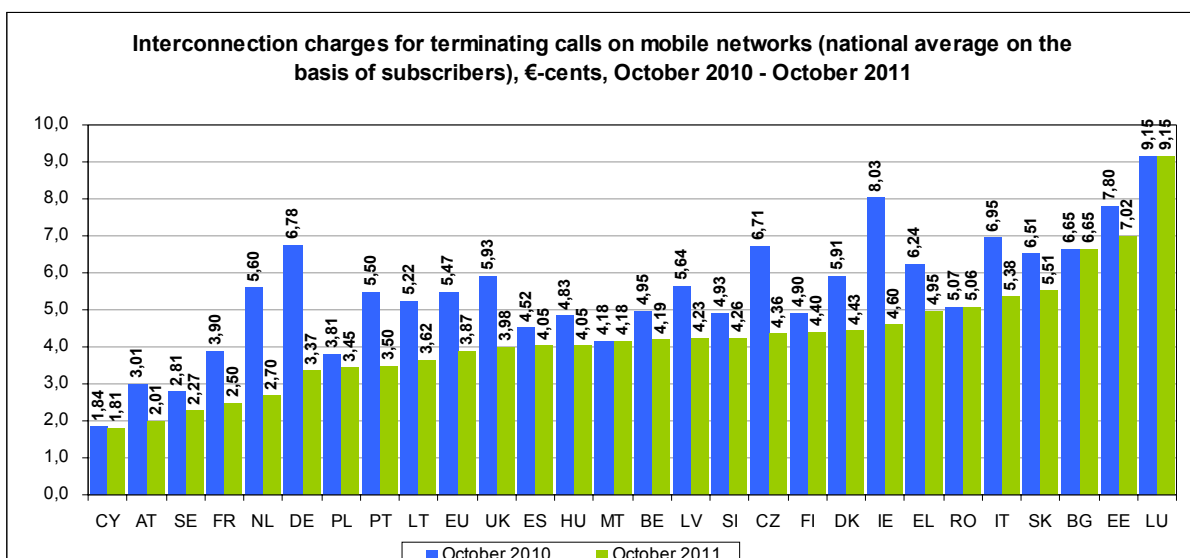
Source: Commission services

While the coverage of 3G networks of all operators is extensive, and will be further improved by the on-going re-farming process, operators are planning to launch their first trials of the 4G network in 2012, in view of its commercial launch by end of 2012 and 2013. In order to exploit LTE's full potential, however, investments will be needed on fibre backhauling.

Some MVNOs quit the market (decreasing from 16 to 12), but overall their market share slightly increased. As a matter of facts their main competitive pressure is not based on price, but rather on the provision of additional services such as financial or fixed ones. Only one MVNO has decided so far to step up the investment ladder and become a "full" MVNO. While the 2010 Numbering Plan by AGCOM provides for mobile number assignments with 4-digit codes for all mobile operators (including enhanced service providers), the NRA is currently considering requests to revise this aspect in view of their expected costs of migration from the current 3-digit system.

In 2011 AGCOM adopted an important decision concerning the level of mobile termination rates (MTR). The European Commission commented on a first draft of this decision, which was notified in May 2011, stressing that, contrary to the Recommendation on the calculation of termination rates, the decision delayed the imposition of cost-orientation which was envisaged only for January 2015, and maintained asymmetric termination rates for the fourth operator until January 2014, without providing any justification for the impact of the spectrum holdings on the termination costs. Moreover, the Commission invited AGCOM to provide further details about how the BU-LRIC cost model developed by AGCOM was applied, and about certain costs elements included in the calculation. In its final decision AGCOM substantially modified the content of the draft, envisaging a steeper glide path compared to the one notified. Although it no longer provides for a reduction of the rates already in January 2012, the glide path applicable from July 2012 should lead to a price based on BU LRIC model set at 0.98€/cents by July 2013, instead of January 2015. Furthermore, in July 2013 asymmetry will be eliminated.

#### Mobile termination rates by member states, October 2010-October 2011



This sharp reduction of termination rates, as well as the maintenance of asymmetry until 2013, will have a different impact on fixed and mobile operators, respectively, depending on their relative positions in the two markets, and was therefore highly debated. As far as the downstream impact of the reductions is concerned, the consumers' association as well as MVNOs, point out that a reduction of MTRs in the past have not led to corresponding reductions of retail and airtime prices.

MVNOs claim that SMS prices at wholesale level do not allow them to replicate MNO retail offers. While SMS termination is not subject to market regulation, AGCOM is currently analysing the competitive dynamics of the market.

The EC Roaming Regulation is currently implemented by all operators

## **5.2 Fixed**

The trend towards fixed-to-mobile substitution continued in 2010, with a further decrease of voice traffic over fixed (decreasing from 47.4% to 43.3%). In addition to that, the increasing relevance of double play bundles (increasing from 13% to 24.7% as for December 2010, which places Italy 4<sup>th</sup> in EU), is indicating that fixed voice is increasingly seen as a commodity linked to the provision of fixed broadband. The reduction of the incumbent's market share was confirmed (from 58,1% to 55,9% in December 2010).

As far as market regulation in 2011 is concerned, AGCOM defined the regulatory obligations regarding IP interconnection and interoperability for the provision of VoIP services, with a view to defining in 2012, following technical roundtables with the operators, the engineering model underpinning the cost model for the calculation of the termination. Indeed, in order to incentivize the migration from the current TDM to IP interconnection, as from 2013, termination rates will only be based on the latter. The effects of this migration on the bitstream offer should be assessed in the context of the approval of this reference offer.

In the meantime, AGCOM has imposed fully symmetric rates at the level of the local exchange for TDM termination as from January 2012, following the comments issued by the European Commission in 2010, on the need to implement a symmetric rate reflecting the cost of an efficient network. However, given that TDM termination no longer will be considered in the calculation of termination rates in 2013, the NRA has not developed a specific cost model for this kind of termination; therefore it will use the reference offer of the incumbent (for 2011 set at 0.335 €/cent) as a basis for the calculation of the symmetric rate, taking into account an efficiency-enhancing reduction factor.

## **5.3 Broadcasting**

As a consequence of the progresses of the switch-off of analogue terrestrial, digital terrestrial is by far the most common television platform (with a market share of more than 70%), and satellite is still keeping a significant share (20%). IPTV has, on the contrary, still not achieved any significant position in the market (with a declining market share of 1.9% in July 2011, from 2.5% of the previous year). Finally, during 2011, retail offers of mobile TV using DVB-H have ceased.

Vertical integration along the entire value chain (from the provision of content up to the provision of associated facilities such as masts) characterizes the digital terrestrial transmission market. This trend even increased in 2011, with the proposed acquisition of the major independent tower company by a vertically integrated national operator. While *ex ante* regulation of broadcasting digital terrestrial transmission is not mandated following the 2010 market analysis by AGCOM, the national antitrust authority imposed conditions on the abovementioned merger, aiming at ensuring access to these associated facilities under fair, transparent and non-discriminatory conditions, including cost-orientation for some services.

In its new regulatory framework on the provision of linear audiovisual media services on digital terrestrial television approved in 2011, AGCOM also decided to repeal current must carry obligations imposed during the switchover process on national digital terrestrial broadcasters holding more than one multiplex. Other must carry obligations might be imposed in favour of former local analogue broadcasters, while at national level these might be imposed according to the rules for the assignment of 6 multiplexes, currently suspended (see below). The regulation also provides for minimum capacity reserved to local channels, access to network at fair, transparent and non-discriminatory terms as well as maximum thresholds on channels owned.

## 6. SPECTRUM MANAGEMENT

While a significant portion of spectrum, including the digital dividend, is being made available for mobile broadband by means of a multiband auction and the material implementation of spectrum refarming, the process for the final assignment of rights of use for broadcasting is still on going.

As envisaged by the Stability law for 2011, during 2011 the Italian authorities completed with a successful process the assignment procedure of some 255 MHz of spectrum, in the 800 MHz, 1800 MHz, 2000 MHz and 2600 MHz frequency bands via a multiband auction, based on simultaneous multiple rounds, which lasted almost one month. With the exception of 15 MHz unpaired in the 2000 MHz band, all other frequency lots have been assigned to the four existing mobile operators, for an overall amount reaching almost € 4 billion, with three operators out of four bidders securing 2x10 MHz each in the 800 MHz band.

The allocation of the digital dividend to mobile broadband appears to be a cornerstone for the dynamics of the entire sector and for the reorganisation of spectrum. While it requires significant investments from the operators, specific coverage obligations attached to some frequency lots in the 800 MHz band aim at reducing the digital divide for rural areas. Finally, in order to free the 800MHz band by January 2013 pursuant to the Stability Law, Italian authorities have to complete the complex reorganisation of the broadcasting spectrum, in particular that used for local transmissions, while trials and tests concerning the risk of interference with broadband are on-going.

In general, the switch-off of analogue terrestrial broadcasting is progressing according to the timetable, with the last Regions supposed to become all-digital by June 2012. In parallel, rights of use for local digital terrestrial television are being assigned to local operators on the basis of local selection procedures based on the criteria set out by Law 34/11. In some areas this process might be challenging, given the high number of potential applicants and the fact that some of the channels used by Italy are not coordinated at an international level. On the one hand, some € 174 million have been made available, to compensate the withdrawal of

existing provisional rights of use. On the other hand, Italy is negotiating on a bilateral basis international coordination, also in view of the final switch-off, although interference episodes have been referred to the ITU by several neighbouring countries.

Another assignment of six rights of use for national digital terrestrial multiplexers was, on the contrary, suspended shortly before its finalisation, in order to assess the opportunity to review the current selection criteria (based on a beauty contest) and in view of international developments for the use of 700 MHz band. In the context of a long lasting infringement proceeding opened by the European Commission against Italy, concerning the direct assignment of digital terrestrial rights of use to the incumbent operators, this assignment aims at opening the market for new entrants or smaller existing operators while ensuring the efficient use of spectrum. The finalisation of the procedure, in view of this objective, is also a step needed to complete the reorganisation of broadcasting spectrum. Further spectrum could be available, following the end of DVB-H transmissions.

In addition to the spectrum available by means of the auction, in 2011 the mobile operators started the implementation of the re-farming process of the 900 MHz band, authorized in 2010. The frequency re-farming should lead to a reshuffling of current holdings in order to allow the provision of service in conformity with the principle of technological neutrality, as well as to the gradual freeing of 2x5MHz in favour of the operator currently not operating in this band. In the application of the 2008 rules on re-farming, this operator also exercised its option for an assignment of 2x10MHz in the 1800 MHz band, although the price to be paid in application of the non-discrimination clause included in the original decision is still debated.

Changes in the National Allocation Tables are still needed to ensure the implementation of Decisions 2009/343/EC and 2009/381/EC. At the moment only one of the two selected MSS operators applied for and was granted the right of use.

## **7. CONSUMER INTEREST**

### **7.1 116 – Harmonised numbers for services of social value**

Missing children helpline 116000 is operational
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The missing children helpline on 116 000 is currently managed by a well-established non-profit organization dealing with protection of children in general, while other 116-related numbers have been made available in the national plan but are not operational.

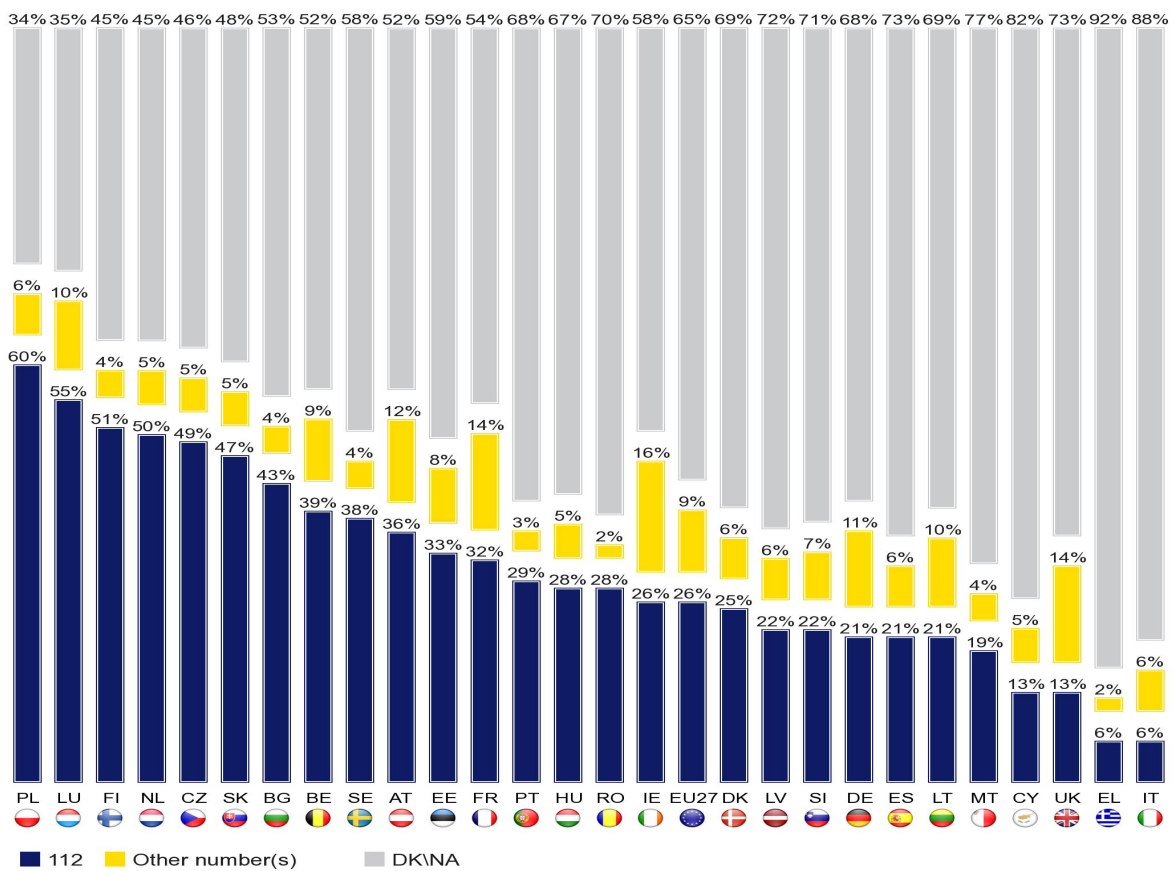
## 7.2 112 – European emergency number

Implementation of the 112 number is still based on a temporary solution, which is subject to further improvements, and the awareness of the European 112 number remains the lowest in EU.

### 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

Following the digitalisation of PSAP lines in 2010, the European Emergency Number 112 is still based on a temporary system managed by the Carabinieri in most parties of Italy. A dedicated 112 PSAP system coordinating all emergency calls is currently available only in Lombardia. The European Commission is monitoring the availability of caller location for roaming users, which needs some technical adjustments from the operators' side. Also instances of mishandling of calls, in particular concerning routing to the competent



emergency system, have been reported. Awareness of 112 as European Emergency Number among citizens is still the lowest in Europe (6%, compared to the European average at 26%).

### **7.3 Net neutrality and Quality of services**

The adoption of tools aiming at enhancing transparency of conditions for end-users remains one of the main objectives of the NRA, which also completed an inquiry on traffic management techniques currently adopted by operators.

AGCOM has increasingly been involved in assessing different measures concerning the relationship between the provision of electronic communications services and networks on the one hand, and the applications and contents running over them on the other. Following the public consultation launched in 2010, AGCOM issued a report on current traffic management techniques adopted by operators and their impact on the net neutrality principle<sup>31</sup>. In particular in the mobile segment some limitations of traffic are increasingly used as a tool to differentiate the retail offers, leading to a wide variety of options for the end-users. While the authority does not envisage immediate regulatory intervention, it will continue monitoring the market developments in view of the transparency and the net neutrality principles.

In addition, AGCOM launched a consultation concerning the implementation of its powers regarding copyright enforcement in the electronic communications sector, including the possibility to impose on ISPs the blocking of access to specific websites.

Finally AGCOM has launched an initiative for a new database providing transparent information on the broadband coverage of (wired and wireless) operators, accessible to end users. This database will complement the existing web tool for the certified measurement of the speed of the broadband connection launched in 2010 and updated in 2011.

### **7.4 Consumer Complaints, tariff transparency**

In case of complaints brought in front of dispute settlement bodies, automatic minimum indemnities for breach of certain quality parameters have been set by the regulator.

Overall, the main sources of complaints involve number portability (in particular fixed), costs of termination of contracts, quality and disconnection of services and call centres quality. As a matter of fact there is a wide variety of instruments dealing with consumer complaint. Besides direct complaints to the NRA and the disputes with the settlement bodies delegated in the Regions (CoReCom), consumers can also refer their case to a specific mediation mechanism for disputes with the incumbent, or file a complaint with the antitrust authority for an alleged breach of the law on unfair commercial practices.

The NRA also approved a regulation defining automatic minimum indemnities due to the consumers for breach of certain quality parameters in case of disputes between users and operators in front of AGCOM and Corecoms. In 2011 around 80.000 cases were filed with an average value of € 400 per case, and around 75% of them were resolved by an agreement<sup>32</sup>.

### **7.5 Number portability**

The smooth functioning of fixed number portability was not yet fully ensured.

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<sup>31</sup> See Decisions AGCOM 713/11/CONS and 714/11/CONS.

<sup>32</sup> Source: AGCOM.

Number portability works differently in the mobile and fixed sectors. In the former case, in general the process is perceived as smooth, with portability requests booming in 2011 (in the period January-September 2011, with an increment of more than 1.9 million of numbers ported with respect to the previous year (+47%), reaching an overall amount of 5.977.477 transactions, the highest in Europe). AGCOM recently adopted new procedures, aiming at ensuring number portability in line with the 2009 Reform package, including indemnities for the consumer in case of delay. As far as fixed migration (with includes switching, between OLOs, of the incumbent access line plus synchronized number portability) is concerned, more than 1,300,000 transactions took place in 2011, although technical problems still arise in several cases. Despite new rules entered into force in February 2011 on pure number portability (typically applied in the case of proprietary access lines), aiming at ensuring portability within 5 days, some implementation problems on the incumbent network have been reported<sup>33</sup>.

## 7.6 Universal service

The delay in the determination of net-cost for past years is still significant.

Universal service is still provided by the incumbent on the basis of the transitional regime, in the absence of the implementation of the designation mechanism envisaged in the Electronic Communication Act. The scope of the universal service has also remained unchanged, while AGCOM focused on supervision of quality parameters. The inclusion of broadband is not envisaged at the moment. The delays in the application of the funding mechanisms, following the annulations of AGCOM's decisions on the calculation of net for the years 1999-2003, have not been made up for yet, while the decision on the net cost for the Universal service concerning the year 2004 has finally been adopted. The calculation is based on the methodology issued in 2008 and on an external audit from 2010, leading to the final figure of €25.90 million.

## 7.7 e-Privacy

The opt-out registry for unsolicited calls has been launched, but compliance of operators is still an issue that triggered several enforcement actions of the national data protection authority (*Garante della Privacy*)

Following the implementation measures adopted in 2010, the opt-out registry for unsolicited calls has been operative since February 2011, and approximately 900,000 subscribers registered so far, out of 15 millions. On the other hand, almost 350 telemarketing operators are registered in the system. Despite the smooth launch of the system, compliance with the national law is still not ensured by all operators and the national data protection authority (*Garante della privacy*) is facing a significant enforcement burden, with sanctions imposed on average for €20,000.

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<sup>33</sup> Following the opening of a sanctioning procedure in 2011, commitments offered by the incumbent in order to redress the issue have been accepted by AGCOM in March 2012



**EUROPEAN COMMISSION**  
Information Society and Media Directorate-General  
Electronic Communications Policy  
**Implementation of Regulatory Framework**

18 June 2012

# **LITHUANIA**

## **2011**

# **Telecommunication Market and Regulatory Developments**

## LITHUANIA

### 25. MAIN MARKET & REGULATORY DEVELOPMENTS: BEST PRACTICES AND CHALLENGES

#### Development of the sector

With the exception of revenues from broadcasting, all revenues from electronic communication services have dropped significantly in 2010 and 2011, shrinking considerably more than the EU average. Yet a strong economic growth was observed in the fourth quarter of 2011 (7.6% GDP increase), and the electronic communications sector is expected to follow. The trend was already visible in the fourth quarter of 2011, with a revenues growth of 1%. Investments grew both in 2010 (by 4%) and in 2011 (by 12.2%), a large part of them being undertaken by the incumbent operator (TEO).

The importance of the mobile market has further increased, with a growing mobile penetration and an increased fixed-mobile substitution. The market shares of the three main players have remained fairly stable through 2011, at approximately 39%, 37% and 24%. 4G services are offered by the first operator (Omnitel), and developments in this area from the second operator are expected soon, too.

The incumbent operator is still playing a highly dominating role on the fixed market with a market share above 90%.

It is also regaining market share in broadband, following significant fibre investments. Lithuania continues to enjoy strong infrastructure-based competition in broadband, supported by a mix of symmetric and asymmetric remedies, with access to ducts playing a key role.

As regards the broadcasting services, IPTV is becoming increasingly popular among Lithuanians, following network investments and having nevertheless in mind that the entire pay TV market is rather low. The penetration of bundled offers remains also well below the EU average.

#### Progress in broadband deployment and take-up

Lithuania continues to be a front-runner in the EU as regards fixed broadband deployment, leading to offers of high quality broadband, including high speeds. In January 2012, almost half of all broadband lines were fibre lines and only 27% were DSL lines. Mobile broadband is expected to be further deployed relatively soon. Yet broadband penetration is still lagging behind, especially fixed broadband penetration, which is at 22.6% in Lithuania, as compared to the EU average of 27.7%.

An Information Society Development Programme was adopted, aimed at bridging the gap between the extensive infrastructure deployment and rather low the penetration rate. Public investment in networks also continues, mainly through the RAIN project.

### Independence and effectiveness of the NRA

The modification of the Lithuanian Electronic Communication Law, by which certain regulatory functions were transferred from the Ministry of Communications to the NRA (Ryšiu reguliavimo tarnyba, or RRT) allowed the Commission to close infringement proceedings regarding effective structural separation between regulatory and ownership functions for bodies vested with market regulation powers.

The alleged use of administrative charges for general state budget needs in 2009 remains an open issue.

### Implementation of the framework

Lithuania transposed the revised EU regulatory framework for electronic communications by amending its Law on Electronic Communications, which was effective 1 August 2011, and by adopting a number of Decisions by the National Regulatory Authority.

### Spectrum management

Further deployment of 4G services is expected following the reassignment of the 900 MHz frequency band and the assignment of additional slots in the 2.5-2.6 GHz frequency band. The digital dividend has not yet been released, despite progress in addressing coordination issues with neighbouring countries.

### Citizens and consumer protection

Updated consumer protection rules have entered into force in 2011. Furthermore, progress has been made in the implementation of key provisions of the revised regulatory package, such as e-privacy or the provision of universal services for disabled users.

## **26. NATIONAL REGULATORY AUTHORITY**

The modification of the Lithuanian Electronic Communication Law, by which certain regulatory functions were transferred from the Ministry of Communications to the NRA (RRT) allowed the Commission to close infringement proceedings regarding effective structural separation between regulatory and ownership functions for bodies vested with market regulation powers.

While transposing the revised EU regulatory framework for electronic communications, Lithuania amended its Law on Electronic Communications to also transfer certain regulatory tasks from the Ministry of Communications to the national regulatory authority, the RRT. Previously the Ministry had regulatory tasks concerning the national radio frequency plan, and the provision of Universal Service in Lithuania, while at the same time retaining

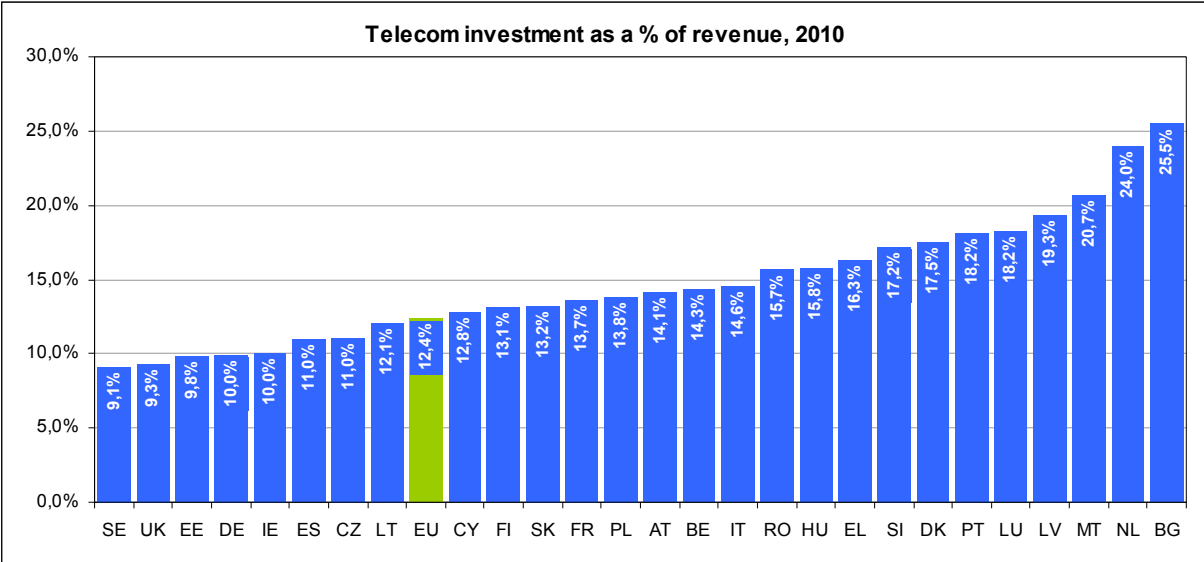
ownership of the Lithuanian Radio and Television Centre. The only power retained by the Government is to approve price caps and rules for compensation of losses resulting from the provision of Universal Service, which are first proposed by the National Regulatory Authority. This legislative change allowed for the closure, in September 2011, of the infringement proceeding against Lithuania regarding structural separation between regulatory and ownership functions.

Having considered the budget surpluses of the previous years and with a view to easing the financial burden on participants in the regulated market, a revenue reduction coefficient of 0.85 was applied by the National Regulatory Authority, as of 1 April 2011. In the meantime, the Commission continued to monitor the issue of the use of administrative charges used in 2009 for general state budget needs.

RRT is also acting as a dispute-settlement mechanism. Its performance in this capacity is rather positively assessed by the operators. The number of pending appeals is also rather low. Nevertheless, the perceived lack of judges specialised in electronic communications cases and the relatively slow proceedings lead to certain frustration among operators.

**27. REVENUES AND INVESTMENTS**

With the exception of revenues from broadcasting, all revenues from electronic communication services have dropped significantly in 2010 and 2011, shrinking considerably more than the EU average. Yet a strong economic growth was observed in the fourth quarter of 2011 (7.6% GDP increase), and the electronic communications sector is expected to follow. The trend was already visible in the fourth quarter of 2011, with a revenues growth of 1%. Investments grew both in 2010 (by 4%) and in 2011 (by 12.2%), a large part of them being undertaken by the incumbent operator (TEO).



