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COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

PROGRESS REPORT ON THE SINGLE EUROPEAN ELECTRONIC COMMUNICATIONS MARKET 2007 (13th REPORT)

{SEC(2008) 356}

1. INTRODUCTION

This Communication reports on developments in the electronic communications sector during 2007[1].

The EU regulatory framework is designed to benefit users and consumers by ensuring that competition and an increasingly integrated European market drive investment in innovative, attractive and affordable services. Its ultimate aim is to phase out *ex ante* economic regulation, provided that competition is sufficiently developed.

This approach has been successful. However, there is considerable scope for further benefits to flow from a reinforced single market, strengthened competition and a reduction in the regulatory burden.

The Commission has accordingly issued a revised Recommendation on relevant markets[2] and proposals[3] to amend the Directives making up the EU regulatory framework. These aim in particular to consolidate the internal market through more consistent national regulation; reinforced consumer protection and users' rights; more effective spectrum management and implementation.

2. MARKET DEVELOPMENTS

The telecoms sector is the biggest single component of the ICT sector, representing almost 44% of its total value[4]. Likely to show growth of 1.9%[5] for 2007, it continues to be key to the European economy, contributing around 12% of labour productivity growth[6]. Estimated revenues are €293 billion, up from €289 billion in 2006[4]. Fixed voice continues to decline in terms of revenues, while mobile continues to grow and fixed broadband continues to show strong growth.

In 2007 consumers again benefited from lower prices in particular for mobile voice services. These gains were supplemented by the increased availability of offerings such as mobile broadband and higher-speed fixed services, in particular over fibre. Most EU markets exhibit increasing volumes and falling prices, suggesting that the average European consumer of electronic communications services was better off in 2007 than the year before.

In areas where the market has failed to deliver lower prices and better value, the Commission has remained vigilant. In 2007 the Roaming Regulation[7] tackled high prices for EU voice roaming services. Pessimistic industry predictions failed to materialise. The Commission will continue to monitor developments in prices for roamed SMS and data services and will report to Council and Parliament in 2008.

[1] Unless otherwise indicated the situation is that at 31 December 2007 and market data that at 1 October 2007.
[2] Commission Recommendation 2007/879/EC.
[3] COM(2007)697-699.
[4] European Information Technology Observatory (EITO) 2007.
[5] EITO Update 2007.
[6] Estimate based on EU KLEMS.
[7] Regulation (EC) No 717/2007.

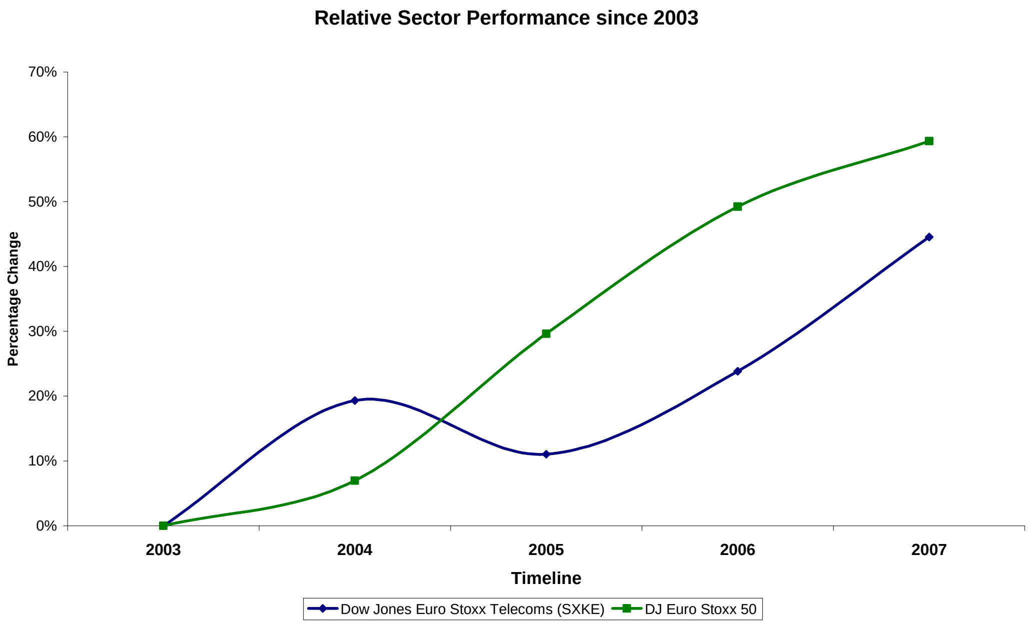
Investment

In 2007 aggregate investment in the sector in terms of capital expenditure is estimated to have exceeded € 50 billion, an increase over 2006 and the fifth consecutive year of increased year-on-year investment.

Fixed incumbents invested approximately 13.5% of their revenues in 2007, similar to 2006. This percentage was again higher for alternative operators: for instance, leading alternative operators in France and Italy invested approximately 30% of their revenues. Total new entrant investment is estimated at 25% of the overall figure.

