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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 2009 (15TH REPORT)
SEC(2010)630**

1. INTRODUCTION

This Communication reports on market and regulatory developments in the EU's electronic communications sector in 2009.¹

Whilst the current EU regulatory framework has brought benefits to European citizens in terms of innovative and increasingly affordable electronic communications services some serious obstacles still need to be overcome. There are still concerns regarding the independence and the effectiveness of national regulatory authorities (NRAs). Significant differences in wholesale and retail prices across Member States cannot be justified by the characteristics of the markets alone but are also the result of diverse regulatory approaches. For example, the wholesale mobile termination charges in the Member States with the five most expensive charges are on average 2.5 times higher than in the Member States with the five cheapest charges. Similarly, the average retail mobile price per minute is almost four times higher on average in the Member States with the five most expensive tariffs compared to the five cheapest tariffs. These differences are exacerbated by a failure to apply remedies in a consistent, timely, transparent and predictable manner and by the lack of NRAs' capacity to act in the face of new technological and market developments. Consumers and businesses are still faced with 27 different markets and are thus not able to take advantage of the economic potential of a single market.

Electronic communications markets such as voice telephony are maturing and growth in the sector is slowing down. Future sustainable growth will require new service innovation and business models. It is now imperative to move to the next generation environment, with its new opportunities and challenges. This transition requires significant investment in enhancing the capacity of fixed and mobile networks.

On 19 May 2010, under the umbrella of the Europe 2020 strategy², the Commission adopted a Digital Agenda³ setting out a number of policy measures to boost the digital economy, to stimulate the transition to a high-speed environment and to strengthen the single online market. These measures need to be accompanied by consistent regulatory approaches and the efficient enforcement of remedies. Furthermore, the revised regulatory framework⁴ which entered into force on 19 December 2009 will need to be properly transposed and applied in a timely manner by Member States.

2. MARKET DEVELOPMENTS

Although the sector weathered the economic downturn in 2009, the maturing nature of traditional markets such as fixed and mobile voice telephony presents significant challenges to growth. The rapid rate of growth witnessed since liberalisation has slowed in recent years. Increases in data revenues are not yet compensating for declining voice revenues.

¹ Unless otherwise indicated the situation is described as of 31 December 2009 and the market data are those applying on 1 October 2009

² COM (2010) 2020

³ A Digital Agenda for Europe

⁴ OJ L 337 of 18.12.2009

The economic climate weakened user spending. Large cost-cutting plans combined with factors such as business models based on flat-rate products have, however, ensured continued profitability. Investment declined and largely focused on fixed networks. In most countries, however, investment in next generation access networks is still limited, though spurred on by cable competition and investments by local authorities. While it will be difficult to return to the growth rates of the past, there are good prospects for achieving positive growth rates in 2010/2011, thanks to GDP recovery and increased user spending.

In 2008, revenues in the electronic communications sector amounted to €351 billion in the EU, which represents about half of the ICT sector overall. Seven of the ten largest telecoms operators in the world are European. 43% of the electronic communications sector revenues are driven by fixed voice telephony and fixed internet access (including business data services), 47% by mobile services (voice and data) and the remaining 10% by Pay TV⁵. According to the European Information Technology Observatory (EITO), growth in 2009 was close to zero (Table 1):

Table 1

| | Growth rate | Share in telecom service revenues |
|---|--------------------|--|
| Fixed voice telephony and Internet access and services | -2.5% | 36% |
| <i>fixed voice telephony</i> | -6.3% | 24% |
| <i>internet access and services</i> | 5.6% | 12% |
| Mobile voice telephony and mobile data services | 0.6% | 47% |
| mobile voice telephony | -1.8% | 36% |
| mobile data services | 9.3% | 11% |
| Business data services | 0.6% | 7% |
| Pay TV | 11.7% | 10% |
| Total Telecom Services (Carrier Services) | 0% | 100% |

Source: EITO (2009)

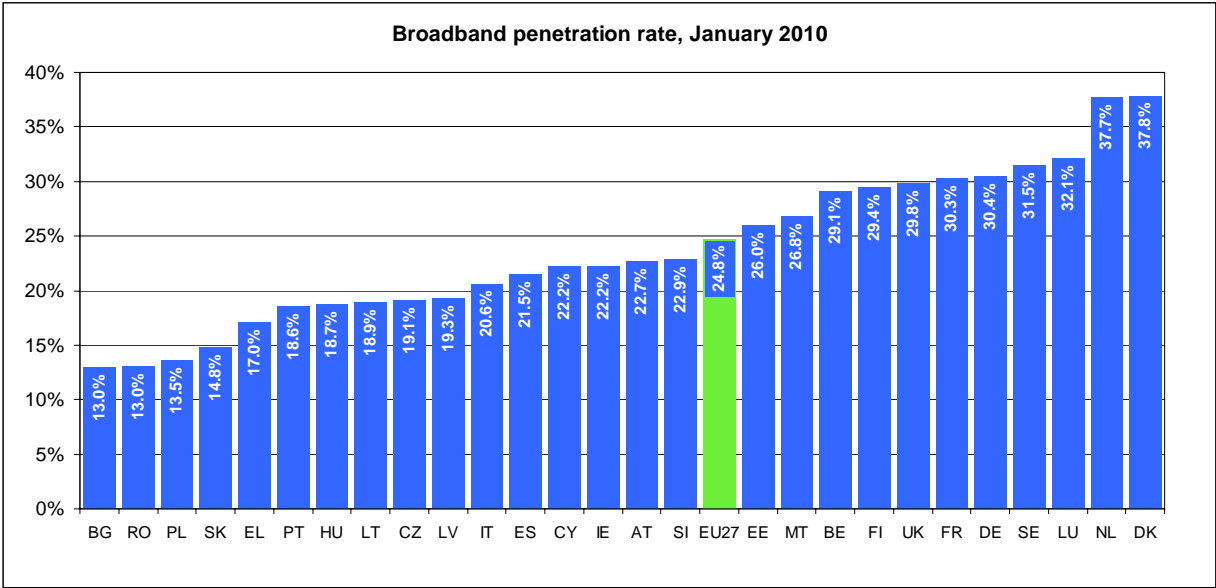
Broadband

In 2009, some Member States (e.g. the Netherlands, Denmark) were world leaders in terms of penetration. The average fixed broadband penetration rate reached 24.8%⁶ which represents an increase of 2 percentage points compared to the previous year's figures, although the growth rate has slowed by more than one third.