Source: Commission Services

The total turnover of the electronic communications sector in Lithuania in 2010 was €745 million, which is almost 11% below the one of the year before. According to the figures made available by RRT, the contraction in 2011 was lower, but still at 7%<sup>34</sup>. Such decreases are considerably higher than the average EU figures (-1.8% in 2010). The revenue contraction applies for both fixed and mobile operators. The only exception to this trend concerns pay TV services, which generated increasing revenues.

The fourth quarter of 2011 marked the return to growth, with revenues from electronic communication services going up with 1%. Therefore, with the return of a rather solid economic growth (7.6% of GDP increase in the third quarter of 2011), it is expected that the revenues in the electronic communications sector will follow.

The investments of electronic communications operators grew by 4% in 2010 and 12.2% in 2011, in spite of shrinking revenues. Most of the investment efforts were undertaken by the incumbent, which reported a 58% increase in its 2010 investments compared to 2009. The overall investment to revenue ratio in 2010 was 12.1%, just slightly below the EU average of 12.2%.

## **28. BROADBAND**

Lithuania continues to be a front-runner in the EU as regards fixed broadband deployment leading to offers of high quality broadband, including high speeds. Mobile broadband is expected to be further deployed relatively soon. Yet broadband penetration is still lagging behind the EU average. Lithuania has strong infrastructure-based competition in broadband supported by a mix of symmetric and asymmetric remedies, with access to ducts playing a key role. An Information Society Development Programme was adopted, aimed at bridging the gap between the extensive infrastructure deployment and rather low the penetration rate. Public investment in networks also continues, mainly through the RAIN project.

### **4.1 Market situation and regulatory developments**

Lithuania continues to be a front runner in the European Union as regards fixed broadband infrastructure deployment. Lithuania is well ahead in the EU as concerns fibre deployment. Fibre is in fact the dominating technology (almost half of all lines), allowing for high quality broadband. Also, it should be noted that roughly half of all fibre lines were deployed by the alternative operators. In January 2012, of all broadband lines, only 27% were of the DSL technology, which was significantly below the 76% EU average. Cable model lines represented 6% of all lines (compared to a 16% average in the EU), with the rest of the lines being either mobile or wireless. As concerns mobile broadband infrastructure, 88% of the Lithuanian territory is covered by a 3.5G mobile network, and LTE deployment is being undertaken by one mobile operator and prepared by a second.

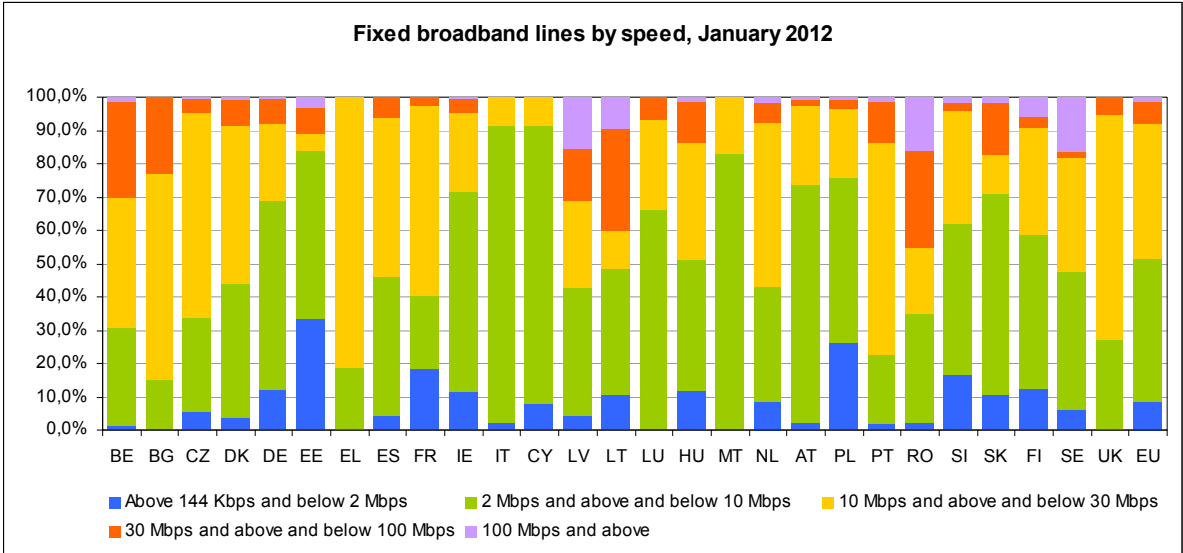
This infrastructure allows for very high data communication speeds and most broadband lines are in fact able to deliver speeds above 10 MBps. This percentage of broadband lines able to deliver speeds above 10 MBps stood at 51.7% in January 2012 and had been rising rapidly

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<sup>34</sup> See <http://rrt.lt/en/press-release/rrt-is-announcing-a5ve.html>

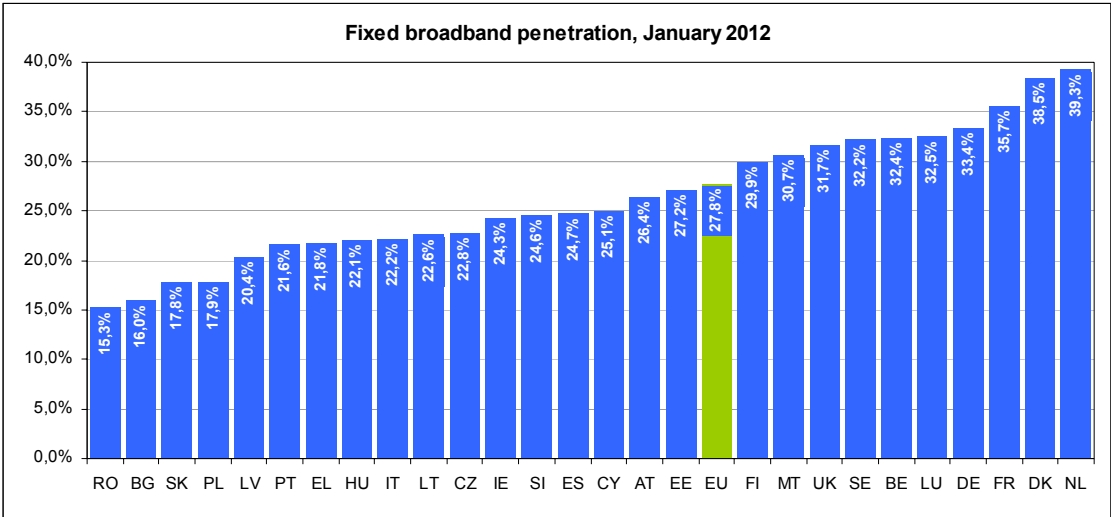
throughout the past years. Lithuania now has the second highest share of very fast lines in the EU, with 40% of all lines offering speeds at or above 30 MBps, which is significantly above the EU average of 8.5%.

**Fixed broadband lines in the EU Member States by speed**



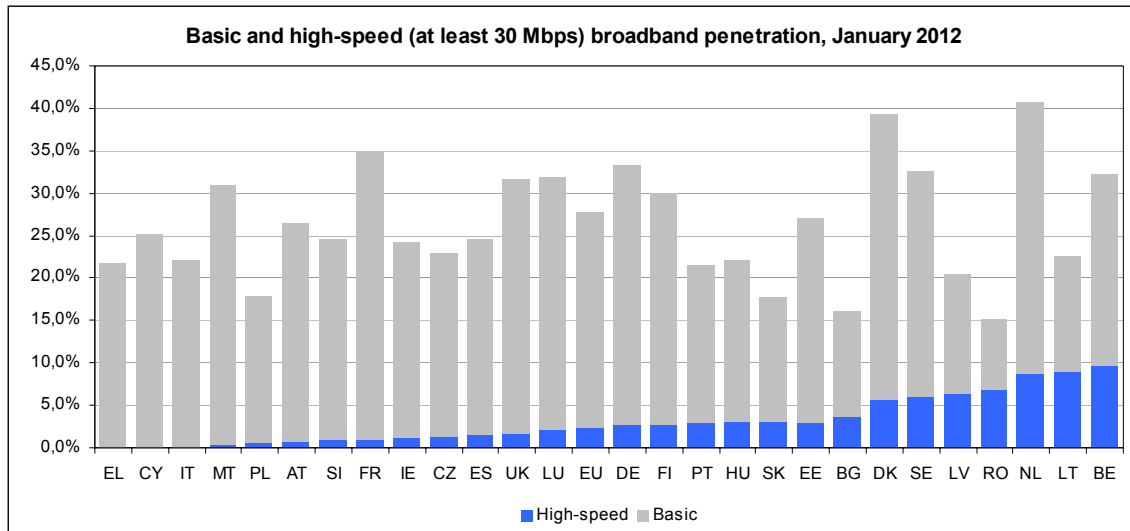
Source: Communications Committee

On the other hand, broadband penetration is still below the EU average. Fixed broadband penetration at 22.6% in January 2012, was below the EU average of 27.4%. Yet the penetration rate continues to grow at a pace higher than the EU average (2% as compared to 1.5% in 2011), showing signs of convergence. Mobile broadband penetration stood at 29.6% compared to the 43.1% EU average, its growth being very rapid. As far as dedicated devices for mobile broadband are concerned, their penetration is close to the EU average (7.9% compared to 8.1%, respectively.)



Source: Communications Committee

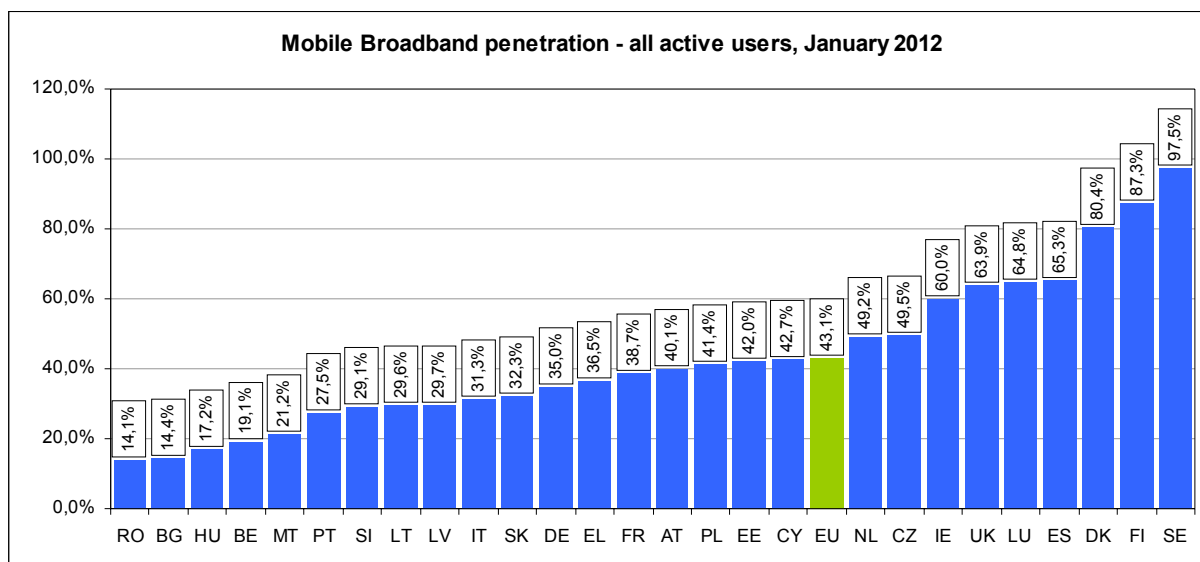




Source: Communications Committee

The broadband market share of the incumbent rose once again from 50.4% in January 2011 to 50.9% in January 2012, and remained above the 43% average in the EU. In fact, faced with the high competitive pressure from the new entrants, which were first to deploy fibre and provide high quality Internet, the incumbent has been investing heavily in deploying Fibre-to-the-Home (FTTH) and Fibre-to-the-Building (FTTB) in order to regain their prominent position in broadband provision. The incumbent still has over 99% of the DSL lines, but those have a decreasing importance. The investments in fibre allowed the incumbent to gain market share not only in the provision of Internet, but also in the provision of pay TV services, although the TV market remains relatively small.

As concerns mobile broadband, one operator already offers LTE services in selected areas and another one is expected to deploy such services shortly (see below). Moreover, a number of providers are offering mobile broadband services based on WiMAX technology at rather high speeds (about 10 MBps).



Source: Communications Committee

This strong infrastructure-based competition is supported by a combination of not only asymmetric regulation applicable only to the operator with significant market power (SMP), but also symmetrical remedies concerning duct access, which are applicable to all market players.

Concerning SMP regulation, a final decision was taken, in June 2011, with regard to the market for wholesale physical network infrastructure access (including shared or fully unbundled access), having taken into account two rounds of comments made by the European Commission. The incumbent operator was found to have SMP, and a whole set of obligations were imposed except functional separation obligation. The decision was effective on 1 January 2012. An analysis of the wholesale broadband access market is currently being undertaken, and the notification of the decision is expected in the course of 2012.

However, it should be noted that there is a very low take up of Local Loop Unbundling products (0.1%) and Bitstream products (0,24%), despite their rather low price compared to the EU average. This is mostly due to the strong development of own infrastructure by alternative operators, in relation to symmetric remedies.

Symmetric remedies mostly concern access to ducts. In May 2010, the NRA introduced a number of changes related to duct access provision into the Regulation on Infrastructure Sharing, following previous complaints of alternative operators and long standing disputes in Courts regarding the rejection of demands by the incumbent on grounds of insufficient duct space. These rules mainly concern a minimum diameter for newly built ducts, the provision of detailed information on duct availability and finally a methodology for calculating the space available. It should be mentioned that most of the ducts are still built by the incumbent operator.

Part of the effort to facilitate duct access is to increase transparency concerning existing ducts. The incumbent operator is currently undertaking a digitalised duct mapping exercise. Moreover, the NRA is working with certain municipalities to develop a centralised system, giving access to digitalised local maps covering passive infrastructure. While the project is still in an initial phase, a dedicated website will be launched in the first half of 2012, functioning also as a

cooperation tool, where operators can exchange information on planned civil works, and where standard cost sharing agreements can be found.

## 4.2 National Plans

The Lithuanian government adopted in 2011 the Information Society Development Program, tackling both demand and supply elements. The program has the goal of bringing the Lithuanian broadband usage indicators in line with the EU ones by 2015, and in particular of bridging the gap between the very high infrastructure deployment and the relatively modest penetration rate.

The Lithuanian Government has continued to invest in ICT infrastructure, mainly through the RAIN project. Part-financed via EU cohesion funding, throughout two programming periods, the objective of the RAIN project has been to offer broadband in rural areas at prices similar to those in competitive, urban areas. The first phase of the project (2005-2008) consisted in connecting remote areas to municipalities. The second phase (2009-2013), which is considered to progress well, is aimed at interconnecting municipalities, extending the network in rural areas, connecting mobile towers to backhaul infrastructure, to allow them to prepare for 4G services etc.

At the end of 2011, the existing RAIN network, currently running as a public company, offering dark fibre and point to point stream at prices established by the Government, served 36 operators, including the incumbent. In certain areas the RAIN network and the incumbent's network act as competitors.

## 29. VOICE AND OTHER eCOMMUNICATIONS SERVICES

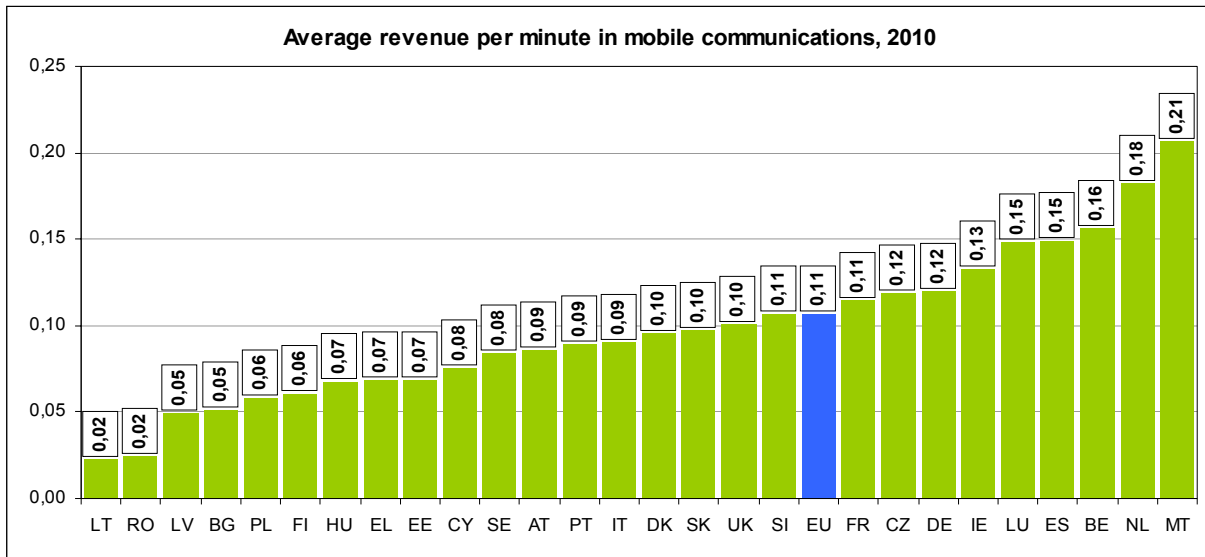
Despite the revenues drop, the importance of the mobile market has further increased, with a growing mobile penetration and an increased fixed-mobile substitution. As concerns the fixed market, its dynamics have remained fairly stable, with the incumbent still playing a highly dominating role. The rise in revenues from broadcasting services is linked to IPTV becoming increasingly popular in Lithuania. The penetration of bundled offers remains, nevertheless, well below the EU average.

### 5.1 Mobile services

Mobile revenues have decreased further throughout 2010, registering a 17% decrease compared to 2009. Moreover, the average revenues per user have decreased by over a third, to €61 in 2010, a figure which is approximately four times lower than the EU average and which is comparable only to Romania. According to the data provided by the NRA, the mobile market shrank further by 4.1% in 2011<sup>35</sup>.

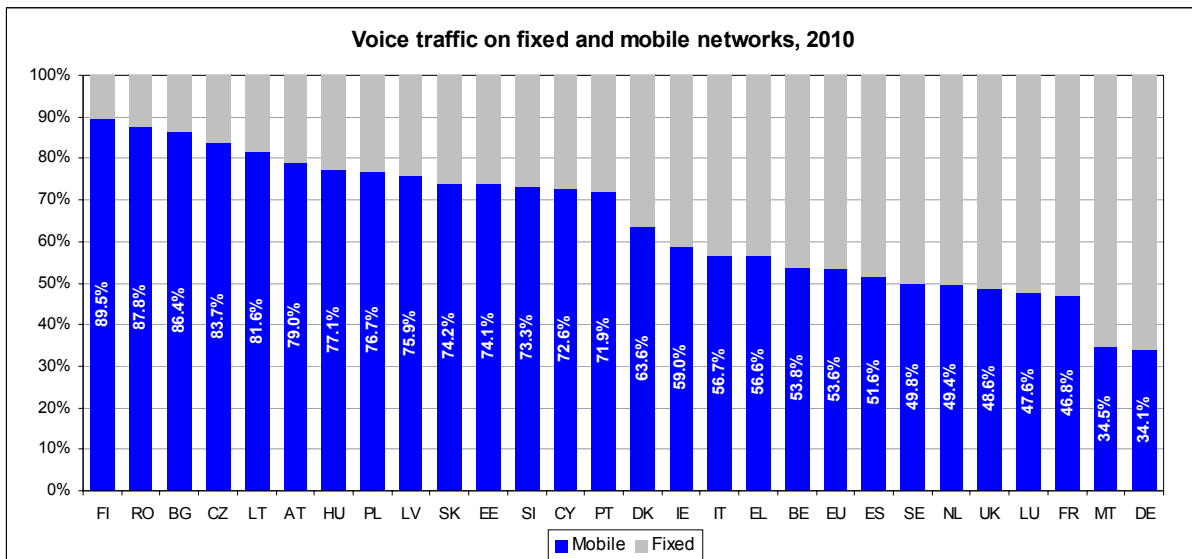
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<sup>35</sup> See <http://rrt.lt/en/press-release/rrt-is-announcing-a5ve.html>



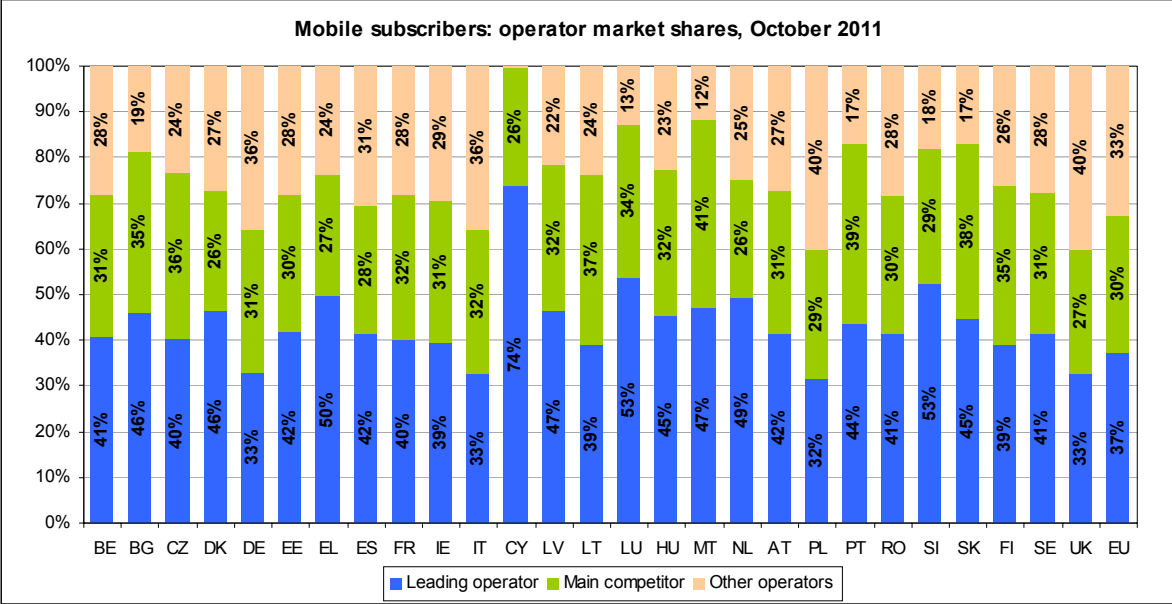
Source: Commission services

On the other hand, the importance of mobile revenues is increasing, as reflected by an increased percentage of mobile revenues as part of the total revenues in electronic communications. Part of this is due to the increasing customer base, ensuring a 152% mobile penetration in 2011, which is largely above the EU average of 127%. Of the current customers, 57.2% had prepaid subscriptions in 2011 and 42.8% postpaid ones, whereas throughout the EU the two categories of customers are on average equal. Moreover, the strong mobile fixed-substitution tendency has continued throughout 2011, with over 81% of the traffic taking place on mobile networks as compared to 78.6% the year before and 76% two years ago.



Source: Commission services

The market shares of the three main players in the mobile market have remained fairly stable through 2011 at approximately 39%, 37% and 24%, indicating a tight competition between the first and the second operator. Both the first and the second operator have been investing in their networks, in preparation to offer 4G services. The first operator (Omnitel, TeliaSonera group) is already providing services based on LTE technology in limited areas (mainly Vilnius and Kaunas), while the second operator has reported having performed the necessary upgrades to its networks in order to provide 4G services.

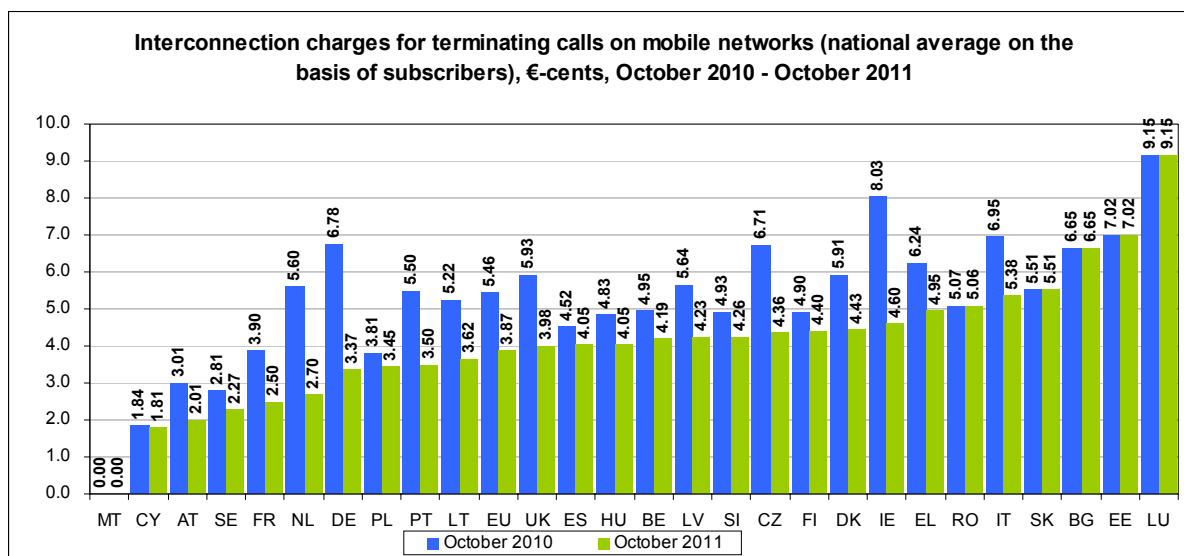


Source: Commission services

However, according to the mobile operators, the market for mobile data services is still rather small, with the main reason being the high cost of handsets. Further development of LTE services are expected from the winners of the 2.5 and 2.6 GHz band tender, selected in April 2012. Currently 88% of Lithuania's territory is covered with 3.5G networks.

Average interconnection charges for terminating calls on mobile networks have dropped significantly from 4,18 €cents/min in 2010 to 2,90 €cents/min. in 2011. Following the 2009 decision on the market for mobile wholesale call termination, the rates were further reduced, in January 2012, to 1.62 €cents/min.

In October 2011 RRT approved a regulation on Access establishing the regulatory framework for deployment of interconnection cables. Established provisions foresee that the least expensive interconnection solution suggested by negotiating parties should be deployed, and costs for provision of such solution should be shared.