Financial outlook

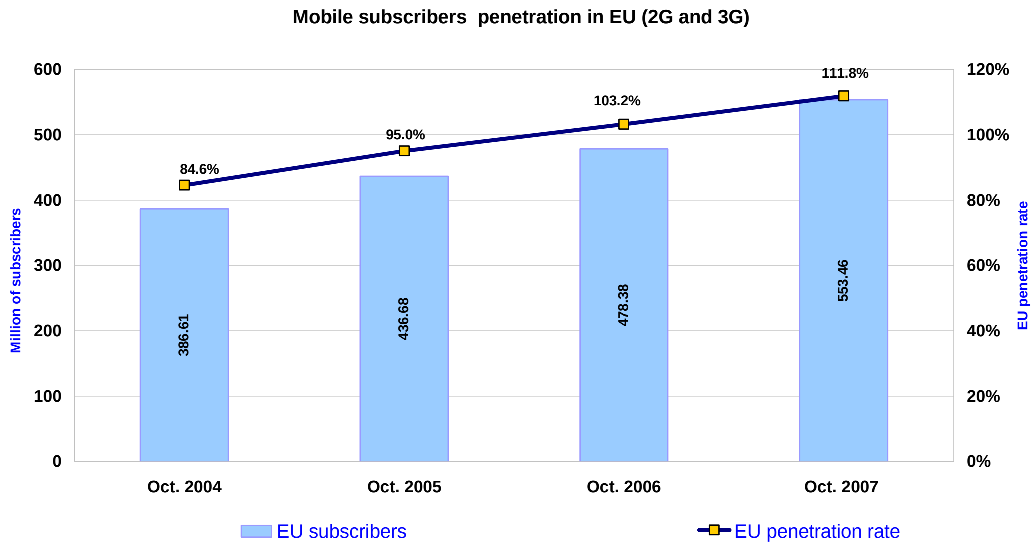
After trailing for some years, since 2005 the electronic communications sector has now caught up with overall market performance. Many financial analysts now rate the sector as 'outperforming' on the basis of characteristics such as continued strong cash-flow from fixed and broadband activities, coupled with debt reduction over the past years and high dividend yields.



Mobile

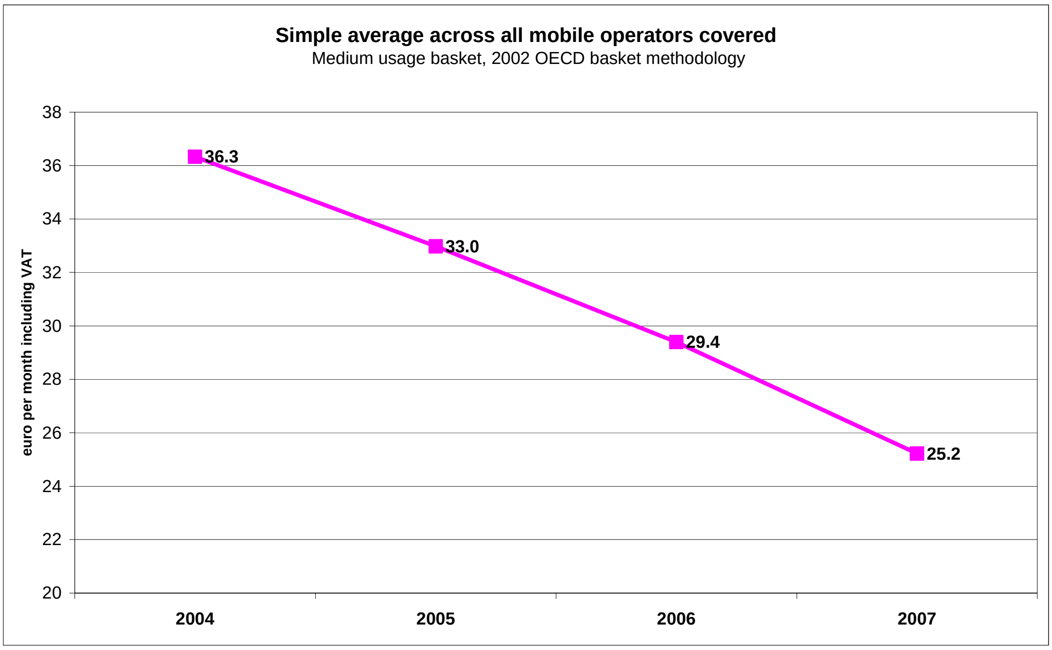
Mobile revenues, up from €133 billion in 2006[4] to an estimated €137 billion, grew at 3.8% compared to 4.1% the previous year[5].

Penetration continued to rise, to a notional 111.8 % of the population compared to 103.2 % the previous year.



The rate of growth in revenues reflects the increasing competition and falling retail prices, coupled with saturation in most countries and falling termination rates. While prices in the low-usage basket[8] fell by around 10%, those in the medium and high-usage baskets decreased by nearly 14%.

