

BELGIUM

INTRODUCTION

Competition between platforms has remained vigorous in Belgium despite consolidation among both broadband and broadcasting operators. However, Belgium no longer belongs to the top EU performers in broadband penetration. Mobile services are further expanding and consumers are expected to benefit from a possible additional licence in the course of 2009. Further regulation and continued efforts to implement and enforce the regulation already in place seems necessary to preserve competition in the fixed telephony and DSL markets at a time when the fixed incumbent is consolidating its position and is rapidly moving to the complete roll-out of a next-generation network. The regulator has started a new round of market analyses. Amendments to the electronic communications legislation, planned for early 2009, are expected to strengthen the regulator's enforcement powers.

REGULATORY ENVIRONMENT

Main regulatory developments

The Belgian legal framework has not changed considerably over the past year. On the basis of the cooperation agreement between the federal State and the (linguistic) communities, the national regulatory authority, the Institut belge des services postaux et des télécommunications/Belgisch Instituut voor postdiensten en telecommunicatie (IBPT/BIPT) was able to carry out the analysis of the markets for wholesale broadband access and wholesale (physical) network infrastructure access, thereby completing the first round of market analyses in January 2008. This allowed the Commission to close the relevant infringement proceeding. These decisions were complemented by an additional decision regarding the impact of next generation networks and next generation access (NGN-NGA) on the broadband access markets. In the context of the roll-out of NGN, the regulator responded to requests to define the migration conditions in the transition period as well as to ensure continued enforcement of the current obligations.

The Belgian authorities regard the legislative and regulatory framework as sufficiently robust and almost complete. They are nevertheless considering how to reinforce the regulatory authorities, by improving the sanction mechanism, streamlining the procedures and consolidating the powers of the NRA and the competition authority. A bill amending the Electronic Communications Act of 2005 and the IBPT/BIPT statute and procedure acts of 2003 is currently under advisory scrutiny by the Supreme Administrative Court. Competition in the mobile market should be strengthened by a fourth UMTS licence in 2009. This new draft legislation is expected to be tabled in Parliament by early 2009.

Several infringement proceedings regarding the universal service obligations and the must-carry rules are still pending. Belgium was referred to the European Court of Justice in January 2008 for not fulfilling its obligations under the Universal Service Directive with regard to the calculation of net cost and the determination of the unfair burden.

Organisation of the NRA

Under the current institutional arrangements of the federal State, the national regulator (IBPT/BIPT) and the regional regulators cooperate in regulatory matters that concern infrastructures common to telecommunications and broadcasting. The cooperation agreement, concluded in 2007, has been used on several occasions and has enabled the NRA to adopt some long-overdue decisions concerning, for example, the broadband markets.

Few changes are reported with regard to the human and financial resources of the NRA. Operators doubt whether the regulator is properly staffed to deal with the growing need for economic regulation. The 2007 accounts continue to show a surplus, which has been returned to the State treasury according to the applicable legal provisions.

As to enforcement, IBPT/BIPT is confronted with a long procedure entailing several steps (preliminary formal notice and formal notice) before it can impose a fine. In 2008 this procedure was applied several times to the incumbent, for instance for not publishing the requested key performance indicators (KPIs) or for not providing the requested regulated products (such as the bitstream reference offers for ADSL2+ and VDSL2 and the wholesale prices for Ethernet leased lines). On one occasion this led to the imposition of an administrative fine of €3 million on the incumbent, which had been complying only partially and consistently late with its obligation to reflect wholesale price decreases (the lowering of mobile termination rates) in retail prices. The incumbent's appeal against the decision, however, resulted in automatic suspension of the fine in accordance with Belgian law. While alternative operators welcomed this intervention, they regretted that the NRA used its powers only for retail issues. For instance, they point to delays in implementation of the broadband access reference offers for ADSL2+ and for VDSL2, when the incumbent is already able to offer these technologies at retail level.

Dispute settlement procedures before the Competition Council remain an issue. These are hardly used, because of time-consuming procedures and uncertain results. Nevertheless, generally speaking, cooperation between the Competition Council and the regulator seems good.

Decision-making

IBPT/BIPT finalised the first round of market analyses with the long-awaited adoption of the remedies related to the wholesale markets for local loop unbundling and bitstream access. An additional decision on NGN/NGA networks was adopted in November 2008. These decisions are of limited validity as IBPT/BIPT is required to further cooperate with the regional regulatory authorities on regulation of converging networks. IBPT/BIPT is committed to carrying out new analyses in 2009 but is expected to maintain the imposed remedies until the definitive adoption of new decisions.