⁵ Revenues from pay TV services include total subscription revenues from Pay-TV channels and services (i.e. premium channels and satellite, cable, ADSL and terrestrial bouquets)

⁶ Penetration rate based on population as of 1 January 2010

Figure 1



Most broadband lines are based on xDSL technologies. The deployment of high-capacity broadband is still limited, with about a quarter of lines providing more than 10 megabit per second (Mbps). Europe is falling behind when it comes to next generation access. Lines based on fibre to the premises⁷ only represent between 1.8% and 5% of all fixed broadband lines, pointing to the need to improve the conditions for the deployment of next generation access networks (NGAs). Retail prices declined, mostly as a consequence of speed upgrades and flat-rate based bundled offers.

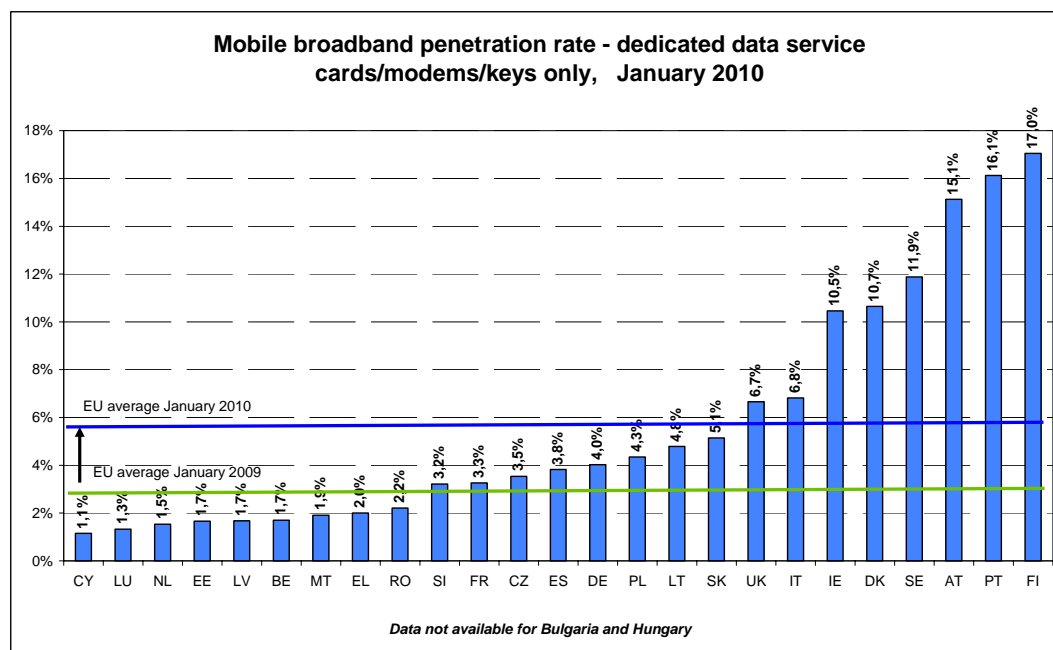
Since July 2003 the market share of the incumbent operators in the fixed broadband market has declined and is now stabilising at 45% (48.3% if resale is included). However, in some countries the incumbents are regaining market share. Local loop unbundling has grown (73.7% of new entrants DSL lines, up from 69.2% in January 2009), mostly at the expense of resale, which shrunk from 12.9% of new entrants' DSL lines in January 2009 to 9.4% in January 2010. Unbundled local loops allow entrants to offer triple play services including TV over IP.

Mobile

While much of the growth of recent years has been driven by mobile communications, the sector is now at a crossroads. While accounting for more than 80% of overall mobile revenues, the share of voice communications in terms of traffic is declining to the benefit of data, which puts great pressure on network capacity. Mobile internet revenues only drive 4% of the total mobile revenues. The average penetration of dedicated mobile broadband cards is growing rapidly the penetration rate being 5.2% compared with 2.8% in January 2009(Figure 2). In Finland, Portugal and Austria the penetration rate exceeds 15%. Convergence has become a reality with mobile operators adapting their business models as new actors such as internet service providers and manufacturers enter the mobile broadband market.

⁷ Including fibre to the home (FTTH) and fibre to the building (FTTB) accompanied with local area network (LAN) solutions, but excluding so called VDSL (Very high Bit Rate DSL) technologies.

Figure 2



3. REGULATORY ENVIRONMENT

Institutional framework

Independence of NRAs

The independence of NRAs is key to safeguarding fair and effective regulation. The need to ensure effective structural separation of Member States' regulatory functions from activities associated with ownership or control of operators has given rise to ongoing infringement proceedings against Latvia, Lithuania and Romania.

The dismissal of NRA chairpersons led the Commission to take action against Member States (Romania, Slovakia) and to launch an investigation into the criteria for dismissal in Slovenia. The revised regulatory framework requires Member States to ensure that the head of the NRA can be dismissed only if s/he no longer fulfils the conditions required for the performance of his/her duties which are laid down in advance in national law. The Commission will continue to focus its attention on this in the run-up to the implementation of the revised regulatory framework.

NRA powers and resources

As stated by the European Court of Justice NRAs must have all necessary powers to undertake their duties⁸.

The revised regulatory framework requires that NRAs have adequate financial and human resources to carry out the tasks assigned to them. In several Member States, the difficult economic situation makes it even more challenging to guarantee sufficient resources.

⁸ C-424/07

Although most NRAs seem to be well equipped to carry out their regulatory tasks, the issue of limited resources was reported in a number of Member States.

