

REPORT ON  
MARKET TRENDS  
AND REGULATORY  
ACTIVITIES OF  
EMERG MEMBERS  
2015

EURO-MEDITERRANEAN REGULATORS GROUP  
(EMERG)



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## **1. Introduction**

### **1.1 Objectives**

Since 2009 the Euro-Mediterranean Regulators' Group (EMERG) has undertaken an annual benchmark of its member National Regulatory Authorities (NRAs). The results form the basis for (a) the evaluation of the level of approximation of the MENA countries with respect to the European Framework for the electronic communications sector and (b) the formulation of the Group's 2016 Annual Work Plan.

During 2013, the European Commission decided not to extend its funding of the NATP-3 programme, and for 2014 and 2015 the preparation and drafting of the Benchmarking Report was handed over to EMERG's Benchmarking Working Group, chaired by CNMC (Spain), as Vice-President of EMERG. The Working Group was integrated by experts from Jordan, Morocco, Lebanon, Portugal, Italy and Spain. In 2015, Morocco was appointed as co-chaired of the Group is co-chaired, together with CNMC (Spain).

The 2015 Report collects information about some key performance indicators and trends of the telecom sector, in particular for the fixed, mobile and broadband markets and provides an update of the regulatory activities of the EMERG members in 2014 and 2015.

Section 1 of the Report is an introduction. Section 2, describes main trends in the telecommunication markets in the EMERG countries. Section 3 is focused on the regulatory developments that Members carried out from 2014 until July 2015.

### **1.2 Process**

An extensive questionnaire on market data was circulated to the National Regulatory Authorities (NRAs) in August 2015. The survey were based on the existing literature as well as on previous research on the topics conducted by the EMERG and the European Commission (EC).

The NRAs were asked several additional questions in the last quarter 2015 in order to clarify and/or supplement the information provided by the NRAs.

It should be noted that compared to the previous Benchmark report the country basis has changed which makes a direct comparison of results, especially with regards to growth rates and average figures, difficult. Bosnia has joined EMERG as a new member in 2015 while Austria has not replied to the questionnaire. In total a number of 19 EMERG members answered to the questionnaire: Bosnia, Croatia, Cyprus, Egypt, France, Germany, Greece, Israel, Italy, Jordan, Lebanon, Malta, Morocco, Palestine, Portugal, Spain, Switzerland, Tunisia and Turkey.

A number of items requested in the questionnaire were considered confidential or not available by some NRAs. Some tables and plots of Chapter 2 have been elaborated with other sources of data, especially from ITU and World Bank. Finally, the data and information included in the Benchmark Report refer as to 31<sup>st</sup> December, 2014.

Finally, in December 2015, it was requested the Members to prepare a brief report summarizing the main regulatory decisions and activities taken by their NRAs between 2014 and 2015. These contributions would serve as a basis to build Section 3.

13 EMERG members replied to the call: Bosnia and Herzegovina, Croatia, Cyprus, France, Germany, Israel, Jordan, Malta, Morocco, Spain, Switzerland, Tunisia and Turkey.

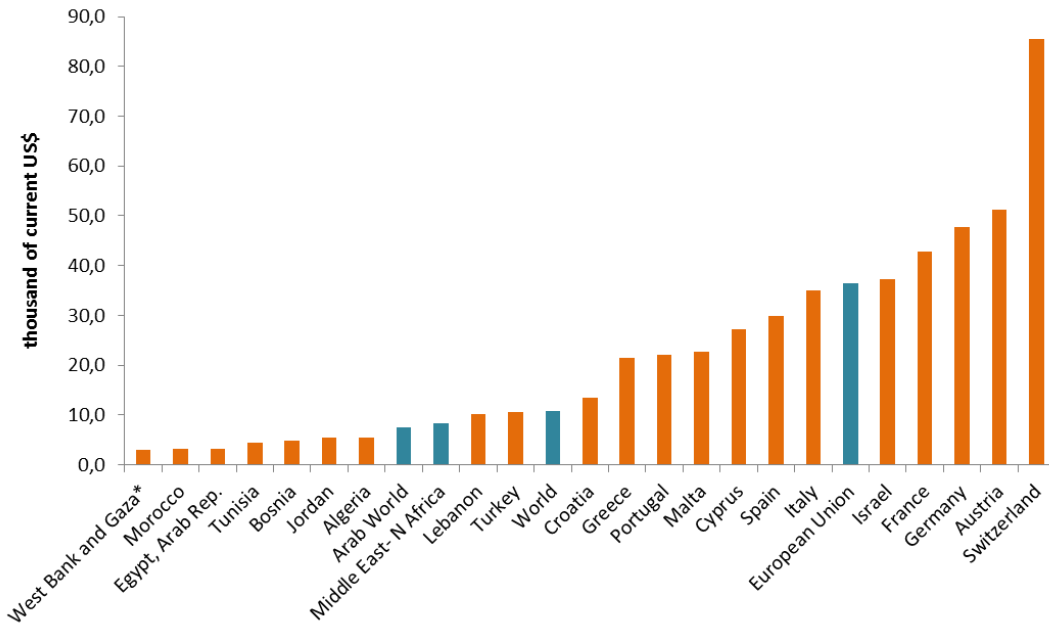
## 2. Trends in the telecommunication markets in the EMERG countries