The relative market shares of the leading operators, main competitors and newer entrants in each Member State have not changed significantly since 2004.



8 OECD methodology – see Commission staff working paper.

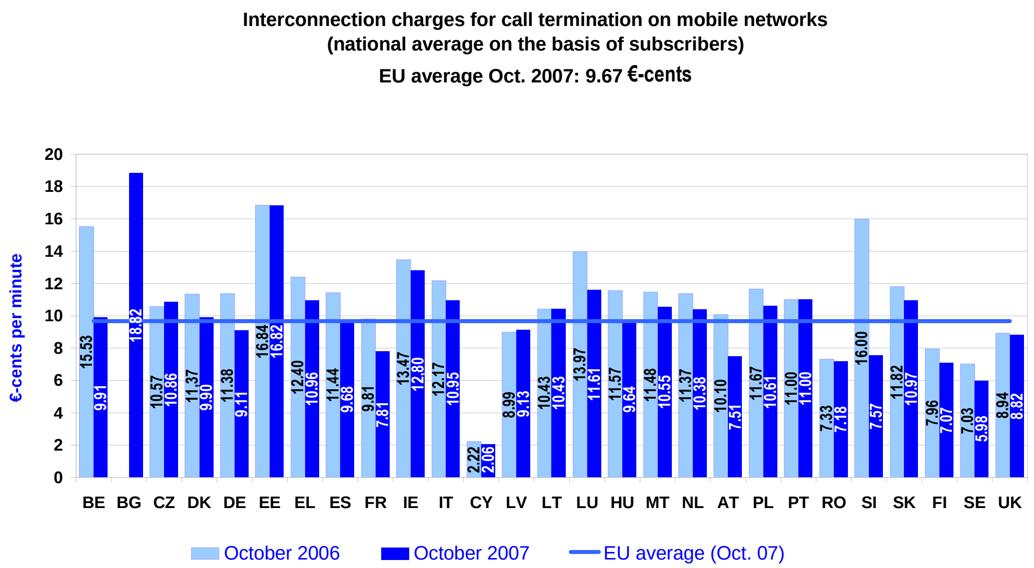
Mobile data services

SMS continues to be an important revenue source, accounting for around 14% of total revenues in 2007, with other data services showing significant growth and accounting for around 7% of revenue compared to 5% in 2006.

3G took off in 2007. Eighty-six operators are currently offering 3G on a commercial basis across all Member States, up from 70 last year. 3G penetration rose from 11% at the end of 2006 to an estimated 20% at the end of 2007[9], representing over 88 million subscriptions. Data cards for mobile broadband are becoming an important source of revenue (in particular in Austria).

Mobile termination rates (MTRs)

Downward pressure on MTRs through regulatory intervention continues, although a lack of consistency of approach is a hindrance to the single market. The average dropped below 10 cents for the first time this year, to 9.67 cents, a fall of 12% compared to October 2006. There are, however, major differences between the MTRs in different Member States, from 1.93 cents in Cyprus to 22.37 cents in Estonia, and the average MTR is 8.7 times higher than the average fixed termination rate.



Mobile number portability

The number of ported mobile numbers increased over the past year by 7.1 million. As at October 2007, 46 million (8.31%) subscribers had ported their number. In Italy alone, over 14 million customers have ported their numbers. This amounts to 15.96% of total mobile numbers. Finland has the highest percentage of ported numbers (68.18%) followed by Denmark (42.06%) and then Spain (27.3%). Overall, however, performance remains very patchy, with negligible porting in a number of Member States, and the potential impact on competition is clearly not being exploited fully. Consequently the Commission has proposed to reduce to one working day the time allowed for operators to execute number portability.

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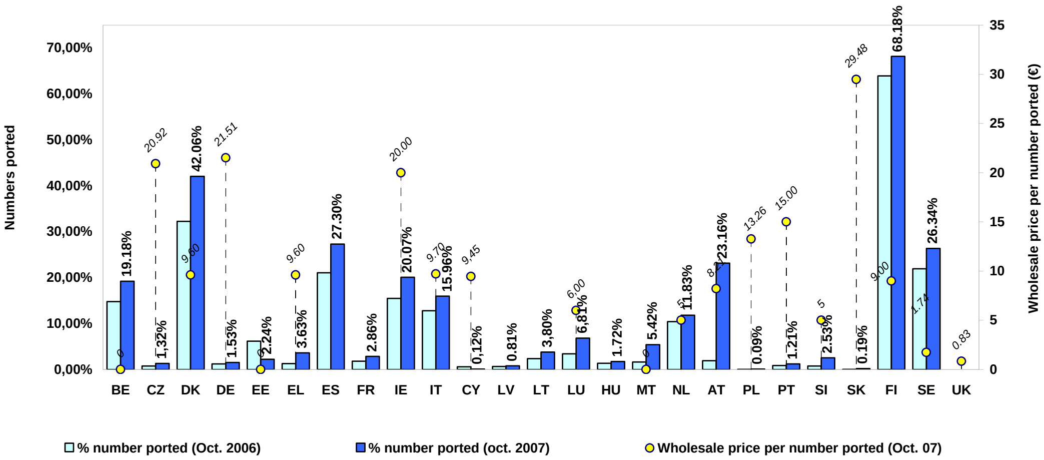
9 IDATE - PAC Consultants – Coe-Rexecode November 2007.