Source: Commission services

## 5.2 Fixed

Revenues from fixed telephony have continued to drop, both as an absolute number and as concerns their relative share in the total revenues in electronic communications. At above 90% in 2011, the market share by retail revenue of the incumbent operator in the fixed market continues to be very high, with only a slight decrease from the year before. The market share by traffic volume was 96.8%, which is the second highest in the EU. The market share of VoIP providers by volume of traffic was approximately 1.4% in December 2010, significantly lower than the European average of 23.4%.

A total of 26 alternative operators (one less compared to the year before and all with proprietary infrastructure) offered voice telephony through direct access in 2011. Yet only 9% of the fixed subscribers are using an alternative provider, which is very low figure compared to the EU average of about 39%. Although there is an increase in their market share, the rate is very slow.

Alternative operators providing fixed services have reported not being able to make competitive offers, partly due to some issues related to the current regulatory regime concerning interconnection and termination rates (e.g. relatively high level of termination charges for fixed operators, practical difficulties when installing connecting cables etc).

## 5.3 Broadcasting

Revenues from broadcasting are the only ones to have gone up from a €72 average revenue per user in 2009 to €86.4 in 2010, surpassing for the first time the average revenues per user in mobile communications. Furthermore, according to data published by RRT, revenues from digital television services grew by 17.7% in 2011. Still, the overall pay TV market is relatively small, given the very high number of free to air channels in Lithuania.

The customer base of satellite and cable providers have remained fairly stable, at approximately 6% and 30% respectively. Improvements of the IPTV offers, mainly by the

incumbent operator, have led to an increase of over 20% of the customer base in 2011. Still, IPTV dominates only in urban areas, with Digital Terrestrial Television being offered in rural areas. 20% of the TV customer households in Lithuania watch digital television.

The date planned for the digital switchover, 29 October 2012, has been reconfirmed by the Government. To accompany the transmission towards the new systems, measures were adopted by the Lithuanian Government in support of the most vulnerable social groups. More precisely, the Government is to co-finance, with a lump sum, the purchase of the necessary receiving equipment, for households with a very low income. Information campaigns are also ongoing.

### 30. SPECTRUM MANAGEMENT

Further deployment of 4G services is expected following the reassignment of the 900 MHz frequency band and the assignment of additional slots in the 2.5-2.6 GHz frequency band. The digital dividend has not yet been released, despite progress in addressing coordination issues with neighbouring countries.

The re-assignment of the 900 MHz frequency band was completed in 2011, with the three mobile operators agreeing among each other, under the coordination of the NRA, to swap frequencies, so that each operator would have a slot of at least 5 MHz, thereby allowing it to deploy the LTE technology. The new licences were issued in February 2012 and are valid until 2017. A full re-farming exercise is foreseen for 2017.

With regard to the long standing digital dividend issue, an agreement was reached with Russia and Belarus concerning the use of the 800 MHz band for terrestrial systems. The agreement defines areas where coordination is needed (10 km across the border) and areas where a maximum density of base stations per square kilometre can be built. While the signing of this agreement is a step forward, coordination is still necessary and negotiations are ongoing. The Commission will monitor the implementation by Lithuania of the provisions of the Radio Spectrum Policy Programme (RSPP)<sup>36</sup> which require Member States to carry out the authorisation process by 1 January 2013 in order to allow the use of the 800 MHz band for electronic communications services (Article 6.4).

A public tender was announced at the end of 2011, concerning the use of certain frequency slots in the 2.5 -2.6 GHz band for the provision of electronic communications, on the entire territory of Lithuania. The tender was organised as a "beauty contest" and the three main mobile operators participated. The winners were selected on 6 April 2012.

Additional slots have been made available for electronic communications in the 2.3-2.4 GHz and in the 3.6-3.8 GHz bands, with authorizations issued on 5<sup>th</sup> March 2012.

As concerns the Spectrum Harmonisation Decisions, the Commission Decision 2011/251/EU concerning the harmonisation of the 900 MHz and 1800 MHz bands, was implemented in October 2011, by an amendment to the National Radio Frequencies Plan in order to add LTE and WiMAX to the list of terrestrial systems capable of providing electronic communications

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<sup>36</sup> Decision 243/2012/EU of the European Parliament and of the Council of 14 March 2012 establishing a multiannual radio spectrum policy programme

services. The Commission Decisions 2011/485/EU and 2011/667/EU are expected to be implemented in the first half of 2012.

### **31. CONSUMER INTEREST**

#### **7.1. 116 – European numbers of social value**

The 116000 number for reporting missing children has been assigned to the Lithuanian Ministry of Interior Affairs, following tenders where no interest was expressed.

Two 116 numbers are currently in use in Lithuania: 116 111 (child helpline) and 116 123 (emotional support), both allocated in 2009. Following unsuccessful tenders, the Ministry of Interior Affairs was authorized in December 2011 to ensure that a service for reporting missing children is available in Lithuania under the number '116000'. Tenders have also been re-launched in 2011 for the 116 006 (help line for victims of crime) and 116117 (non-emergency medical on-call services), but no applications were received.

#### **7.2. 112 – European emergency number**

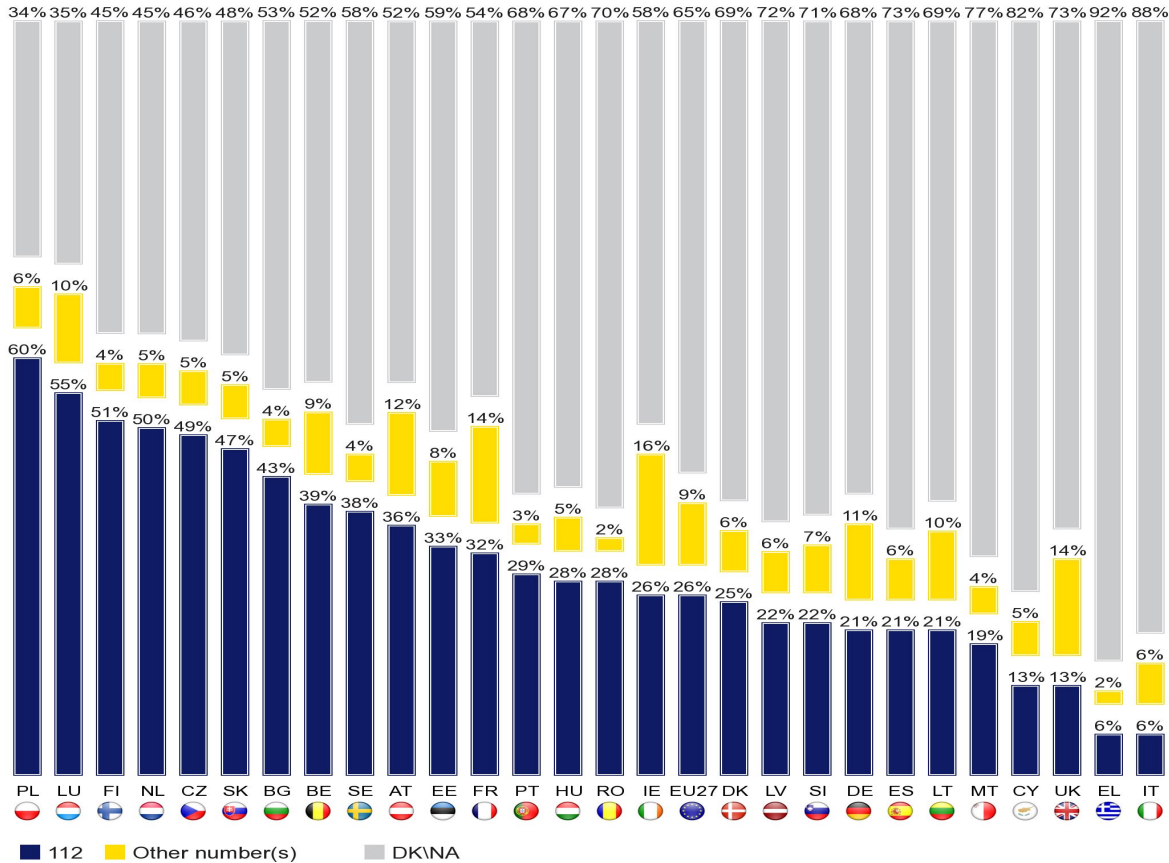
New rules concerning the 112 number were introduced, including requirements for the accuracy and reliability of caller location information.



**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

The last Eurobarometer flash report revealed an increased awareness of the 112 number among Lithuanians, significantly above the EU average.

In October 2011 RRT amended the Regulation on provision of Emergency services introducing the requirements for accuracy and reliability of the caller location information, which should be submitted to the Public Safety Answering Point (PSAP) by the operators in case of the emergency call.

**7.3 Net neutrality and Quality of service**

No particular issues were reported concerning net neutrality and quality of service.

No secondary rules setting minimum quality standards, and aimed at preventing the degradation of the service, or the hindering of traffic over networks, have been developed in Lithuania yet. This is partially due to the fact that, following a previous regulation, data transmission rates are set out in the contracts.

The NRA is also actively monitoring the occurrence of such practices as the throttling of VoIP services, of peer-to-peer file sharing or of video streaming, with a view to developing a framework for service quality.

#### **7.4 Consumer complaints, tariff transparency**

Updated consumer protection rules have entered into force in 2011.

A recent development is the entering into force of updated consumer protection rules on the provision of electronic communications services. Most important changes concern the terms of contracts, information to be provided to consumers, especially disabled users, the unlocking of phones, once the handset subsidy has been recovered by the operator etc.

#### **7.5 Universal service**

The process of extending universal service provisions to disabled citizens is ongoing.

While certain provisions for blind or partially sighted subscribers of universal services have already been included in Lithuanian secondary legislation (concerning for example the provision of information), others are still under discussion with the stakeholders involved.

#### **7.6 Number portability**

Number portability has improved substantially in 2011.

The number of days required to port a number has gone down from five to one for both mobile and fixed networks. The actual observance of the new rules depended to a certain extent on the replacement of the old analogue stations, for which respecting the new requirements was somewhat difficult.

Furthermore, an ongoing issue regarding the porting of numbers for prepaid mobile customers has been solved by imposing an obligation on donor operator to develop and make publicly available web-site, which enables “donor users” to register free of charge in case if donor operator disagrees to allow porting of its unregistered user.

#### **7.7 ePrivacy**

The NRA and the Lithuanian State Data Protection Inspectorate have worked together to implement the new e-Privacy provisions. The NRA has at the same time stepped up its efforts in the field of security of networks.

The responsibilities for the implementation of ePrivacy issues are shared between the NRA and the Lithuanian State Data Protection Inspectorate.

The Data Protection Inspectorate has been working together with the NRA and with industry to develop practical ways to implement the provisions concerning the use of cookies and similar devices. So far, two recommendations have been developed, one of them containing advice for users of electronic communications services with regard to dealing with cookies, and the other one specifying requirements for cookies used on the websites of public institutions.

The Data Protection Inspectorate is also dealing with spam (direct marketing) complaints. Yet one shortcoming is the lack of ability to impose fines. Sanctions can only be imposed by the Courts. However, if parties agree to pay the sanctions on a voluntary basis, the level of fines is much lower (up to €580). The number of complaints is however relatively stable and low.

During 2011, the NRA has reinforced its efforts in the field of security of networks. The national computer emergency response team (CERT) has been strengthened with new investigation and enforcement competencies. Also, an automated process of preliminary investigation of incidents has been put in place, against the background of a rapid increase in the number of incidents reported.



**EUROPEAN COMMISSION**  
Information Society and Media Directorate-General  
Electronic Communications Policy  
**Implementation of Regulatory Framework**

18 June 2012

# **LUXEMBOURG**

## **2011**

# **Telecommunication Market and Regulatory Developments**

## LUXEMBOURG

### 32. MAIN MARKET & REGULATORY DEVELOPMENTS

#### Development of the sector

The total **revenues** of the electronic communications sector were stagnating at €509 million and total **investment** (both tangible and intangible investment) decreased at €93 million in 2010, the mobile sector depicting the most important decrease. (*Section 3*)

The year 2010 was characterised by an increase in the state-owned incumbent's (P&T Luxembourg) robust market share in terms of call volumes in the **fixed telephony market**, attaining 79.5% in December 2010. In the **mobile market**, the leading MNO (LuxGSM) displayed the second highest market share in Europe, further extending its lead, reaching a market share of 53% in 2011 (from 52% in 2010), followed by its main competitor (Tango) with 34%, and the third operator (Orange) with 13%. (*Section 5*)

While depicting the seventh higher fixed broadband penetration in Europe (32%), the Luxembourgish market followed the slowdown of the penetration growth in Europe. In the mobile broadband market, the main trend was the take-up of mobile data services, mostly from smartphones. Although the **fixed broadband market** continues to be largely dominated by the incumbent operator (72% market share of all broadband lines), the approval from the regulator (ILR) of a reference DSL offer and of a reference offer for broadband access, in addition to the upgrading of cable networks to DOCSIS3, pave however the way for the development of a more competitive retail market. (*Section 4.1*).

Mobile **number portability** increased steadily in absolute figures and mobile numbers are usually ported within three days through an automated system. Fixed number portability is less frequent, with only 2.1% of the activated PSTN lines being ported in 2010. (*Section 7.5*)

#### Progress in broadband deployment and take-up

At the end of 2011, Luxembourg has achieved the DAE target aiming at securing a basic broadband connection (in the order of 2 Mbps) for all EU households by 2013. However, progress in the deployment of high-speed (30 Mbps) and very-high speed broadband (100 Mbps) has so far been less encouraging, both in terms of coverage and take-up. The country is, nevertheless, committed in NGA deployment and pursues an ambitious strategy, initiated in April 2010, aiming to make it the first fully fibred country in Europe. The approval from the regulator of a reference DSL offer and of a reference offer for broadband access, in addition to the upgrading of cable networks to DOCSIS3, pave the way for the development of a more competitive retail market for broadband, characterized by a significant increase in speeds. (*Section 4.2*)

#### Independence and effectiveness of the NRA

Besides the recruitment of new personnel to carry out regulatory tasks, a new director of the ILR was appointed in March 2011. The declared priorities of the new Head are the implementation of the National Broadband Strategy, and the completion of the analysis of the wholesale broadband markets. In parallel, the incumbent operator was at its first

steps of a voluntary separation. *(Section 2)*

#### Implementation of the framework

The transposition of the revised regulatory framework was completed by way of several legislative measures, which entered into force on 1 April 2011. The Law on protection of personal data in the sector of electronic communications transposed the modifications to the ePrivacy Directive and entered into force on 1 September 2011, allowing the closure of the pending infringement proceeding. Furthermore, in June 2011, the Commission was able to close an infringement proceeding following the establishment of transparent, simple and inexpensive out-of-court dispute resolution procedures.

#### Spectrum management

The adoption of the law which is amending the law on the management of radiowaves, and the adoption of the new frequency plan, pave the way for the assignment in 2012 of the expiring licences in the 900 MHz and 1800 MHz bands, as well as of already available spectrum, in the 800 MHz and 2.6 GHz frequency bands. *(Section 6)*

#### Citizens and consumer protection

There was only one harmonized number for services of social value operating in Luxembourg at the end of the reporting year. *(Section 7.1)* The level of awareness of 112 as the Single European Emergency number is the second highest in Europe (55%) and no major issues of accessibility have been signalled. *(Section 7.2)* ILR established a mediation procedure providing the consumers with a transparent, simple and inexpensive out-of-court dispute resolution procedure. The Parliament adopted in November 2011 a resolution on net neutrality, initiating a policy debate on whether the principle of net neutrality should be enshrined in the Luxembourgish legislation. *(Section 7.3)* No Universal Service provider has been designated in Luxembourg. *(Section 7.6)* The National Commission for Data Protection has been recently empowered to impose financial sanctions for the lack of notification of data breaches. *(Section 7.7)*

### **33. NATIONAL REGULATORY AUTHORITIES (NRA)**

Besides the recruitment of new personnel to carry out regulatory tasks, a new director of the ILR was appointed in March 2011. The declared priorities of the new Head are the implementation of the National Broadband Strategy, and the completion of the analysis of the wholesale broadband markets. The incumbent operator is at the first steps of a voluntary separation.

The amendment to the Law on the organisation of the ILR, which relates to Article 3(3a) of the Framework Directive, and which strengthens the independence of the NRA, had already been adopted in July 2010.

The incumbent announced to the NRA in June 2011 that it had started the process of a voluntary separation. The aim is to concentrate all fixed and mobile retail activities in a separate entity, while the infrastructure and wholesale activities will remain with the pre-existing company. The process seemed to be complicated by the transfer of public sector employees to the new private law entity. Another problem may be the postal and banking sector activities of the incumbent. Alternative operators expect improved transparency

towards the market, and better guarantees of non-discrimination. The incumbent expects simplification in providing bundled offers, combining fixed and mobile.

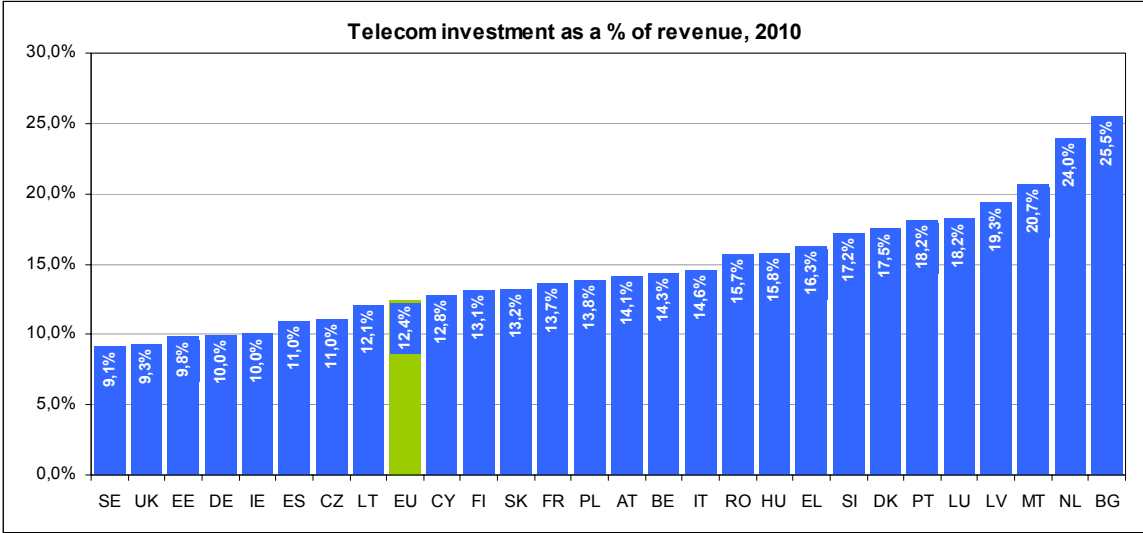
In 2011, the ILR continued recruiting new personnel to carry out its regulatory tasks. The NRA has the power to impose functional separation of an SMP operator, under the new legislation implementing the 2009 Reform Package.

The cooperation between the ILR and the Luxembourgish competition authority (*Conseil de la concurrence*) was marked in 2011 by profound changes in the personnel of the competition authority, and by the reorganisation of the authority under a new law (*Loi du 23 octobre 2011 relative à la concurrence*) coming into force on 1 February 2012. The cooperation between the two authorities is based on *ad hoc* exchange of expertise by way of consultations on particular issues.

ILR’s regulation which was adopted in December 2011 fixed the rate of the administrative tax on operators to cover the regulator's administrative and regulatory costs in 2012 as a fixed lump sum of €2 500 and 0.9% of the operators’ turnover (i.e. the same as in 2011, compared to 0.5% in 2010 and 0.4% in 2009).

**34. REVENUES AND INVESTMENT**

The total revenues of the electronic communications sector were stagnating at €509 million and total investment (both tangible and intangible investment) decreased at €93 million in 2010, the mobile sector depicting the most important decrease.



Source: Commission services

The total revenues of the Luxembourg electronic communications sector were stagnating in 2010 at €509 million. The total value of both tangible and intangible investments in electronic communications networks in 2010 decreased to €93 million, of which €21 million were invested by the mobile operators. The investment over revenue rate in Luxembourg reached 18.2%, placing Luxembourg above the EU-27 average of 12.4%.

**35. BROADBAND**

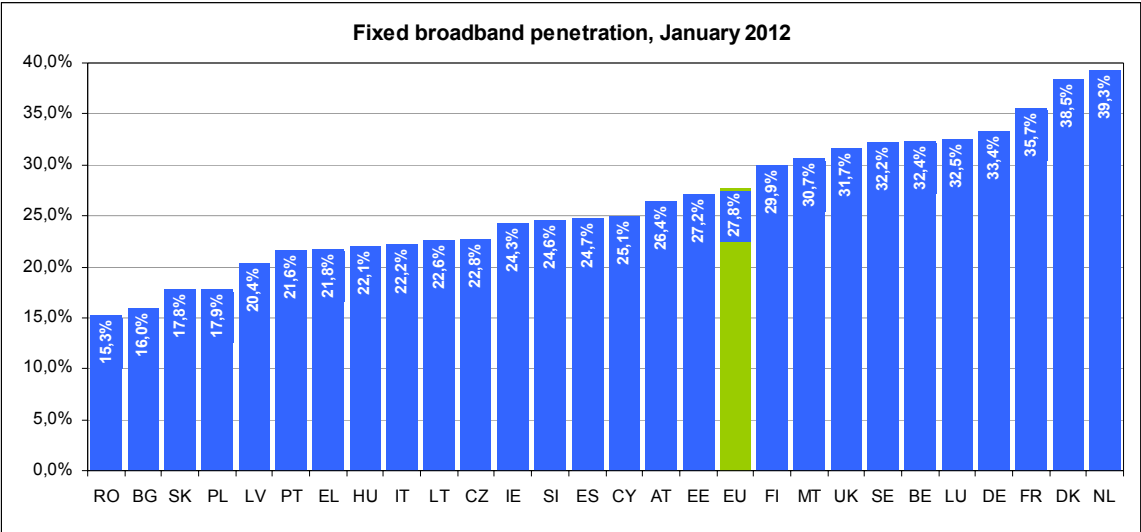
While depicting the seventh higher fixed broadband penetration in Europe (32%), the Luxembourgish market followed the slowdown of the penetration growth in Europe. In

the mobile broadband market, the main trend was the take-up of mobile data services, mostly from smartphones. Although the fixed broadband market continues to be largely dominated by the incumbent operator (72% market share of all broadband lines), the approval from the regulator (ILR) of a reference DSL offer and of a reference offer for broadband access, in addition to the upgrading of cable networks to DOCSIS3, pave however the way for the development of a more competitive retail market.

At the end of 2011, Luxembourg achieved the DAE target aiming at securing a basic broadband connection (in the order of 2 Mbps) for all EU households by 2013. However, progress in the deployment of high-speed (30 Mbps) and very-high speed broadband (100 Mbps) has so far been less encouraging, both in terms of coverage and take-up. The country is, nevertheless, committed in NGA deployment and pursues an ambitious strategy, initiated in April 2010, aiming to make it the first fibred country in Europe. The approval from the regulator of a reference DSL offer and of a reference offer for broadband access, in addition to the upgrading of cable networks to DOCSIS3, pave the way for the development of a more competitive retail market for broadband, characterized by a significant increase in speeds.

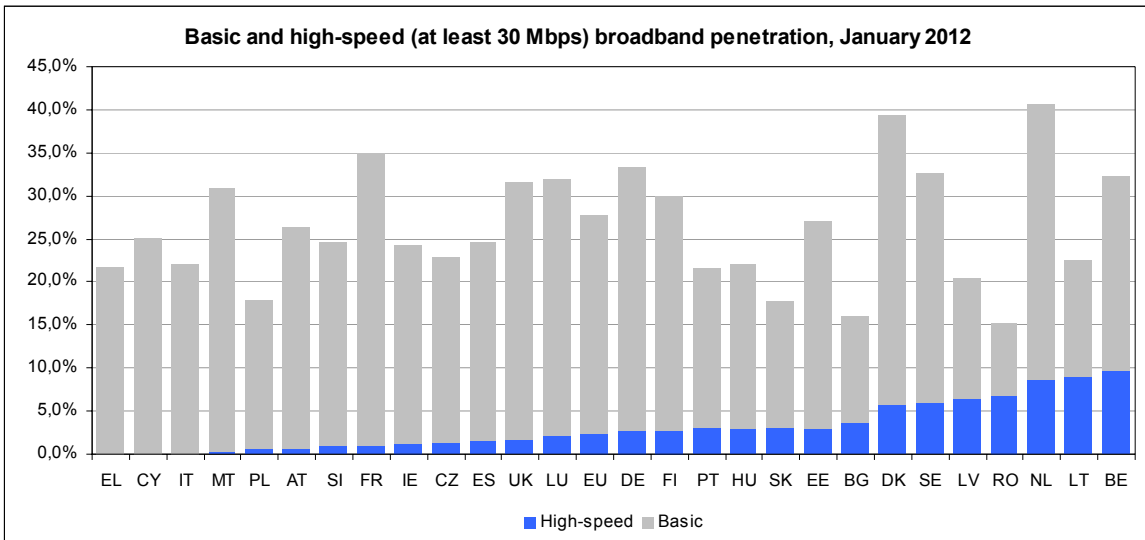
**35.1. Market situation & Regulatory developments**

Luxembourg's broadband penetration rate increased by 1 percentage points since January 2011, reaching 32 % in January 2012, which is well above the EU-27 average of 27.7%.



Source: Communications Committee

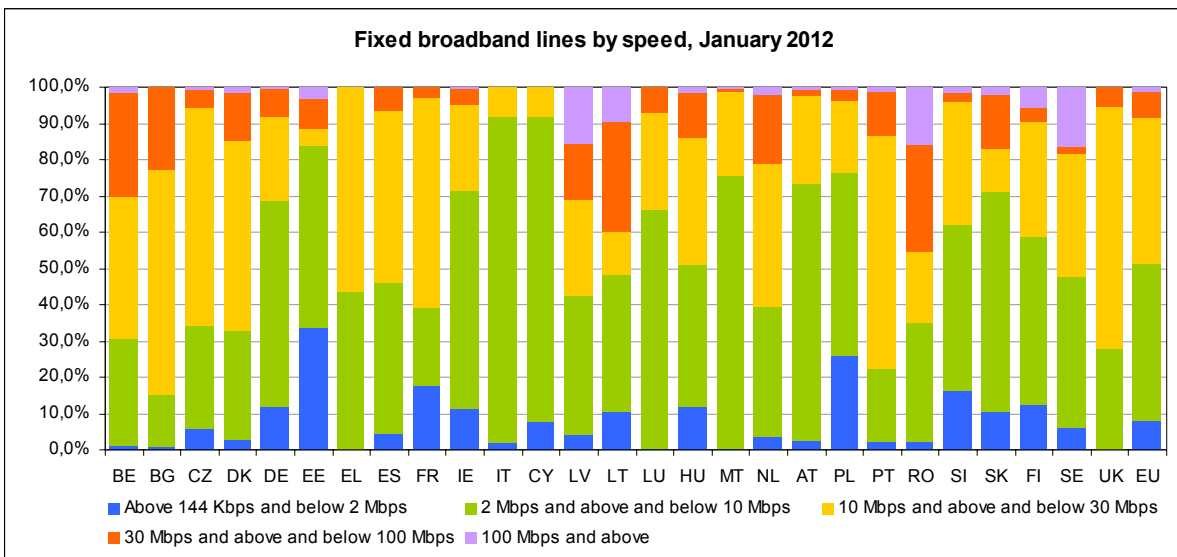




Source: Communications Committee

The incumbent's share of fixed broadband lines has remained stable at 72% as of January 2012. The incumbent had a 80% market share, if the resale of lines of alternative operators is included, compared to 76% a year before. Alternative operators have only 20% of the DSL market (VDSL included), well below the EU 27 average of 45%. Cable represents 10% of all broadband lines, below the EU 27 average of 17%.

