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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 2008 (14TH REPORT)**

{SEC(2009) 376}

1. INTRODUCTION

The electronic communications sector in the EU is continuing to bring significant benefits to users and consumers. EU countries are world leaders in broadband take-up, mobile Internet is growing rapidly, prices for most services are continuing to fall and consumers are increasingly availing themselves of bundled services. While the sector is not immune to the current economic crisis¹, a certain resilience is provided by the relatively strong cash flows due to the essential nature of basic telecoms services, increasingly offered at flat rates, as well as by the relatively low debt levels. Revenues are continuing to grow and in real terms the sector is growing faster than the economy. However, the increasingly challenging environment makes it necessary to adopt a regulatory approach that will enhance predictability and certainty and create a level playing field in the EU's single market.

Despite consumer gains, the full potential of a competitive telecoms market is still impeded by ineffective and inconsistent implementation of regulation. For example, approaches to Next Generation Access (NGA) are fragmented and regulatory methods for setting mobile termination rates remain diverse. A more cohesive approach to such emerging and existing regulatory challenges is needed to improve certainty and give consumers and businesses alike greater opportunities to benefit from a strengthened and more competitive single market.

As part of the drive to ensure effective and consistent regulation, the Commission is finalising a Recommendation on the regulatory treatment of fixed and mobile termination rates and preparing a Recommendation on regulated access to NGA networks.

More generally, the Commission's proposals² to reform the EU's regulatory framework aim to empower consumers, boost genuine competition and remove structural obstacles which continue to impede the development of the internal market. These proposals are currently under discussion in the European Parliament and the Council.

This Communication reports on developments in the electronic communications sector in 2008³.

2. MARKET DEVELOPMENTS

In 2008, the EU's telecoms sector continued to grow, at 1.3%⁴ in real terms, which compares to a 1% real increase in GDP for the economy overall. The sector is withstanding the current sharp deterioration in the economic climate relatively better than other sectors thanks to the stability of cash flow for most operators but, like the rest of the economy, is now facing difficulties in accessing credit which will inevitably affect its capacity to invest.

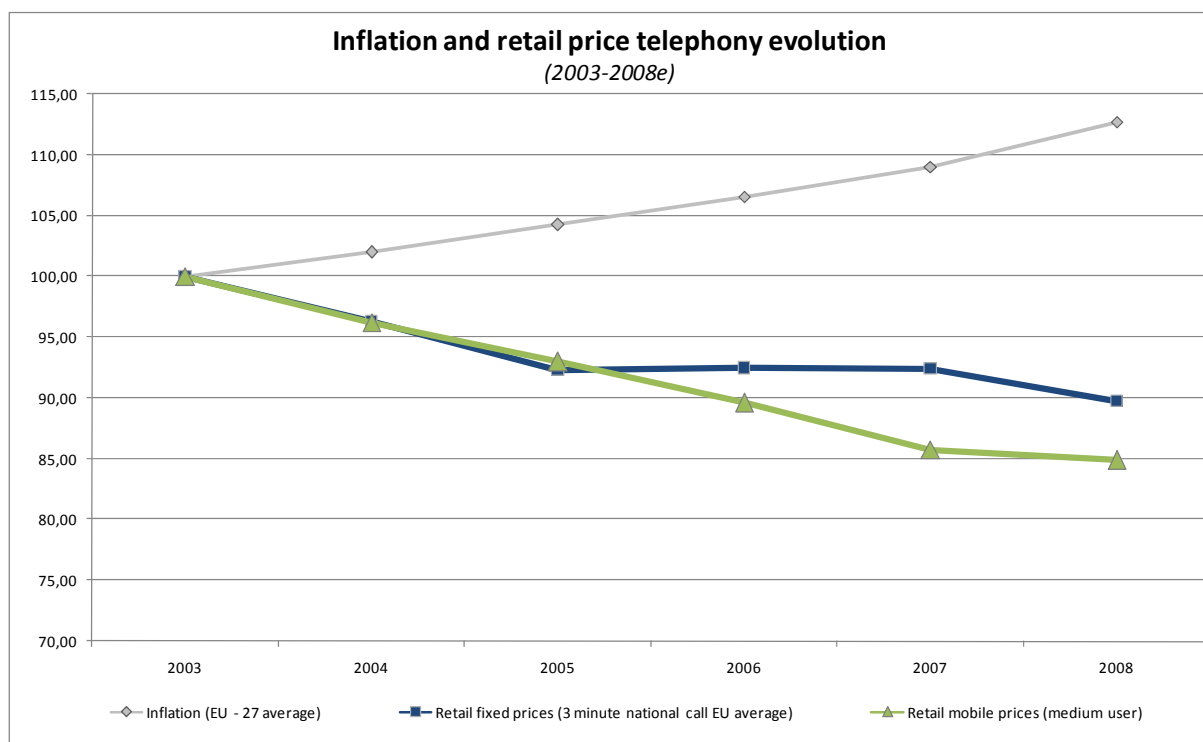
The prices of most standard communications services have continued to fall and the electronic communications sector has continued to have a dampening effect on inflation. Overall, the average European consumer of electronic communications services was better off in 2008 than the year before.

¹ The current crisis is different from the downturn in 2002, which affected the telecom sector specifically.

² COM(2007) 697-699.

³ Unless otherwise indicated the situation is that at 31 December 2008 and the market data are those applying at 1 October 2008.

⁴ EITO November 2008.



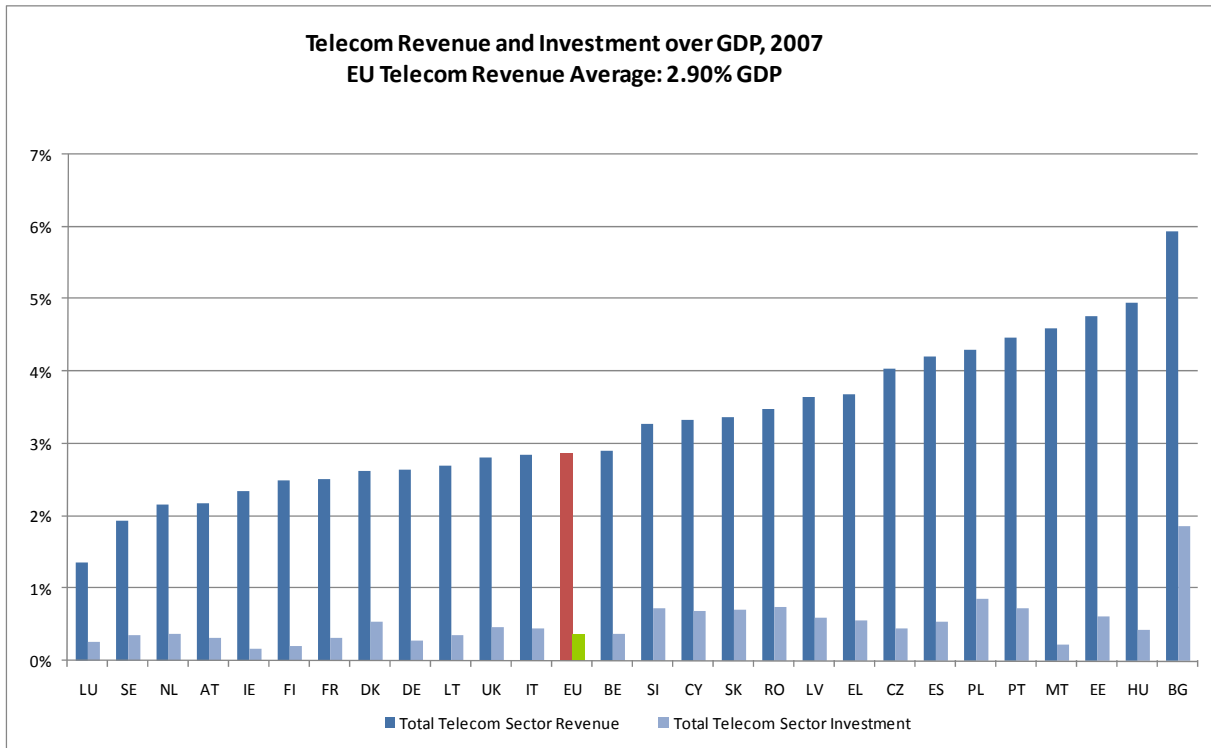
Consumers also benefited from wider availability of new services such as mobile broadband and fixed broadband via fibre, increasing the potential for network-based competition. A particularly important feature in 2008 was the increase in both fixed and mobile number portability, which facilitates switching and is a key instrument for boosting competition. .