Appeals

Access to an effective judicial review of NRA decisions is a fundamental right of all affected parties. Following the interpretation of 'affected party' given by the European Court of Justice⁹, changes in previous practice have been reported. In Austria, the NRA now involves all relevant stakeholders in the market review proceedings. In Sweden new legislation enables all market players and users to appeal against the NRA's decisions.

The time and resources consumed by appeal proceedings remain a serious challenge for effective regulation and legal certainty. This was reported to be the case e.g. in Belgium, Greece, Luxembourg, Poland, Portugal, Sweden and the UK. In some cases regulators are concerned that the number of appeals and disputes is affecting their work plan.

Regulatory measures

*Market analysis and remedies*¹⁰

While some NRAs advanced with their regular periodic reviews and/or addressed the key bottlenecks with more effective remedies tailored for a next generation environment (e.g. access to unbundled fibre loops in the Netherlands), other regulators produced limited results (e.g. Belgium, Luxembourg). Romania and Bulgaria, whilst making progress, have yet to finalise their first round market reviews. In certain cases, remedies are outdated when they finally become available, e.g. ATM bitstream in Germany. Lack of clarity in remedies further delays their take-up and also tends to provoke disputes which further consume regulators' resources.

Further to the Community consultation mechanism, the Commission uses its implementation powers issuing Recommendations to reinforce consistent regulation. The enhanced role of the Commission in remedies and the new institutional set-up provided in the revised framework will need to be exploited effectively to enhance consistency. Particularly vital is timely action taken by Body of European Regulators for Electronic Communications (BEREC).

Broadband

The competitive situation in broadband markets has recently stagnated or even reversed in some Member States. This is partly because remedies were not enforced in an effective and timely manner. In some cases, important access products have been made available only recently, e.g. naked DSL in the Czech Republic, Cyprus and Slovenia or bitstream in Slovakia. The relevant reference offers, such as for ADSL or VDSL, are sometimes delayed (e.g. in Italy, Germany, Belgium, Bulgaria or Luxembourg).

The current market trend towards bundled products is significantly affecting the competitive dynamics and is creating an additional regulatory challenge for NRAs. It is necessary to examine the extent to which available wholesale access products enable alternative operators to compete with the incumbents' bundles at retail level.

⁹ C-426/05

¹⁰ See also the Communication on Market Reviews under the EU Regulatory Framework (3rd report).

Whilst some NRAs included fibre in the wholesale broadband markets and have imposed obligations (e.g. the Netherlands, Finland, Latvia, Estonia) others excluded fibre from the market or did not regulate it (e.g. France, Germany, Italy, Cyprus, Greece, Luxembourg, Sweden). The Netherlands have imposed an obligation of unbundling fibre loops. Some NRAs have differentiated the remedies imposed on fibre and copper networks (e.g. Estonia, the Netherlands and Finland).

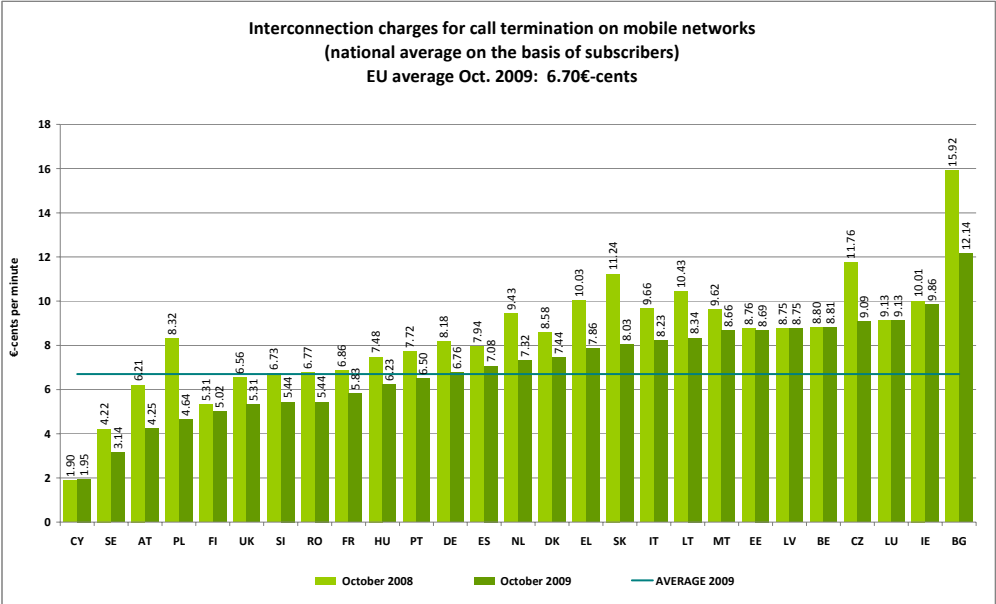
In order to foster the deployment of NGAs, legislative measures have been taken (e.g. in Portugal, Austria, France, Slovenia) to facilitate access to physical infrastructure and facility sharing. In addition, access to passive infrastructure has been imposed by many NRAs, in order to facilitate network deployment by alternative operators (e.g. Denmark, Greece, Estonia, Slovenia, Portugal, Germany, France, Spain). Measures in relation to in-house wiring have been adopted by means of symmetric obligations in France, Portugal and Spain.

Further consistency, transparency and legal certainty are needed in regulatory measures such as those concerning the migration from copper to fibre. To this effect, the Commission will adopt a Recommendation on regulated access to NGAs in the course of 2010.

Mobile

Mobile termination rates (MTRs) continued to fall (by 18.4% compared to 14.8% in 2008), but still with significant discrepancies between Member States (Figure 3). The rates are lowest in Cyprus (1.95 €cents) while Bulgaria has the highest (12.4 €cents). MTRs remain high when compared to fixed interconnection rates. Divergences in the regulatory treatment of termination rates create distortions of competition and hinder the development of the single market. That is why the Commission adopted a Recommendation for the regulatory treatment of fixed and mobile call termination rates¹¹. Further reductions are expected when NRAs implement the Recommendation.