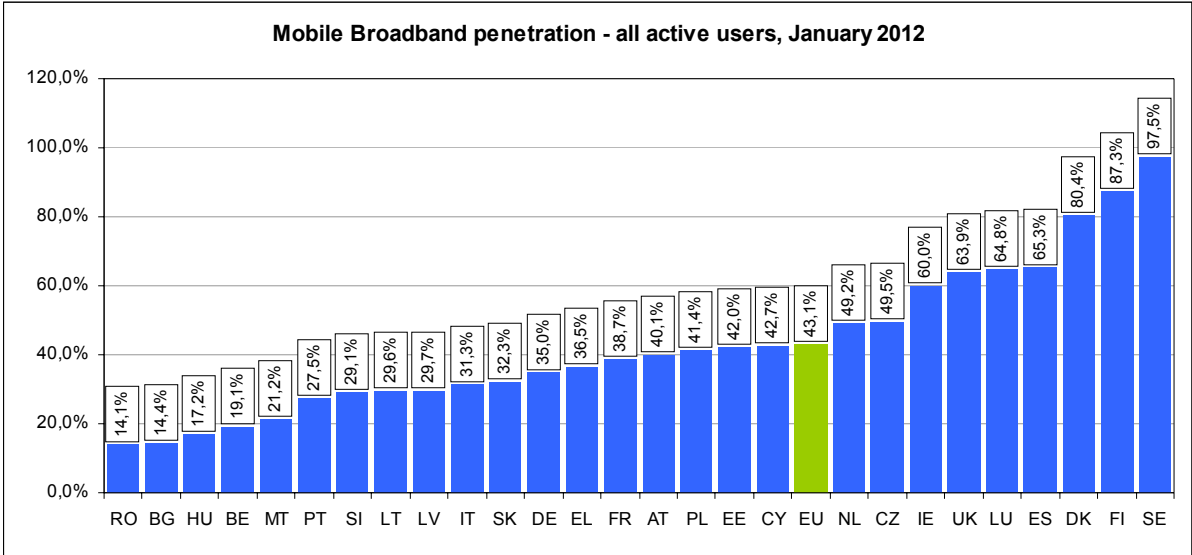
Speeds have significantly increased during the reporting year. The incumbent and one of the alternative operators, as well as one cable operator, launched offers at the speed of 100 Mbps or more, at least for a part of the territory. In January 2012, 65.9% of the connections were providing a speed of between 2 Mbps and 10 Mbps (slightly decreasing from 66% in January 2011), while 33.8% were providing more than 10 Mbps, comparing to 27.4%, a year before. Only 0.3% of the connections were providing a speed of below 2 Mbps (6.6% in January 2011). NGA lines represented 7% of the total broadband lines in January 2012 placing Luxembourg below the EU 27 average of 12%. NGA penetration is also low (2% of the population), but closer to the EU 27 average of 3%.



Source: Communications Committee

According to the results of a survey of the consumer behaviour regarding the Internet and communication technologies published by the regulator in June 2011<sup>37</sup>, the majority of respondents are very satisfied (20%) or satisfied (56%) with the quality, reliability and speed of their Internet connection. Therefore, the households in Luxembourg do not yet seem to feel the urgent need for a very high-speed Internet. 90% of households have fixed Internet access, of which at least 82% have access to broadband. 42% of households use a "smartphone" and 31% have mobile broadband Internet access by handsets, tablet PC or PC.

Data traffic was growing rapidly thanks to the robust deployment of 3G networks on the part of all three operators. The number of mobile users accessing data services via 3G increased from approximately 230 000 in January 2011 to 331 800 in January 2012. With 6.3% mobile broadband penetration in January 2012 (measured on the basis of dedicated data service cards/modems/keys only), Luxembourg is still below the EU average of 8.1%. On the contrary, if all active users are accounted, Luxembourg ranks fifth in mobile broadband penetration (64.8%), significantly above the EU-27 average of 43.1%.



Source: Communications Committee

The market trend towards bundled offers, combining broadband and mobile or fixed telephony and TV continues with a penetration of 23.6% of the population, above the EU-27 average of 22.2%. According to the Eurobarometer household survey, penetration of bundled offers reaches 50% of the households. Double play presents an important reduction with a penetration of only 2.3%, comparing to 7% a year before, while triple play scores better at 17.3%, losing only 0.6 points. This decrease seems to be the result of a demand swift towards quadruple play combining mobile, broadband, TV and fixed voice and of the success of the recently introduced IPTV services.

With regard to the LLU market, the number of fully unbundled lines supplied to alternative operators continued to increase, and covered 59.4% of alternative operators' DSL lines, but resale is still very important (40.6% comparing to an EU average of 6.4%). The price charged for LLU has not changed since 2007 and the connection fee remained high, for both full LLU

<sup>37</sup> ILR, "Enquête sur le comportement du consommateur à l'égard de l'Internet et des technologies de la communication", available at <http://www.ilr-public.lu>, p. 9.

(€91.13) and shared access (€157.36) as of October 2011. Alternative operators have been requesting for several years that this connection fee be brought closer to the constantly diminishing EU average (i.e. €39.05 for shared access).

The incumbent's reference collocation offer (RCO) for 2007-2008 was still in force in 2011, since its validity period was extended for an unspecified period of time in December 2008. The incumbent's draft RCO 2009-2010 was still subject to ILR's approval in 2011 as far as its quantitative part was concerned. The approval of the draft reference unbundling offer (RUO) 2009-2010 by ILR was also still pending in 2011. A new round of market analyses was initiated in 2010, concerning the market for wholesale physical network infrastructure access at a fixed location and the market for wholesale broadband access, but ILR had still not completed them in 2011.

The ban by ILR in March 2010 on the incumbent's launch of retail VDSL and fibre offers, as well as of a commercial wholesale offer to alternative operators, continued to apply during the first six months of 2011. After three public consultations on the two related draft reference offers, RDSLO (reference DSL offer) and ORATH (reference offer for broadband access over FTTH), carried out in 2010 and 2011, ILR finally withdrew its interim injunction and approved the offers in July 2011. The offers include resale on both copper and fibre. Fibre unbundling is, on the contrary, available under an unregulated offer. Relevant players consider that the delay caused by the regulator allowed alternative operators to better prepare for the existence of a new product on the market. On the other hand, some alternative operators expressed their disappointment with the fact that more than one year of negotiations did not lead to the acceptance of all their demands. They criticized notably the incumbent's retail pricing, under which the best ADSL product is more expensive than a faster VDSL product, which the incumbent attributes to its real costs. The pricing model for wholesale offers is "retail minus". In the absence of a regulated bitstream offer, the incumbent launched a commercial offer whose technical specifications, but not the tariff, seem to satisfy the alternative operators.

Alternative operators criticize the difficulties related to access to the corporate market. The ILR requested in December 2011 that the incumbent publish, and submit for approval, a draft amendment to its existing reference offer Direct Internet Access (DIA) which provides high-speed Internet access dedicated to business customers over the incumbent's backbone.

In the area of rights of way, the state-owned dark fibre operator deploys a fibre backbone with the use of railroad and motorway infrastructure. In 2011, a new Regulation modified the competencies of the Ministry of Labour and Employment and simplified the procedure for granting licences for the operation of 3G base stations, following the freeze of the issue of these licences in 2010 on the grounds of potential health risks. Since then, the procedures have resumed, but there are still many applications to be processed. The Luxembourgish public remains rather sensitive to the potential risk of radio waves.

### **35.2. National Plans, private & public investments**

In 2011 Luxembourg worked on the implementation of the national strategy for the development of next generation networks. New buildings are supposed to be equipped with in-house multifibre wiring from 2011, based on a non-binding recommendation addressed to local authorities competent to issue building permits. The Luxembourgish authorities claim that civil engineering accounts for 70% of the investment, therefore they focus on measures to reduce these costs. The plan to create a national infrastructure inventory, however, did not yet

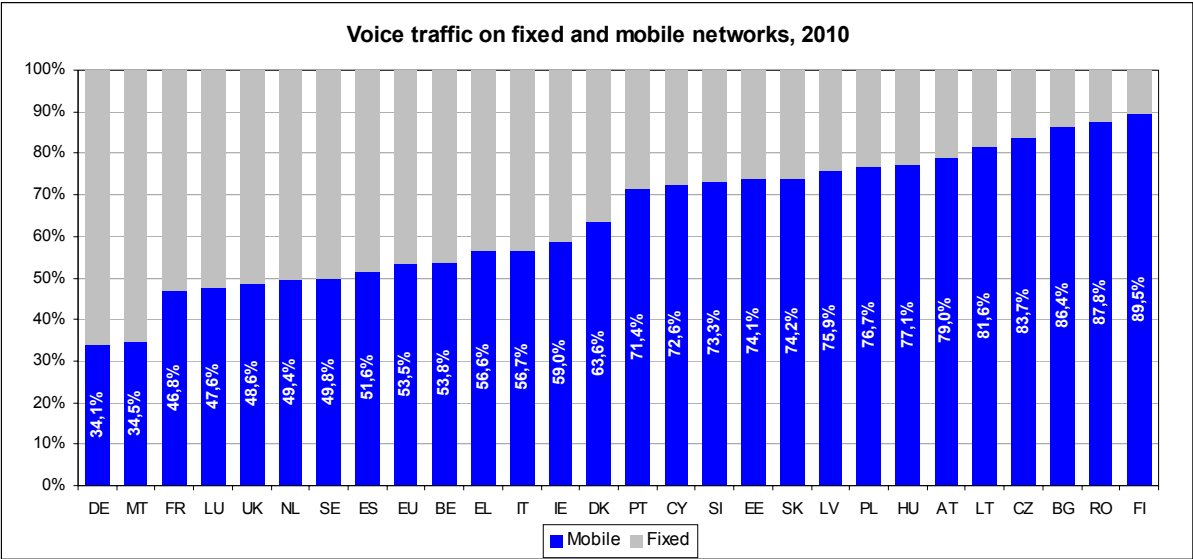
materialize in 2011. The regulator gave priority to the development of the new registry of infrastructure works permits, usable for fibre deployment, although this registry was not available at the end of 2011 either. The regulator has the power to request information only from operators; therefore it launched an informal initiative with the Union of Towns and Municipalities of Luxembourg (SYVICOL) and water, gas and electricity utilities, to make sure that their works are visible in the registry as well. The Ministry of Interior distributed a circular to the Municipalities on this subject. The registry of infrastructure works permits is expected to be operational during the course of 2012.

Although the national NGA strategy is technologically neutral, in practice it focuses on open multifibre FTTH network. The incumbent has already covered about 30% of households either by GPON (Gigabit Passive Optical Networking) technology when modernizing its network in the course of the last decade, or by the point-to-point technology that is used more recently. Apart from that, the incumbent envisages to use other technologies such as VDSL to reach intermediate targets of the national strategy. In general, the impact of the national strategy is considered positive by the market players.

**36. VOICE AND OTHER ECOMMUNICATION SERVICES**

The year 2010 was characterised by an increase in the state-owned incumbent's (P&T Luxembourg) robust market share in terms of call volumes in the **fixed telephony market**, attaining 79.5% in December 2010. In the **mobile market**, the leading MNO (LuxGSM) displayed the second highest market share in Europe, further extending its lead, reaching a market share of 53% in 2011 (from 52% in 2010), followed by its main competitor (Tango) with 34%, and the third operator (Orange) with 13%.

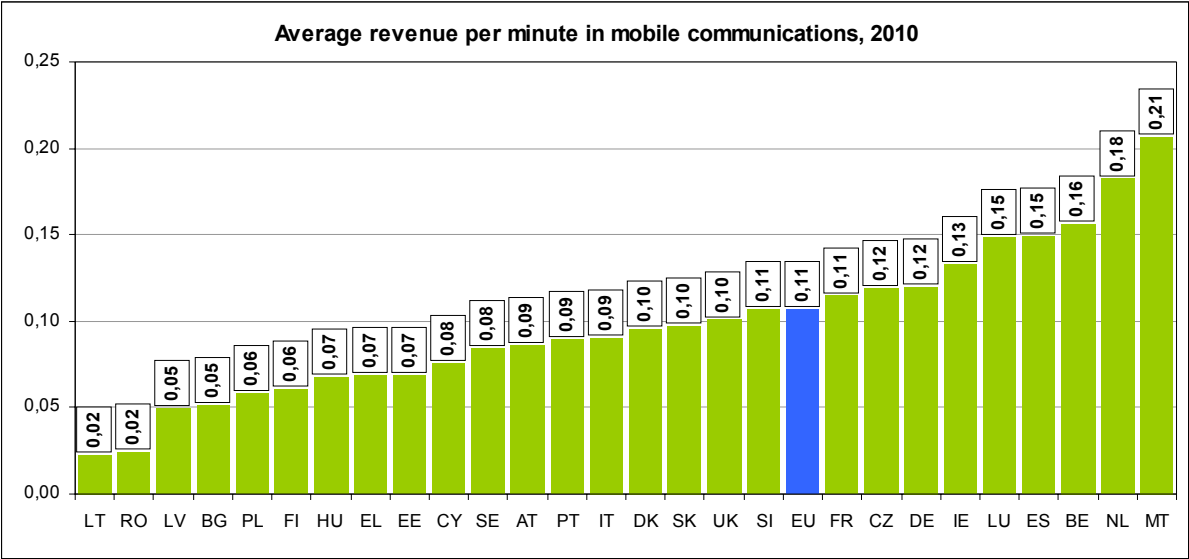
**36.1. Mobile**



Source: Commission services *Market situation*

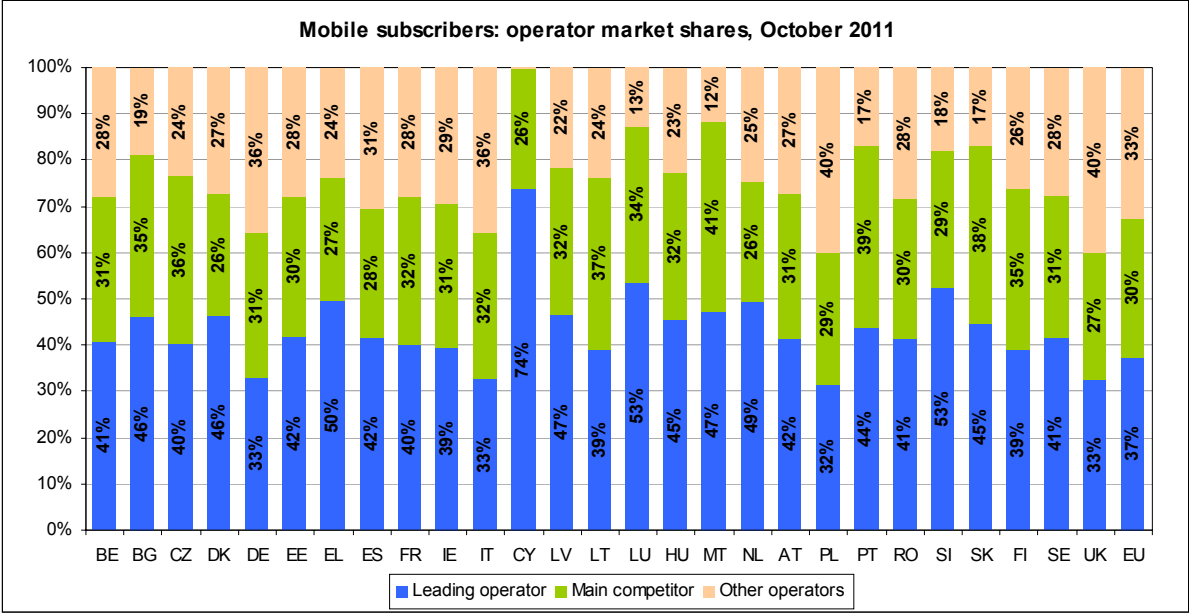
As of October 2011, the penetration rate for mobile services amounted to 142.8%, gaining 2.3 percentage points in comparison with the previous year and being well above the EU average of 127%. The proportion of pre-paid subscribers in October 2011 further decreased to 32% from 36% in 2010.

The average revenue per minute for mobile communications decreased by 22% in 2010, reaching €0.15, but is still above the EU average of €0.11. The annual average revenue per user decreased to €264 (from €343 one year earlier), which represents a steeper contraction, compared to the decrease of the EU average (€221 from €244).

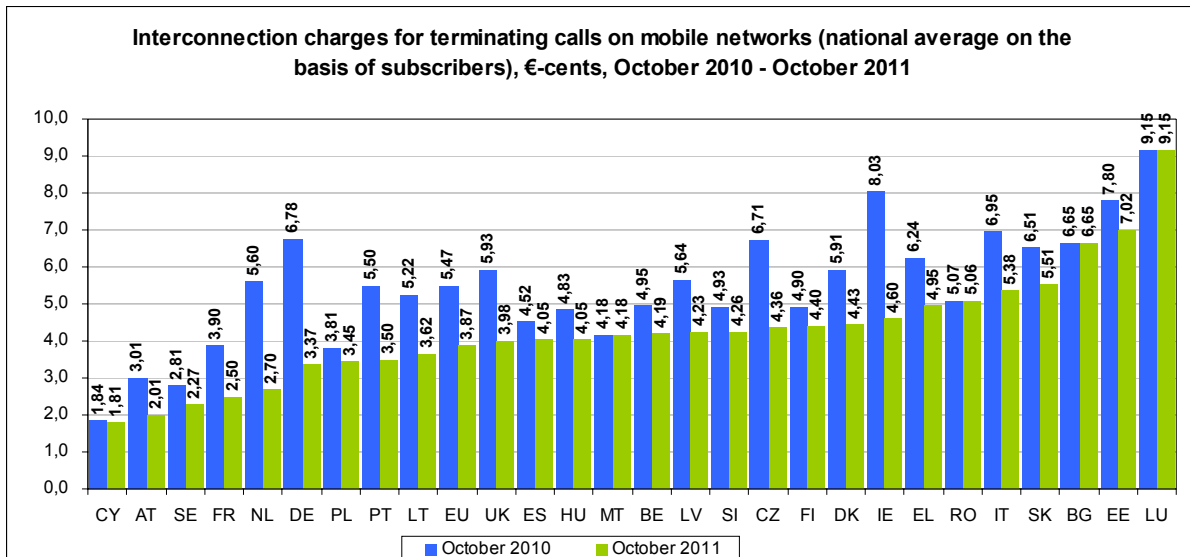


Source: Commission services

The leading MNO displayed the second highest market share in Europe, further extending its lead in the market, reaching a market share of 53% in 2011 (from 51% in 2010), while the first competitor's market share was 34% and the second competitor's market share 13%. Two virtual network operators (MVNOs) are present in Luxembourg, which are resellers active in "niche markets" such as clients travelling regularly across the border. Mobile termination rates throughout 2011 remained asymmetric, in favour of the third operator, based on ILR's decision of May 2006 that set the last cap reduction for July 2008.



Source: Commission services



Source: Commission services

### *Regulatory issues*

No new licence for 4G mobile services has been granted so far. The 900 MHz band, although liberalised, has not been used for the deployment of 4G mobile technology either. Mobile operators seem to be most interested in the 1800 MHz band as a suitable resource for the deployment of LTE technology. Two licences in the 900 MHz and two in the 1800 MHz band will expire in 2012 (a third license in the 900 MHz band expires in 2021 and another in the 1800 MHz band in 2019). Finally, two 3G licences in the 2.1 GHz band, which were granted in 2008 for a period of 15 years, without strict coverage obligations, were still not operational in 2011.

The Roaming Regulation has a relatively strong impact in Luxembourg, given the high percentage of workers from neighbouring countries crossing the border into the country daily. Operators tend to set the retail prices at or very close to the maximum level indicated by the Regulation. They claim that implementation of anti-bill shock rules means increased costs. Most of roaming related complaints in 2011 came from professional subscribers that were complaining about low default cut-off limits for the blocking of data roaming. Inadvertent roaming is still an issue in Luxembourg, but the situation has improved thanks to better coverage, reduction in differences between national and roaming rates, and thanks to subscribers using the function to block foreign networks.

## **36.2. Fixed**

### *Market situation*

2010 was characterised by an increase in the state-owned incumbent's robust market share in terms of call volumes in the fixed telephony market (79.5% by call minutes as of December 2010, compared to 78.6% as of December 2009). Fixed voice traffic continued to decrease, still representing 52.4% of total voice traffic as of December 2010, compared to 57.5% the previous year.

The provision of VoIP service linked with a DSL subscription is not offered by any operator in Luxembourg, while the EU average market share of VoIP operators by volume of traffic was 23.1% as of December 2010. Only certain cable operators were offering this service.

#### *Regulatory issues*

The incumbent's reference interconnection offer (RIO) of 2007 was still in force in 2011 for an indefinite period. The draft RIO 2010 was still not approved by ILR, and no other draft was submitted for ILR's approval in 2011.

The existing reference line rental offer (RLO) 2007-2010 that was approved in 2008, was still valid in 2011, but is not widely used by alternative operators. Furthermore, in January 2012, ILR launched a public consultation on a draft reference offer for Ethernet connectivity.

Interconnection charges for terminating calls for local and single transit are still well above the EU average. While the EU average for local transit and single transit stood at 0.43 €c and 0.62 €c respectively, as of October 2011, alternative operators are charged 0.73 €c and 0.96 €c for these levels in Luxembourg, without any change from the previous year.

### **36.3. Broadcasting**

#### *Market situation*

While satellite TV extended its customer base, with a penetration rate of approximately 34.2% in July 2011 (gaining almost 10 percentage points in one year), cable still remained the most used platform, albeit experiencing an important decrease of 12.1 percentage points with a take-up of about 64.9% of households. On the other hand, no data on digital terrestrial broadcasting are available (analogue broadcasting was switched-off back in 2005). As of July 2011, almost double the number of households had access to IPTV (10.7%), compared to a rate of 5.8% from the previous year.

#### *Regulatory issues*

This 85.1% increase in IPTV penetration occurred despite the fact that the incumbent had chosen not to introduce IPTV in its bundled offer in 2011, even though the Competition Authority withdrew in September 2011 its interim measure of 2008 that had prohibited the incumbent from incorporating IPTV into its bundle until alternative operators were in a position to replicate this offer. The incumbent's commercial wholesale offer bases the price of its IPTV service on the actual usage of the incumbent's network, taking into account the advantages of the transmission of multicast streams. According to alternative operators, it is only economically viable for them to offer IPTV on unbundled lines, subject to sufficient capacity.

### **37. SPECTRUM MANAGEMENT**

The adoption of the law which is amending the law on the management of radiowaves, and the adoption of the new frequency plan, pave the way for the assignment in 2012 of the expiring licences in the 900 MHz and 1800 MHz bands, as well as of already available spectrum, in the 800 MHz and 2.6 GHz frequency bands.

The Law amending the Law on the management of radiowaves (*Loi du 27 février 2011 modifiant la loi du 30 mai 2005 portant organisation de la gestion des ondes radioélectriques*) was adopted at the end of January 2011. It redefined the competencies of

the ILR in spectrum management, and set out rules for the financing of ILR's activities in this field. In addition, the amendment aims to improve the efficiency and the coordination of the spectrum management, in relation to the common European spectrum policy.

Under the new rules, the frequency plan takes the legal form of a regulation of the ILR, instead of a Grand-ducal regulation, which aims to make the plan more flexible for future changes. The new frequency plan, under preparation in 2011, was submitted for public consultation in November 2011, and came into force on 12 January 2012. The new plan transposes the latest Commission's Decisions on spectrum, namely Decision 2011/251/EU amending Decision 2009/766/EC on the harmonisation of the 900 MHz and 1800 MHz frequency bands, Decision 2011/485/EU amending Decision 2005/50/EC on the harmonisation of the 24 GHz range radio spectrum band for the time-limited use by automotive short-range radar equipment in the Community and Decision 2011/667 on modalities for coordinated application of the rules on enforcement with regard to mobile satellite services (MSS).

On 1 February 2012, ILR launched a public consultation regarding two licenses in the 900 MHz and two in the 1800 MHz frequency bands which expire in 2012.

The 800 MHz band has not been in use for analogue television since several years, but before reusing it Luxembourg first needed to finalise an agreement with neighbouring countries regarding reducing risks of interference due to overlapping coverage. This agreement was concluded in October 2011. Similar agreements were concluded at the same occasion in relation to the 1800 MHz and 2.6 GHz frequency bands. A regulation that will determine the minimum price of spectrum in the 800 MHz band was under preparation in 2011. However, no concrete plans for the granting of the digital dividend to electronic communications services have been made public by the Luxembourgish authorities. Article 6(4) of the Radio Spectrum Policy Programme (RSPP) requires 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. Therefore the Commission will monitor the carrying out of the authorisation process related to the 800 MHz frequency in Luxembourg regarding the respect of this deadline.

## **38. THE CONSUMER INTEREST**

### **38.1. 116 - Harmonised numbers for services of social value**

<p>There was only one harmonized number for services of social value operating in Luxembourg at the end of the reporting year (116 111).</p>
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The existing service of a helpdesk line for children and adolescents in distress migrated to number 116 111 in October 2011. While the remaining 116000, 116006, 116117 and 116123 numbers have not yet been assigned, information has been published that the numbers are available for the provision of services, and that applications may be submitted.