The EU also contributed to these trends by intervening where competition was insufficient to deliver lower prices. A good example is the EU Roaming Regulation⁵, which has led to a decrease in roaming prices of around 60%. In 2009, the scope of the Roaming Regulation, which is currently being debated in the European Parliament and the Council, is expected to be extended to include excessive prices for SMS and data roaming services.

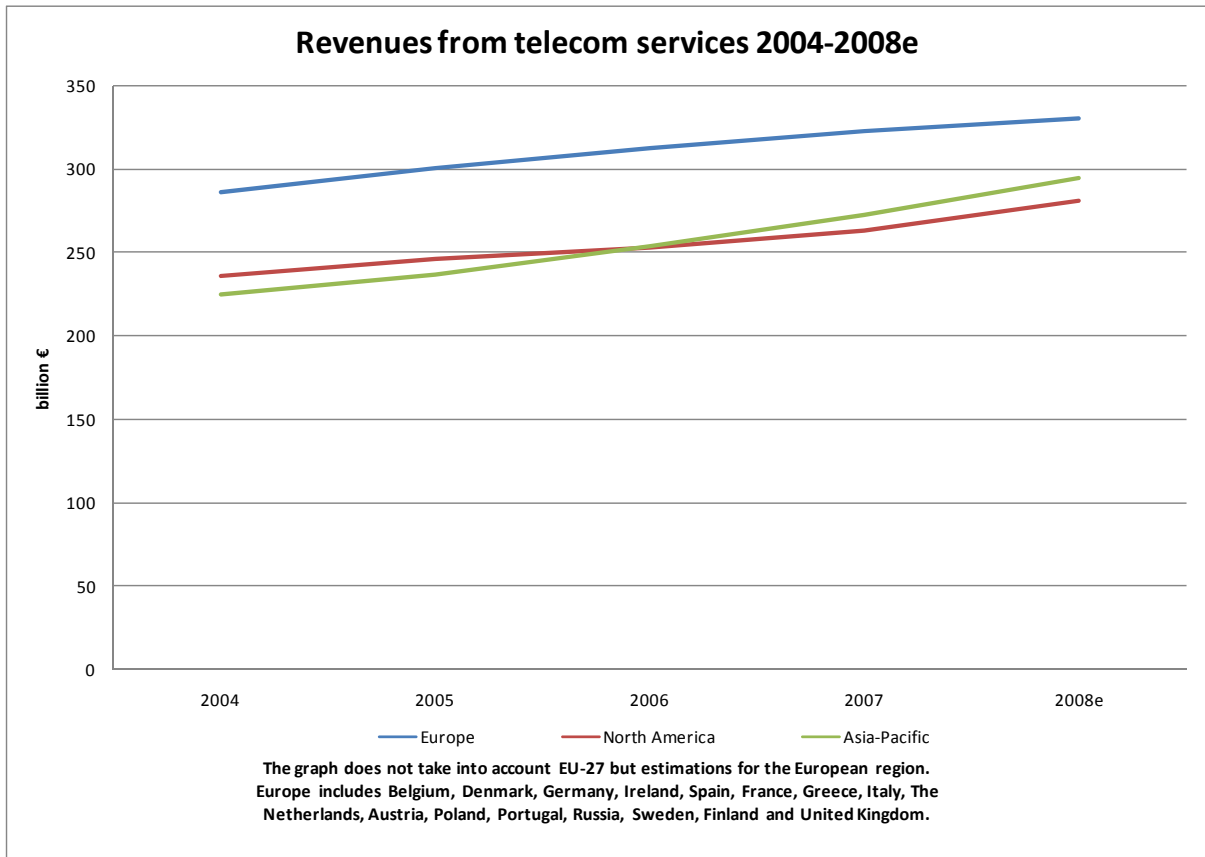
Investments and Revenues

In 2008, the revenues of the telecoms sector accounted for over 52% of those of the whole ICT sector. Data for 2007 collected by the National Regulatory Authorities (NRAs) indicate that the revenues of the EU telecom sector reached almost €357 billion, or 2.9% of GDP.

⁵ http://ec.europa.eu/information_society/activities/roaming/regulation/index_en.htm



Data for investment in the Netherlands and UK come from OECD estimates.



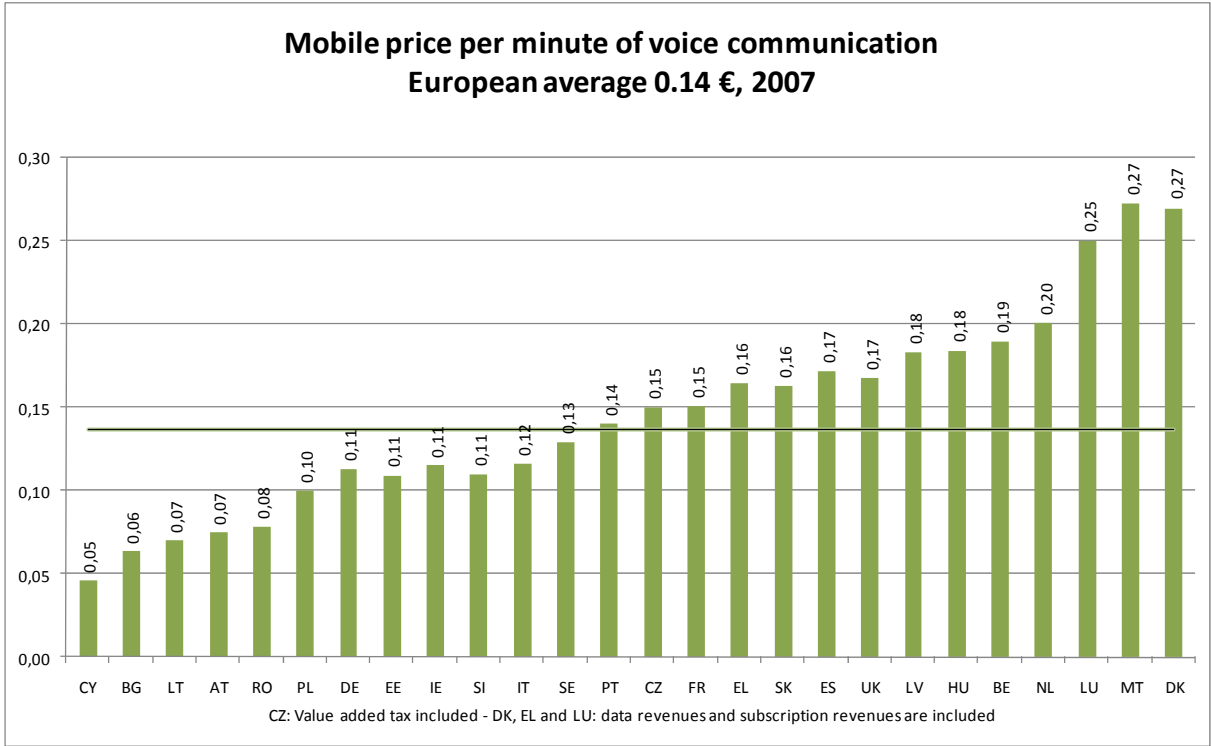
In 2007 investment increased by around 1.5%, thus marking the sixth consecutive year of growth. This trend is likely to continue in 2008 although with a flattening trend as a consequence of the financial crisis⁶.