Cumulative mobile ported numbers as a % of total mobile numbers and wholesale price of mobile number portability, October 2007



Roaming

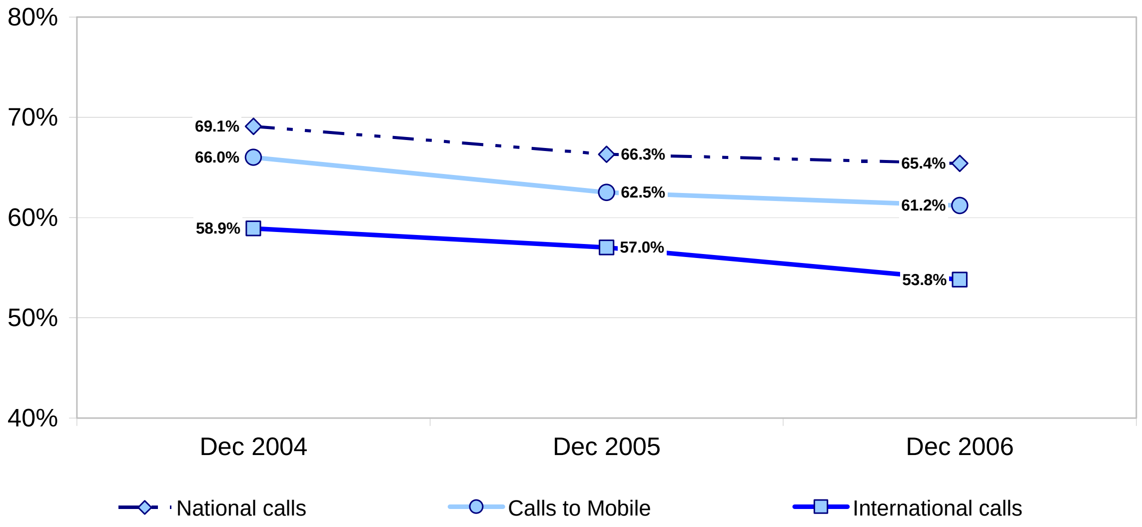
The Roaming Regulation came into force on 30 June 2007 and has been implemented in all Member States, with only minor difficulties arising. Consumers are now making significant savings of around 60% on roaming calls. The Commission is now examining the functioning of the Regulation, in particular whether it should be extended beyond June 2010 and whether there is a need to regulate prices for roaming SMS and data downloads.

Fixed voice

Fixed voice revenues continue to decline at around 5%[4], as in 2006. Revenues are estimated at € 79[4] billion. Falling traffic volumes can be attributed to the continuing switch to IP and mobile services.

Fixed incumbents' market shares (by retail revenues and volume of traffic) have almost stabilised, except those for international calls, which have continued to decline. In some countries fixed incumbents have strengthened their position, however, and the market is still very concentrated. There has nonetheless been an increase in the number of direct access lines provided by new entrants, and fixed number portability remains an important contributor to competition.

EU incumbents' average market share on the voice telephony market (based on revenues)



Bundled services

Along with platform convergence there is a continued trend towards bundled services, where operators offer a mix of fixed voice, broadband, TV and mobile at a flat rate. It is however essential that alternative operators have access to the necessary wholesale inputs to enable them to offer competing services and that users' freedom to switch operator is not unduly restricted. An EU survey[10] showed that 29% of households have subscribed to at least one bundled service, up from 18% the previous year.

VoIP

Although use of VoIP is growing in several Member States, for example representing 14% of overall fixed traffic in France, 6.3% in Austria and 5.6% in Slovenia, divergent approaches by national regulatory authorities (NRAs) could frustrate the potential of this technology. Divergence is evident on issues such as treatment as a traditional voice service, numbering, number portability, interconnection, quality of service, and provision of caller location information to emergency authorities. The European Regulators' Group (ERG) recently issued a Common Position on a number of these issues[11] which goes some way towards a more consistent approach.