There is a number of common market trends in the set of countries included in EMERG. In relation to fixed networks' services, fixed telephony still shows generalized reductions in the stock of active lines, while broadband services in terms of lines continue to grow. Fixed telephony lines reached an average penetration of 29.5 lines/100 inhabitants. Fixed broadband lines showed an average penetration rate of 19.7, which in comparison with fixed lines penetration, shows that there is room for growth yet.

Services based on mobile networks continue to grow. Mobile telephony lines reached a penetration figure (measured as number of mobile lines per 100 inhabitants) of 116.8 on average across all EMERG countries. In several countries, in any case, a slight absolute reduction in the stock of mobile lines was recorded, as e.g. in Algeria, Croatia, Egypt, Greece and Italy. Mobile broadband is the most successful service in recent years all across the world and as well in the EMERG countries. The region as a whole recorded a 41% growth rate in the number of subscriptions compared to 2013, reaching an average penetration of 56.97 subscriptions per 100 inhabitants. In many countries the gap between mobile broadband penetration and fixed broadband penetration widens considerably (see chart 6).

Comparing performance indicators across the EMERG countries is a difficult exercise. The very wide differences in per capita income, living conditions and regulatory frameworks make comparisons an exercise which must be taken with caution. As will be shown during this report, the significant differences in GDP per capita across the countries considered do not translate directly in the same magnitude to coverage and penetration of certain telecommunications services.

**Chart 1. GDP per capita in EMERG countries**  
(thousands of current US\$)



Source: World Bank

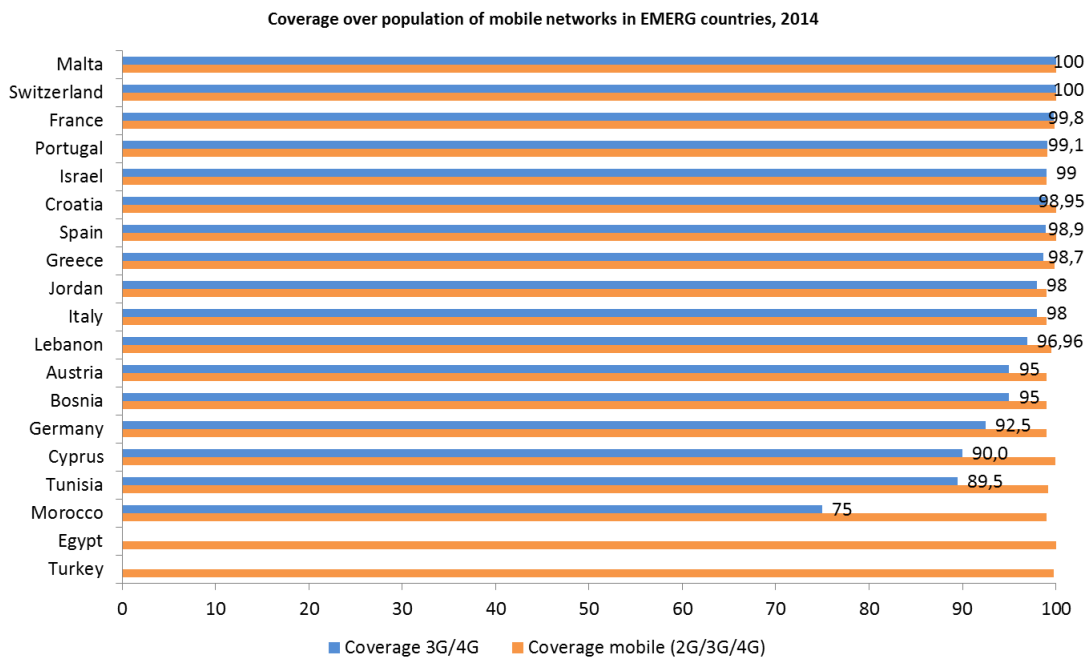
In the following sections basic indicators of usage, penetration and coverage are presented for the set of countries for which data is available, -either obtained directly from the NRAs or from other sources-, notably ITU. The objective is to extract the main trends occurring in the market place.