Figure 3

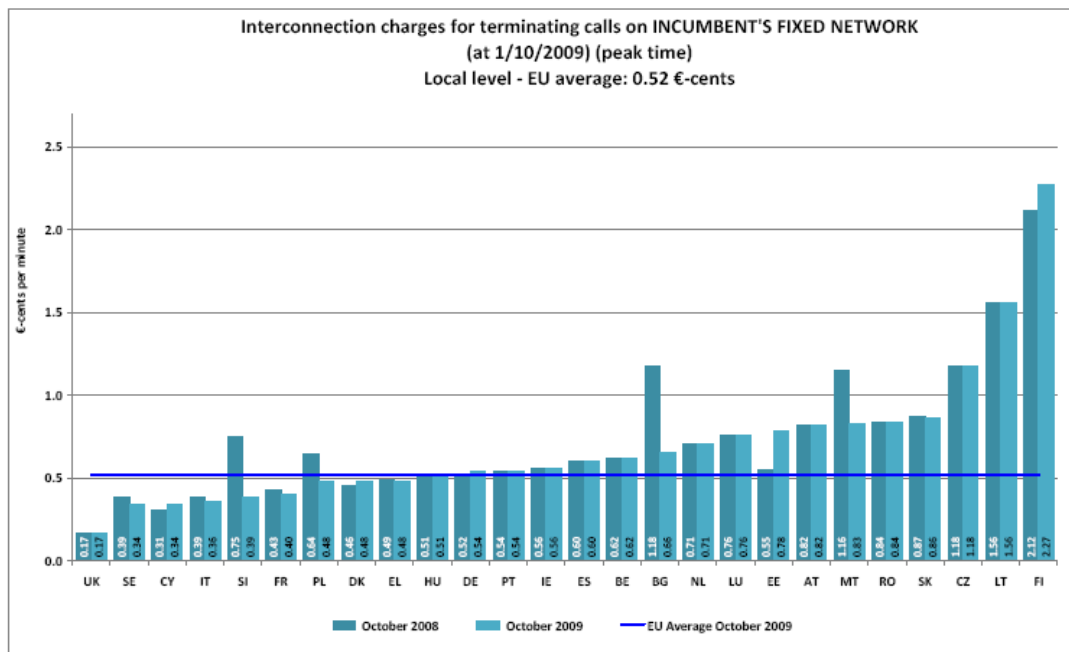


¹¹ OJ L 124, 20.05.2009, p.67

Fixed

Retail voice calls markets were further deregulated in United Kingdom, Slovenia, the Netherlands, Malta, Spain, Austria and Germany. Retail leased lines market regulation was withdrawn in Finland, Germany, Czech Republic and Italy. At the wholesale level deregulation took place in transit markets (Sweden, Spain, Germany) and in the market for trunk segments of leased lines (Italy, Poland, Spain). Actions by NRAs in relation to fixed termination have resulted in a modest reduction in the levels of average fixed termination rates. However the levels of such rates still remain diverse (Figure 4).

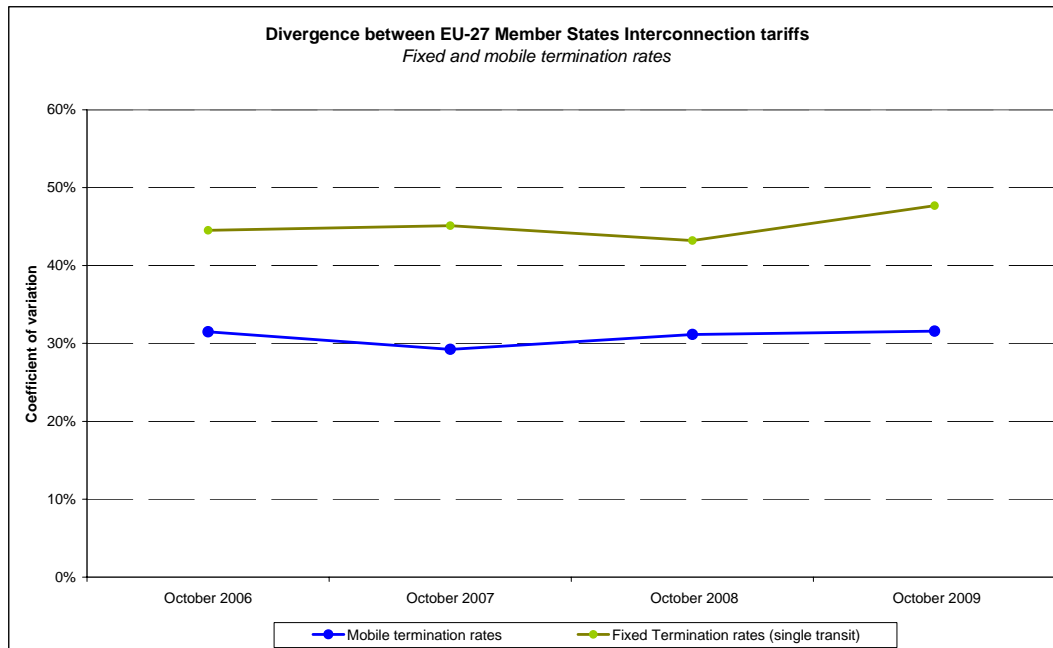
Figure 4¹²



Divergences in termination rates among Member States (Figure 5) have not decreased over the last years. Variations for fixed termination rates are slightly increasing.

¹² Local level not applicable in Latvia

Figure 5¹³



Spectrum management

Digital dividend

The immediate regulatory actions recommended by the Commission are to complete the switchover from analogue to digital broadcasting by 1 January 2012 and to draw up harmonised conditions of use for the 790-862 MHz sub-band¹⁴. Coordinated action is needed to open up the digital dividend spectrum for different services, as this will create an opportunity particularly for wireless broadband network operators to gain valuable radio spectrum, which in turn is expected to reinforce competition in the provision of broadband services.