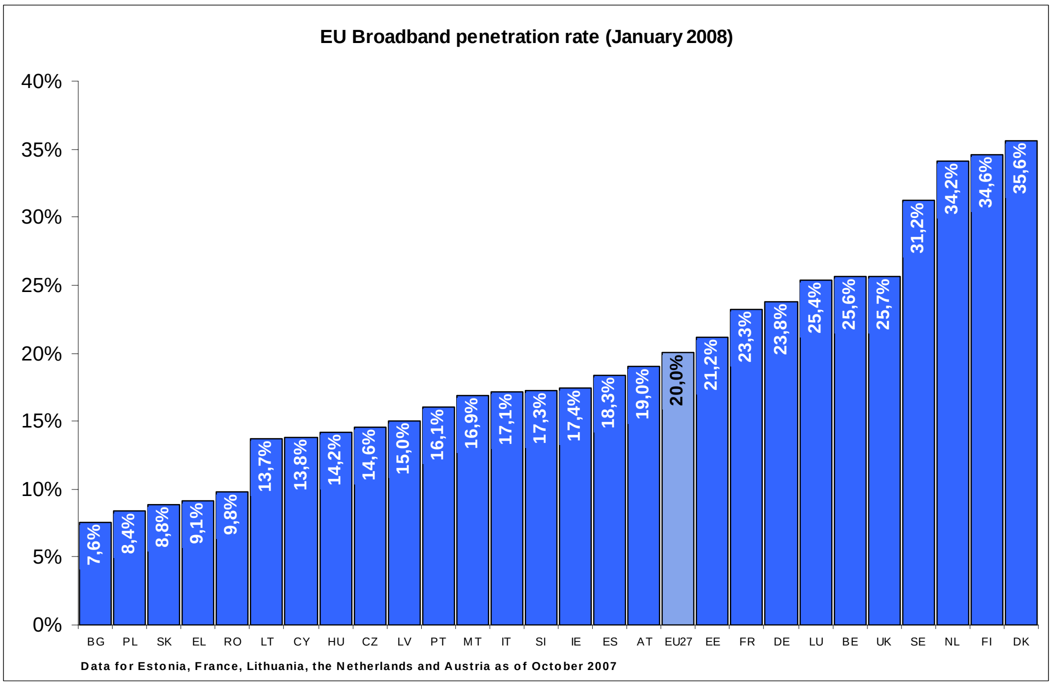
Broadband

Revenues from fixed data, primarily broadband, continue to grow strongly. Overall this sector generated an estimated €62 billion, up from €58.5 billion in 2006[4].

The number of fixed broadband access lines was more than 99 million at 1 January 2008, compared to 80 million in January 2007.

EU average penetration rose from 16.3% in January 2007 to 20.0% in January 2008.

[10] e-Communications Household Survey (Nov.-Dec. 2007).
[11] ERG (07) 56 rev 2.



The gap between Member States with the highest and lowest penetration increased from 27.4 percentage points in January 2007 to 28.0 in January 2008.

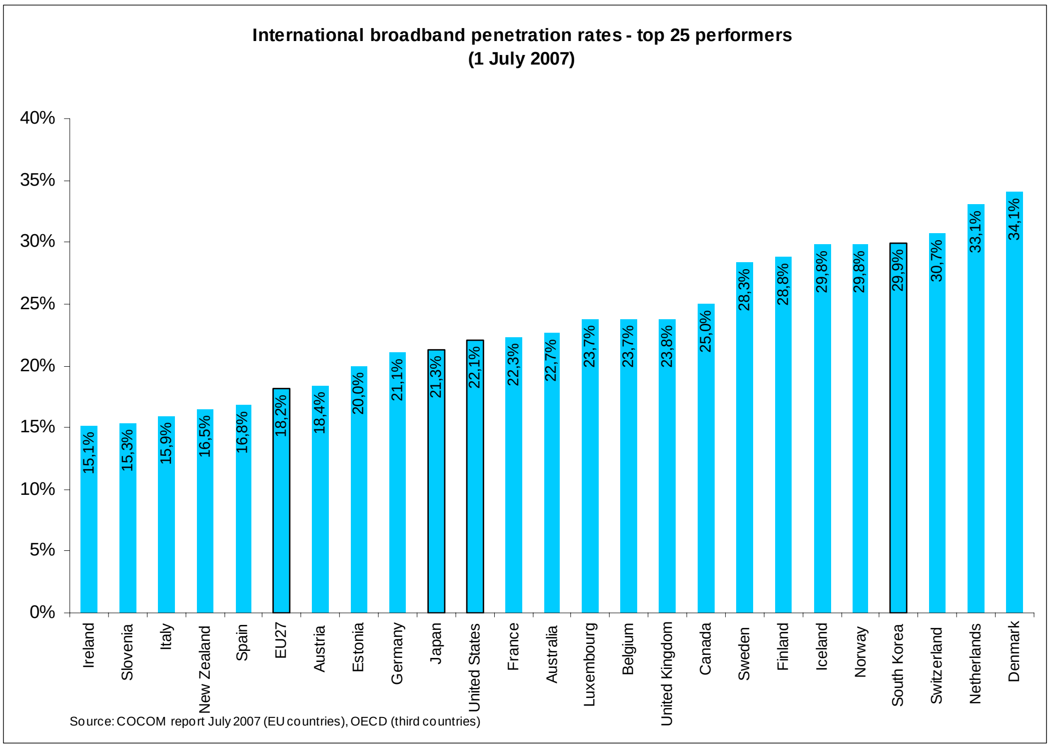
There are also significant differences between broadband availability in urban and rural areas. For example, DSL coverage in rural areas is 71.3% compared to 89.3% at national level (94% urban-only coverage). For cable the difference is even greater, with only 7.4% coverage in rural areas compared to 35.6% at national level. The gap between DSL and cable coverage in rural areas and the national average is particularly significant in Slovakia, Italy, Latvia and Germany[12].