The new round of market analyses on the basis of the revised Recommendation on relevant markets started in September 2008 with the notification and adoption of two decisions (November 2008) regarding the retail telephony markets (not listed among the relevant markets). Other market analyses are scheduled for 2009.

IBPT/BIPT spent a considerable amount of time on reviewing wholesale access products while new reference offers were being created for ADSL2+, VDSL2 and Ethernet. It also introduced corrective measures, in several market decisions, with regard to the incumbent's obligation to publish key performance indicators (KPIs), as the fixed access market decision had been annulled on this element in 2007. In the same way the NRA promptly adopted, in April 2008, a new decision on mobile termination rates, after the market decision concerned had been suspended by the appeal court.

Ensuring the effective availability of remedies remains a challenge. NRA decisions are systematically appealed by the incumbent and most of the appeals are still pending before the Court. Moreover, when decisions are annulled by the Court, in some cases for purely formal reasons, IBPT/BIPT is not allowed to restore them retroactively, according to settled case-law.

In addition to the regulated wholesale offers, IBPT/BIPT also applies margin squeeze tests. In August 2008, it ended an internal inquiry into the tariffs of wholesale Ethernet leased lines. Market players were asked for their views on whether the prices as communicated by the

incumbent would lead to a price squeeze. The incumbent reduced its tariffs in the course of the inquiry.

MARKET AND REGULATORY DEVELOPMENTS

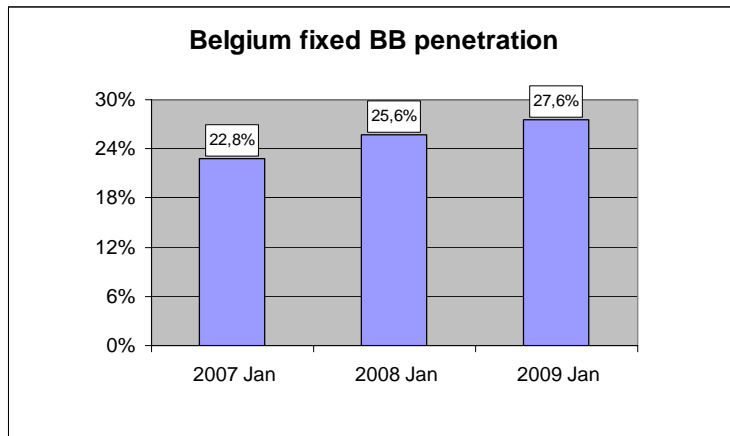
The total turnover of the Belgian telecommunications sector stood at €9.83 billion on 31 December 2007, whereas the revenues from fixed markets were €5.64 billion, and the revenues from mobile markets were €4.18 billion. The total value of tangible investments by alternative operators in fixed telephony networks was €0.46 billion. Mobile operators invested €0.34 billion. The incumbent fixed network operator invested €0.39 billion in its fixed infrastructure in 2007. Most of these turnover and investment figures are slightly higher than the 2006 figures. The investment over revenues ratio in the telecom sector was 12.3%, close to the European average.

The NRA finally started to debate NGN-NGA with the public consultation of January 2008. The first specific regulation on NGN-NGA was issued in November 2008 with the aim of clarifying the existing obligations in terms of access, non-discrimination, transparency and cost-orientation during the transition period. Alternative operators, emphasising the already very advanced roll-out of the VDSL2 network, requested the NRA to widen its initial remedies to Ethernet backhaul and dark fibre access, which were indeed included in the NGN-NGA decision.

In the meantime, consolidation has taken place among cable companies as well as DSL operators. In November 2008, the fixed incumbent was allowed by the competition authority to take over the third DSL provider. In order to keep competition of alternative operators alive and to remove the competitive overlap resulting from the acquisition, it was required to divest itself of the newly acquired fibre network. At the same time, it was imposed a number of conditions in the retail market. Competition between the incumbent's and the cable operators' networks, however, is steadily increasing in terms of product performance. The broadband retail market remains however characterised by an overall lack of price competition. In the mobile telephony market, there was much talk about the arrival of a new entrant using the fourth 3G licence, which was not granted in 2000.

Broadband

Market situation



Although still above average, Belgium's European ranking has been falling for the past few years (now in eight place) with 27.6% penetration at 1 January 2009, compared to 25.6% at 1 January 2008. The pace of growth is decreasing (below 2 percentage points).