**2.1.1 Mobile services, coverage and penetration**

One relevant development in telecommunications markets around the world is the strong extension of mobile networks in the last two decades. The deployment of mobile networks implies much lower costs than the ones implied for fixed networks and one evidence since the emergence of mobile telephony is the fact that in developing and emerging markets, coverage of mobile networks soon surpassed the coverage registered for fixed networks significantly. Nevertheless, at longer term, it should be noticed that the deployment of fixed fiber-based infrastructure is likely necessary in order to support the increase of mobile internet connection volume.

As it shall be depicted in this section, large differences in terms of penetration and use of final services do exist among more developed and less developed countries, but in terms of coverage of mobile networks these differences are negligible. In fact, if coverage is measured in terms of population covered by at least one mobile network- whatever the network standard used: 2G, 3G, LTE/4G-, the coverage in all EMERG countries is practically the same reaching between 99 and 100%.

**Chart 2. Coverage over population of mobile networks  
(% of population)**



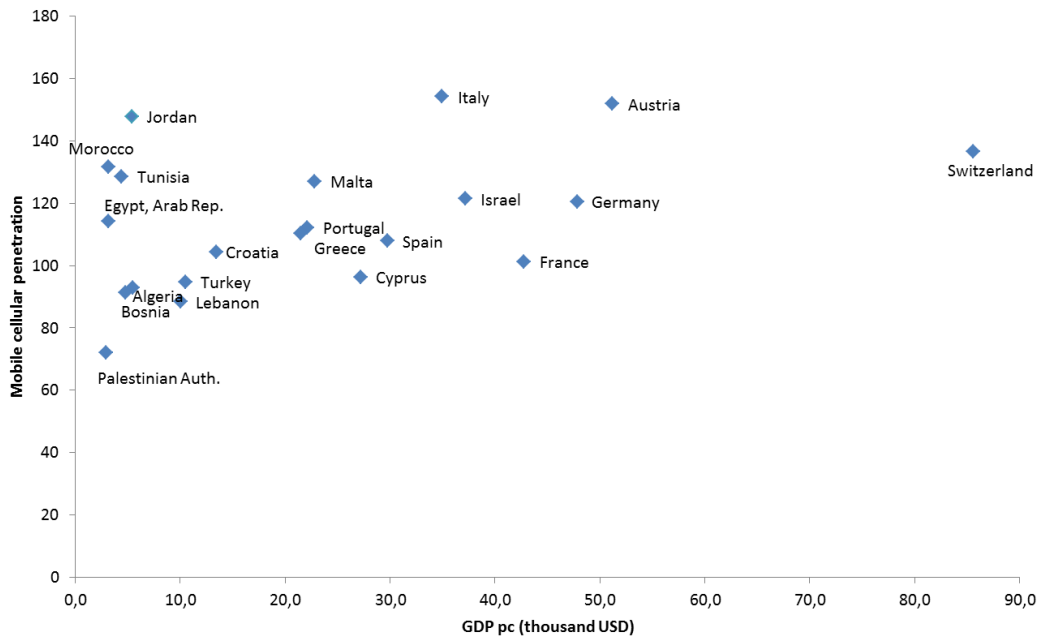
Source: EMERG

Higher differences are observed when looking at 3G/4G coverage in the EMERG countries. Morocco shows the lowest 3G/4G coverage while over half of the countries (13) have coverages of 95% and more. On average the 3G/4G coverage is high in EMERG countries with 95.6%.

Mobile cellular subscriptions- which include voice and messaging services- kept rising during 2014 in most of EMERG countries. Penetration of mobile cellular in terms of subscriptions per 100 inhabitants lies above the 100 ratio in most countries. Countries with penetration rates below 100 in general have lower GDP pc, e.g. Bosnia, Cyprus, Lebanon, Palestine and Turkey. In countries with ratios above 100 and higher GDP pc mobile penetration shows a decreasing trend. In Austria, Croatia, Greece, Italy and Malta

for example penetration ratios have decreased compared to 2013, even if for different reasons probably. In this respect, mobile penetration ratios in EMERG countries seem to converge slowly.

**Chart 3. Mobile cellular penetration & GDP pc <sup>1</sup>**  
**(lines/ 100 inhabitants & thousands of \$)**



Source: EMERG and ITU

Penetration of mobile cellular is much higher than penetration in fixed telephony in all countries, but especially in the MENA countries.<sup>2</sup>

Based on ITU data regarding Internet and Mobile usage across the countries, the distance in case of Internet usage between the most developed and less developed countries in the EMERG is higher compared to the differences in mobile usage.