The Commission's reform proposals will help address this divide by facilitating the use of parts of the spectrum which will become available following digital switchover to increase broadband access in rural areas by means of wireless solutions.

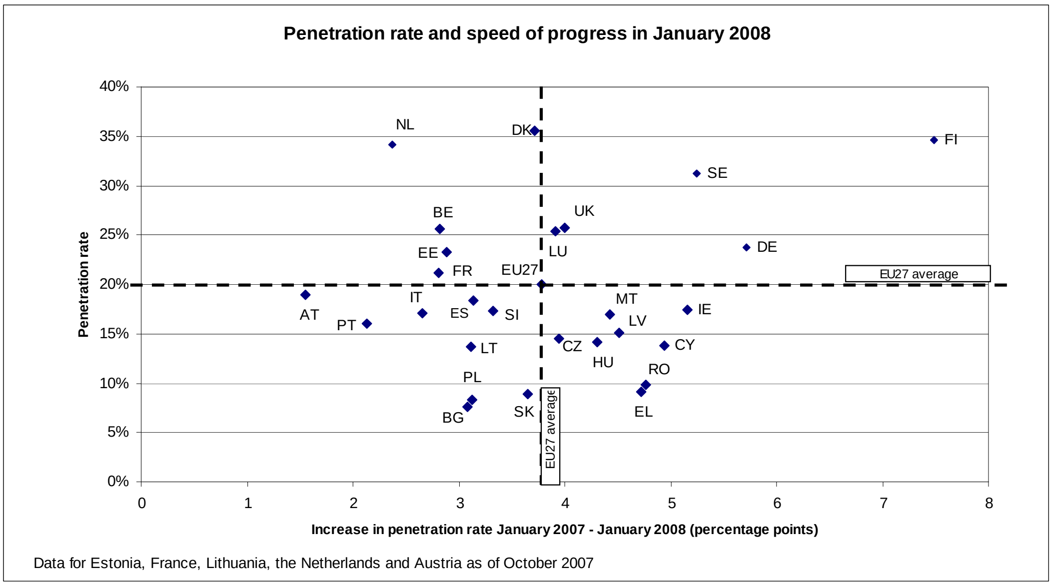
International comparison

In July 2007 Denmark and the Netherlands had the highest penetration rates in the world, and a number of other EU Member States were among the international leaders. Even though also the US and South Korea improved their performance in 2007, there are now eight EU countries with stronger broadband penetration rates than the US.

[12] IDATE 'Broadband Coverage in Europe' 2007 (data as at 31 December 2006).



EU growth has been highest in Finland, Germany, Sweden, Ireland and Cyprus. Whereas for Finland and Sweden the growth figure follows on from an already advanced position, for the three other counties this represents a 'catching-up'.



Broadband platforms

DSL is still by far the predominant broadband access technology in the EU, accounting for around 80% of all lines. However, the relative position of DSL lines compared with other technologies evolved, with growth of 22.4% in 2007 compared to 34.5% in 2006. At the same time, alternative technologies, mainly cable but also fibre to the home (FTTH), wireless access (WLL) and mobile, are beginning to provide the potential for significant platform competition.

Growth in cable broadband was 21.7% from January 2007, and was particularly robust in Germany, Poland, the United Kingdom, Spain, Hungary and Belgium. In Sweden, Lithuania and Estonia, the Member States with the highest ratio of fibre access lines, FTTH has increased its market share compared to the end of 2006; WLL constitutes an important means of access in the Czech Republic, Ireland and Slovakia, the latter experiencing significant growth during 2007.

Competition

While the incumbents' broadband market share appears to be declining (to 46.3% in January 2008 from 46.8% in January 2007 on average), much of the competition is still based on the resale of incumbent lines. For example, in the United Kingdom the incumbent's market share excluding resale lines is 25.8%, but nearly doubles if resale lines are taken into account. In Germany this difference is 18.0 points and in Luxembourg 10.8 points. The incumbent's market share ranges from 17.2% in Romania to 88.0% in Cyprus.

Despite relying to a considerable extent on resale to supply broadband to their customers, new entrants are moving away from simple service-based competition. Wholesale unbundled local loops, which now represent 12.8% of PSTN lines in the EU, have grown over the year (full unbundling by 54.2%, shared access by 33.8%), while bitstream grew by 10.5%. The fact that there are now 23.5 million unbundled lines, compared to 11.6 million resold and 6.0 million bitstream lines, suggests that new entrants are climbing the investment ladder.