Several Member States adopted strategic decisions on the use of the digital dividend and some have announced their intentions as regards its assignment. In particular, auctions of the digital dividend spectrum will, reportedly, be held in 2010 in Germany, the UK and Sweden. Denmark has already announced that the digital dividend will be used for purposes other than broadcasting, in particular for mobile broadband, and France has similar plans.

Spectrum liberalisation

More Member States took steps towards the introduction of market-based approaches to their spectrum management practices. The revised GSM Directive¹⁵ provides for the introduction in the 900 MHz band of new wireless services, starting with UMTS services. Many Member States had taken regulatory measures to allow the use of 900 MHz and 1800 MHz frequency bands for services relying on technologies other than GSM.

¹³ The coefficient of variation is the ratio of the standard deviation to the mean

¹⁴ COM(2009) 586 and C(2009) 8287

¹⁵ OJ L 274, 20.10.2009, p. 25

Mobile Satellite Services (MSS)

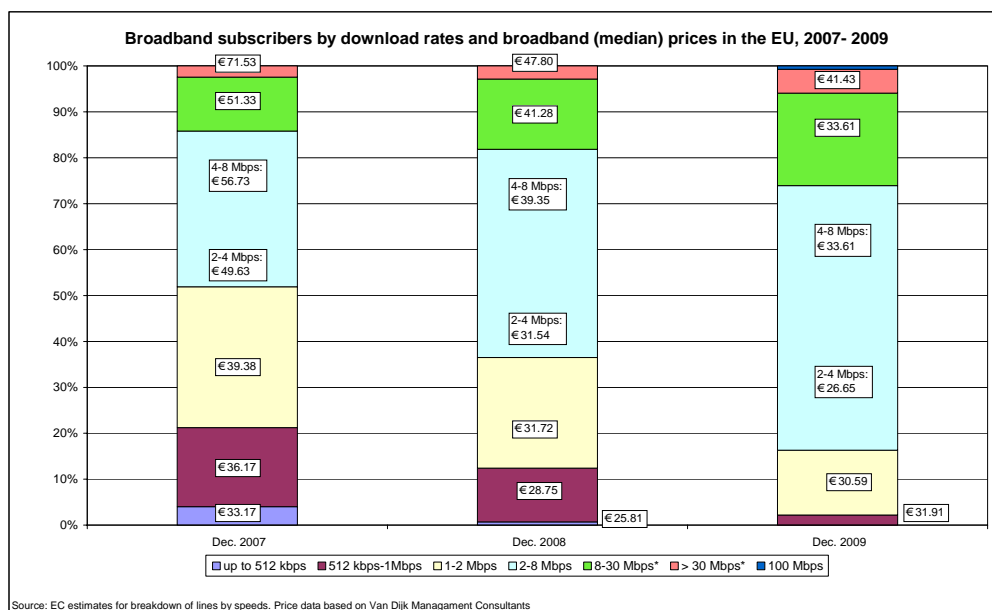
Following a Decision of the European Parliament and the Council¹⁶ on the selection and authorisation of systems providing MSS, a Community selection procedure was completed in May 2009. As a result, two operators were chosen to provide services. Member States need to take swift steps to authorise and to monitor the development of these systems.

4. CONSUMER INTEREST

Broadband speeds and prices

Most broadband lines in Europe are above 2 Mbps and the share has been increasing (figure 6). Broadband retail prices declined, although less than in the previous year. Users have increasingly been receiving faster internet access for similar prices.

Figure 6



Mobile prices

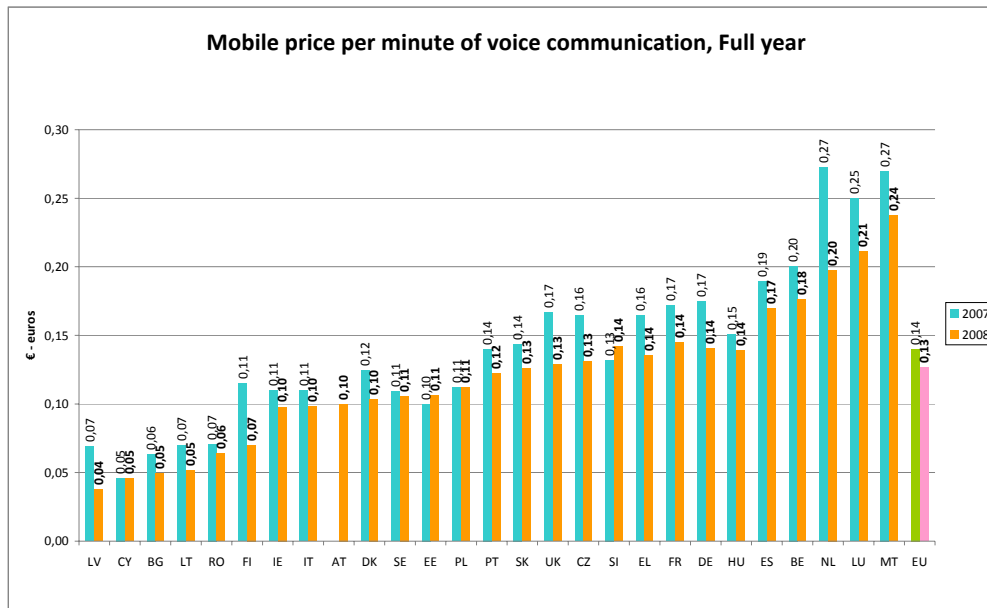
The Roaming Regulation¹⁷ has significantly lowered roaming charges and improved tariff transparency for mobile phone users travelling within the EU.

The average price per minute of mobile communications declined from €0.14 in 2007 to €0.13 in 2008. Strengthened competition, enhanced by more effective regulation of termination rates, has led to a growth in flat-rate offers thereby bringing down retail prices. The most significant declines in percentage took place in Finland and Latvia (Figure 7), but prices still vary widely from €0.04 in Latvia to €0.24 in Malta. These differences cannot be explained by market characteristics alone thereby indicating that there is, as yet, no single market.