The market capitalisation of the telecom sector has declined since the beginning of 2008, but less markedly than that of other sectors. The Dow Jones SXKP⁷ index, which captures the performance of the whole sector, has declined by 20%, which compares to 25% for the wider economy⁸.

Mobile

The mobile market remains the most dynamic part of the electronic communications sector, due to increasing call volumes and the take-off of mobile broadband.

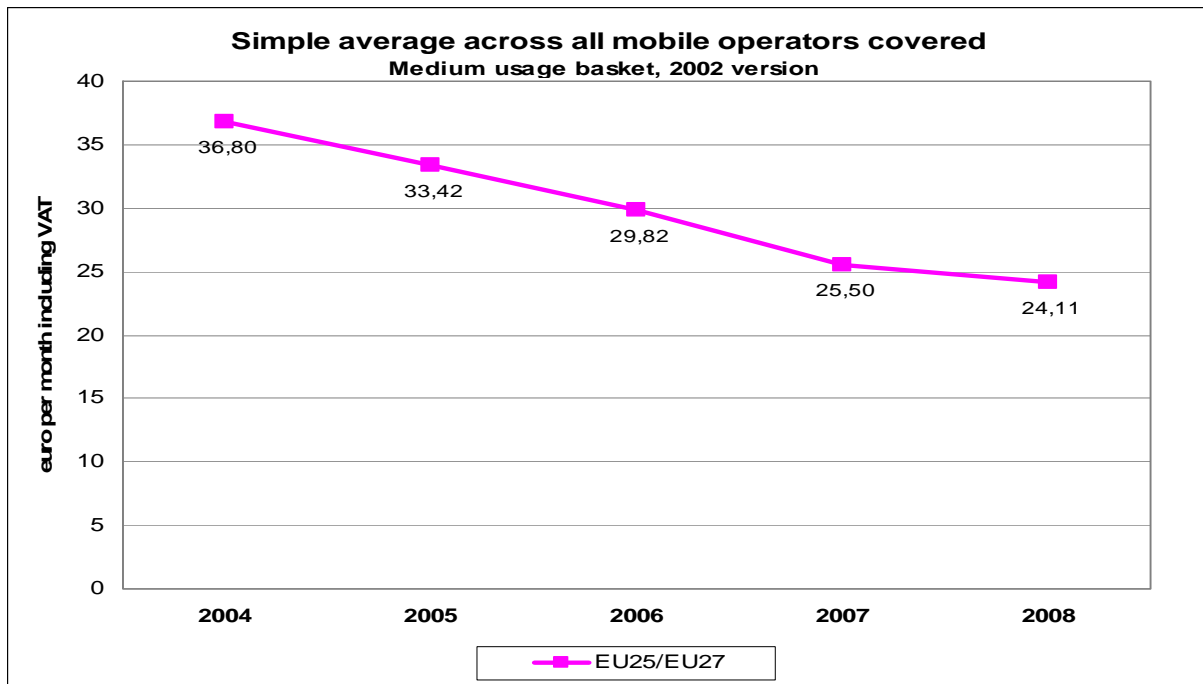
In general, prices for mobile services fell during the year, mainly as a result of a decrease in the prices for mobile voice services and domestic SMS. The resulting lower revenues for operators have, though, been partially offset by increased volumes. However, as the following chart shows, prices throughout the EU still vary widely. Some of the variations may well reflect differences in local costs and purchasing power, some may be due to differing business models, and some may be due to competitive conditions, but the variations overall are so great that the differences are unlikely to be due to such factors alone. Regulatory differences between Member States appear to contribute substantially to these variations.



⁶ EITO November 2008.

⁷ Dow Jones SXKP Telecoms Index (as of 22 August 2008): see Annex for constituents

⁸ As measured by the Dow Jones 50 Stoxx Index.



For the purposes of the above graphs, baskets using 2002 OECD methodology have been used.⁹

Since 2004, mobile telephony prices, as measured by the so-called "OECD baskets methodology", have decreased by 34.5% for all consumer profiles.

Mobile Internet services now account for around 3% of industry turnover, and are continuing to show strong signs of growth. The growing demand for mobile broadband services demonstrates the need for a more coordinated approach to management of spectrum resources at Community level, which is a key aim of the Commission's review proposals.

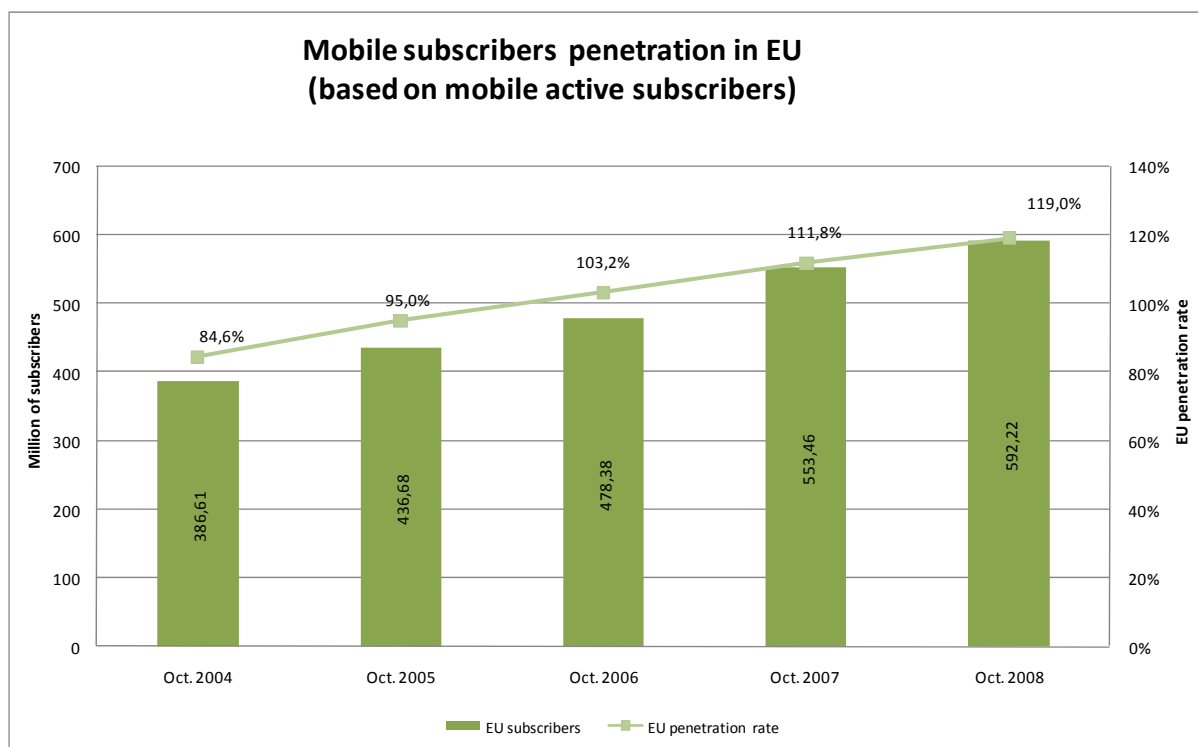
SMS account for an estimated 11% of mobile operators' total revenues. While prices per SMS have remained stable, operators are using 'buckets' of SMS which can be very cheap on a per SMS basis at national level and can generate considerable volumes. It became apparent last year that some operators had begun offering data services through flat-rate data tariffs. Revenues from mobile Internet services are higher in Europe than in the United States.

However, these national-level trends are not reflected in prices for SMS roaming and, to some extent, prices for data roaming services, which remain unjustifiably high across the EU. It is for these reasons that the Commission has adopted proposals to extend the current Roaming Regulation to include such services.