3. REGULATORY ENVIRONMENT

Institutional framework

NRA powers and resources

The Commission is examining concerns regarding a lack of effective NRA enforcement powers, particularly as regards the maximum financial penalties that can be imposed (Bulgaria, Estonia, Austria) or doubts as to the ability of the NRA to intervene in access and interconnection issues (Poland, Sweden).

While NRA effectiveness has been strengthened in a number of countries (Italy, Ireland, Hungary, Sweden, Netherlands), the Commission is examining continuing concerns as to resource constraints in Bulgaria, Greece, Luxembourg, Poland and Slovakia.

The NRAs in the small Member States in particular can find it difficult to muster the expertise and resources needed to conduct market reviews and monitor implementation of remedies in increasingly complex markets.

Independence

NRA independence is a prerequisite for regulatory certainty. Measures to underpin the NRA's independence have been taken or are planned in Latvia and Hungary. However, concerns persist in Bulgaria and Luxembourg, and in particular in Poland in relation to the rules for the removal of the head of the NRA. The Commission has therefore included provisions to strengthen the independence of the NRAs in its proposals for revision of the framework.

Appeals

Lengthy and systematic appeals against NRA decisions continue to hamper effective implementation, despite efforts in a number of Member States to streamline the process (Germany, Greece, Ireland, Malta, Poland, and Sweden). The Commission's reform proposals in this area should diminish the incentives for systematic appeals as a means of delaying the implementation of regulatory decisions.

Implementation of regulatory measures

Market reviews

The first round of market reviews is now substantially completed in all Member States, with the exception of Bulgaria and Romania. While the Commission has accordingly closed infringement proceedings against eleven Member States, the markets in those countries have clearly not benefited from the targeted regulation applied in Member States where reviews were carried out on time.

In those Member States where the first round of market analysis was completed in a timely manner and appropriate regulation at wholesale level imposed, this has enabled them to deregulate some retail markets. Future market reviews by NRAs, taking account of the Commission's revised Recommendation on relevant markets, are likely to lead to further deregulation of retail markets.

Implementation of remedies

As regards the imposition and enforcement of regulatory remedies, the situation is varied. In a number of Member States final measures have yet to be adopted (e.g. Hungary, Poland) and the delay between completion of the market analysis and the imposition of definitive obligations is an issue of particular concern e.g. in Germany, Estonia, Ireland, Luxembourg.

Even where definitive obligations have been imposed, in many cases the level of detail is not sufficient to guarantee a solid basis for investment and market entry. Launch of commercial operations is often delayed until key details are clarified through appeal or individual dispute resolution procedures.

Moreover, the pricing conditions in reference offers for specific regulated products may still not provide an incentive for alternative operators to launch competing services (e.g. Lithuania, Luxembourg, Malta, Poland, Slovakia, and Sweden). Alternatively, difficulties in the process of delivering wholesale products (including non-price discrimination compared with the significant market power (SMP) operator's own retail arm, problems with service level agreements, collocation, migration between products or portability) may delay implementation and undermine the competitiveness of alternative retail offers.

One of the areas where a lack of consistency in the implementation of remedies is most apparent is in cost-orientation and cost-accounting methodologies. The move towards cost-orientation can also be subject to very different time frames and involve different degrees of asymmetry, not necessarily justified by different national market conditions.

These differences act as an extra burden on operators seeking to offer pan-European services, and impede the completion of an internal market for electronic communications services.

Lack of NRA enforcement powers or unwillingness to exercise them can be a further reason why remedies are still not implemented in practice.

These shortcomings have convinced the Commission of the need for it to have a 'say' on remedies and of the need for enhanced enforcement powers for NRAs, both of which have been included in the Commission's reform proposals.

The difficulties experienced by NRAs in ensuring the timely and effective application of non-discrimination across regulated markets has led a number of them (e.g. Italy, Poland, Sweden) to consider the introduction of the functional separation of the fixed incumbent's local network access services from its other retail and wholesale business units in order to ensure equality of access to wholesale inputs for the incumbent's retail arm and alternative operators alike. In Ireland the incumbent has itself proposed a form of structural separation. These developments highlight the need to find a mechanism to ensure consistency of approach across Member States.

Spectrum management

2007 saw further progress towards a single market for wireless communications, through a number of harmonisation measures at EU level for the use of spectrum without the need for individual rights of use (Short Range Devices, RFID, and R-LAN). The trend towards greater use of market-based approaches to spectrum management has also continued. The proposed changes to the regulatory framework are expected to consolidate this trend as required by the pace of new technologies, changing demands for services and the growing globalisation of markets.

There is also a move in some Member States towards making spectrum authorisations technology and service neutral, in line with the proposals made by the Commission in relation to the repeal of the GSM Directive and in the proposed amendments to the framework. For example, the Swedish and United Kingdom regulators have announced their intention to make at least part of the spectrum released by the switch to digital broadcasting technology and service neutral, and a number of Member States have begun a process which would lead to the use for 3G services of spectrum in the 900MHz band, up to now reserved for GSM services[13]. Malta, Denmark and Finland are also preparing a major spectrum management reform.