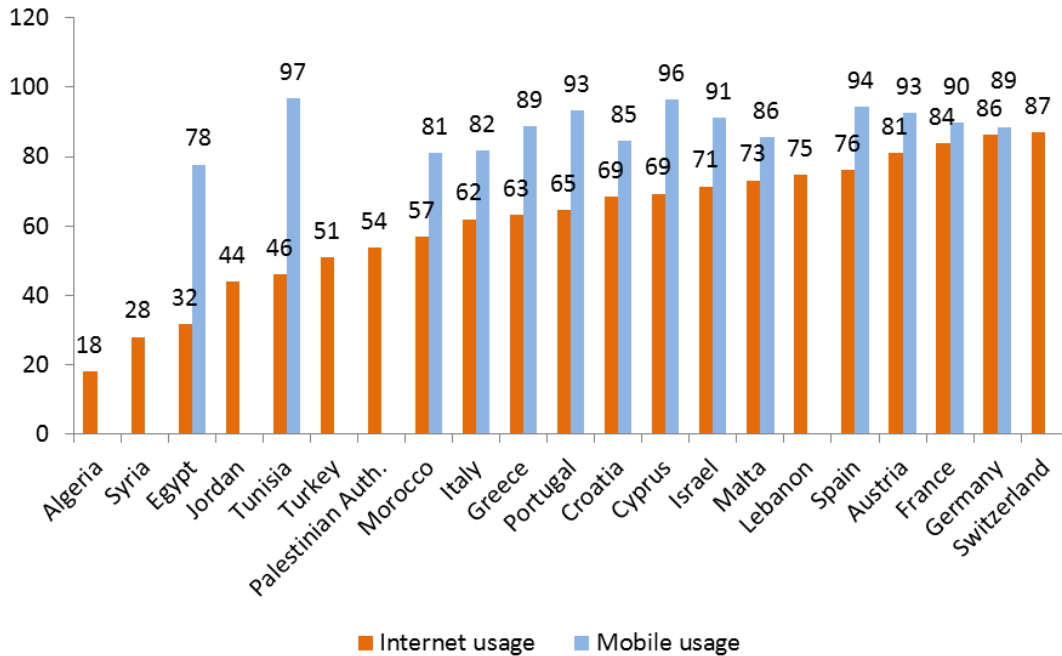
<sup>1</sup> GDP pc: Gross Domestic Product per capita.

<sup>2</sup> On average fixed telephony penetration in the observed European countries amounted to 42.8% compared to an average 117.8% of mobile telephony penetration. In MENA countries the average fixed telephony penetration amounted to only 14.1% compared to 107% of mobile penetration.



**Chart 4. Individuals using Internet and mobile in EMERG countries**

(% of total individuals)



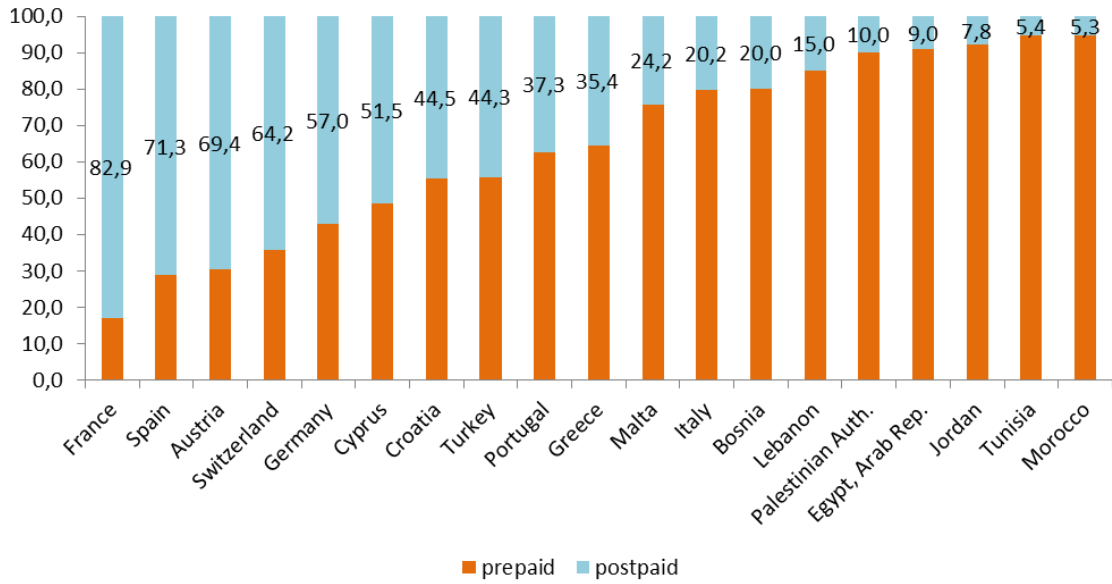
Source: ITU (2015)

*Note: Data for Internet usage refers to 2014 in all countries. Data for mobile usage refer to previous years (2012 and 2013) in all countries except for Tunisia (2014) and Israel (2010)*

Mobile broadband registered much higher penetration levels than fixed broadband and clearly higher growth rates as well. For the EMERG countries as a whole a 41% annual increase was recorded. Mobile broadband penetration, counting the total subscriber base per 100 inhabitants, was 56.97 in the region. The extensive coverage of 3G networks in all the EMERG members no doubt helped pushing demand for broadband in mobility.