The average EU mobile penetration rate, already at a very high level last year, continued to grow from 112% to 119%¹⁰. The use of "3G" services is also increasing and it is estimated that at the end of 2008 there were around 91.3 million users in the EU (15.5% of the total mobile operators' subscribers). The average market share of the leading operators decreased by around 3%, having been stable over the previous two years.

⁹ Further details can be found in the Annexes.

¹⁰ According to OECD data, mobile penetration was 87% for the USA and 84% for Japan in 2007.



Mobile termination rates

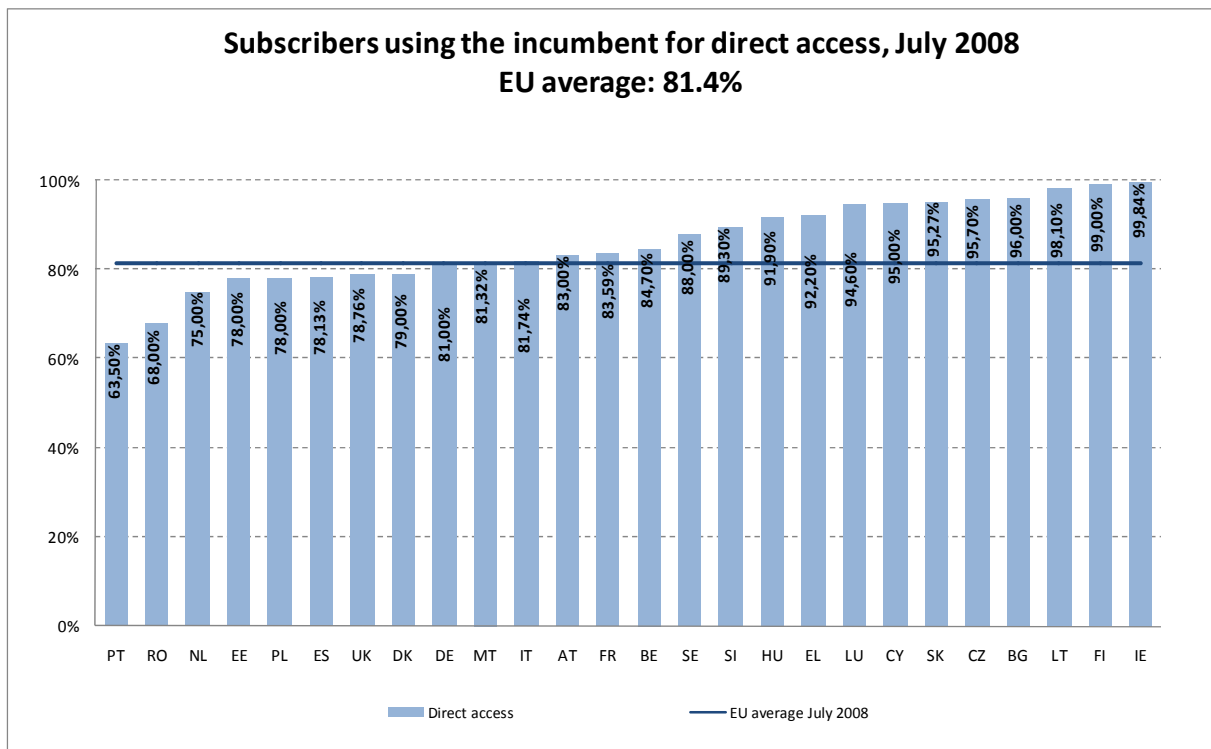
The intervention of NRAs has continued to reduce mobile termination rates (MTRs) although they remain rather high. In October 2008, the average value of these rates was 8.55 euro cents, a reduction of 11.6% compared to the 9.67 cents of October 2007. There is still huge variation in individual rates, from 2.10 cents in Cyprus to 15.92 cents in Bulgaria.

Fixed voice

In 2008, the traditional fixed market for voice calls continued to decline at a rate of 5% of revenues, which is similar to 2007. The substitution of services over traditional switched networks by mobile and broadband services (e.g. Voice over broadband calls) largely explains this trend.

Fixed incumbents' market shares are, on average, stabilising, although in some countries the incumbent's share has increased. There has been a considerable increase in direct access from alternative operators: five percentage points between July 2007 and July 2008 to 18.6% of subscribers.

Prices are generally stabilising, although they have increased in certain local calls markets. Regarding the fixed interconnection market, wholesale prices are also stabilising.



VoIP and convergence

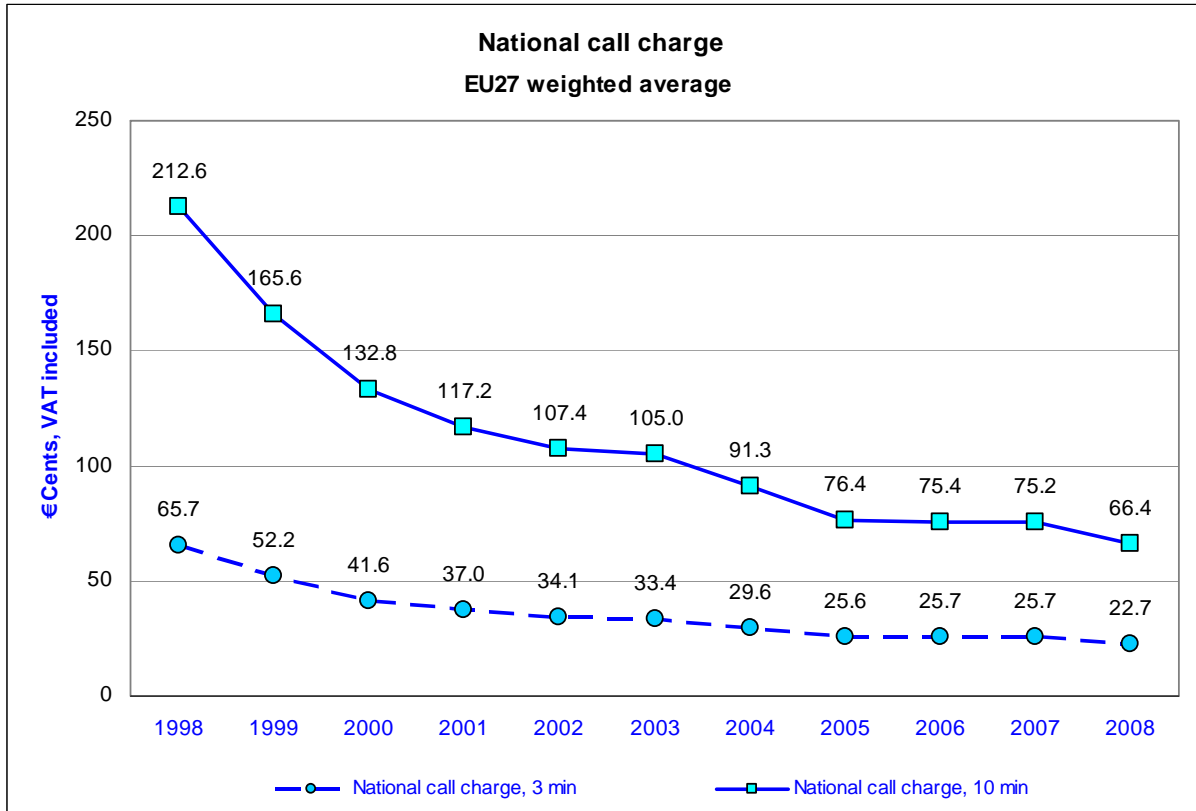
VoIP continues to replace traditional fixed voice telephony. The managed VoIP market share has almost doubled to 8.33% of the EU market.