¹⁶ OJ L 172, 02.07.2008, p.15

¹⁷ OJ L 167, 29.6.2009, p.12

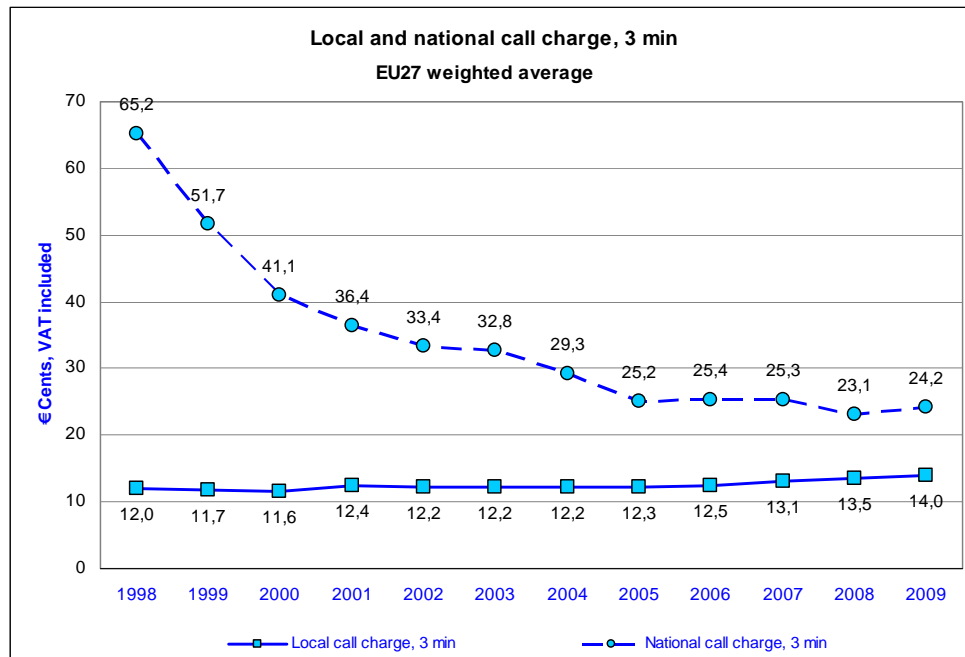
Figure 7



Fixed prices

Fixed voice telephony tariffs increased in 2009. Despite a general downward trend over the past decade, the price of the 3-minute local call increased by 3.7% in 2009¹⁸, while the 3-minute national call increased by 4.8%. The 10-minute local call increased slightly by 0.5%, while the 10-minute national call increased by 4.1% (Figure 8). Since 2007, prices of retail local calls have increasingly diverged and fragmentation for the price of national voice calls has not declined over time (Figures 9 and 10).

Figure 8



18

OECD methodology

Figure 9

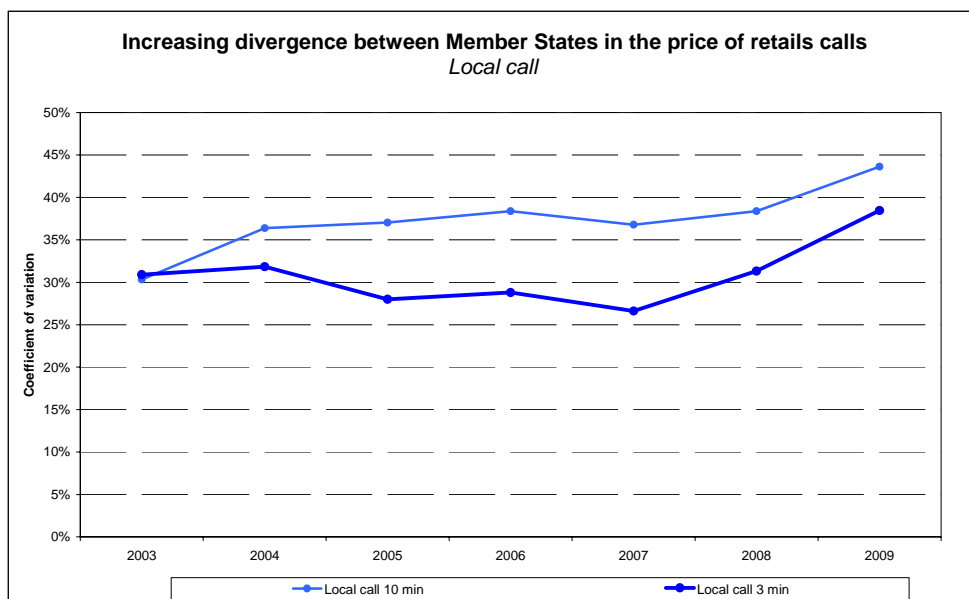
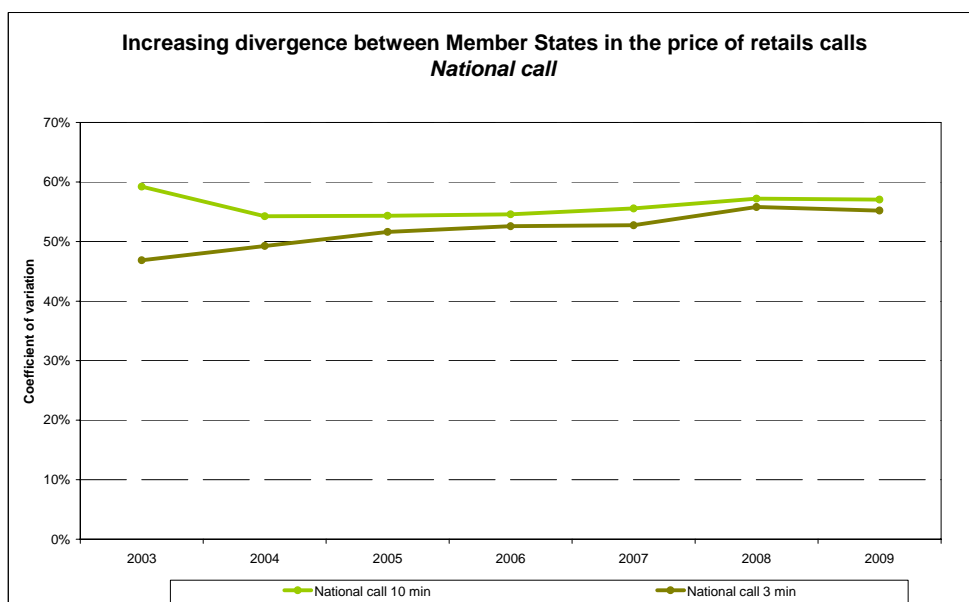


Figure 10



Tariff transparency

Several Member States reinforced transparency through new legislation (e.g. Romania, Portugal, France, United Kingdom, Spain, Lithuania, Poland, Hungary and Slovenia).