The total number of broadband lines reached more than 2.9 million in January 2009, compared to 2.7 million in

January 2008. 58% of these lines are provided by DSL operators. The incumbent's market share has slightly increased to 46%. Almost all the other lines are provided by the cable operators, whose joint market share has increased from 39% to almost 41%. Fibre to the home lines remain marginal. Fibre to the curb already reaches a very high coverage rate of more than 60% of population. With almost 4 users per 100 population, Belgium has one of the lowest penetration rates of mobile broadband in the European Union.

Operators have continued migrating from resale to bitstream and unbundling, although the latter form of access remains modest (respectively 55% and 17% of new entrants' DSL lines). With 2% of all broadband lines, LLU penetration is also very limited from a European perspective, in spite of prices for shared access that are amongst the lowest in Europe (while prices remain stable or are decreasing).

The speed of fixed broadband connections is generally very high: nearly 28% of all lines offer high speeds (above 10 Mbps), while 64% of the lines are medium-speed connections (between 2 and 10 Mbps).

Broadband coverage is very high in rural areas, 100% for DSL and 50% for cable, in 2007. For the latter transmission platform, there remains however a gap of 38% with regard to national coverage average.

Regulatory issues

The market analyses relating to the markets for physical network infrastructure access (LLU) and for wholesale broadband (bitstream) access were adopted in January 2008. Operators were pleased that the regulator finally succeeded, in July 2008, after a long period of enforcement action, in imposing a first bitstream reference offer for ADSL2+.

This intervention nevertheless came at a time when the incumbent was already rolling out a VDSL2 network and offering retail services based on this technology. The incumbent has further indicated its intention of closing down more than 60 main exchanges from 2011-2012. This would concern exchanges with co-location facilities, where alternative operators are present with a considerable number of unbundled and bitstream lines. Moreover, the incumbent's core network is expected to migrate from ATM to Ethernet at the same time. The uncertainty that accompanies the migration process negatively affects LLU investments and prevents alternative operators from climbing up the ladder of investment.

A study commissioned by the NRA showed that in Belgium the business case for sub-loop unbundling (SLU) in the current market conditions is clearly not as economically feasible as for LLU. A viable case could only be constructed if several conditions with respect to regulation of backhaul and co-location were met, in addition to alternative operators being

able to substantially increase market share. Access to the largest local exchanges representing the densest population of Belgium and additional revenue would also be essential.

As to VDSL2, the incumbent launched a retail offer in April 2008 (including High Definition television) based on this technology and, in July 2008, made a first commercial wholesale offer for resale. The NRA reminded the incumbent again of its obligation, pursuant to the broadband markets decision of January 2008, to provide a VDSL2 bitstream reference offer. After a preliminary formal notice, the incumbent finally published a reference offer, which is currently submitted to consultation.

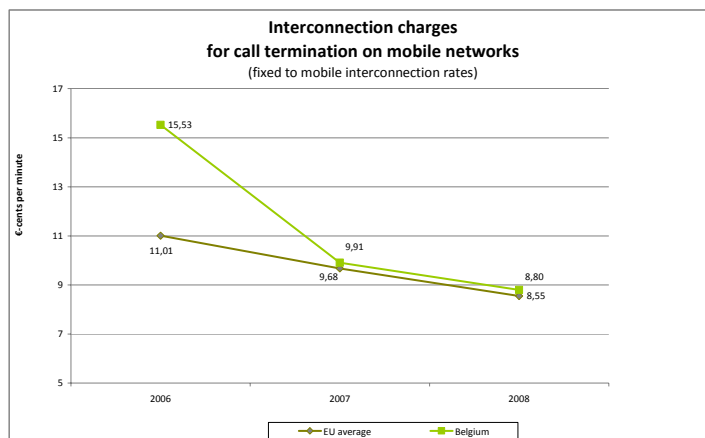
Consequently, operators feel apprehensive about the incumbent's intentions and about future competition opportunities. They urge the regulator to manage the overall process of transition and to define rules for migration. They express the need for transparency. Information on roll-out of the VDSL network, phasing out of exchanges, migration paths, etc., as well as enforcement of the non-discrimination obligation would be absolutely essential.

The provisions in the service level agreements (SLAs) continue to concern alternative operators despite the fact that deadlines for provisioning and fault repair were further shortened in 2008 following a glide path. They are expected to be reviewed again in early 2009 in order to achieve reasonable and measurable SLA deadlines, reasonable forecasting conditions and indisputable compensation rules. The operational processes in the incumbent's wholesale division will need to be audited in 2009, and the NRA's policy would then be based on the results of the audit report.