12.25% of the European population now subscribe to bundled offers, which is an increase of 33.3% on last year.¹¹

Pricing

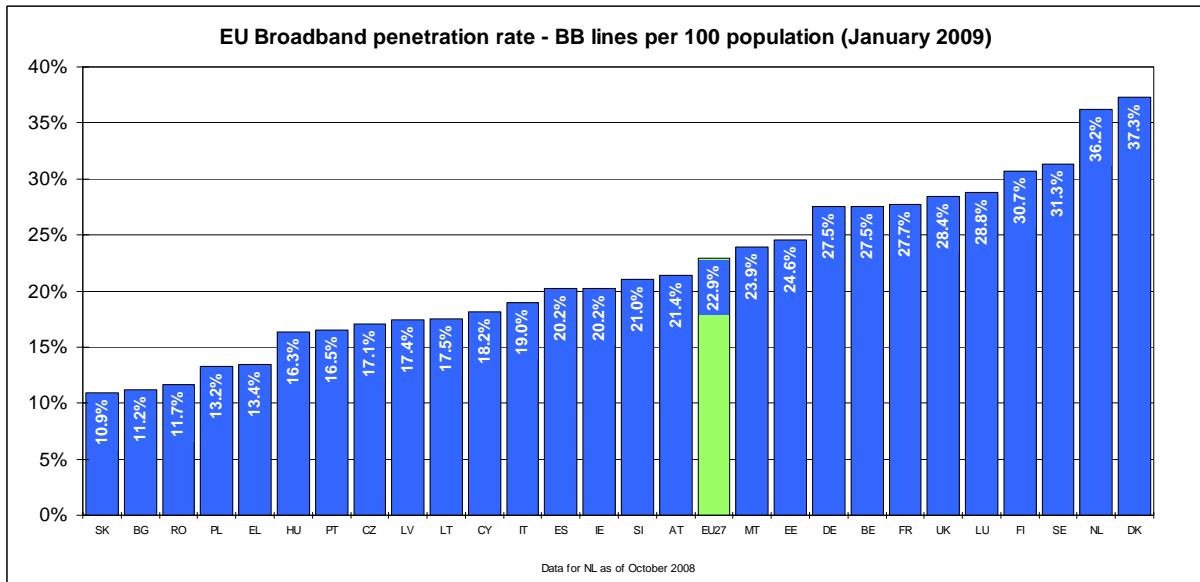
Prices for both 3-minute and 10-minute national calls declined by 11.7% during the year, which is the biggest drop since 2004.

¹¹ Bundled offer means a commercial offer of two or more services marketed as a single offer and offered for a single price.

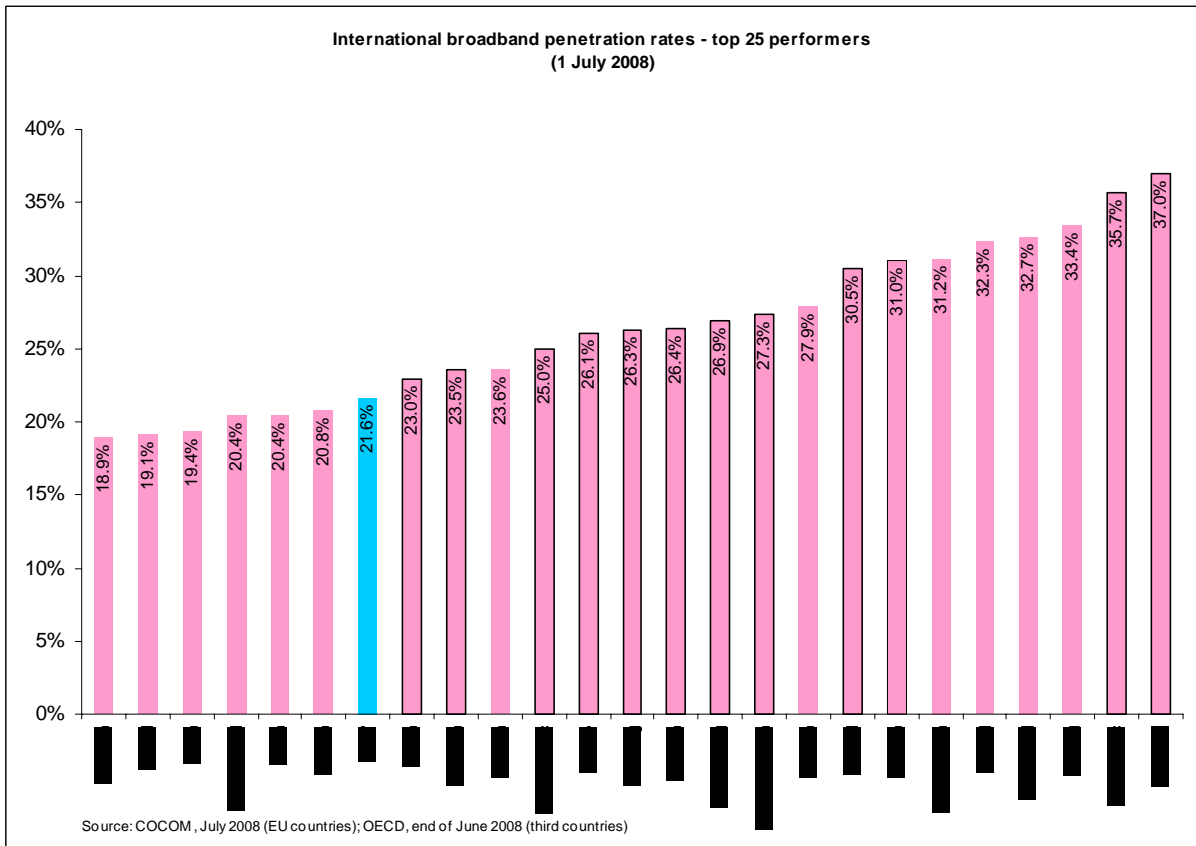


Broadband

Fixed broadband penetration continued to grow in 2008 with 14 million new lines added, bringing EU average fixed broadband penetration to 22.9%.



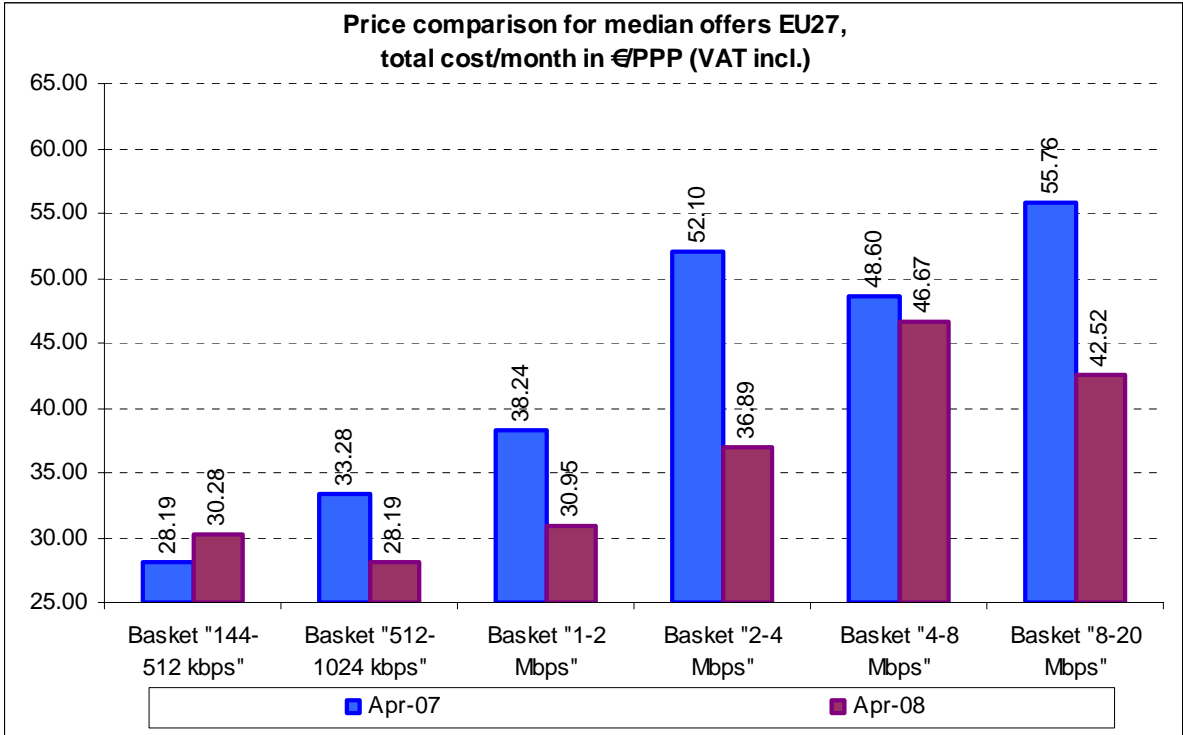
The top EU countries remained world leaders in broadband penetration. Nine EU countries are currently ahead of the USA and the EU is catching up with Japan and Australia.