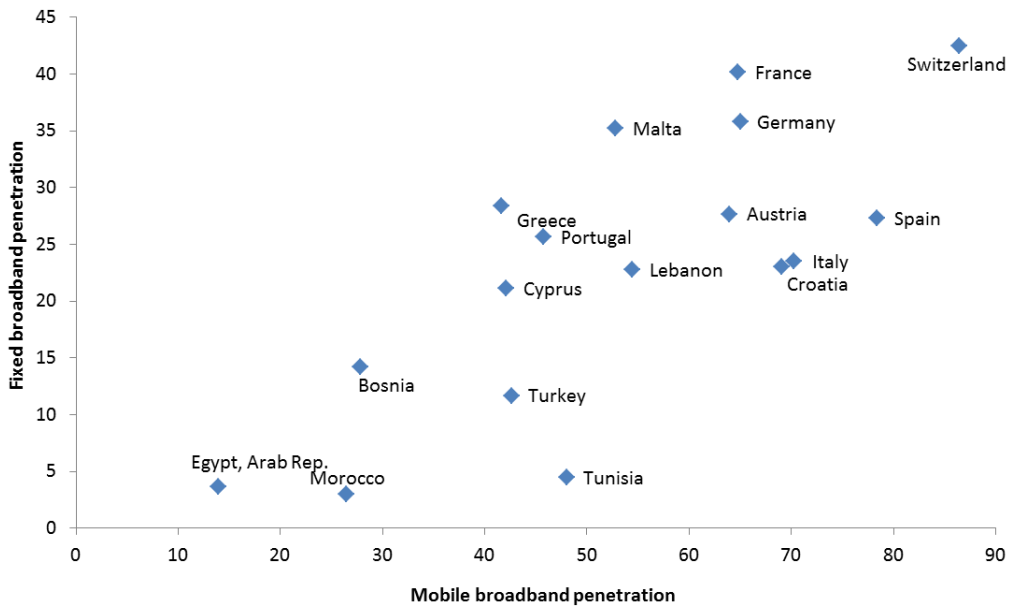
The prepayment modality is the most common way of contracting mobile services in all the MENA countries. Lebanon (85%), Palestine (90%), Egypt (91%), Tunisia (94.6%) and Morocco (94.7%) showed the highest proportion of prepayment subscriptions. The average for all countries considered was 65.6% of subscriptions, though this figure varies a lot across countries.

**Chart 5. Proportion of mobile subscriptions by contract modality**  
(% of total subscriptions)



Source: EMERG. In case of Austria and Germany figures refer to 2013.

**Chart 6. Mobile broadband and fixed broadband penetration**

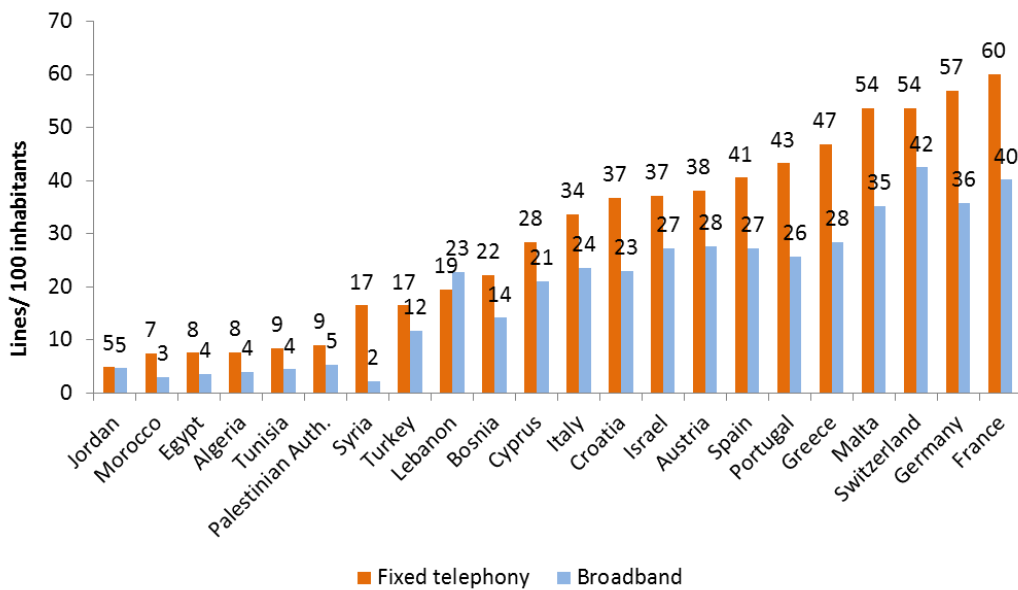


Source: EMERG and ITUIT is expected that during next years with the rise of mobile broadband and the upgrading of mobile networks in many less developed EMERG countries, will reduce differences in penetration between all EMERG countries.