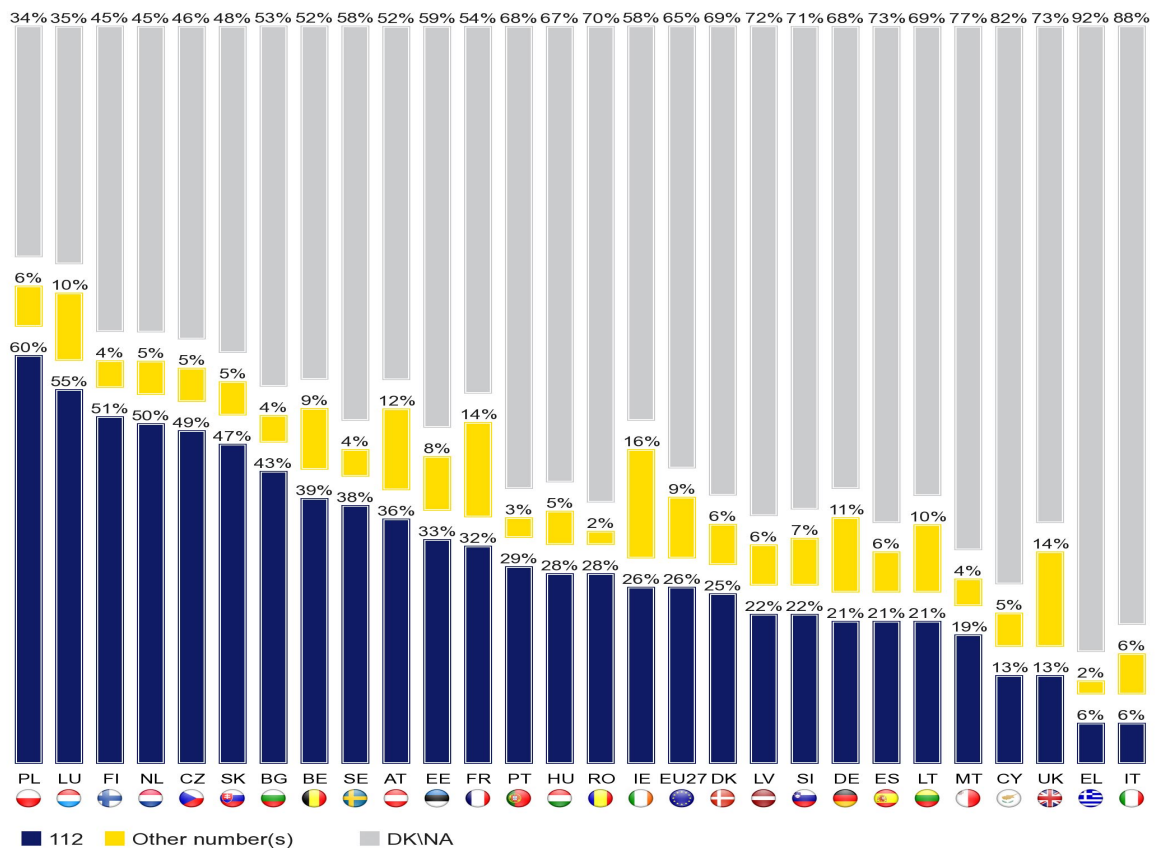
### 38.2. 112 – European emergency number

No major issues of accessibility have been signalled and the level of awareness of 112 as the Single European Emergency number is the second highest in Europe (55%).

#### 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

No major problems with the accessibility of 112 in Luxembourg have been signalled. Caller location information is available automatically for mobile phones with every 112 call (push mode), including international roaming, and upon request by the emergency services for fixed telephones (pull mode, available in less than one second). The pull mode is also available for mobile phones in order to get an address of a caller registered in the directory service. Otherwise the localisation of a mobile caller refers to the last cell in which the phone was used. According to the Luxembourgish authorities, emergency services can also be reached by SMS or fax. Regarding awareness of the Single European Emergency number, Luxembourg scored quite well in the last Eurobarometer survey regarding awareness, since 55% of the

respondents spontaneously identified 112 as the number to call for emergency services from anywhere in the EU.

### 38.3. Net neutrality & Quality of Service

The Parliament adopted in November 2011 a resolution on net neutrality, initiating a policy debate on whether the principle of net neutrality should be enshrined in the Luxembourgish legislation.

Until late 2011, there was no discussion on net neutrality in Luxembourg. Nevertheless, in November 2011, the Parliament adopted a resolution on net neutrality, in which it reminds the regulator ILR that it should ensure that operators provide non-discriminatory access to the Internet. Furthermore, it asked the parliamentary Commission for Higher Education, Research, Media and Communications to prepare a report for a policy debate on whether the principle of net neutrality should be enshrined in the Luxembourgish legislation. Mobile operators affirm that they do not block VoIP traffic on their networks.

Regarding quality of service, the regulator launched a project of making available on its website factsheets that would enable consumers to compare tariffs of different operators. They are expected to be updated by operators. They were not yet available at the end of 2011.

### 38.4. Consumer complaints, tariff transparency

ILR established a mediation procedure providing the consumers with a transparent, simple and inexpensive out-of-court dispute resolution procedure.

In April 2011, ILR adopted a regulation setting out the procedure for mediation in electronic communications services, which led the Commission to close infringement proceedings for Luxembourg's failure to ensure that a transparent, simple and inexpensive out-of-court dispute resolution procedure is available for dealing with disputes, involving consumers, related to issues covered by the Universal Service Directive. The new procedure, applicable exclusively to the electronic communications sector and managed by the ILR, is available to consumers for free and in three languages. The procedures launched by consumers in 2011 concerned mainly invoicing issues, roaming and premium SMS services. The operators seem to be ready to cooperate in settling the disputes.

In some instances, unfair commercial practices of certain providers of services over premium numbers of "900" range were reported.

### 38.5. Number portability/switching

Mobile **number portability** increased steadily in absolute figures and mobile numbers are usually ported within three days through an automated system. Fixed number portability is less frequent, with only 2.1% of the activated PSTN lines being ported in 2010.

Mobile number portability increased steadily with 29 046 numbers ported from January to September 2011 (3% of all mobile numbers), comparing to 26 384 for the same period in 2010. Mobile numbers are usually ported within three days through an automated system. Fixed number portability is less frequent, with only 4 444 numbers ported for the period from October 2010 to October 2011 (2.1% of all activated PSTN lines). Thanks to the database of subscribers' numbers launched by the NRA in 2010, the porting is reported to work well.

### **38.6. Universal service**

No Universal Service provider has been designated in Luxembourg.

While no Universal Service provider has been designated, the incumbent provides Universal Service on a voluntary basis. It claims that its DSL network provides 100% of households with least 5 Mbps Internet access. The electronic communications sector in Luxembourg does not offer or finance social tariffs, this issue being dealt with by the State's social welfare policy.

### **38.7. e-Privacy**

The National Commission for Data Protection has been empowered to impose financial sanctions for the lack of notification of data breaches.

The Law of 28 July 2011 amending the Law of 30 May 2005 on protection of personal data in the sector of electronic communications aimed at transposing the modifications to the ePrivacy Directive. Based on the Law of 28 July 2011, the National Commission for Data Protection has recently been empowered to impose financial sanctions for instances of non-respect of data breach notification provisions of the Law. The said authority was planning to provide guidance to the operators on the implementation of the data breach notifications.



**EUROPEAN COMMISSION**  
Information Society and Media Directorate-General  
Electronic Communications Policy  
**Implementation of Regulatory Framework**

18 June 2012

# **LATVIA**

## **2011**

# **Telecommunication Market and Regulatory Developments**

## 39. LATVIA

### Development of the sector

Telecommunications sector revenues and investment increased in Latvia between 2009 and 2010 by 1% and 15%, respectively, to reach €592 million for revenues and €114 million for investment.

Strong competition continued in the mobile sector with falling retail prices and growing consumption of services, especially mobile data. There was no change as regards the incumbent's (Lattelecom) undisputed dominance in the fixed voice market, which continued shrinking as mobile voice services continued their expansion at the expense of the fixed. In 2011, the NRA, the Public Utilities Commission (SPRK), issued two consultations regarding the future regulation of mobile and fixed termination rates, in which it indicated a postponement of the introduction of the LRIC methodology recommended by the Commission to 1 July 2014 and announced its intention to continue applying benchmarking approach until then.

As regards the number porting procedure the national law and the NRA rules issued in 2011 only prescribe the one-day time limit for activation of the number leaving it to the industry to negotiate and agree on the entire porting procedure.

### Progress in broadband deployment and take-up

The availability of fixed broadband connectivity remains limited in rural areas. On the other hand, thanks to the strong activity of operators' in upgrading the networks in densely populated areas Latvia continues to perform significantly above EU average as regards high speed fixed broadband lines. The year 2011 confirmed the earlier trends of the growing broadband market share of the incumbent (Lattelecom) in the fixed broadband market. An EU funded rural broadband development project for the construction of backhaul connectivity in rural areas was approved in 2011 with the aim to reduce the cost of broadband roll-out by retail operators. A national broadband strategy is due to be established in 2012. Latvia also remains below EU average in terms of mobile broadband penetration.

### Independence and effectiveness of the NRA

In February 2011 a new Chair and Council members were appointed to the SPRK, the NRA responsible for market analysis and dispute resolution in the electronic communications sector. Legislative amendments adopted in the context of the transposition of the revised framework strengthened the SPRK's budgetary autonomy but did not change the grounds of removal of its management, which remain broadly formulated. In 2011, the Commission could close the infringement proceeding regarding the structural separation of the regulatory functions in the electronic communications sector from activities associated with ownership and control of State-owned communications providers. On the contrary, the infringement procedure concerning administrative charges for the usage of radio spectrum was continued in 2011 by the Commission.

### Implementation of the framework

The revised regulatory framework was only partly transposed in Latvia by the deadline of 25 May 2011; therefore Latvia was one of the Member States against which the Commission opened, in July, the infringement proceedings for non-communication of transposition measures. Further transposition measures were adopted in the following months and notified to the Commission, which enabled the Commission to close the respective infringement proceedings in October 2011.

### Spectrum management

In 2011 SPRK carried out the assessment of the competition following the liberalisation of the 900MHz band in 2009. The 2600 MHz spectrum was auctioned in January 2012 but there were no moves regarding the “digital dividend” spectrum.

### Citizens and consumer protection

In 2011, there was no change regarding 116 numbers with 116111 still remaining the only operational 116 number in Latvia. Latvia continued the multiplication of national emergency numbers functioning in parallel with 112 and the user awareness of 112 declined according to the Eurobarometer survey. The SPRK reinforced the rules on the presentation of guaranteed speeds for Internet access services in consumer contracts. A decrease in the number of complaints by telecom users was reported in 2011. The discussions on the industry fund for compensating Universal Service costs were revived and, in the telecoms area, focused on the affordability of telephony to persons on low income and persons with disability. The Latvian law transposing the provisions of the ePrivacy Directive 2002/58/EC on “cookies” only applies to the transmission and access providers the exception provided in the Directive concerning the provision of a service requested by the user.

## **2. NATIONAL REGULATORY AUTHORITIES (NRA)**

In February 2011 a new Chair and Council members were appointed to the Public Utilities Commission (SPRK), the NRA responsible for market analysis and dispute resolution in the electronic communications sector. Legislative amendments adopted in the context of the transposition of the revised framework strengthened the SPRK’s budgetary autonomy but did not change the grounds of removal of its management, which remain broadly formulated. In 2011, the Commission could close the infringement proceeding regarding the structural separation of the regulatory functions in the electronic communications sector from activities associated with ownership and control of State-owned communications providers. On the contrary, the infringement procedure concerning administrative charges for the usage of radio spectrum was continued in 2011 by the Commission.

### **2.1 Independence & organisation**

Since December 2010, the SPRK Council, which is the SPRK decision-making body consisting of five members (including the Chair), worked in the composition of only three members meaning that it could only adopt decisions unanimously. After several unsuccessful selection procedures, on 24 February 2011 the Parliament finally appointed a new Chair and new members of the SPRK Council (including replacements for two further members whose term of office expired on 1 July 2011).

The amendments of 14 July to the Law on the SPRK reinforced its independence, in particular in budgetary matters, regarding which the SPRK is no longer subject to supervision by the Ministry of Economics. These amendments did not, however, alter the grounds for removal of the SPRK Chair or Council member, which still include, firstly, doubts on the part of Secret Services about a person's trustworthiness and ability to preserve the State secret and, secondly, being subject to prosecution, i.e. before conviction by the court.

In August, the SPRK issued new rules on market consultations, which now also provide that the SPRK publishes on its website an overview of the consultation responses and its opinion on proposals within five working days following their examination by the SPRK Council. Lack of feedback from the SPRK to contributions in public consultations was previously an issue frequently raised by the industry.

The Commission closed in April 2011 the infringement procedure concerning the structural separation of the regulatory functions from the activities associated with the ownership and control of State-owned communications providers in the case of the Ministry of Transport. The remedy chosen by the Latvian authorities at the end of 2010 consisted of the transfer of the respective regulatory functions regarding spectrum and number management from the Ministry of Transport to the Ministry of Environmental Protection and Regional Development (VARAM). This measure also involved transfer to the VARAM of the supervision of the Electronic Communications Office, which grants technical authorisations for spectrum use and carries out enforcement actions.

Accordingly, the VARAM was put in charge of challenging regulatory tasks as well as review on appeal of the administrative decisions taken by the Electronic Communications Office. The strengthening of its administrative capacity to assume fully its regulatory tasks should be a strong priority, in particular to ensure that Latvia advances quickly in its policy regarding the digital dividend spectrum (800 MHz). The 2011 experience showed that VARAM's regulatory activities concerning spectrum and numbering may be closely related to certain policy activities of the Ministry of Transport, such as setting fees for the use of numbers and developing rules on caller location information for emergency services. This interaction between regulatory and policy issues means that in the Latvian case extra care needs to be taken to delimit clearly the respective roles of each ministry, including in the communication to the industry.

## **2.2. Resources & capacity / administrative charges**

In 2011, the Commission continued the infringement proceeding concerning the administrative charges for ensuring electro-magnetic compatibility in spectrum usage. The additional letter of formal notice sent in April dealt with the Methodology of July 2010 for calculating these administrative charges and the resulting charge rates, which were adopted in December 2010. Certain progress was achieved during 2011 on some of the issues raised in this additional letter. In particular, an annual adjustment mechanism of charge rates was introduced and its first application in 2012 on the basis of the 2011 results should accordingly put an end to the previous practice of revenue surplus being transferred to the general budget.

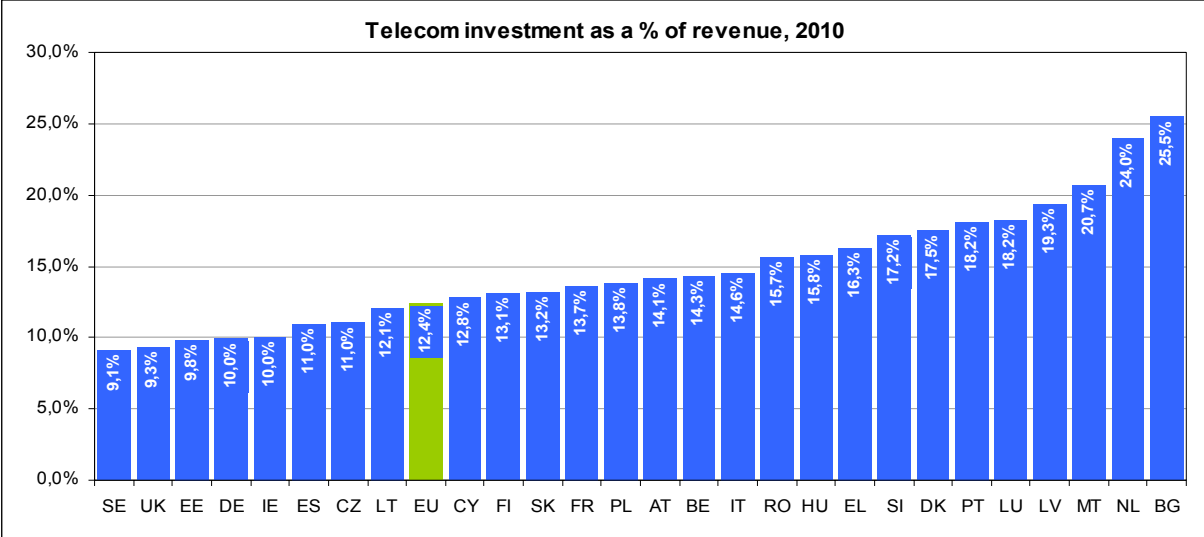
The Latvian authorities also removed from the methodology a fixed mark-up named “capital return”. Its removal was presented as one of the basis for the reduction of charge rates that the Government enacted in July 2011; however, the Methodology itself was only modified in this respect in January 2012. Furthermore, a number of issues are still pending regarding the Methodology and will continue to be discussed between the Commission and the Latvian authorities in 2012.

**2.3. Dispute resolution**

The same amendments of July 2011 also dealt with the out-of-court dispute resolution procedures. In particular, they stipulate that a party, which is not satisfied with the SPRK decision regarding a dispute, is entitled to refer the subject matter of the dispute to the court or to the arbitration court according to the law on civil procedure.

**3. REVENUES AND INVESTMENTS**

Telecommunications sector **revenues and investment** increased in Latvia between 2009 and 2010 by 1% and 15%, respectively, to reach €592 million for revenues and €114 million for investment.



Source : Commission Services

The total turnover of the Latvian telecommunications sector amounted to €592 million at the end of 2010, which represented about 1% increase on the previous year. Whilst fixed sector revenue remained the same at €188 million and mobile sector revenue decreased to €209



million (€236 million in 2009) there was an increase in pay TV revenues (from €45 to €68 million) and other revenues (from €117 to €126 million).

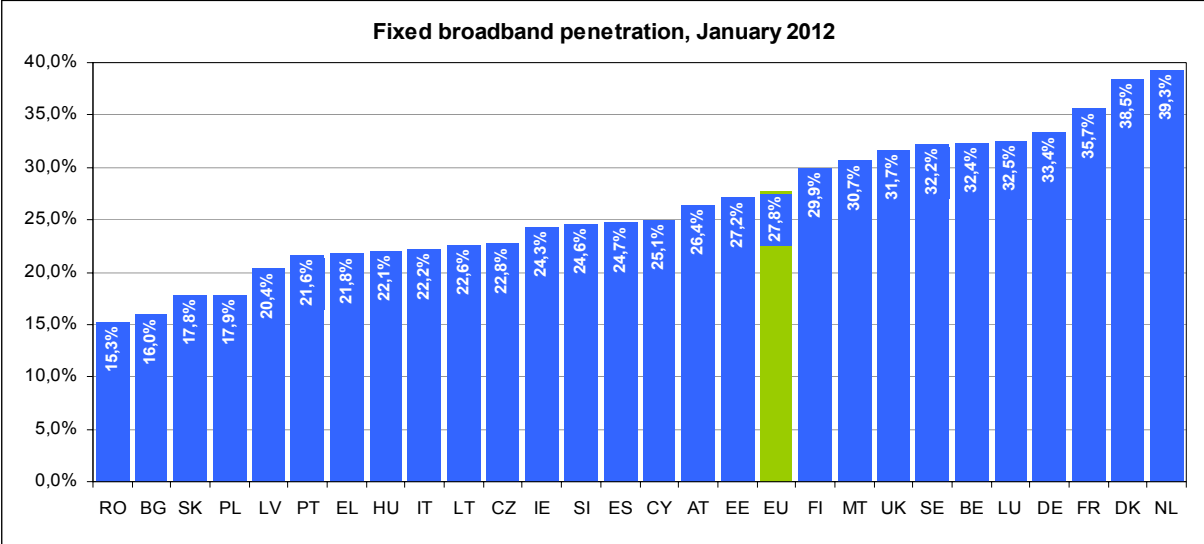
The total investment in the telecommunications sector was €114 million or 19.3% of revenues at the end of 2010 representing an increase by 15%. The total value of investment by fixed telecommunications operators was € 61 million and by mobile operators was €37 million.

**4. BROADBAND**

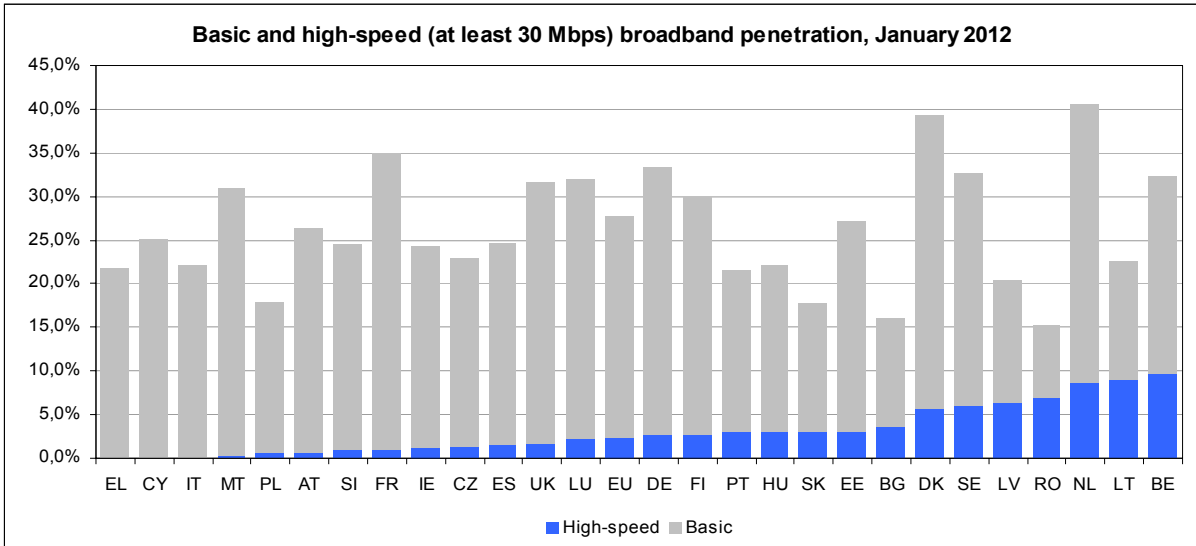
Following stagnation in 2010, Latvia’s fixed broadband market returned to growth in 2011, which was nevertheless not sufficient to reduce Latvia’s gap with the EU average broadband penetration. In particular, the availability of fixed broadband connectivity remains limited in rural areas. On the other hand, thanks to the strong activity of operators’ in upgrading the networks in densely populated areas Latvia continues to perform significantly above EU average as regards high speed fixed broadband lines. The year 2011 confirmed the earlier trends of the growing broadband market share of the incumbent (Lattelecom) in the fixed broadband market. An EU funded rural broadband development project for the construction of backhaul connectivity in rural areas was approved in 2011 with the aim to reduce the cost of broadband roll-out by retail operators. A national broadband strategy is due to be established in 2012. Latvia also remains below EU average in terms of mobile broadband penetration.

**39.1. 4.1 Market situation & regulatory developments**

After slowing growth in 2008 and 2009 and stagnation in 2010, Latvia’s fixed broadband penetration returned to growth in 2011 to reach 20.4% in January 2012. However, this progress was not enough to catch up with the EU average, which increased to 27.7%. Consequently, Latvia’s gap with the EU average broadband penetration continued increasing and Latvia remains one of the EU countries with the lowest fixed broadband penetration.



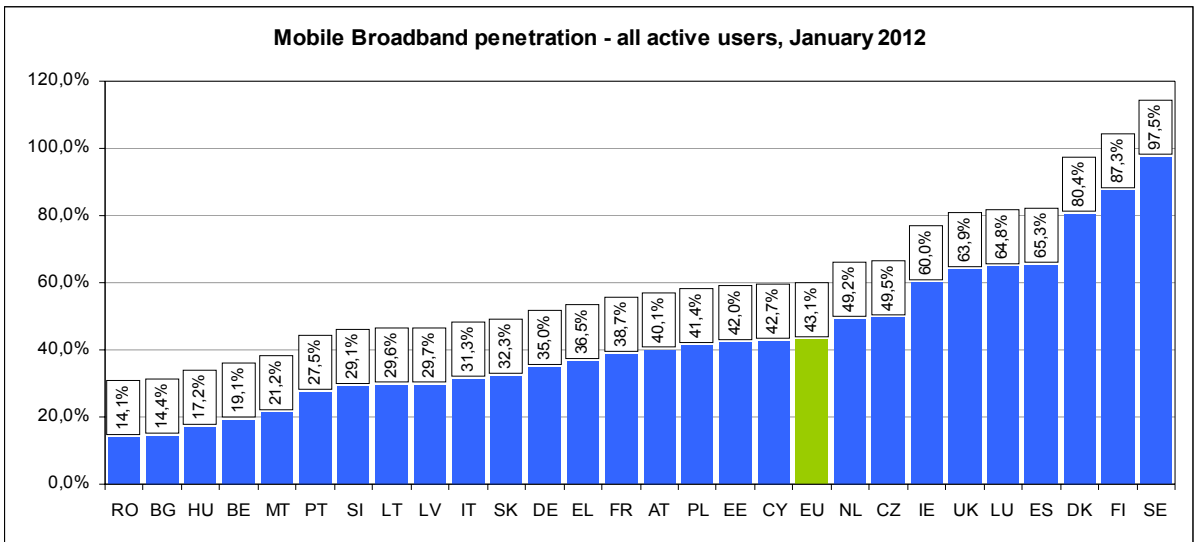
Source: Communications Committee



Source: Communications Committee

The increase in fixed broadband penetration was thanks to addition of new broadband lines but also to decrease in Latvia's population according to Eurostat data. Furthermore, according to the provisional results of the 2011 census published by Latvia's Central Statistical Bureau, in March 2011, Latvia had considerably fewer residents than according to Eurostat data

Latvia also performs below EU average in the area of mobile broadband where the penetration rate reportedly decreased from 36.3% a year earlier to 29.7% in January 2012, which is below the EU average of 43.1%.

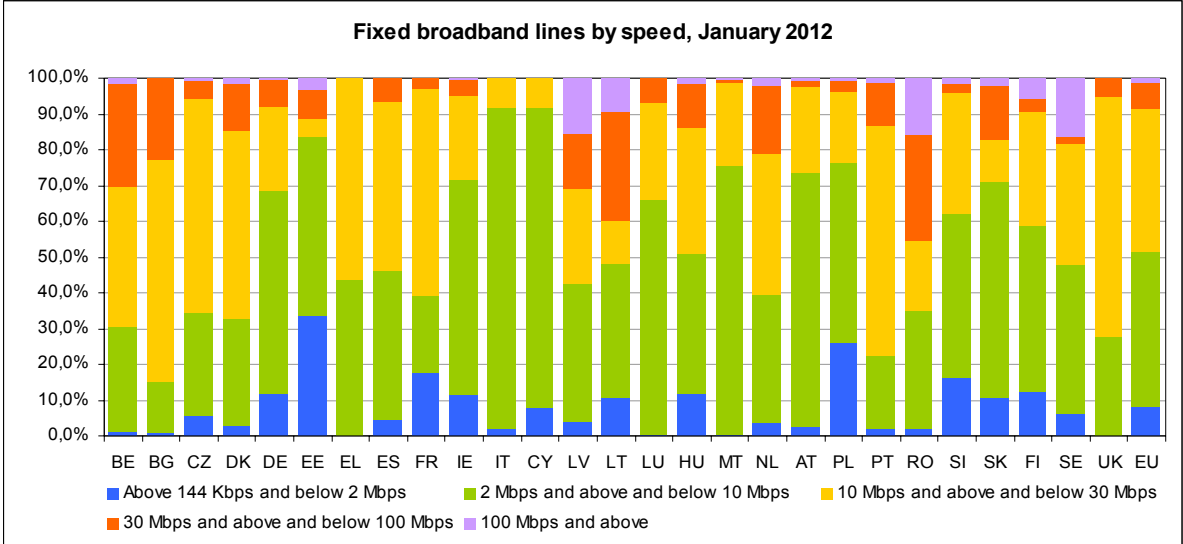


Source: Communications Committee

On the other hand, Latvia performs significantly above EU average in terms of fixed broadband speeds. Thus, the share of high-speed lines above 10 Mbps increased to 57.5 % in

January 2012, which is above the EU average share of 48.4%. Consequently, the share of lines in the 2 to 10 Mbps range decreased from 53.7% to 38.2%, which is below the EU average of 43.4%, and the share of low-speed lines (up to 2 Mbps) was just 4.3%, which is well below the EU average of 8.2%.