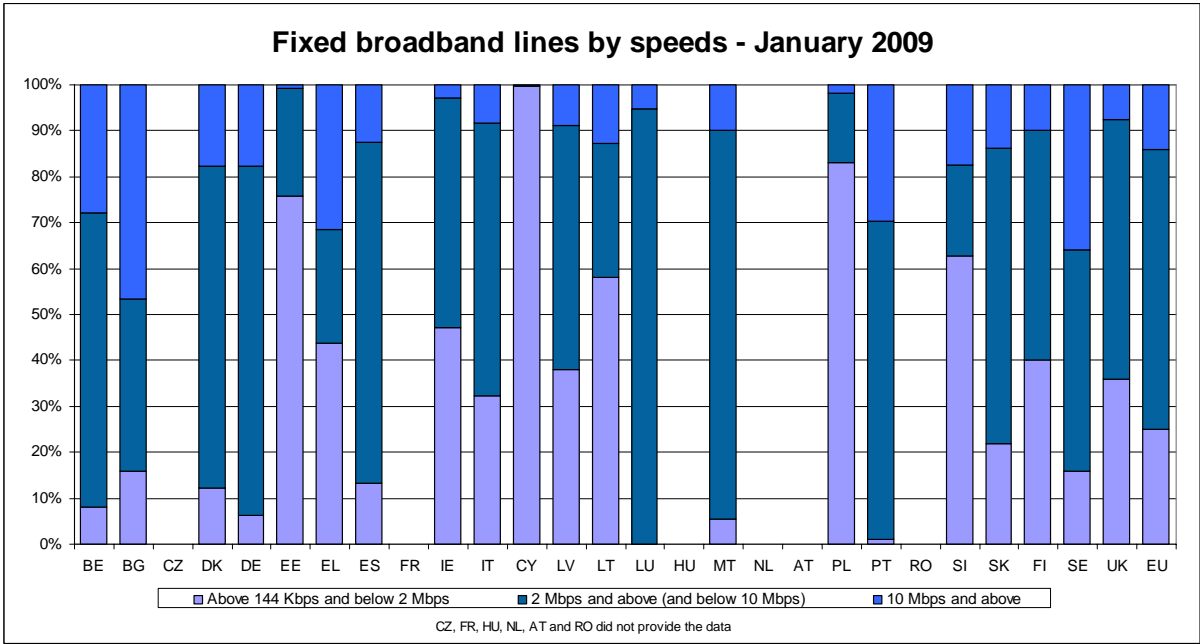
The gap between the best and the worst-performing countries in Europe is narrowing even though the difference remains significant: 26.3 percentage points between the worst-performing country (Slovakia) and the best (Denmark).

DSL remains the main broadband technology in the EU, but alternative technologies are gaining ground (fibre and wireless). High growth of unbundled local loop-based products continues and now represents 69.3% of all DSL lines used by alternative operators. Wholesale access prices are decreasing. The Commission will consider the implications of these developments in its Recommendation on NGA.

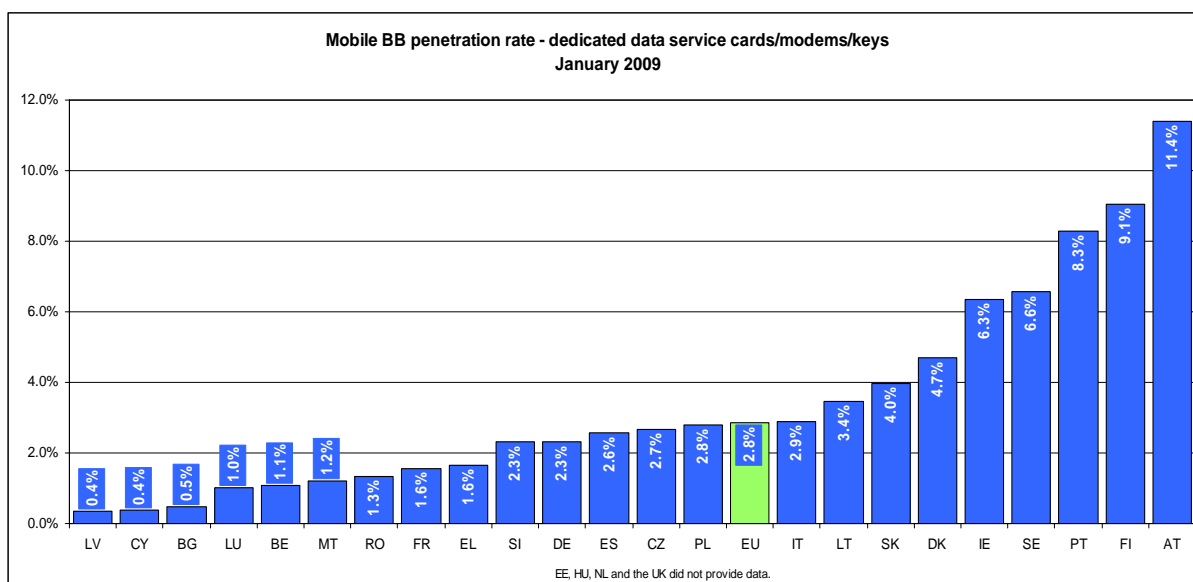
Prices of broadband subscriptions continue to fall.



Three quarters of broadband lines in the EU have download speeds of 2 mega bits per second (Mbps) and above, a speed that supports TV over the Internet, for example.



Mobile broadband is starting to take off (13% penetration on average). The number of mobile broadband connections using only dedicated data cards/modems/keys is, however, significantly lower (2.8% penetration). Mobile broadband subscriptions are becoming a viable alternative to fixed broadband in a number of countries, even though mobile technologies generally allow transmission speeds below those of wired technologies.



Member States' policies seeking to bridge the digital divide are starting to pay off, but more needs to be done to further narrow the gap. At the end of 2007 DSL networks were available to 93% of the European population, although 30% of the rural population do not yet benefit from access.¹²

3. REGULATORY ENVIRONMENT

Institutional framework

Independence of NRAs

Independent NRAs are a prerequisite for ensuring fair and effective regulation of the sector. Independence may be compromised in particular where Member States still have control over operators. The Commission had to launch infringement proceedings against Lithuania, Latvia and Luxembourg to ensure effective separation between regulatory functions and ownership/control functions. The case concerning Luxembourg was closed in early 2009. The conditions for the appointment or removal of the head of the NRA led the Commission to refer Poland to the Court of Justice and to launch an infringement proceeding against Romania. The Commission services are also examining the conditions under which the head of the Slovakian NRA was dismissed. Effective separation between regulatory and ownership functions led the Commission to close the corresponding infringement proceeding against Bulgaria.