Some Member States reinforced transparency obligations, codes of conducts or price caps with regard to premium rate and value added services including.

Regarding quality of service, most attention was focused on internet services, in particular on broadband speeds. Some NRAs (e.g. Denmark, Latvia, Greece) continued to develop IT tools which allow end-users to test their actual broadband speeds.

The revised regulatory framework further strengthens the requirement to provide transparent information on prices and service conditions.

Universal service

Actions taken with regard to universal services are twofold. First, several Member States carried out new designation procedures for some or all elements of existing universal service obligations. Second, Member States increasingly considered including broadband services within the scope of universal service. In a number of Member States, universal service is still provided under a transitional regime or via legislation without a designation procedure. The Commission has emphasised the need to carry out designations swiftly. Although the number of requests for compensation is increasing, the financing mechanism for universal service has not been activated in most Member States. Due to administrative delays, court proceedings or updates of net cost calculation methodologies, compensation through a Universal Service fund is only in place in France, the Czech Republic and Romania.

Several Member States have been relaxing obligations relating to services which are delivered by the market or which are considered to be of declining significance. For instance, in the Czech Republic, Estonia, Italy, Finland, Ireland and Austria no undertaking is designated to provide comprehensive directories and directory enquiry services. In Germany, Luxembourg and Sweden universal service is provided without a formal designation.

Infringement proceedings for incorrect implementation are still pending against Belgium, Portugal and Spain. Moreover, the Danish financing mechanism is currently under scrutiny.

Users' access to the Internet and network management

The digital economy builds on the availability of innovative services and applications. The revised regulatory framework strengthens transparency requirements and provides the NRAs with powers to set quality of service parameters so as to prevent the degradation of services and the hindering or slowing down of traffic. Net neutrality has been identified as an issue in some Member States mainly in the context of mobile operators either preventing access or applying differentiated pricing strategies to VoIP services. In some Member States legislative initiatives to protect intellectual property rights sparked a debate on how to strike a balance between end-users' rights and the need to safeguard the legitimate interests of intellectual property rights owners. The Commission will, in line with its Declaration to the European Parliament¹⁹, keep developments under close scrutiny.

Number portability

Number portability is now available in all Member States. The timing and the level of charges are important factors affecting the porting of numbers. Significant reductions in time limits were introduced (Portugal, Netherlands, Slovakia, Poland, Czech Republic) or were planned. The average porting times for mobile and fixed numbers in October 2009 was 4.1 days and 5.9 days compared with 8.5 and 7.5 days in October 2008, respectively. Improvement is needed as the revised regulatory framework requires that porting be carried out within one working day.