**2.1.2 Fixed network services: penetration, usage and evolution**

The broadband penetration in EMERG countries is only two thirds of fixed telephony penetration. The majority of lines are based on the legacy- copper wire- incumbent’s network. Through this fixed network the xDSL and in some cases the VDSL standard- which is capable of providing very high speeds- broadband connections are offered as well.

**Chart 7. Fixed telephony and fixed broadband penetration, 2014**  
(lines/ 100 inhabitants)

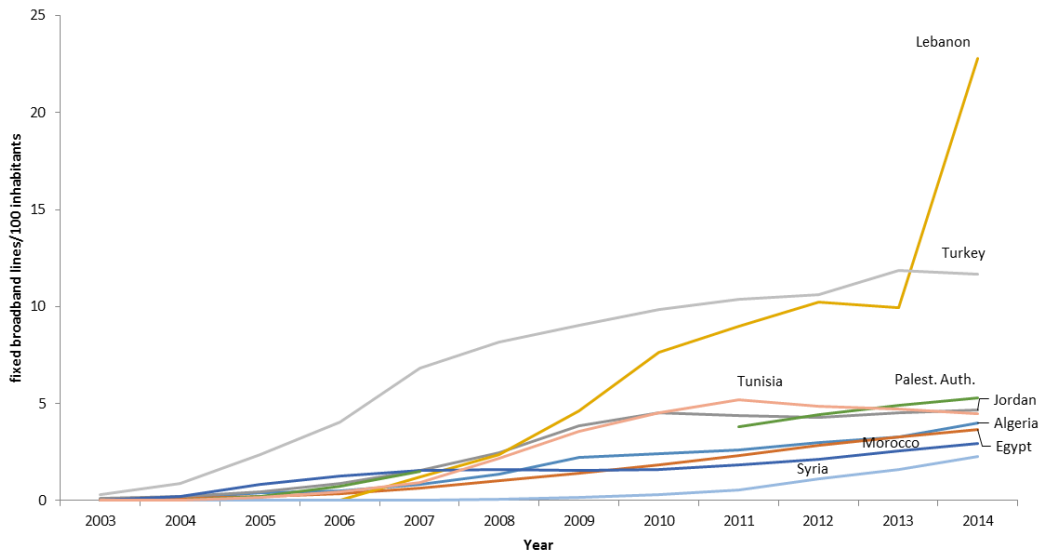


Source: EMERG and ITU

The evolution of broadband uptake has been different depending amongst other things on the development of the country. From the figures shown below it is clear that rapid two digits and increasing growth rates that in most of the European countries took place in the initial period 2001-2006, for the rest of the countries, though, took two to three years longer to occur. One relevant finding is that even if most of the countries stand now in a mature stage of penetration, where growth rates are positive but decreasing, still very healthy rates of increase in the stock of broadband connections is taken place year after year. The supply of better- faster- connections all across the EMERG set of countries, the

bundling of broadband together with other services and the lowering of prices in many cases, is helping in extending the penetration of broadband significantly.

**Chart 8. Evolution of fixed broadband penetration in MENA countries (lines/100 inhabitants)**

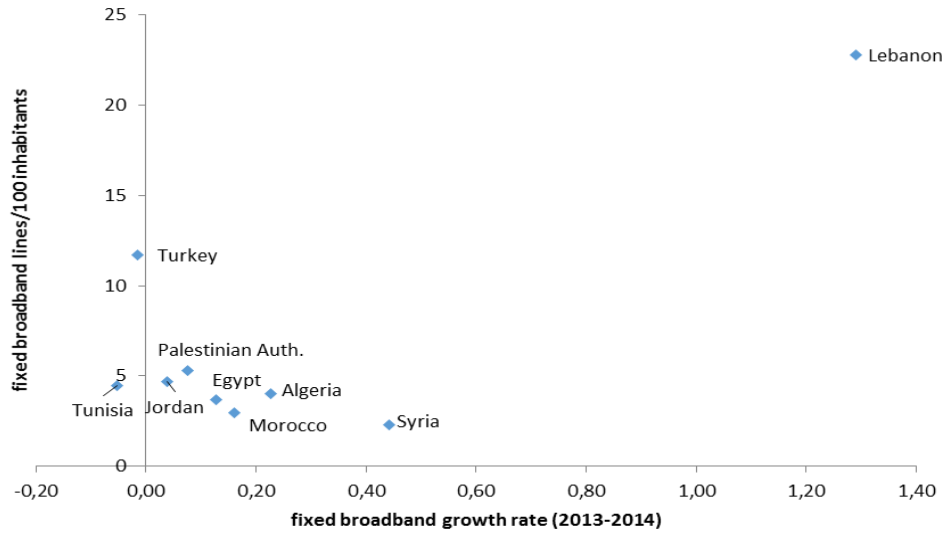


Source: ITU

In the MENA countries during 2014, a median growth of 10.2% was reported, more than double the rate registered in European countries.<sup>3</sup>