Mobile markets

Market situation

The penetration rate in terms of active subscribers increased significantly to 102%, compared to 94% in 2007. This is still well below the European average of 119%. Growth in minutes amounted to 15% (compared to a 21% rise in 2006), while prices are further decreasing. The second and the third operator are gaining a slightly bigger market share, of respectively 33% and 23% (based on subscribers). The number of post-paid customers has risen to 45% (compared to 44% in 2007). Mobile virtual network operators have increased their presence with a market share of 2.3%, compared to less than 1% in 2007 (in minutes).



Regulatory issues

Mobile termination rates have steadily fallen and progressed towards symmetry since 2006, according to a glide path fixed by the NRA. The mobile operators have, however, appealed two successive IBPT/BIPT decisions, the first of August 2006 and the second of December 2007. In April 2008, the Court of Appeal held that the NRA had insufficiently substantiated its choices with regard to the cost-orientation method adopted in the second decision, and decided to suspend the effects of that decision.

Awaiting further judgements on the merits of the case, the NRA withdrew the second decision and adopted a new decision on 29 April 2008. Current termination rates are extracted from the first (August 2006) decision, which provides for cost-oriented rates based on a top-down model and following a glide path. The final steps were applied in May and July 2008, reintroducing higher and more asymmetric rates, compared to the initial intentions of the regulator. IBPT/BIPT is expected to carry out a new market analysis in 2009, and is currently developing a bottom-up model which is due to be finalised in the first half of 2009.

Roaming

While some operators have set voice roaming prices at the maximum level indicated by the Regulation (September 2008), one network operator and some virtual operators are offering lower tariffs.

The Belgian mobile operators generally charge very high prices for sending SMS whilst roaming (from €0.25 up to €0.70), which are the highest rates in the EU.

Fixed

Market situation

The number of PSTN lines, and the volume of fixed traffic, has continued to decrease (4.5% by number of minutes), although the number of "mobile only" households seems to have stabilised (32% by end 2007). Traffic volumes of fixed and mobile telephony are almost converging, in line with the European average. The incumbent's market share is slightly increasing by revenues (up to 70.8%), but decreasing in volume (from 68% down to 67%).

The incumbent's dominance is noticeable in both the residential and the business markets (respectively more than 60% and 70% in market share). Cable telephony is growing (with a market share of 12%) while managed VoIP (voice over broadband) telephony provided by DSL operators is not really taking off (with a market share of only 3.6%). Flat-rate packages, bundles and the introduction of naked ADSL offers could have contributed to the current trends.

Only one competitor had a market share of more than 10%, whereas three others barely achieved a market share of 3% each. The market for international telephony is subject to slightly more competition, where two competitors have achieved a market share of 8% each.

Regulatory issues

The fixed telephony incumbent is under an obligation, as an SMP operator, according to the retail market decisions of 2006, not to charge excessive retail tariffs and also to reflect wholesale price changes in its customer prices. Despite decreasing mobile termination rates throughout 2007 and 2008 the incumbent did not consistently adapt its fixed-to-mobile retail tariffs. The regulator undertook successive enforcement steps, which finally led, in July 2008, to the imposition of a €3 million fine for late and incomplete implementation of regulatory obligations.

Although the fixed retail telephone service markets (for both business and residential customers) are not part of the 2007 Recommendation on relevant markets, IBPT/BIPT undertook an analysis of these markets, carrying out the three-criteria test. It concluded that these markets were not effectively competitive, found dominance of the incumbent and thereby established the necessity of regulation. The decision, which was subsequently adopted

in November 2008, has a validity of one year. The NRA committed itself to reviewing these markets within one year, and will re-examine the effects of the corrective measures for the wholesale markets.

As to wholesale interconnection charges, the NRA adopted new tariffs for the period 2008-2010. Faced with declining traffic volumes and transition to NGN, the NRA decided to maintain the current wholesale prices of most products, with the purpose of stabilising prices, and only to subject carrier (pre)selection activation fees to price indexation. These activation fees are, however, decreasing due to the exclusion of some non-recurring costs which occurred in past years.

Broadcasting

Market situation

Cable TV remains the most used platform for viewing broadcasts: more than 90% of households are connected. The incumbent's IPTV platform achieves a market share of more than 8%. Only 2.3% of the Belgian population avail themselves of bundled offers which include broadcasting services. This is due to the fact that bundled packs (including IPTV) are just starting to be introduced.

The cable sector is moving closer to consolidation, with the formation of mainly one cable company in the north and one for the south of the country (with a third one in Brussels).

As to terrestrial networks, in the Flemish Region the analogue switch-off took place in November 2008. In Brussels and in the Walloon Region, switch-off is expected to take place by the end of 2011.