NRA powers and resources

While resources remain an issue of concern in some Member States, generally speaking most NRAs seem to be equipped with the appropriate legal powers to carry out the tasks provided for in the regulatory framework. The Commission opened an infringement proceeding against Sweden for the lack of appropriate authority to deal with interconnection disputes.

¹² COM(2008) 572 on the scope of Universal Service - the Commission opened a debate on the future of universal service with particular reference to broadband services.

Appeals

Systematic appeals and lengthy procedures continue to undermine legal certainty and effective implementation of the framework in a number of Member States (e.g. Belgium, Hungary, Portugal, Romania and Sweden). In contrast, efforts to address these issues have been made in Greece and Poland. In the meantime, the Court of Justice has provided clarification on the types of undertaking or users eligible to appeal decisions of NRAs, which is expected to broaden the number of eligible parties in certain Member States (e.g. Sweden) and will increase legal protection by improving the standing of competitors.

Regulatory measures

Market analysis

Significant progress was made with the second round of market analyses and in some cases the third round has already started (e.g. Finland, Austria and Hungary). Following some recent notifications all Member States have now completed the first round of market analyses with the exception of Bulgaria, Poland and Romania.

Remedies

Many Member States are failing to implement and enforce remedies properly or in a timely manner. In addition to the United Kingdom, some other Member States have considered the possibility, and even commenced the initial stages, of some form of separation of the SMP operator. In Sweden, a law has been adopted to enable the NRA to impose functional separation on the incumbent upon approval by the Commission.

On the basis of its experience in implementing the regulatory framework, the Commission will continue to support and work with NRAs in order to enhance predictability and improve certainty in the market.

Inconsistency in the approach to remedies continues to be a problem as indicated below:

Broadband

Whilst several access products such as bitstream or naked DSL were finally made available in some countries (e.g. Germany, Slovenia, Spain), in others (e.g. Bulgaria, Slovakia, Hungary, Cyprus, Sweden, Latvia) problems such as the lack of, or delay in, implementation of the remedies imposed, inappropriate technical or economic conditions for the available access products, or inconsistency between the conditions for different access products led to low take-up of these products and made it difficult for alternative operators to compete.

The approaches to setting price control obligations for wholesale broadband access vary significantly across Member States. Some NRAs rely on "retail minus" methodologies while others apply cost-orientation. Some NRAs have not been able to implement the cost-orientation obligations which they have imposed and rely in the meantime on other methods such as benchmarking (e.g. Portugal, Poland).

NRAs are also facing a major challenge regarding the regulatory treatment of bundled offers to guarantee that operators remain in a position to compete.

The issue of NGAs remains a regulatory challenge and while many NRAs have started to reflect on the regulatory treatment of NGAs and to adopt appropriate measures, some others are only at a very early stage of their discussions, which is creating uncertainty for operators as well as a lack of consistency across Member States.

Some NRAs withdrew obligations imposed in the wholesale broadband access market by defining different geographic markets (UK and Portugal).

Mobile

With regard to methodologies for calculating MTRs, there are still diverging approaches. In some Member States price regulation is not imposed at all, leaving MTRs to be negotiated commercially (e.g. Slovakia). Differences also persist across the EU as to the setting of symmetric or asymmetric MTRs. As a result of these inconsistent practices, as already observed, MTRs vary greatly from one country to another.

Fixed

As regards the markets for call termination, various cost accounting methodologies were applied by Member States, such as the LRIC model or historical costs.

Regulation was withdrawn from retail calls markets by many NRAs (e.g. Germany, Spain, France, Czech Republic, Ireland, the Netherlands).

During the Community consultation process the Commission noted a practice whereby, while the market definition was changed to meet the Commission's concerns, the remedies imposed in that market, where the Commission's powers are more limited, produced the same outcome as if the market definition had not been changed. The Commission's proposals to reform the EU's regulatory framework would avoid such a situation by allowing it to act also when remedies proposed by a national regulator threaten to hamper the efficient functioning of the single market.

Spectrum management

- In general, Commission radio spectrum harmonisation decisions adopted up until 2007 have been implemented in most Member States, except for the decision on harmonised availability of information regarding spectrum use within the Community. In the meantime, some Member States have taken steps to introduce market-based approaches into their spectrum management practices (e.g. Denmark, Greece, the Netherlands and Portugal).
- In November 2008, the Commission proposed to update and simplify the GSM Directive to allow the introduction of new mobile services, starting with UMTS services, in the 900 MHz band. Several Member States took concrete regulatory action to allow the use of 900 MHz and 1800 MHz frequency bands for services relying on technologies other than GSM.

At EU level, the European Parliament and the Council adopted a Decision¹³ on the selection and authorisation of systems providing mobile satellite services (MSS), aimed at creating a single market for pan-European mobile satellite services.

Greater efforts appear to be required in order to ensure effective implementation of the Commission's spectrum harmonisation decisions.

Digital dividend

While certain Member States (e.g. Finland, France, UK) have seized the opportunity presented by the digital dividend to allow the deployment of innovative services, several others are intending to keep all or most of the digital dividend for broadcasting applications.

¹³ No 626/2008/EC.

Some Member States have not yet taken a decision on this issue. The Commission will, in 2009, prepare the required measures to reserve and coordinate these bands at EU level.

4. CONSUMER INTEREST

Tariff transparency

A guarantee of transparent tariffs and up-to-date information on standard terms and conditions is one of the cornerstones of the consumer protection measures enshrined in the Universal Service Directive.

In this context, although more action is needed, some Member States have recognised the need for measures to improve transparency of tariffs. Various web-based price comparison tools have been developed in a number of Member States. Where such tools exist, there is a notable trend towards widening their scope to cover additional platforms as well as bundled offers.

Transparency of information relating to broadband speeds as well as maintaining the quality of broadband services appear to be issues of growing concern for consumers.

Several Member States have taken steps to ensure that customers are granted safeguards for broadband speed delivery. Codes of practice, voluntary agreements with industry and various measures on quality of service introduced in Hungary, Greece, Latvia, France and Spain lay down clear requirements regarding broadband speeds.

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

Universal service

Following a regular review of the scope of universal service, the Commission issued a Communication on the subject in 2008, thereby initiating a forward-looking EU debate on the future of universal service, with particular reference to broadband services.

Several Member States have limited the scope of the current universal service obligations as some universal service elements are being delivered by the market without the need to designate any specific undertaking(s) (e.g. Czech Republic, Denmark, Hungary, Latvia).

In June 2008, the European Court of Justice issued an important ruling with regard to France, denouncing a national rule under which only those undertakings able to provide universal service for the whole of the national territory could be designated. According to the Court, Member States have an obligation to ensure the provision of universal service in a cost-efficient manner, whilst respecting the principles of objectivity, non-discrimination and minimum market distortion.

Many Member States appear to have found it difficult to establish comprehensive directories and directory enquiry services including both the fixed and mobile subscribers who have consented to be listed. The Commission opened a total of 11 infringement proceedings in this regard, all of which have been closed as the services have become available, with the exception of the case concerning Portugal, which is pending before the ECJ. However, comprehensive directories and directory enquiry services are not yet available in Bulgaria and Romania.

Service providers have voiced concern with respect to retention rates applied by mobile network operators for calls made to directory enquiry services.