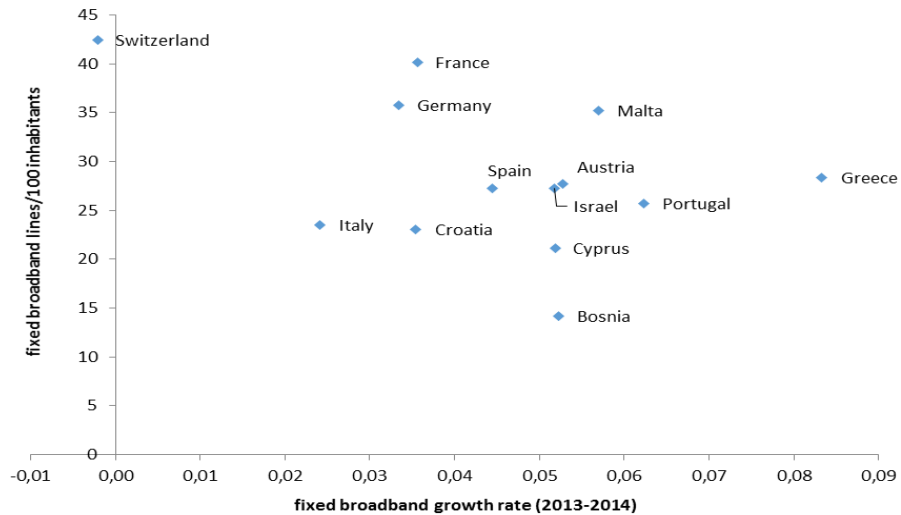
<sup>3</sup> The average growth in MENA countries between 2013 and 2014 was even higher with 23%. This was mainly due to the fact, that, according to ITU data, Lebanon alone more than doubled its number of fixed broadband subscriptions between 2013 and 2014.

**Chart 9. Penetration and growth of fixed broadband in MENA countries**  
(as lines/ 100 inhabitants and annual growth rate)



Source: ITU

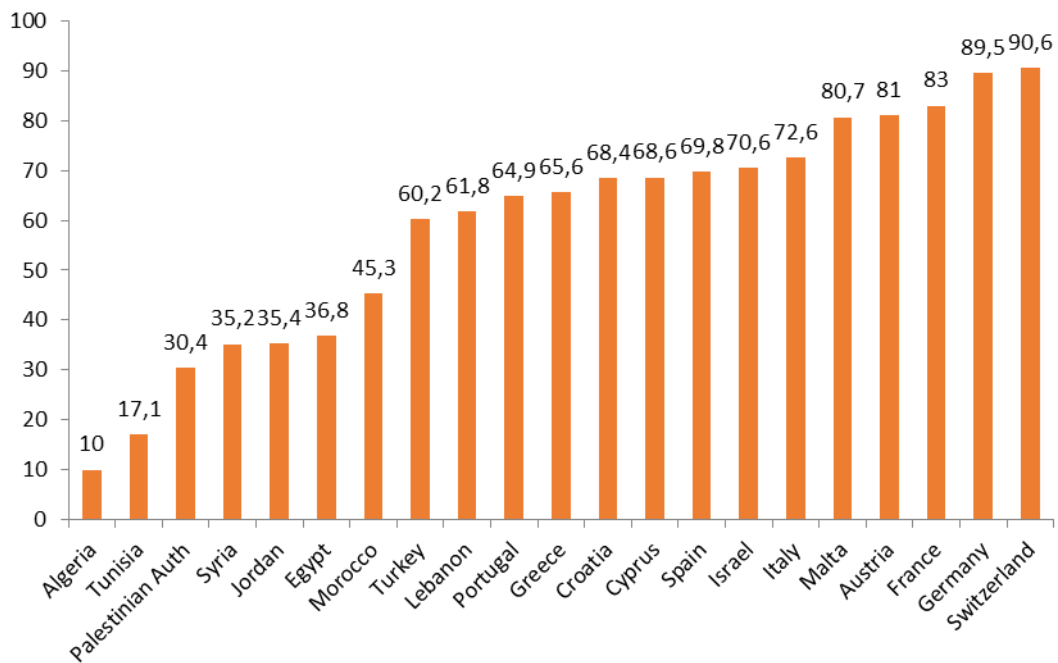
**Chart 10. Penetration and growth of fixed broadband in the European countries**  
(as lines / 100 inhabitants and annual growth rate)



Source: ITU

In relation to fixed broadband there is a group of countries with high rates of penetration growth during 2014, 13% or higher: Egypt, Algeria and Morocco. Continuing its strong growth pattern as a European country is Greece with 8% annual rate. The rest of the countries, except Tunisia and Turkey, registered moderate albeit in all cases positive and significant growth rates. The European countries registered an average 4.1% growth rate in penetration- showing in the last ten years a trend of positive but decreasing growth rates. The MENA countries in EMERG, by contrast, had an average overall growth of 23% in 2014 although penetration levels in both group of countries still differ notably.