Regulatory issues

In September and October 2008, linguistic community regulators, which are competent for broadcasting, jointly launched a consultation on the market for broadcasting transmission networks and services. Interestingly, these regulators launched the same consultation for the markets of LLU (physical network infrastructure) access and bitstream (wholesale broadband access), although they have common competence for these markets with IBPT/BIPT, the national regulator.

Horizontal regulation

Spectrum management

As the time of digital switch-over varies across the linguistic communities of the country, coordination will be necessary for any decision on the attribution of the digital dividend. In October 2007, the Flemish Community established its digital frequencies plan for broadcasting network providers. The Flemish governmental decree was challenged before the Supreme Administrative Court by the national regulatory authority, which claims that it has jurisdiction over the management of some of these frequencies.

A fourth UMTS licence is expected to be made available in 2009 by means of an auction. Procedures for the granting of authorisations for mobile data traffic in the 2.6 and 3.6 GHz bands are also under preparation.

Implementation of spectrum decisions

Belgium has implemented the Commission's spectrum harmonisation decisions, except Decisions 2006/771/EC on the harmonisation of the radio spectrum for use by short-range devices and 2007/344/EC on harmonised availability of information regarding spectrum use within the Community. The authorities claim that the major part of Decision 2006/771/EC has already been transposed in the current interface versions and is applied in practice.

THE CONSUMER INTEREST

Tariff transparency and quality of service

IBPT/BIPT has continued to develop a "tariff simulator" jointly with the sector. This web-based tool for comparison of broadband and mobile and fixed telephony prices, in development since 2006, is currently being tested by the operators, and will soon be made available to the public. Tariff comparison for bundled products will also become available.

Pursuant to the national law, all operators of electronic communications services are obliged to provide quality of service indicators to the NRA, and to publish them on their website. Since mid-2008 this obligation has been implemented by an IBPT/BIPT decision. Indicators include connection times, defect rates, fault repair time and, for mobile networks, data such as dropped calls rate.

Universal service

The Commission has opened infringement proceedings against Belgium on the costing and the financing of the Belgian universal service obligations, and in particular the social tariffs. In Belgium, all operators offering public telephony services to consumers are required to offer social tariffs. In this system, the net cost of universal service is calculated as any loss of revenue resulting from the granting of social discounts. Any net cost so calculated, which is incurred by an operator, has to be considered as an unfair burden.

The Commission considers that the provisions in the Belgian Electronic Communications Act with regard to calculation of net cost and determination of the unfair burden infringe the Universal Service Directive. It decided to refer the Belgian State to the European Court of Justice in January 2008.

Number portability

Wholesale prices for porting geographic and non-geographic numbers other than mobile numbers were considerably reduced by an NRA decision of April 2008. The cumulative amount of ported mobile numbers increased by more than 500 000 over the last year. More than 21% of the total mobile numbers are ported numbers.

A draft royal decree, lifting all restrictions on the porting of VoB numbers, was put to public consultation. This should be a significant move towards enhancing competition.

Consumer complaints

The Belgian Ombudsman for telecommunications has been dealing with a growing number of complaints (up by 10% in 2007 and by more than 100% since 2003). It also assessed the way in which the specific consumer protection provisions of the national law are functioning in practice (obligation to provide social tariffs, to provide specific tariff information on tariff packages, anti-slamming provision, etc.).

On the other hand, the Ombudsman has also been focusing on consumer complaints regarding SMS premium rate services, where operators are requested to better apply the guidelines established by self-regulation. The government intends to adopt an "ethical code" which will impose firm obligations on service providers and ease consumer complaint resolution.

European emergency number 112

Belgium is passing from a manual to an automated "pull" system for mobile caller localisation. The new system is expected to become operational in 2009.

There have been some complaints about the failure to pass 112 calls to the police services, which can also be reached by another emergency number. This system should, however, function correctly by the existence of a "hot" line between emergency services. This will be completely resolved through the introduction of centralised Public Safety Answering Points.

116

A royal decree assigning number 116 000 to Child Focus (hotline for reporting missing children) is under preparation. This number will be one of the emergency numbers, to be carried free of charge by the operators.

Must-carry

The Commission launched an infringement proceeding against Belgium for its must-carry legislation in the bilingual region of Brussels-Capital. It considers that the amended legislation of 2007 does not conform to the Universal Service Directive and accordingly sent two reasoned opinions to the Belgian authorities, in May and December 2008.

Data protection

The sector was consulted on draft texts for further transposition of the Data Retention Directive in Belgian law. Operators were in particular requested to give a cost evaluation for fulfilment of their obligations with regard to data retention, in the hypothetical cases of fixing the retention period at respectively, 6, 12 or 24 months.