¹⁹ OJ L 337, 18.12.2009, p.37-69

Figure 11

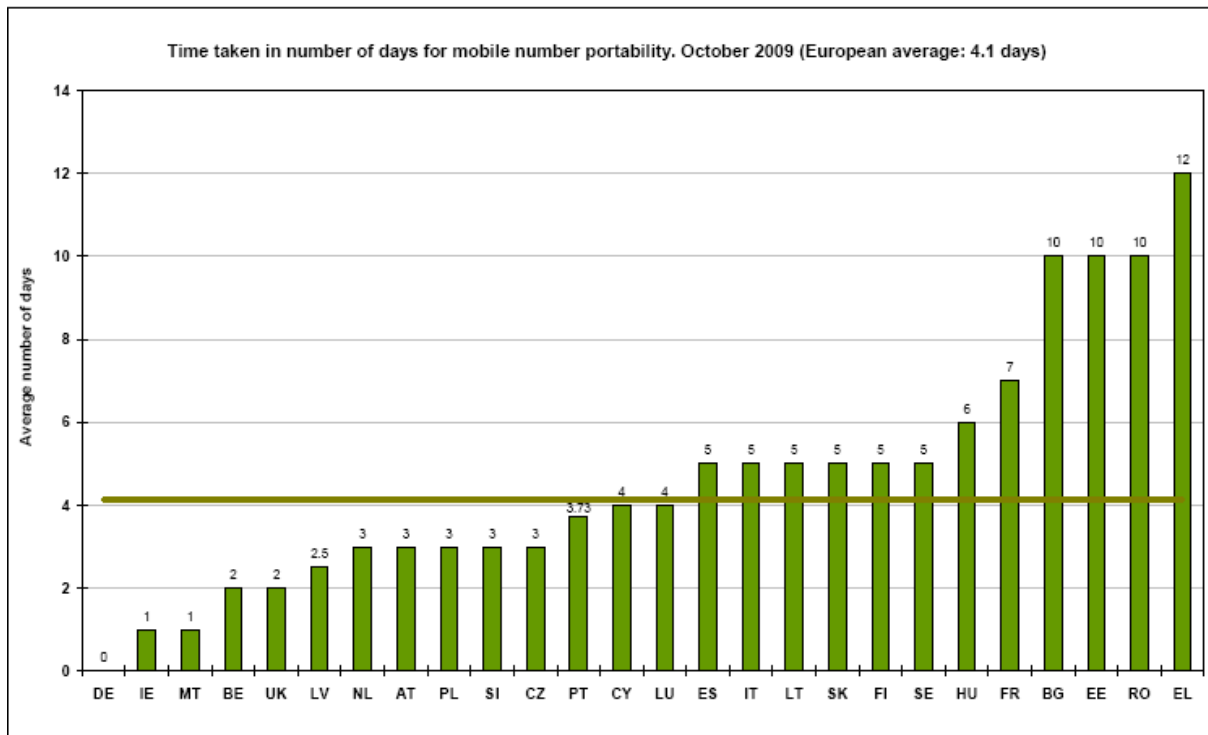
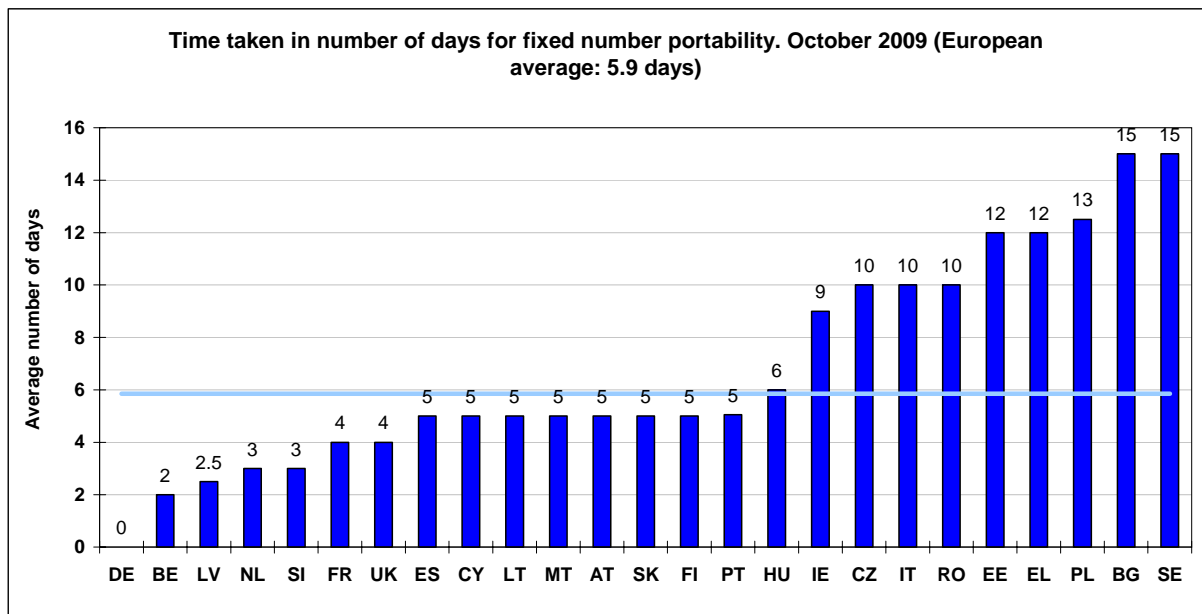


Figure 12



Whilst in some countries no wholesale charges for fixed numbers are levied, in Slovakia operators charge each other €0. For mobile numbers, no wholesale charges are applied in seven Member States in contrast to the high charges of €3 and €1 in Slovakia and the Czech

Republic. In some Member States customers are also charged at retail level for porting numbers. Such charges deter people from requesting number portability.

European emergency number 112

The Commission remains committed to guarantee the safety of European citizens when travelling abroad through the availability of the EU wide emergency number 112. In the vast majority of cases the provision of 112 services is now compliant with European law.

The Commission's services are currently investigating issues related to the availability of caller location information in some Member States. An infringement is still pending against Italy regarding the provision of caller location information

Member States must ensure that citizens are informed about the availability of 112. Currently, only one out of four EU citizens is aware that they can call 112 across the EU. A number of measures have also recently been taken at the European level in order to enhance public awareness²⁰. In February 2009, the Commission, the European Parliament and the Council declared 11 February as the 'European 112 Day'. According to the Roaming Regulation, mobile phone users receive an SMS on the availability of 112 when they travel abroad.

The revised regulatory framework further reinforces the provisions relating to caller location information and awareness raising, and the Commission will continue to work with Member States to ensure that European citizens reap the full benefits of the single European emergency number.

ePrivacy

National rules on privacy should be fit for purpose in the new digital economy. The Commission launched infringement proceedings against the UK for incorrectly transposing EU rules on confidentiality of communications. The issues involve user consent, lack of sanctions in the case of infringements and absence of an independent authority to supervise interception activities. Other Member States are taking measures to ensure the integrity and security of electronic communications (e.g. Malta, Sweden) and to raise awareness about online security risks (Slovakia, the Netherlands, Sweden).

A recent study²¹ on actions to deal with spam, spyware and malicious software confirms the need for the legislative changes which are included in the revised regulatory framework. These changes include clearer and more consistent enforcement rules and dissuasive sanctions, better cross-border cooperation, and adequate resources for national authorities in charge of protecting citizens' online privacy.

The Commission will continue working to enhance consumer trust and confidence so that the full potential of the EU digital economy can be exploited.

²⁰ http://ec.europa.eu/information_society/activities/112/index_en.htm

²¹ http://ec.europa.eu/information_society/policy/ecom/doc/library/ext_studies/privacy_trust_policies/spam_spyware_legal_study2009final.pdf

5. CONCLUSIONS

To move closer to a true single market, it is vital to step up efforts to address the issues identified in this Communication. The Commission will continue to closely monitor market developments so that problems can be tackled swiftly. In line with the Digital Agenda and the measures it outlines on spectrum, universal service, the regulatory treatment of NGAs and privacy, the Commission will also take a number of targeted measures:

- (1) to address the divergences in regulatory approaches and the lack of timely and effective enforcement of remedies;
- (2) to lay solid foundations for a correct and timely implementation of the revised regulatory framework and;
- (3) to ensure an effectively functioning Body of European Regulators for Electronic Communications (BEREC).

These measures will in turn strengthen competition for the benefit of consumers and ensure that operators function in an environment which allows them to adapt their business models to new realities.