In terms of the broadband speed targets set by the Digital Agenda for Europe (DAE), in January 2012 Latvia had the second highest penetration of lines of at least 100 Mbps - 3.2%, which is well above EU average of 0.4%. Latvia also had one of the highest penetration rates of lines at and above 30 Mbps - 6.3% , which is above EU average of 2.4% for such lines.



Source : Communications Committee

**39.2.**

Latvia’s fixed incumbent continued its network upgrading programme focused on FTTH roll-out in cities. Like in the previous few years, it continued to increase its broadband market share, which reached 55% in January 2012 compared to 53% on 1 January 2011 and was above the EU average of 43% (45% with resale).

The second round reviews of the wholesale market for (physical) network infrastructure access and wholesale broadband access market, which the SPRK carried out in 2009 and 2010, respectively, did not bring about any change as regards the use by alternative operators of the fixed incumbent’s regulated wholesale products. There was still no take-up of either Local Loop Unbundling (LLU) or bitstream products in 2011 as operators continued to compete on the basis of alternative infrastructures. In October 2011, the monthly average total cost for full LLU was 9.63 € for full LLU, which was close to the EU average price of 9.70 € whilst the price of 5.50 € for shared access was significantly above the EU average of 2.90 €.

In the area of rights of way, the Cabinet of Ministers issued a new Regulation in March 2011, which distinguishes between installation of networks, which is overseen exclusively by the Electronic Communications Office and construction works, which are subject to additional procedures involving also the local authorities. There were attempts to introduce charges for the installation/ authorisation authorisations issued by the Electronic Communications Office but these were strongly opposed by the industry and were not enacted. Moreover, towards the end of the year the Electronic Communications Office launched a proposal to relieve it of all functions in this area (which were only assigned to it a few years ago).

Network providers appreciated a change made in 2011 in the legislation on multi-apartment condominiums, which facilitates network roll-out to multi-apartment buildings since the previous requirement for unanimous agreement of all co-owners has now been replaced with a 50% +1 owner's agreement, which is easier to achieve.

The amendments of 19 May 2011 to the Electronic Communication Law, which were the main transposition measure for the revised regulatory framework, did not entrust the SPRK with any symmetrical regulatory powers. Instead, amendments were proposed at its initiative to the above-mentioned Government Regulation to generally require installation of additional capacity in all new ducts built in residential areas and to impose a sharing obligation of such ducts. The Commission services will monitor the developments in this area in 2012.

#### **4.2 National Plans, private & public investment**

On 13 April 2011, the Cabinet of Ministers approved a policy paper entitled "Guidelines for the electronic communications policy in 2011-2016". These Guidelines do not provide for specific broadband coverage and speeds targets but set the penetration targets (20% in 2012 and 25% in 2016 for fixed broadband and, respectively, 15% and 30% for mobile broadband). They also aim at increasing the number of inhabitants who use internet regularly to 70% in 2012 and 85% in 2016. The Guidelines provide for elaborating a national broadband strategy until 1 January 2013.

As regards rural broadband, on 9 November 2011, the European Commission approved under State Aid rules a Latvian support scheme worth LVL 71.5 million (€101.71 million) for the deployment of fibre backhaul connections in the white areas. The scheme covers the period from 2011 to 2020 and the financing for the first stage until 2015 is supported by EU structural funds in the amount of approx. 23 million €. The objective of the first stage is establishing approximately 165 fibre backhaul access points, which will be open to all Internet service providers on a non-discriminatory basis.

The designated infrastructure manager is a State owned network and communications provider controlled by the Ministry of Transport. It was appointed to this role subject to a number of conditions, in particular non-competition in retail markets using this publicly funded infrastructure. The access fees and conditions for using the backhaul network will be set by the Ministry of Transport on proposal from the project's Steering Group, which will involve also the telecoms industry. The Government's Regulation on the implementation of the project was adopted in January 2012.

### **5. VOICE AND OTHER ECOMMUNICATION SERVICES**

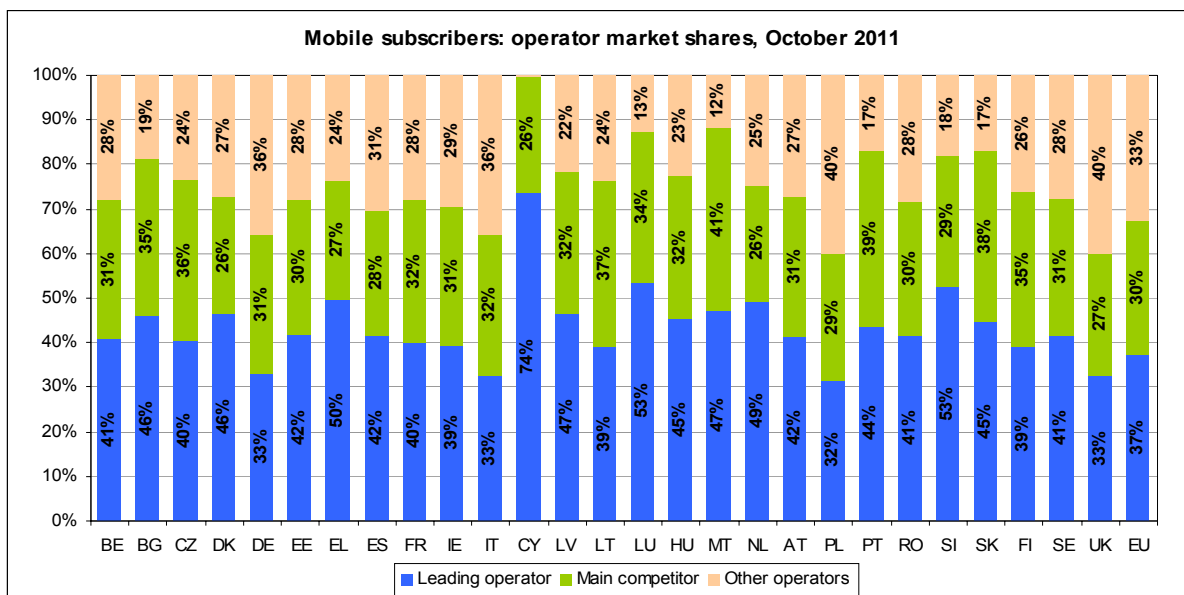
Strong competition continued in the mobile sector with falling retail prices and growing consumption of services, especially mobile data. There was no change as regards the
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incumbent's (Latt telecom) undisputed dominance in the fixed voice market, which continued shrinking as mobile voice services continued their expansion at the expense of the fixed. In 2011, the SPRK issued two consultations regarding the future regulation of mobile and fixed termination rates, in which it indicated a postponement of the introduction of the LRIC methodology recommended by the Commission to 1 July 2014 and announced its intention to continue applying benchmarking approach until then.

### 39.3. 5.1. Mobile Services

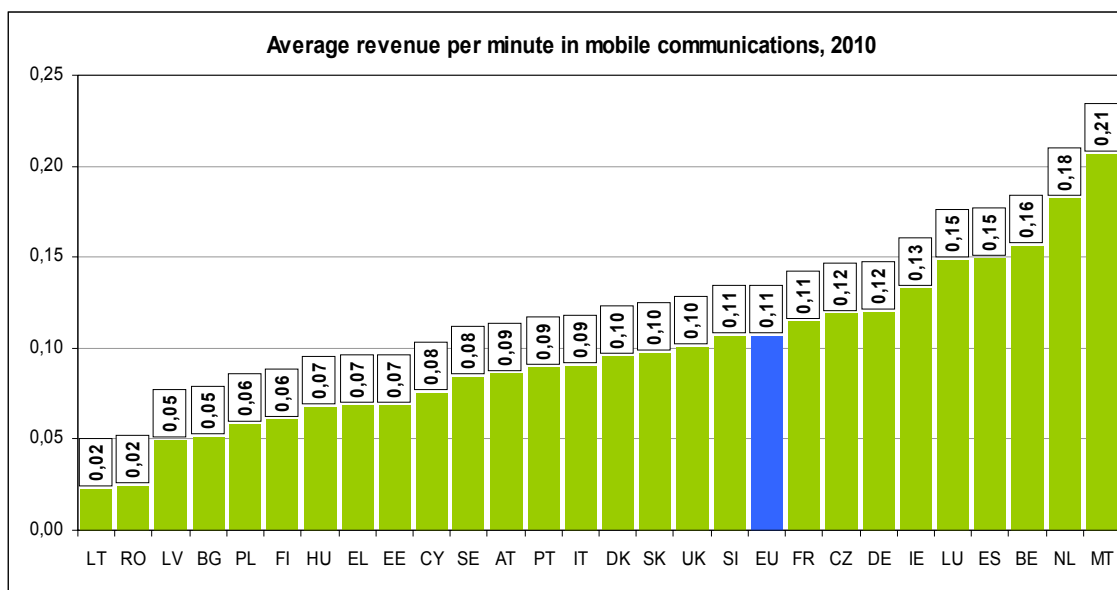
In the mobile sector the 3G coverage was further boosted thanks to the use of the 900 MHz band by some operators. Also first commercial offers of 4G were launched and are expected to develop, also thanks to falling prices for user terminals. On the retail side, some operators moved to uniform tariffs for pre- and post paid services. Year 2011 marked the end of independent Mobile Virtual Network Operator (MVNO) business in Latvia (the only remaining MVNO is a daughter company of a Mobile Network Operator (MNO)).

The mobile penetration rate rose to 158% in October 2011, which is above EU average of 127% and one of the highest in the EU. The largest MNO had 47% of mobile subscriptions (SIM cards) followed by the second largest MNO with 32%.



Source : Commission Services

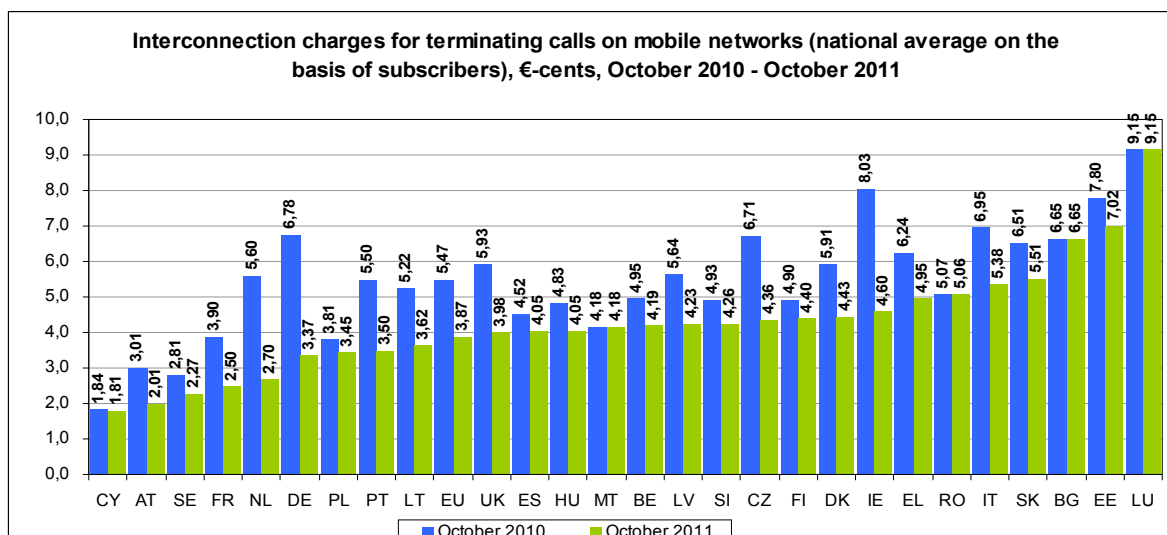
The competition in mobile services remained strong and the average revenue per minute was €0.05 in December 2010, which was one of the lowest in the EU and considerably below the EU average of € 0.11.



Source : Commission Services

The average revenue per user declined to € 71 at the end of 2010, which is also one of the lowest in the EU and well below the EU average of € 221.

The average mobile termination rates as of 1 October 2011 were about 4.23 €-cents, which was slightly above the EU average MTRs of 3.87 €-cents. The current glide path on termination rates imposed on the three main mobile network operators ended with the last reduction on 1 January 2012, i.e. 0.026 LVL/min for mobile (about 3.7 €-cents).



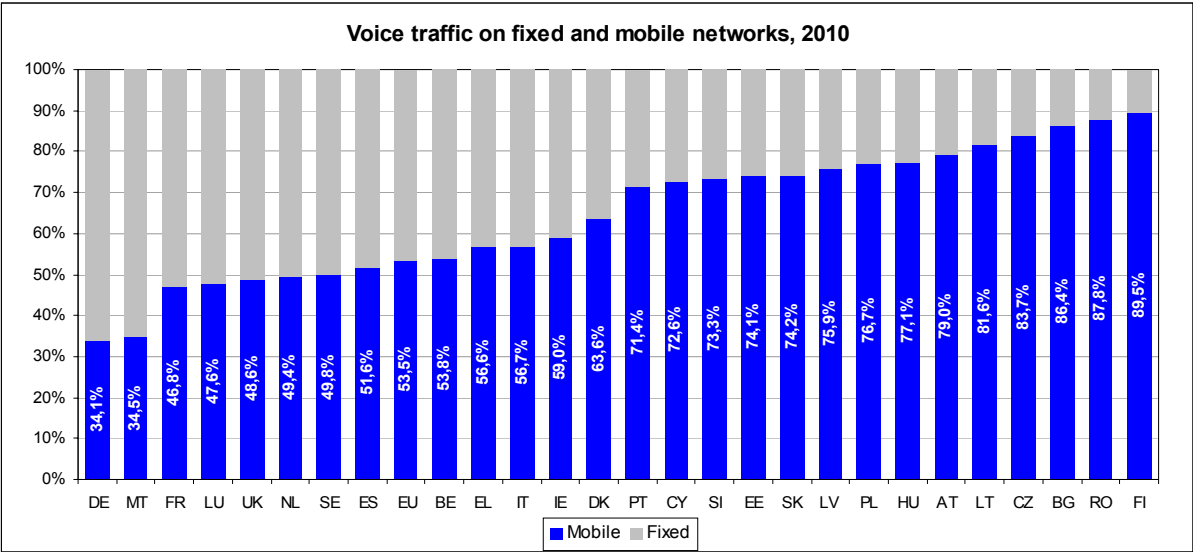
Source : Commission Services

On 20 October 2011 SPRK published a consultation document on mobile termination markets. In this consultation, the SPRK proposed to designate with SMP also 12 alternative operators, to which the SPRK has assigned mobile numbering ranges and which negotiate their own interconnection agreements. These operators as well as the fourth CDMA network operator (already designated with SMP earlier but not subject to price regulation) would be made subject to the same price caps as the three established MNOs. The draft measure was notified to the Commission in February 2012. A new phenomenon in 2011 was development of fraud related to artificially inflated traffic.

In mobile roaming, a political process was launched in 2011 with the aim of achieving lower rates when roaming in Latvia’s neighbouring Russian Federation. The signature of a Protocol of co-operation is planned between the two respective Ministers whilst the mobile operators have been invited to negotiate between themselves regarding tariff reductions.

**39.4. 5.2 Fixed**

The fixed voice market continued to decline in favour of mobile communications - as of December 2010 the voice traffic on fixed networks accounted for only 24.1%, which is well below the EU average of 46.5%. The fixed incumbent retained strong dominance in the fixed voice market where the competition accordingly remains very limited.



Source : Commission Services

Similarly to mobile termination, the current glide path imposed on the fixed incumbent ended with the last reduction on 1 January 2012, i.e. 0.005 LVL/min (about 0.71 €-cents) + call set up charge of 0.0054 LVL (about 0.77 €-cents). The charge for terminating calls on the fixed incumbent’s network (given the application of a set-up charge, this is calculated on the basis of a three minute call) went down to about 1.04 €-cents in October 2011 (in the case of single transit). Nevertheless, this charge still remained above the EU average per minute charge of 0.62 €-cents.

Further to the consultation launched in December 2010, on 10 August 2011 the SPRK adopted decisions regarding fixed termination. While the obligations of the fixed incumbent were not altered, the SPRK additionally imposed price control regulations on 39 alternative networks as from March 2012. The Commission in its comments of 22 April 2011 to the SPRK indicated that, when notifying in 2010 *post factum* the price control remedies imposed on the fixed incumbent in 2009, the SPRK had committed itself to modify its adopted measures in the event this became necessary as a result of the EU-wide consultation. The Commission regretted that, notwithstanding this commitment, in its new notification the SPRK had reconfirmed the adoption of the costing methodology and the tariffs without modification in line with the Commission's comments. The Commission also criticised the lack of access obligation on the alternative networks.

The resulting SPRK decision imposing price control on alternative networks attracted strong opposition and was appealed by nine operators. In 2011, the administrative court denied interim relief against the SPRK decisions whilst the ruling on merits is expected later.

#### **40. 6. SPECTRUM MANAGEMENT**

In 2011 SPRK carried out the assessment of the competition following the liberalisation of the 900 MHz band in 2009. The 2.6 GHz spectrum was auctioned in January 2012 but there were no moves regarding the “digital dividend” spectrum.

- **Digital dividend**

No formal consultations were launched in 2011 and no indication given to the market about the future use of the 800 MHz “digital dividend” spectrum, currently assigned until end 2013 to digital terrestrial broadcasting. On 8 December 2011, the Ministry of Transport presented a draft concept paper on TV broadcasting beyond 2014 but this document does not address the future of digital dividend. The Commission will monitor the implementation by Latvia of the provisions of the Radio Spectrum Policy Programme (RSPP) 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.

In August and September 2011 the Ministry of Transport reported on having reached agreements with its counterparts in the Russian Federation and Belarus on the conditions to be observed when introducing mobile communications systems in this band in Latvia. According to these agreements, no additional frequency coordination is needed between electronic communications services and aeronautical navigation services for 96% of Latvian territory and such coordination will be required only in a 10-15 km wide border area.

At the same time these agreements do not affect the protection granted by international agreements for broadcasting services. On this basis, the Latvian authorities are of the view that the “digital dividend” spectrum will not become available in Latvia before the analogue broadcasting switch-off in the Russian Federation and Belarus, which these countries reportedly do not plan before 17 June 2015.

- **Refarming**



Further to the liberalisation of the former GSM bands for new technologies pursuant to the amended GSM Directive 2009/114/EC, which was implemented in Latvia already in 2009, the SPRK carried out, in 2011, the assessment of the effect of this liberalisation on competition, as required by Article 1(2) of the amended GSM Directive. In its resulting report on the use of the 900 MHz band the SPRK dismissed the claims about competition distortion, advanced by one operator in the public consultation, and stressed the comparable and contiguous assignment of the 900 MHz spectrum amongst the relevant three MNOs.

Further to consultations in 2011, the auction of the rights of use for the 2.6 GHz spectrum took place on 2-3 January 2012. The three existing MNOs each acquired a 2x20MHz lot for approx. 1 million € each whilst the current rights holder to this band acquired the remaining 2x10 MHz for about 160 000 €. On the other hand, no bidder applied for the TDD spectrum also made available in this auction. The rights of use will be technology/ service neutral with duration of 15 years from 1 January 2014. There is a coverage requirement for all licences – 55% of population until 1 January 2018. The licences are tradable, except to an undertaking which has acquired another lot in this band.

- **MSS**

The providers of pan-European Mobile Satellite Services (MSS) selected by the Commission at the EU level did not apply to the SPRK for the rights of use also in 2011. According to the SPRK, the operators concerned are required to register in the Latvian Commercial Register, which in turn obliges them to establish a branch in Latvia, to lease a permanent office and to appoint a branch manager.

## **7. THE CONSUMER INTEREST**

### ***40.1. 7.1. 116 - Harmonised numbers for services of social value***

In 2011, there was no change regarding 116 numbers with 116111 still remaining the only operational 116 number in Latvia.

In 2011, there were no changes in 2011 regarding the 116 numbers - the only one in operation remains 116111 for child helplines, which is run by the fixed incumbent and operates as a freephone. The helpline service is provided by a State authority, the State Inspectorate for the Protection of Children's Rights.

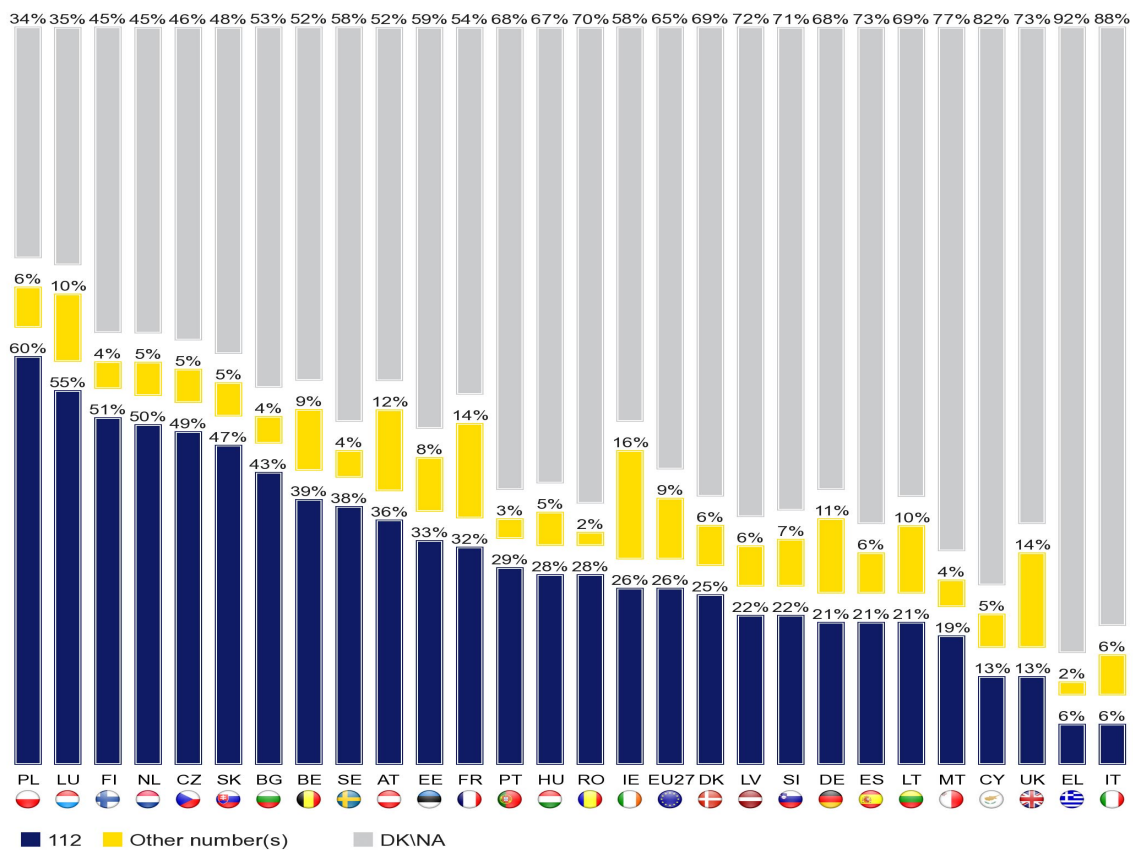
40.2. 7.2. 112 – European emergency number

Latvia continued the multiplication of national emergency numbers functioning in parallel with 112 and the user awareness of 112 declined according to the Eurobarometer survey.

**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

During 2011, Latvia continued the trend of multiplication of national emergency numbers, which obviously reduces the visibility of the EU emergency number 112. Beside “110” for the police and “113” for medical emergencies, which were put in operation in 2010 beside legacy numbers “02” and “03” for these services, at the end of 2011 the VARAM proposed establishing a new emergency number “114” for gas-related emergencies, which would function in addition to the legacy number “04”. The latest February 2012 Eurobarometer Flash survey indicated a steep drop in the knowledge among Latvian citizens of 112 as EU-wide emergency number – from 29% in 2011 down to 22%, which is below EU average of 26%.

#### **40.3. 7.3. Net neutrality & quality of service**

The SPRK reinforced the rules on the presentation of guaranteed speeds for Internet access services in consumer contracts.

The net neutrality provisions of the revised framework have been transposed in national law. On 30 March 2011 SPRK published an overview on the quality of electronic communications.

According to the new edition of the “General Authorisation Rules” adopted by the SPRK on 17 August 2011, as from 1 January 2012, the indicated guaranteed speed must not be lower than 20% of the advertised speed in both fixed and mobile networks. Furthermore, if mobile internet access is presented as “broadband” the guaranteed speed must not be lower than 144 Kbps. The SPRK has put in place a broadband speeds testing system for measuring both fixed and mobile broadband speed, in particular in case of a dispute over the execution of service contract.

#### **40.4. 7.4. Consumer complaints, tariff transparency**

A decrease in the number of complaints by telecom users was reported in 2011.

The SPRK’s annual report on user complaints showed a drop in the number of complaints – 96 complaints were received by the regulator in 2011 compared to 133 in 2010. Most of the complaints related to the quality of internet access services.

#### **40.5. 7.5. Number portability**

As regards the number porting procedure the national law and the NRA rules issued in 2011 only prescribe the one-day time limit for activation of the number leaving it to the industry to negotiate and agree on the entire porting procedure.

The revised framework rules on porting numbers were transposed through amendments to the Electronic Communications Law and further implementing rules issued by the SPRK. Whilst setting the one-day time limit for activation of the number these legal instruments contain no time limits regarding the preparatory steps for porting, which were accordingly left for the industry agreement. The respective agreement between the mobile operators could not be concluded by the end of the year but the compromise solution, although not entirely satisfactory for all the parties, would require the donor operator to respond to porting request from the recipient operator in the next working day whilst the actual switching between networks would take place the following night.

The number of ported mobile numbers between 1 January and 30 September 2011 amounted to 103 183 numbers, representing 2.4% of subscribers, which was below the EU average of 3.4%. The number of fixed numbers ported in this same period was just 8454 numbers representing 0.9% of subscribers, which was well below the EU average of 5.5%.

Number portability remains free of charge for both fixed and mobile customers. The wholesale rate charged by fixed operators remained about € 8.5, which the SPRK had recognised as being cost-oriented in 2008. Also the wholesale charges for mobile porting did not change in 2011 and remained at about € 8.5 although some operators have concerns as to whether they remain cost-oriented.