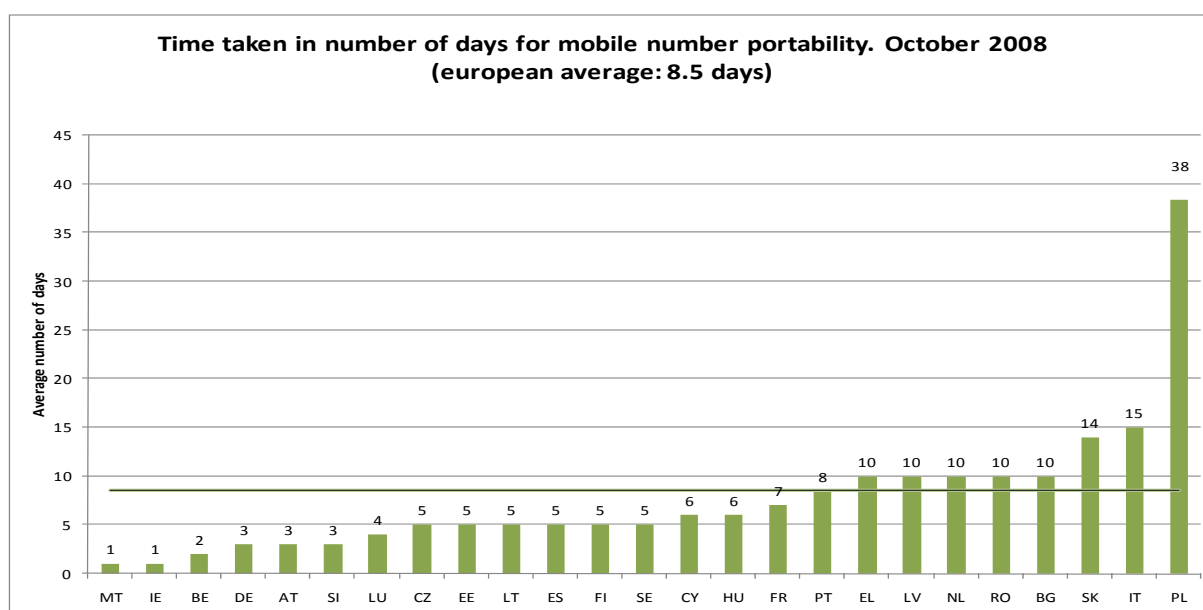
Number portability

Number portability is now available for both mobile and fixed users in all Member States with the exception of Bulgaria (for fixed numbers), the latter having been granted an exemption until January 2009 under the accession agreement.

The number of ported mobile numbers increased over the past year (14.1 million more in 2008)¹⁴. Since its introduction 60.2 million subscribers (10.3% of mobile numbers) had ported their number by October 2008 (8.3% in October 2007).

Since the introduction of fixed number portability, almost 26 million subscribers had ported their numbers by October 2008 (a 37% increase on 2007).

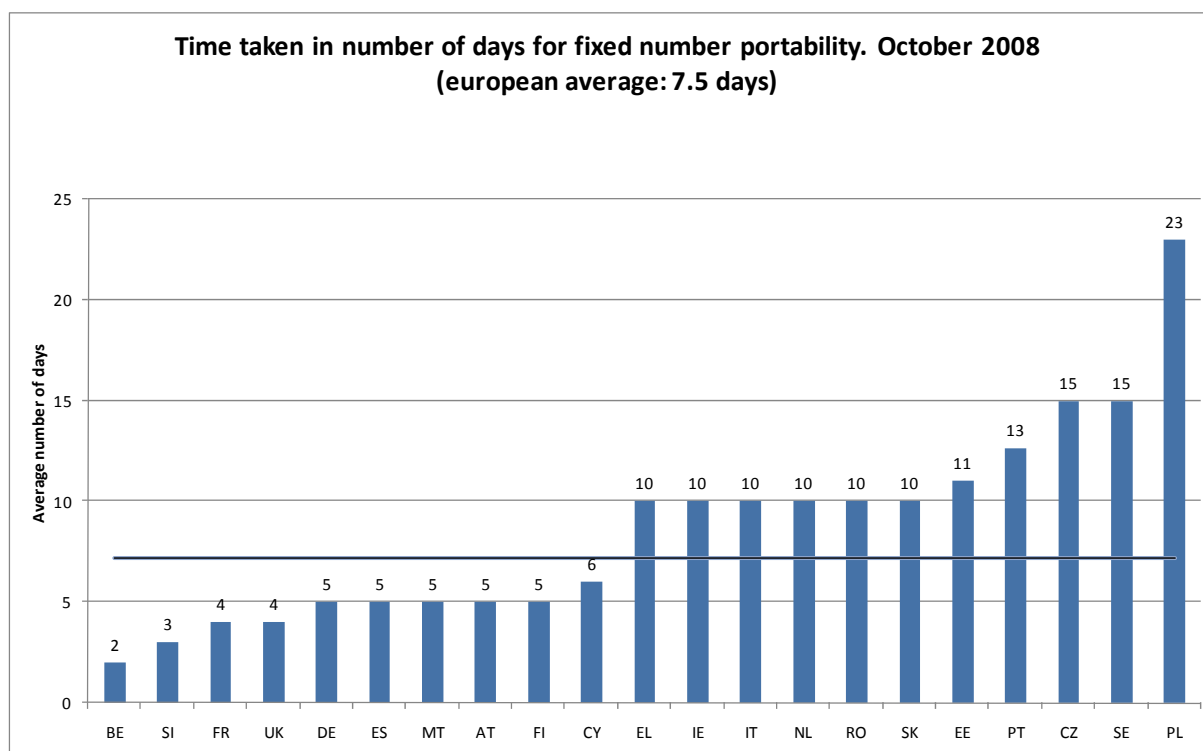
The prices applied for number portability vary to a great extent. While no wholesale charge is applied in some countries, e.g. Estonia and Spain (for mobile) and Germany (for fixed), these charges are as high as €49 for fixed number portability in Slovakia and €45 for mobile number portability in Malta.



The time aspect is crucially important. In October 2008, the European average time taken for mobile number portability was 8.5 days and for fixed number portability was 7.5 days (7.8 days in October 2007).

The time taken varies significantly across Member States which cannot be justified by national circumstances. There is therefore considerable scope to reduce the time taken for number portability, which is why the Commission has recommended a duration of one day in its Review proposals. At least six Member States (UK, Portugal, Spain, Slovakia, Italy, Poland) have proposed to shorten the time taken to port numbers to between one and five days.

¹⁴ Figures for UK not available.



(Data from Denmark and Luxembourg not available)

European emergency number 112

The single European emergency number 112 can now be dialled to contact emergency services from fixed and mobile phones free of charge anywhere in the EU. However, there are still some areas for improvement, such as the provision of caller location information for 112 calls from mobile phones, the handling of calls and raising of awareness.

The infringement proceeding against Bulgaria for non-availability of 112 was closed in early 2009, and out of seven infringement proceedings for failure to ensure the provision of caller location information for 112 calls as of January 2009, four resulted in judgments (the Netherlands, Lithuania, Slovakia and Italy). Only Slovakia has so far complied with the Court's decision. Moreover, the Commission launched an infringement proceeding against Italy for failing to ensure that the handling and answering of 112 calls is as effective as for calls made to other national emergency numbers.

In June 2008, the Commission launched a website¹⁵ dedicated to 112 that provides information in all the official EU languages. As a further part of the drive to highlight the 112 number, 11 February was declared European 112 Day and the Commission will continue to promote 112 and to disseminate best practice amongst Member States.

ePrivacy

Despite international cooperation initiatives on enforcement, achieving genuine confidentiality and security over electronic communications remains a challenge, in particular over the Internet, as illustrated by several security breaches or controversial Internet marketing strategies in Member States (e.g. Germany, UK, Malta).

¹⁵ <http://ec.europa.eu/112>

5. CONCLUSIONS

In 2008, the telecom sector continued to grow and is showing good resilience in the present difficult economic situation. Even though the state of competition is improving and new technologies are being taken up, there is evidence of a lack of consistency in regulatory approaches to the removal of persistent bottlenecks and to the roll-out of fibre.

In an increasingly challenging environment it is crucial to ensure effective implementation and consistent regulatory approaches, which are key aims of the reform of the regulatory framework started by the Commission in November 2007. It is necessary to complete the Review as soon as possible in order to bring the single market closer to completion, give legal certainty to market players and deliver increased consumer benefits.