While Commission spectrum harmonisation decisions taken in accordance with the Radio Spectrum Decision 676/2002/EC during the period 2004 to 2007 have been implemented in most Member States, a significant effort is needed to complete the process. A further difficulty is that the EU spectrum harmonisation legislation is duplicated in non-binding intergovernmental agreements in the CEPT.

The Commission followed up its Decision 2007/98/EC harmonising the use of spectrum for the implementation of systems providing mobile satellite services (MSS) with a proposal in August 2007 for a European Parliament and Council Decision to create a legal basis for the pan-European selection and authorisation of MSS operators. Coordinated action at pan-European level is also under way to facilitate mobile communications on aircraft.

[13] A proposal for an EU Decision is pending.

Further harmonised procedures are clearly needed at Community level in order to ensure that spectrum required for the provision of pan-European services can be licensed in a coordinated and timely manner. The Commission has therefore proposed a role for a new body, the European Electronic Communications Market Authority, in facilitating the process of licensing pan-European services.

4. CONSUMER INTEREST

NRAs have increasingly focused on consumer issues, possibly reflecting the intensifying competitive activity associated with converging markets, the bundling of different service offerings and corresponding efforts by operators to win and retain customers.

Tariff transparency

Price transparency remains a concern, although a growing number of regulators are developing web-based price comparison tools to help consumers decide which service provider offers the service best for their needs.

Several Member States have also introduced measures to reinforce transparency for premium rate and other services using non-geographic numbers, where hidden costs and lack of pricing information often give rise to concern.

The Commission welcomes these developments, which are in line with the proposed amendments to the framework.

Universal service

Germany and Luxembourg remain the only Member States where universal service is provided under normal market conditions. A number of other Member States, however, have chosen to exclude individual elements from the designation (e.g. directories and directory enquiry services in Italy and Estonia and the latter services in Ireland and Austria). The Czech Republic no longer includes access at a fixed location as a designated element, and Sweden and Finland are considering mobile solutions. Romania limits the service to the provision of ‘tele-centres’ to provide access in rural areas.

Users with disabilities and special needs continue to face numerous limitations on their access to services which are essential for social and economic life. While the framework encourages Member States to take measures to facilitate access to the services enjoyed by the majority of users, the measures taken and the results achieved vary greatly across the EU.

Number portability

Number portability is now available for mobile and fixed users in all Member States except Bulgaria and Romania. A number of Member States have acted to facilitate number portability for VoIP and mobile virtual network operator (MVNO) services, but the rules vary widely, depending on the classification and use of relevant numbers. The time taken to port numbers (as well as cost) is critical in enabling competition. While some improvements have been made (e.g. France, Spain, United Kingdom), delays are still hampering competition in many Member States, which is why the Commission has proposed a legal requirement for porting to take place within one working day.

112

The European emergency number 112 can be used to call emergency services free of charge from fixed and from mobile phones throughout the EU except in Bulgaria.

The provision of caller location information to the emergency services remains problematic. The Commission has decided to refer six Member States (Italy, Netherlands, Lithuania, Slovakia, Latvia and Poland) to the Court of Justice, and opened a proceeding against Romania, for failing to ensure the provision of caller location information for 112 calls on mobile networks.

The quality of the response to emergency calls varies considerably across the EU, since this area is not subject to harmonised rules. Pending the amendment of the current EU regulation, which will provide a framework for best practice in this area, the Commission is working through the Communications Committee and its specialised subgroup on emergency access, as well as the Civil Protection Committee, to promote the quality of response to 112 calls.

5. CONCLUSIONS

The sector continues to enjoy increased revenues from continued growth in turnover for fixed broadband and mobile services. At the same time, consumers have benefited from a strengthened competitive environment through lower prices.

The EU regulatory model has shown itself capable of ensuring increasingly competitive markets while providing solid consumer protection and a guaranteed basic service.

In Member States where regulation has been applied at best practice levels, the potential for consumers to benefit has been demonstrated, for example in the roll-out of innovative broadband services. Regulatory action has been particularly successful where the market analysis process was carried out on time, remedies imposed on SMP operators have been sufficiently precise and detailed, the appeals process and judicial intervention have been carried out efficiently, and regulators have not been constrained from tackling non-price-related issues actively.

However, the regulatory framework currently allows a great deal of latitude as to the exact rules to be put in place and in the way in which they are actually applied. The result is that the regulatory environment is frequently based on inconsistent approaches which greatly hinder the realisation of a real single market across the Union and the economic benefits flowing from it. Examples of disparate regulation include that relating to mobile termination rates and glide paths, accounting methodologies, treatment of VoIP, mobile number portability, and non-price discrimination by dominant players.

The Commission’s proposals currently before the European Parliament and Council seek to address these issues, using innovative approaches where appropriate while retaining the basic overall concept that formed the 2002 framework.