#### **40.6. 7.6. Universal Service**

The discussions on the industry fund for compensating Universal Service costs were revived and, in the telecoms area, focused on the affordability of telephony to persons on low income and persons with disability.

The amendments to the Electronic Communications Law of 19 May 2011 also provided that the sector specific Universal Service (US) fund has to be established by Government by 1 June 2013 and that in the meantime the compensation to the designated US provider continues to be provided by public funding.

The discussions on the US fund were re-launched in 2011 and focussed on the affordability of tariffs for basic telephony to people on low income and persons with disability. It is proposed to grant a subsidy to these users, which they will be able to use with an operator of their choice selected from an approved list of operators. It is estimated that the cost of such a scheme could be 1.5-2% of operators' turnover.

In February 2011, the agreement was extended between the Government and the US provider to compensate its US net costs through a reduction of its dividend payments to the State as its shareholder to cover also the costs in 2009. On 5 October 2011, SPRK passed the decision on the net costs of the US obligations in 2010. The US provider asked in its application for compensation in the amount of about 80 000 € but the SPRK concluded that the intangible benefits were greater than the provider's costs and therefore the provision of the US in 2010 has not resulted in any net cost.

#### **40.7. 7.7. ePrivacy**

The Latvian law transposing the provisions of the ePrivacy Directive 2002/58/EC on "cookies" only applies to the transmission and access providers the exception provided in the Directive concerning the provision of a service requested by the user.

The amended provision of the ePrivacy Directive 2002/58/EC dealing with Internet "cookies" was transposed in Latvia by interpreting rather narrowly the exception from the obligation to acquire user consent in cases when the storing of or access to a cookie is strictly necessary for the provider of an information society service to provide the service requested by the user. The Latvian transposition only applies this exception to "intermediary service provider", i.e. the transmission and access provider. Nevertheless, the implementation of this rule or any other rule of the amended ePrivacy Directive did lead to any particular industry debate or specific guidelines being issued by the supervisory authorities.



**EUROPEAN COMMISSION**  
Information Society and Media Directorate-General  
Electronic Communications Policy  
**Implementation of Regulatory Framework**

18 June 2012

# **MALTA**

## **2011**

# **Telecommunication Market and Regulatory Developments**

## MALTA

### 41. MAIN MARKET & REGULATORY DEVELOPMENTS: BEST PRACTICES AND CHALLENGES

#### Development of the sector

The **total turnover** for the electronic communications sector as of December 2010 amounted to €223 million, down from €235 million in 2009, which represents a 4.8% decrease. This moderate decrease impacted both the revenues of the fixed and the mobile sectors while pay-TV revenues remained stable. Investments, which were boosted in 2009 by the network deployment of the new mobile operator (Melita), continued to increase in 2010 (from €32 million to €46 million), mostly due to significant investment in the upgrade of broadband networks. (SECTION 3)

**In the fixed broadband market**, consumer choice is effectively limited to offers by two operators sharing the market, the fixed incumbent (GO) and the cable incumbent (Melita), which are competing with quad-play offers. As of January 2012, the fixed incumbent (GO) had a very short lead, with a 50.9% share of fixed broadband lines in January 2012, against 49.1% for the cable incumbent (Melita). The third operator (Vodafone) is operating a fixed wireless platform but has stopped marketing this service. All other ISPs have exited the market over the past years. (SECTION 4)

**In the mobile market**, the main operator (Vodafone) retained its strong position, with a 47.2% market share in October 2011 against 48% in October 2010. Some dynamic was introduced following the entry of the cable incumbent (Melita) in the market in 2009. Melita has been successful in acquiring new customers, thus reaching a market share of 11.6% in October 2011, mostly at the expense of the second operator, i.e. the fixed incumbent (GO plc). However, this market entry did not have an immediate impact on the level of prices: in 2010, Maltese consumers were charged the highest mobile tariffs in the EU, with an average revenue per minute of 0.21€ compared to the EU average of 0.10€. (SECTION 5.1)

**In the fixed voice market**, the incumbent (GO)'s market share for fixed direct access lines remains high at 75% in 2011, compared to the EU average of 69.9%. The digital pay-TV scene remains very competitive. (SECTION 5.2)

**Number portability** in mobile networks was usually carried out within one day. While the number of porting transactions decreased in fixed networks, it went up for mobile numbers from 38 415 transactions in 2010 to 45 590 in 2011. (SECTION 7.5)

#### Progress in broadband deployment and take-up

At the end of 2011, Malta was considered as having achieved the DAE target aiming at securing a basic broadband connection (in the order of 2 Mbps) for all EU households by 2013. This is not only due to the geography of the Islands or to the presence of two ubiquitous infrastructures; it is also linked to a strong public policy focus on ICT. Fixed broadband penetration reached 30.9% as of January 2012 (above the EU average of 27.8%), with Malta ranking as the 9th EU performer. There are also positive developments in terms of upgrading broadband networks. In May 2011, the cable incumbent (Melita) launched nationwide coverage of Docsis 3.0, which allows customers to reach up to 100 Mbps in download speed. Consequently the share of NGA lines as a percentage of total broadband lines is the third highest in the EU (46% compared to the EU average of 12%). However, despite this significant progress, the take-up of high-speed (30 Mbps) and very high-speed broadband (100 Mbps) offers remains marginal. Malta is also lagging behind in terms of mobile broadband take-up (at 21.2% against an EU average of 43.1%). (SECTION 4.1)

Malta is addressing broadband with a national plan called Vision 2015, which envisages the deployment of a nationwide open-access FTTH network. As a first step, a call for expression of interest from undertakings, interested in investing in the deployment of a FTTH network in Malta, has been issued. The Government has announced its intention to provide financial support but the final decision on the nature of state involvement will be decided on the basis of the replies to the call for expression of interest. Compatibility with EU state aid rules will then need to be assessed. Reflections are also ongoing on how to utilise the potential of measures in infrastructure-sharing and co-deployment more fully. (SECTION 4.2)

#### Independence and effectiveness of the NRA

There were no changes with regard to the status of the regulator. At operational level, it has been reported that the efficiency of the NRA's work is affected by unnecessary administrative constraints, which result in significant delays in budgetary execution and human resources management. No improvements have been achieved concerning the appeals process. Most appeals against decisions of the NRA are still pending with the Communications Appeals Board. (SECTION 2)

#### Implementation of the framework

Malta has transposed the revised telecom framework shortly after the deadline set by the EU Legislator (25 May 2011). On 14 June 2011, the Parliament adopted the amendments to various Acts transposing the main provisions of the revised electronic communications



framework and the Government subsequently transposed the remaining provisions through Regulations.

There is currently no pending infringement procedure against Malta.

### Spectrum management

The re-assignment process of the 900/1800 MHz bands was completed in August 2011, with the NRA issuing three spectrum licences to the main operators. The opening up of the 800 MHz band for electronic communications services is a key challenge in Malta. Its release for purposes other than TV transmission remains dependent on the migration of the current services, i.e. a network transmitting digital broadcasts of general interest nature. This is, in turn, largely dependent on the resolution of long-standing interference and coordination issues with Italy. (SECTION 6)

### Citizens and consumer protection

Malta is one of the few Member States that has adopted measures to include access to a broadband connection (at a speed of 4 Mbps) in the national universal service. (SECTION 7.6)

The most prominent issues being faced by consumers are related to billing and contractual conditions. The MCA therefore took legal actions to address inaccurate or delayed billing and post-termination billing. The MCA also published a decision exempting operators from the need to apply the 30-day notification period where proposed changes to subscribers' terms and conditions are considered to be manifestly positive by the Authority. (SECTION 7.4)

Awareness of the availability and use of the 112 European emergency number has gone down to 52% in Malta, which is very low in EU comparison. (SECTION 7.2)

While 116 harmonised numbers for services of social value are operational in Malta, the recognition by users of these numbers is particularly low. (SECTION 7.1)

No major issues on net neutrality and e-Privacy were reported. (SECTION 7.3)

## **42. NATIONAL REGULATORY AUTHORITIES (NRA)**

*There were no changes with regard to the status of the regulator. At operational level, it has been reported that the efficiency of the NRA's work is affected by unnecessary administrative constraints, which result in significant delays in budgetary execution or human resources management. No improvements have been achieved concerning the appeals process. Most appeals against decisions of the NRA are still pending with the Communications Appeals Board.*

The Malta Communications Authority (MCA) is established under the MCA Act. It is responsible for *ex ante* electronic communications regulation, spectrum management including monitoring and frequency coordination, the postal sector, eCommerce, eSignatures, eInclusion, eBusiness, Galileo, facilitating fibre-to-the-home (FTTH), internet governance, operator interfaces related to legal interception, digital switchover project management and international connectivity.

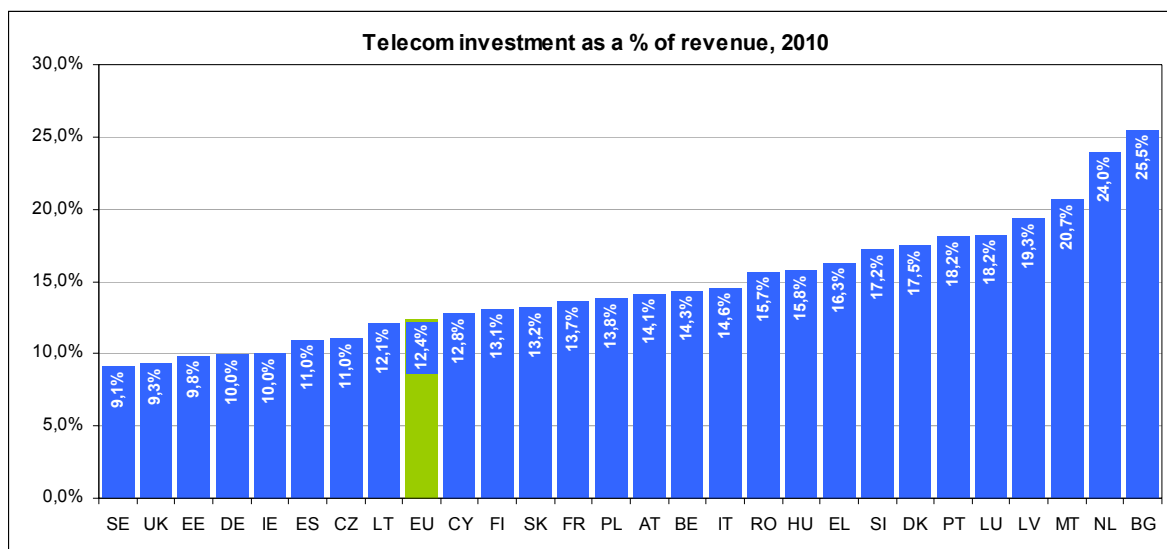
Overall, operators continue to stress their good relationship with the MCA, which is seen as an efficient and qualified body. However, the MCA is reporting that its work is being affected by lengthy bureaucratic processes, in relation to recruitment or to tendering procedures. These unnecessary obligations imposed on the MCA in its day-to-day functioning hinder it from performing its role in a fully effective and efficient manner, notably when it comes to important tasks such as carrying out market analysis.

Charges collected by the MCA include those charges imposed on operators by the current legislation to cover the cost of the legal interception system. Operators are currently collectively contesting the charges imposed on them as a result of this legal provision. The Maltese Security Services have in the past months deployed a new legal interception system, which will result in much higher charges being imposed on operators.

Another essential element in ensuring fair and effective regulation of the sector is the appeals mechanism against decisions of the national regulators. Despite having held regular hearings, the Communications Appeals Board has not issued any decision since September 2008. Thirteen appeals are currently pending, the oldest one dating back from 2004. Operators are strongly calling for all possible measures to be taken in order to ensure timely and effective resolution of these appeals. This state of affairs is indeed seriously damaging regulatory certainty, with potential negative consequences on the functioning of the market.

### 43. REVENUES AND INVESTMENTS

*The total turnover for the electronic communications sector as of December 2010 amounted to €223 million as compared to €235 million in 2009, which represents a 4.8% decrease. This moderate decrease impacted both the revenues of the fixed and the mobile sectors while pay-TV revenues remained stable. Investments, which were boosted in 2009 by the network deployment of the new mobile operator (Melita), continued to increase in 2010 (from €32 million to €46 million), mostly due to significant investment in the upgrade of broadband networks.*



Source : Commission Services

The total turnover for the electronic communications sector as of December 2010 amounted to €223 million as compared to €235 million in 2009, which represents a 4.8% decrease. This moderate decrease impacted both the revenues of the fixed and the mobile sectors while pay-TV revenues remained stable. Investments, which were boosted in 2009 by the network deployment of the new mobile operator (Melita), continued to increase in 2010 (from €32 million to €46 million), mostly due to significant investment in the upgrade of broadband networks.

In February 2012, a complaint lodged by mobile operators concerning an excise duty applied on a number of mobile services has been referred by the Maltese Constitutional Court to the European Court of Justice. It concerns a 3% excise duty that was imposed by the government on 2005 (backdated to 2004). Operators are disputing its compatibility with the EU telecoms rules, in particular the provisions of the Authorisation Directive (Directive 2002/20/EC)

#### 44. BROADBAND

*In the fixed broadband market, consumer choice is effectively limited to offers by two operators sharing the market, the fixed incumbent (GO) and the cable incumbent (Melita), which are competing with quad-play offers. As of January 2012, the fixed incumbent (GO) had a very short lead, with a 50.9% share of fixed broadband lines in January 2012, against 49.1% for the cable incumbent (Melita). The third operator (Vodafone) is operating a fixed wireless platform but has stopped marketing this service. All other ISPs have exited the market over the past years.*

*At the end of 2011, Malta was considered as having achieved the DAE target aiming at securing a basic broadband connection (in the order of 2 Mbps) for all EU households by*

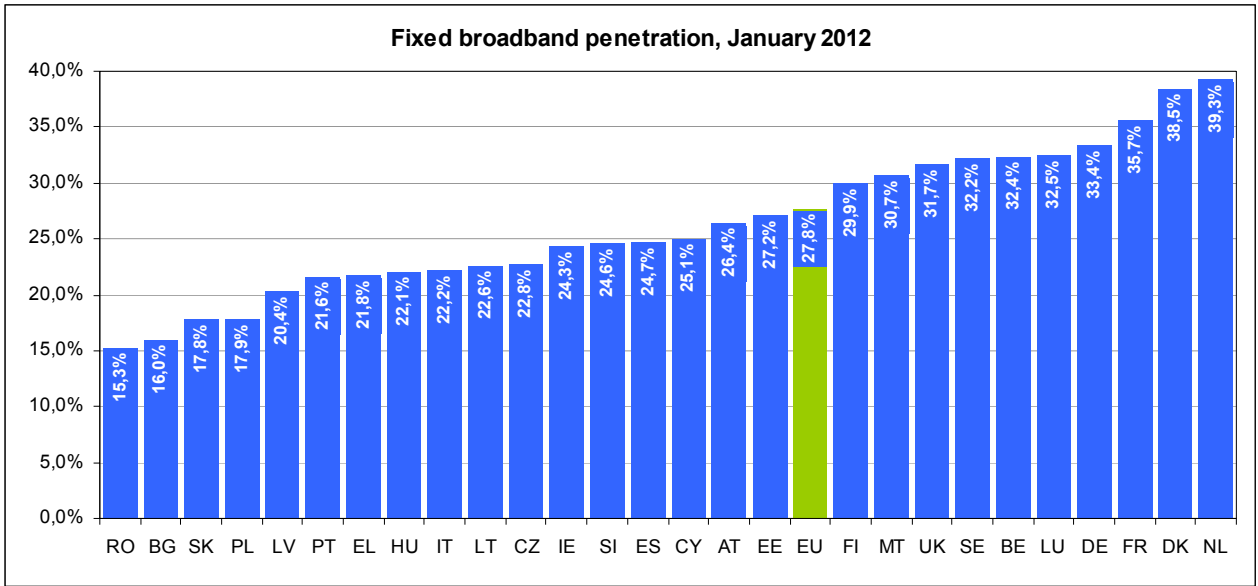
2013. This is not only due to the geography of the Islands or to the presence of two ubiquitous infrastructures; it is also linked to a strong public policy focus on ICT. Broadband penetration reached 30.9% as of January 2012 (above the EU average of 27.8%), with Malta ranking as the 9th EU performer. There are also positive developments in terms of upgrading broadband networks. In May 2011, the cable incumbent (Melita) launched nationwide coverage of Docsis 3.0, which allows customers to reach up to 100 mbps in download speed. Consequently the share of NGA lines as a percentage of total broadband lines is the third highest in the EU (46% compared to the EU average of 12%). However, despite this significant progress, the take-up of high-speed (30 Mbps) and very high-speed broadband (100 Mbps) offers remains marginal. One of the top EU performers for fixed broadband penetration, Malta is lagging behind in terms of mobile broadband take-up (at 21.2% against an EU average of 43.1%).

Malta is addressing broadband with a national plan called Vision 2015, which envisages the deployment of a nationwide open-access FTTH network. As a first step, a call for expression of interest from undertakings, interested in investing in the deployment of a FTTH network in Malta has been issued. The Government has announced its intention to provide financial support but the final decision on the nature of state involvement will be decided on the basis of the replies to the call for expression of interest. Compatibility with EU state aid rules will then need to be assessed. Reflections are also ongoing on how to utilise the potential of measures in infrastructure-sharing and co-deployment more fully.

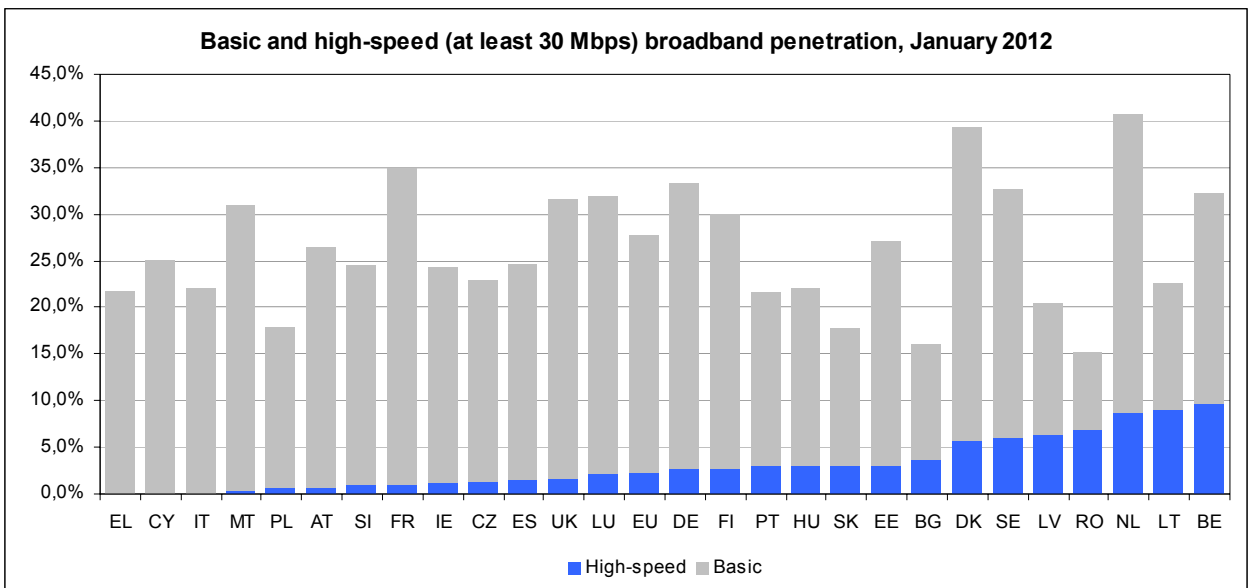
#### 4.1 Market situation and regulatory developments

The Maltese market has unique characteristics, with two nation-wide competing infrastructures and an unregulated wholesale broadband access market. Moreover, operators are highly dependent on international connectivity. Malta now has four cables linking the island to Sicily. This is a considerable improvement from five years ago but all operators complain of the high costs of international bandwidth.

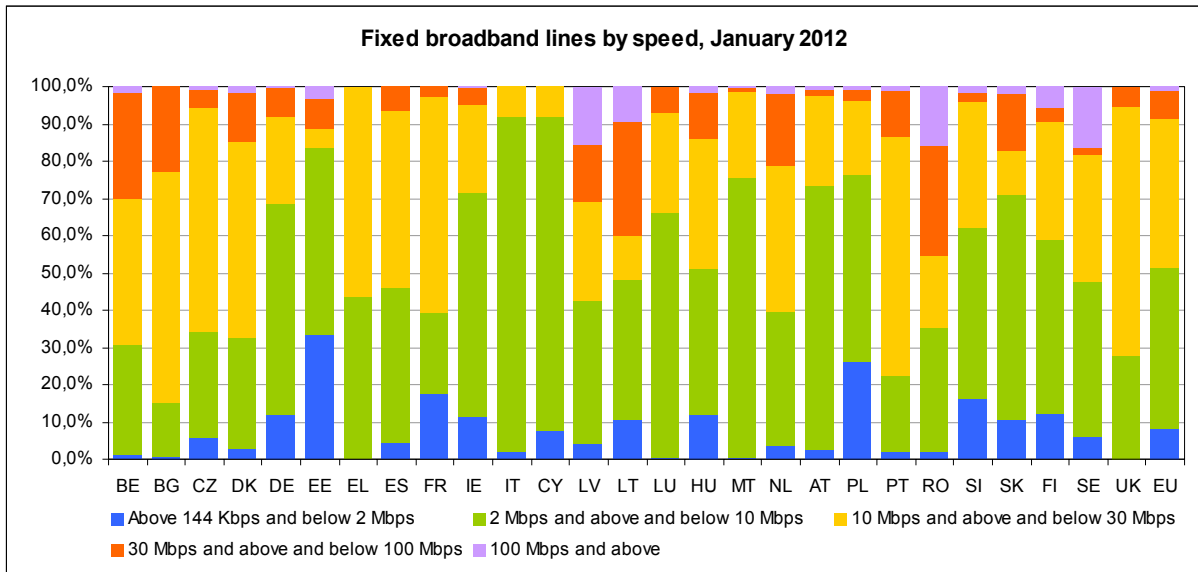
Basic broadband is now available to all households in Malta- one of the targets of the Digital Agenda. This is not only due to the geography of the Islands or to the presence of two ubiquitous infrastructures; it is also linked to a strong public policy focus on ICT. There are also positive developments in terms of upgrading broadband networks. In May 2011, the cable incumbent launched nationwide coverage of Docsis 3.0, which allows customers to reach up to 100 Mbps in download speed. Meanwhile, the fixed incumbent has been concentrating on rolling-out a progressive upgrade of the last 1.5 mile of its network to ADSL 2+ and has announced that it will be investing €100 million over the next six years to roll-out further infrastructure, including fibre to the cabinet (FTTC), mobile network upgrades and investments in the infrastructure to cover new services and applications.



Source: Communications Committee

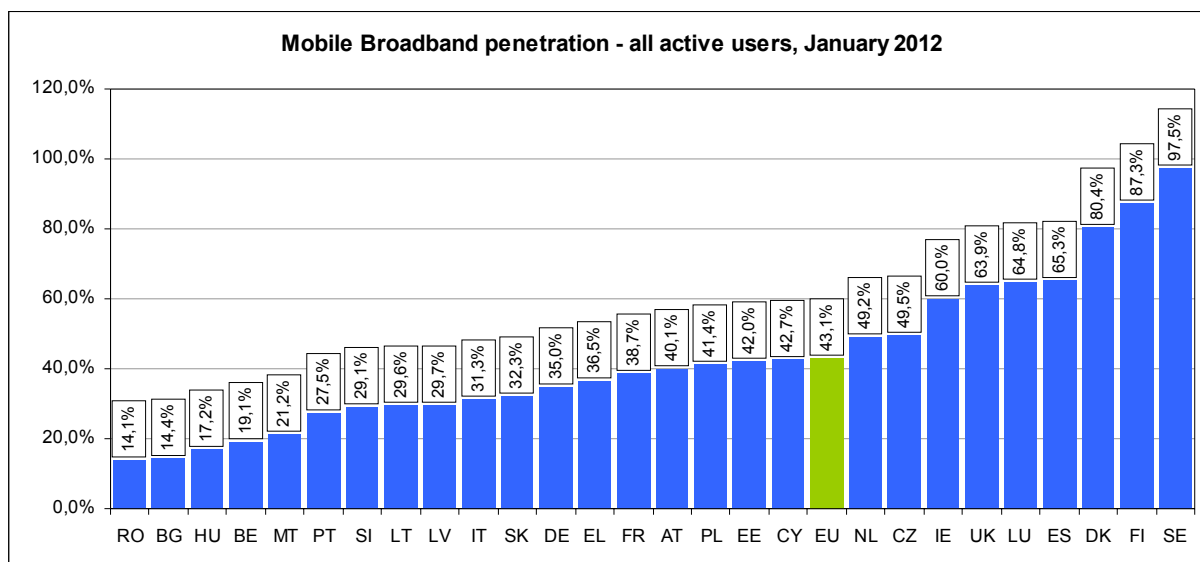


Source: Communications Committee



Source: Communications Committee

Broadband penetration continued to grow to reach 30.9% as of January 2012 (above the EU average of 27.8%). Over the past years, all independent ISPs have exited the market because of competition between the two main players (the fixed and cable incumbents), in particular through increasingly popular multiple play packages. As of January 2012, the fixed incumbent had a very short lead, with a 50.9% share of fixed broadband lines in January 2012, against 49.1% for the cable incumbent (Melita). Broadband connections are getting faster but ultrafast broadband has not yet taken off. The vast majority of connections enjoy speeds of between 2 and 10 Mbps (82.4% as of January 2012). The share of lines between 10 and 30 Mbps is increasing and reached 23.4%, but remains significantly below the EU average of 39.9%. However, since December 2011 a majority of the cable incumbent's subscribers enjoy packages which deliver internet speeds of 15 Megabits per second or more, which is expected to have a positive impact on this statistic. As for very high speed lines, a slow take-off has been registered with 0.7% of broadband lines enjoying speeds above 30 Mbps and 0.5% having speeds above 100 Mbps. As regards mobile broadband, the take-up remains low (23.2%) as compared to the EU average (43.1%).



Source: Communications Committee

As of July 2011, 17.7% of the population is subscribing to a bundled offer (up from 14.6% in 2010). According to the MCA, around 54% of all fixed broadband subscribers are on a bundled offer as of the end of the second quarter of 2011. This represents a strong increase compared to last year, where about 34% of retail broadband access subscriptions purchased as part of a duo-, triple- or quadruple-play package. From a regulatory perspective, the MCA sees this trend as rendering more complex the monitoring of competitive developments.

In 2011, the MCA proposed amendments to the Reference Unbundling Offer (RUO) of the SMP operator in order to ensure that competition is maintained in the transition to Next Generation Access Networks, namely in view of the operator's planned transition to a Fibre-to-the-Cabinet (FTTC) network. The proposed amendments to the RUO included migration rules which ease the transition from local loop unbundling (LLU) to sub-loop unbundling (SLU) in instances where the FTTC upgrade is underway. Such migration rules mainly concern information exchange, the sharing of cabinets, the introduction of temporary virtual access (TVA), rules on exchange decommissioning and principles regulating eligible costs. In its comments letter of December 2011, the Commission essentially welcomed the MCA's proposed migration rules and also welcomed the imposition of TVA as an interim remedy deemed at ensuring that the upgrade of operator's network does not lead to stranded investments by alternative operators. The Commission however expressed concerns over the lack of inclusion of fibre-based access products in the relevant product market and urged MCA to proceed with the full review of the wholesale infrastructure access market as soon as possible and carefully justify the scope and duration of the TVA remedy once the relevant product market has been properly assessed. The Commission also urged MCA to assess the need to impose TVA as a permanent virtual access product, should the remedies at the time and currently imposed, namely the SLU obligation, not prove sufficient to address the competition problems identified in the market. The Commission finally urged MCA to ensure that the SLU remedy is supplemented by appropriate backhaul and ancillary remedies.

The MCA is reflecting on the need for a more consistent and efficient approach on co-deployment and facility sharing, which has also been repeatedly underlined by operators. While rights of way fall within the remit of Transport Malta, facility sharing falls within MCA's competence. The lack of clear boundaries between the powers of the different Authorities could potentially give rise to inconsistent approaches and create unnecessary delays and complexities which could be detrimental in the context of NGA deployment projects.

As regards in-house wiring, the MCA is currently assessing whether regulations should be developed covering the wiring within the common parts of the building and inside the household itself. Moreover, a new Act of Parliament, the Buildings Regulation Act, allows for regulations to prescribe standards or recommend codes of practice, in particular to “electronic communications services installations, ducts, ancillary fixed equipment and materials associated therewith”.

In view of the rise in broadband take-up and average speed, the MCA issued a decision in June 2011 to extend the scope of universal service to the provision of a broadband connection capable of a minimum data rate of 4Mbps (see "Consumer interest section").

## **4.2 National Plans, private & public investments**

Significant steps have been taken by the Government in setting out its long-awaited NGA-related strategy, with a view to meeting the related Digital Agenda and Europe 2020 objectives. The Government has recently concluded an in-depth assessment of the situation, made of a series of consultations with stakeholders and commissioned a feasibility study, in order to determine the cost of a FTTH network in Malta, the most suitable technologies to deploy and the best investment model to implement. These initiatives followed the publication of the Green Paper on Next Generation Access Infrastructure in 2008. In the meantime, operators have been considering the lack of visibility and legal certainty as a strong disincentive to engage in NGA investment plans, due to.

In early 2012, on the basis of the results of the feasibility study, the Government unveiled its decision to actively promote the deployment of a nationwide open-access FTTH network. Where fibre is limited in reach, the Government will also consider alternative technologies. As a first step, a call for expression of interest from undertakings, interested in investing in the deployment of a FTTH network in Malta, has been issued. In terms of funding, the Government has announced its intention to provide support but the final decision on the nature of state involvement will be decided on the basis of the replies to the call for expression of interest. Compatibility with EU state aid rules will then need to be assessed. As regards FTTH technologies, the Government is taking a neutral approach at this stage. As far



as facilities and infrastructure are concerned, the Government proposes to make the electrical and water infrastructures available on a commercial basis in order to assist in the economic viability of the open access FTTH network.

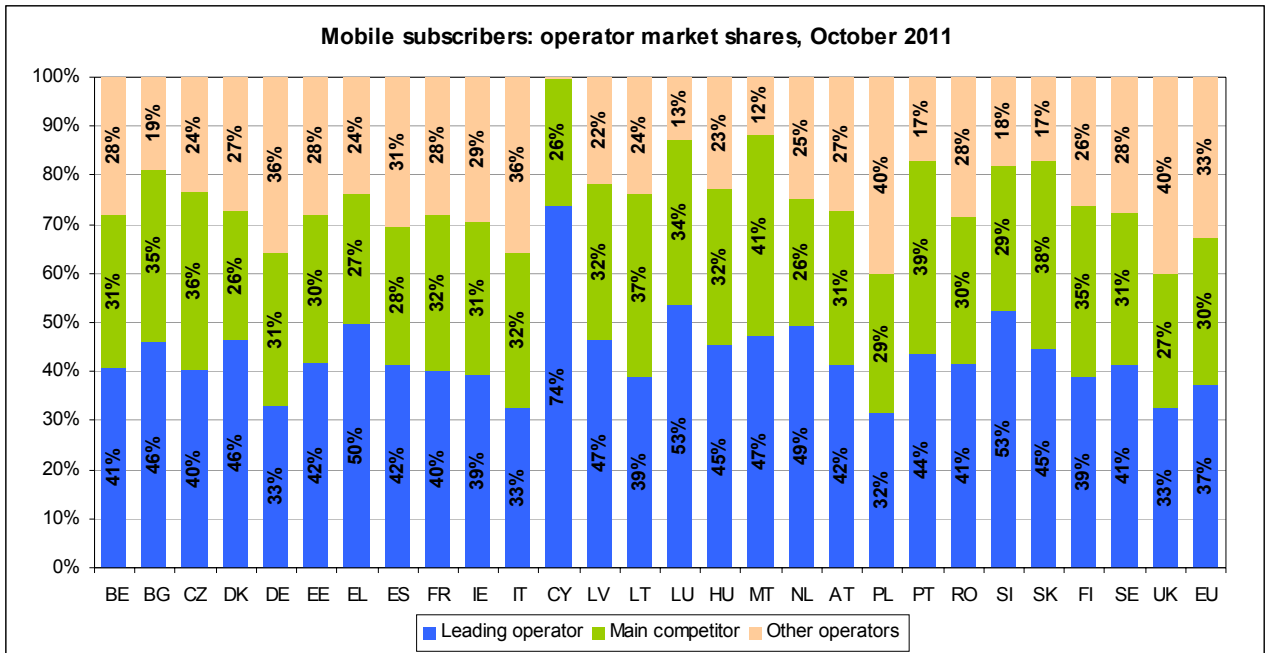
The willingness of market players to embark on this venture is still uncertain. On the one hand, the business case for investing in NGA deployment at this stage is questioned by certain operators, since the demand for very high speed bandwidth is still considered too low. However, the recent launch of IPTV is an important element that could stimulate this demand, thus creating more positive prospects. The cable operator is concerned that, given that it is already making available a 100 Mbps connection, the high infrastructure cost of FTTH deployment would not be justified.

The deployment of an open access FTTH network is intended, amongst others, to facilitate the participation of other market players, including the third major operator, in providing electronic communications services. The forthcoming market reviews relating to wholesale broadband markets are part of the MCA's outline strategy for the regulation of NGA networks.

#### **45. VOICE AND OTHER COMMUNICATIONS SERVICES**

*In 2011, there were three players competing in the fixed voice market. The incumbent (GO) market share for fixed direct access lines remains high at 75%, compared to the EU average of 69.8%. The digital pay-TV scene remains very competitive. In the mobile market, the main operator (Vodafone) retained its strong lead, with a 47.2% market share in October 2011 against 48% in October 2010. Some dynamic was introduced following the entry of the cable incumbent (Melita) in the market in 2009. Melita has been successful in acquiring new customers, thus reaching a market share of 11.6% in October 2011, mostly at the expense of the second operator, i.e. the fixed incumbent (GO). However, this market entry did not have an immediate impact on the level of prices: in 2010, Maltese consumers were charged the highest mobile tariffs in the EU, with average revenue per minute of 0.21€ compared to the EU average of 0.10€.*

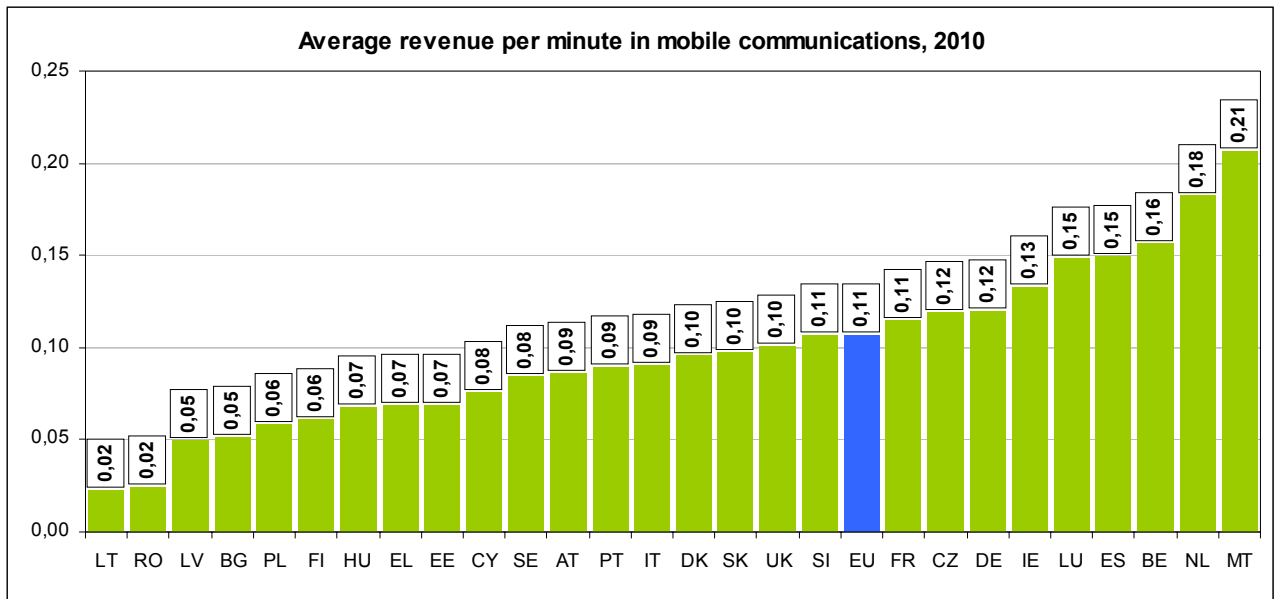
##### **5.1 Mobile services**



Source : Commission Services

There are currently three mobile network operators, whose infrastructures are based on 3G technology. No immediate plans to invest in LTE have been announced by operators. However, the possibility to deploy LTE has been inserted in the recently awarded licences in the 900 and 1800 MHz bands. Mobile penetration has increased from 105% in 2010 to 118% in 2011.

Competition between the three main players has further intensified. The main mobile operator however has retained its strong lead, with a 47.2% market share in October 2011 against 48% in October 2010. However, the mobile subsidiary of the cable incumbent, which has entered the market in 2009, has been successful in acquiring new customers, thus reaching a market share of 11.6% in October 2011, mostly at the expense of the second operator, i.e. the fixed incumbent. There are also three MVNOs, whose share of the market is currently marginal. However, the new market entry did not have an immediate impact on the level of prices: in 2010, Maltese consumers were charged the highest mobile tariffs in the EU, with average revenue per minute of 0.21€ compared to the EU average of 0.10€.

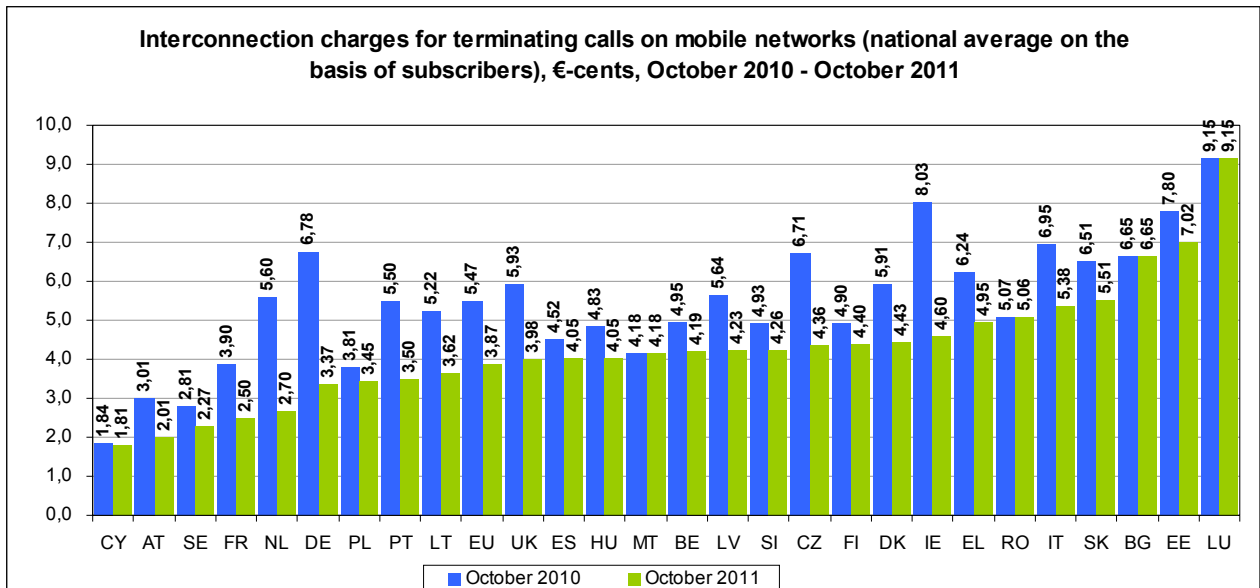


Source : Commission Services

In July 2011, the MCA reviewed the Mobile Termination Rates (MTRs) applied by the three SMP operators and established a rate of €0.0418, down from €0.0617 in 2010. The new entrant on the mobile market is calling for further reduced MTRs, questioning in particular the benchmarking methodology used by the MCA. These rates were obtained by means of a revised benchmarking methodology which was based on the average of the lowest 75% of MTRs in the EU Member States (excluding Malta), as presented in the BEREC snapshot report published in January 2011. In its notification to the Commission, MCA indicated that the rate shall remain applicable for a maximum of one year and that once 25% of Member States have shifted to a pure LRIC methodology, the MCA will apply an alternative benchmarking methodology based on the pure LRIC rates prevailing in those countries and carry out a review before the expiry of the one-year period. MCA reiterated its commitment of concluding its own BU-LRIC model by December 2012 and thus fully comply with the Commission's Recommendation on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU ("the Termination Rates Recommendation")<sup>38</sup>. The Commission whilst welcoming MCA's commitment to develop and apply its own pure LRIC model by 2012 and to comply with the Termination Rates Recommendation, made some remarks with regard to the benchmarking proposed by MCA.

No issues have been raised in relation to the compliance with the Roaming Regulation.

<sup>38</sup> Commission Recommendation of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU, OJ L 124, 20.05.2009, p. 67.



Source : Commission Services

## 5.2 Fixed

In 2011, there were three players competing in the fixed voice market. The fixed incumbent's market share for fixed direct access lines remains high at 75%, compared to the EU average of 69.9%.

In July 2011, the MCA published a consultation on the review of the market for transit services in the public telephone network provided at fixed locations (ex-Market 10). The MCA concluded that no operator enjoys SMP in either the national or the international markets for transit services and proposed to withdraw the existing regulatory obligations. The Commission was notified of the proposed measure and made no comments. The final Decision was adopted on 23 November 2011.

In February 2012, the MCA published a decision on the review of the market for retail access to the public telephone network at a fixed location (Market 1). The MCA identified four separate retail product markets, all national in scope and concluded that the markets were still not effectively competitive. MCA imposed the full set of remedies on the fixed incumbent operator designated with SMP in all the four defined markets. The Commission, when notified of the proposed measure, pointed *inter alia* to the need to ensure that MCA is provided with the necessary information to perform its tasks, e.g. information needed in order to enable the correct calculation of market shares.

### 5.3 Broadcasting

The digital pay-TV scene remains characterised by intense competition between the two main commercial players, the cable and fixed incumbent, which have launched new products on the market (IPTV and VOD). The market share of the cable incumbent continued to decline slightly and stood at 60.1% as of July 2011. In addition, a free-to-air digital terrestrial platform is now fully operational and carries six Maltese broadcasters meeting general interest objectives. Digital switch-over was completed on 31 October 2011 with the switching off of the analogue broadcasts. In this very competitive environment, operators are strongly concerned by the large-scale issue of the use of satellite card-sharing and its consequences on the value of content rights. The issue of sports rights for major events remains very much a subject of public debate, in particular since the fixed incumbent acquired certain football rights that were previously held by the cable incumbent.

## 46. SPECTRUM MANAGEMENT

*The re-assignment process of the 900/1800 MHz bands was completed in August 2011, with the NRA issuing three spectrum licences to the main operators. The opening up of the 800 MHz band for electronic communications services is a key challenge in Malta. Its release for purposes other than TV transmission remains dependent on the migration of the current services, i.e. a network transmitting digital broadcasts of general interest nature. This is, in turn, largely dependent on the resolution of long-standing interference and coordination issues with Italy.*

The re-assignment process of the 900/1800 MHz bands was completed in August 2011, with the MCA issuing three spectrum licences to the main operators. This process was concluded by a proposal from the MCA following brokered meetings, which was accepted by the three applicants. The three-phased assignment process envisaged a qualification phase followed by brokered meetings and finally an auction as a last resort measure only in case brokered meetings were unsuccessful. This process was generally welcomed by operators, which consider that it has led to a quick, efficient and balanced result. The fixed incumbent has however filed a complaint, challenging the fact that channels in both bands were valued at the same price.

The opening up of the 800 MHz band for electronic communications services is a key challenge in Malta. Its release for purposes other than TV transmission remains dependent on the migration of the current services, i.e. a network transmitting digital broadcasts of general interest nature. This is, in turn, largely dependent on the collaboration of neighbouring States in the international coordination of frequencies. The Maltese authorities have stated that there are indeed currently no available frequencies outside this band onto which to migrate these transmissions, primarily as a consequence of long outstanding frequency issues with Italy. Moreover, harmful interferences are also negatively affecting local transmissions to the detriment of operators in Malta. The Commission will monitor the implementation by Malta

of the provisions of the Radio Spectrum Policy Programme (RSPP)<sup>39</sup> 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 (Article 6.4) unless a derogation has been granted.

In May 2011, Malta amended its National Frequency Plan in order to transpose Decision 2010/166/EU (MCV services). Concerning the provision of mobile satellite services, a legal Notice (LN397 of 2011) on the granting of authorisations to the two selected operators has been published in September 2011 and the granting of authorisations to operators is currently being finalised.

## **47. CONSUMER INTEREST**

### **7.1 116- Harmonised numbers for services of social value**

*While 116 harmonised numbers for services of social value are operational in Malta, the recognition by users of these numbers is particularly low.*

A register is currently being maintained on the MCA website and is available to the general public. This includes a list of all the reserved Harmonised European Short Code numbers, a service description for each of them and a list of those currently in service, namely 116000 and 116123. The latest Eurobarometer survey<sup>40</sup> on 116 awareness showed that none of the respondents in Malta declared that they would call 116 000 (the missing children hotline) in the event of a child gone missing.

### **7.2 112- European emergency number**

*Awareness of the availability and use of the 112 European emergency number has gone down in Malta to 52%, which is very low in EU comparison.*

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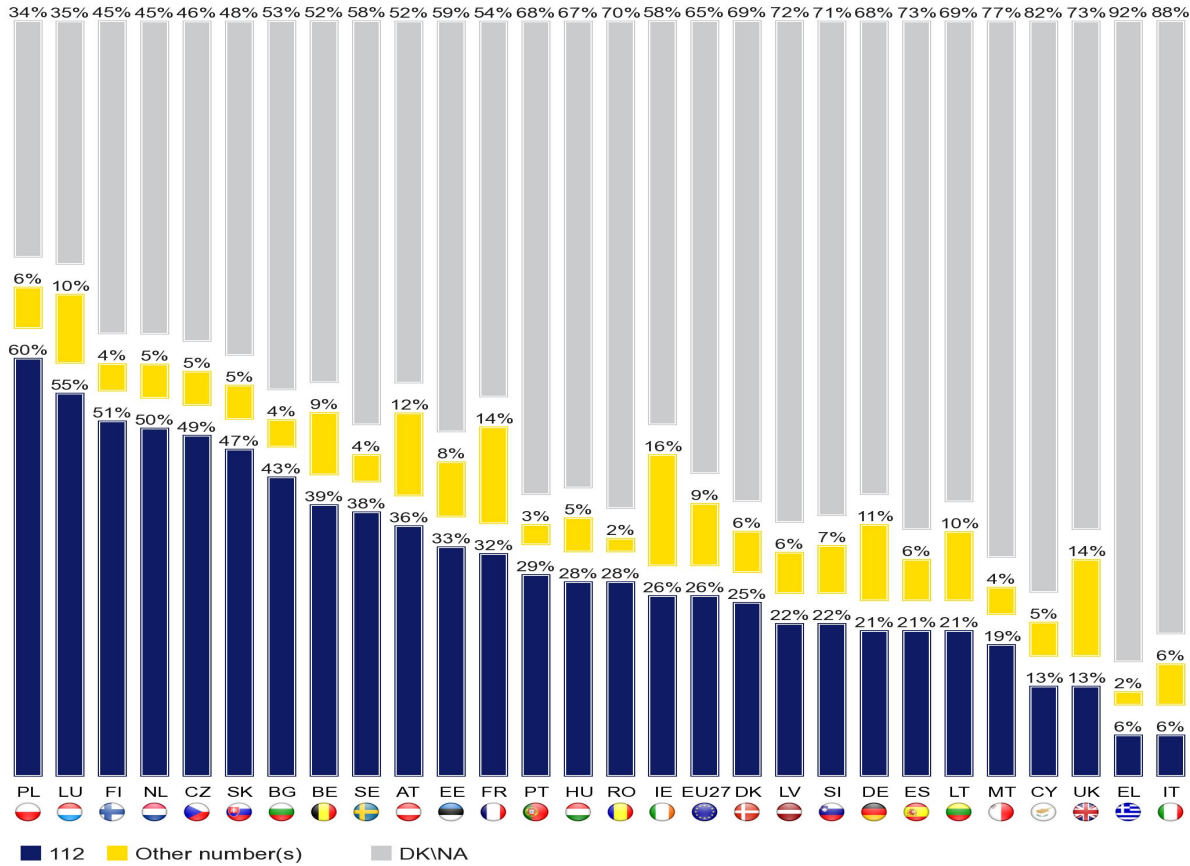
<sup>39</sup> Decision 243/2012/EU of the European Parliament and of the Council of 14 March 2012 establishing a multiannual radio spectrum policy programme; <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:081:0007:0017:EN:PDF>

<sup>40</sup> Special Eurobarometer survey on 116 (2011)

**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

The Commission services have been closely monitoring the compliance of Malta with EU rules concerning implementation of 112, following indications that information on caller location was not provided in an efficient way, and allegations that a proportion of calls remained unanswered. The Maltese authorities have taken steps to improve the operation of the system but further measures are required to comply with the stricter requirements imposed by the revised EU telecom rules with respect to caller location information. Discussions are currently underway with the operators to allow for the automatic forwarding of the Cell ID.

In January 2012, awareness of 112 as the national emergency number has gone down in Malta to 52% (-4 percentage points compared to 2011)<sup>41</sup>. This result is by far the lowest amongst the

<sup>41</sup> Flash Eurobarometer survey on 112 (2011)

countries that have 112 as their main emergency number. In addition, awareness of 112 as the Europe-wide number in Malta is 19%, down by one percentage point compared to last year and still below the EU average (26%).

### **7.3 Net neutrality and quality of service**

*No major issue on net neutrality was reported.*

Concerning net neutrality, no issues have been brought to the MCA's attention. In January 2012, the MCA published a consultation document on a quality of service framework for broadband internet.

### **7.4 Consumer complaints, tariff transparency**

*The most prominent issues being faced by consumers related to billing and contractual conditions. The MCA therefore took legal actions to address inaccurate or delayed billing and post-termination billing. The MCA also published a decision exempting operators from the need to apply the 30-day notification period where proposed changes to subscribers' terms and conditions are considered to be manifestly positive by the Authority.*

According to the MCA and the Consumer Association, the most prominent issues being faced by consumers relate to billing and contractual conditions. The MCA took legal actions to address these issues, such as inaccurate or delayed billing and post-termination billing. The MCA is also analysing the effect of the sale of products in bundles and on the consumers' ability to switch bundles or individual products within them.

In October 2011, the MCA published a decision on the notification process in instances where operators propose to change subscribers' terms and conditions. This decision notably establishes that in the event that service providers propose changes which are considered to be manifestly positive by the Authority, for example, a reduction in tariffs, such changes may be introduced with immediate effect without the need to apply the 30-day notification period. Service providers are still required to inform subscribers about these changes, however in such instances subscribers will not be given the option to terminate the contract.

### **7.5 Number portability**

*Number portability in mobile networks was usually carried out within one day. While the number of porting transactions decreased in fixed networks, it went up for mobile numbers from 38 415 transactions in 2010 to 45 090 in 2011.*



While the number of porting transactions decreased in fixed networks, it went up for mobile numbers from 38 415 transactions in 2010 to 45 090 in 2011. Number portability in mobile networks was usually carried out within one day. One operator has expressed concerns over the specifications adopted by the MCA for fixed number portability, in particular about the three days allocated for administrative checks, and is calling for the MCA to review these rules.

## 7.6 Universal service

*Malta is one of the few Member States that has adopted measures to include access to a broadband connection (at a speed of 4 Mbps) in the national universal service.*

The MCA published a decision on the extension of the scope of "functional Internet access" in relation with the provision of access at a fixed location, which requires the designated Universal Service Provider (i.e. the fixed incumbent) to provide a connection capable of supporting functional internet access at a guaranteed access line speed of 4 Mbps, as of 1 August 2011. Prior to adopting this decision, the MCA invited any other undertakings to express their interest in the provision of such Universal Service Obligation.

At the choice of the end-user, the Universal Service Provider (USP) is required to provide a connection at a guaranteed access line speed of 4 Mbps. If the connection does not permit the provision of such broadband Internet access for technical or economical reasons, and no alternative offering is readily available on the market under comparable conditions to the end-user requesting the connection, the USP is allowed to provide the connection at a speed that is lower than the access line speed specified above. In these exceptional cases, the access line speed must not be lower than 2 Mbps.

Concerning the provision of a printed directory, three entities expressed their interest to provide the directory but discussions failed in August 2011. Consequently, the fixed incumbent was designated as the USP.

## 7.7 e-Privacy

*No major issue on e-Privacy was reported.*

Data Protection falls under the portfolio of the Ministry of Justice, Dialogue and the Family. The respective provisions of the e-Privacy Directive 2009/139/EC were transposed in the local legislation by means of amendments introduced to both the Data Protection Act (Cap. 440 of the Laws of Malta) and the Electronic Communications Act (Cap. 399 of the Laws of

Malta). At the time of drafting this report, the regulation which transposes the provisions concerning the processing of personal data, was published but has not yet been brought into force.