**Chart 11. Households with Internet access**  
 (% of total HH), 2014



Source: ITU. Note that data for Algeria and Syria refers to 2010, Tunisia for 2012, Morocco, Spain and Israel to 2013, Lebanon, Jordan and Palestinian Authority for 2011.

### 2.1.3. Market shares of leading firm in the more relevant markets

The leading firm in fixed telephony is in all cases the historic incumbent, which in several cases still holds practically the whole of the retail market, as in Tunisia, Jordan, Egypt and Lebanon. Across all the countries included the average market share of the incumbent was 72% of all telephony lines, as compared to 75% in 2013<sup>4</sup>. It is noteworthy, that competition was induced in practically all of the European countries where market shares of the leading firm were below 60%.

One clear trend in practically all markets considered is the declining weight of the incumbent operator. Only in the last year 2013- 2014, the market share of the leading firm declined in nearly all countries, with a major reduction in Turkey (-5 pp). The exception is Morocco where the incumbent regained 8pp market share. The overall declining market shares have to be considered as well in the context of declining market sizes, i.e., in the majority of EMERG countries the stock of fixed telephony lines declined significantly during the period, except in Portugal and Palestinian Authority- which registered growth, and Jordan, Spain, Egypt and Malta which practically maintained the telephony lines stock at previous levels. The rest of the countries registered absolute declines. Most notably Morocco, Croatia, Switzerland, Tunisia, Greece, Turkey and Cyprus, show reductions above 2% figure in the last year.

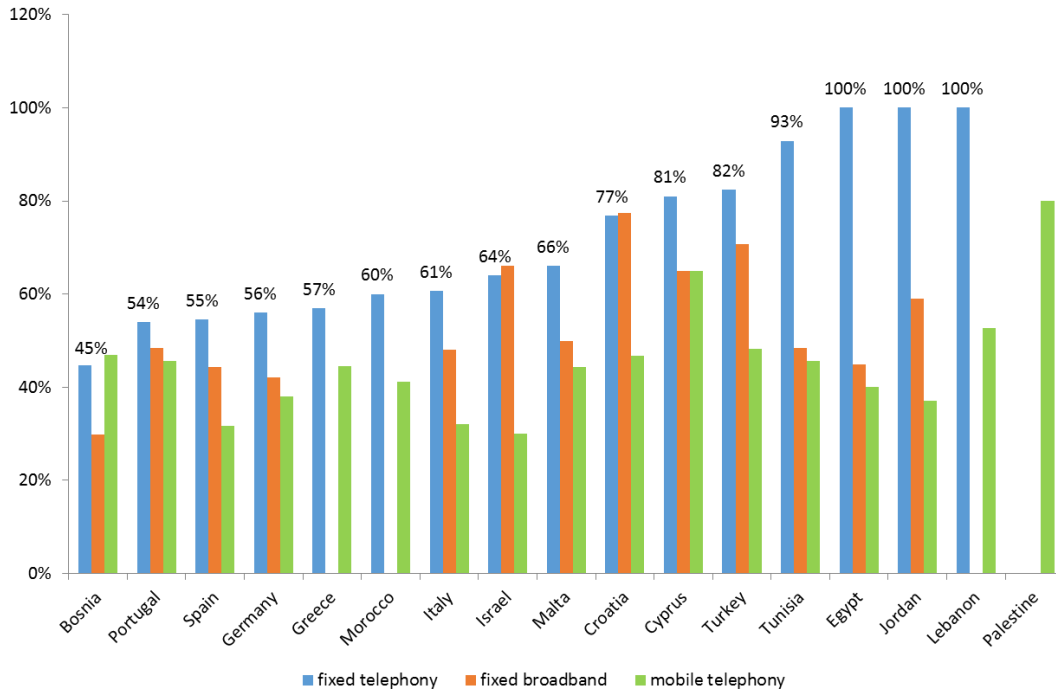
Comparing the declining trend in fixed lines and the healthy growth rates in mobile telephony subscriptions, it is clear that mobile usage is replacing the traditional fixed telephony consumption.

While in last year's sample market share of the traditional fixed telephone service operator was significantly higher than the broadband operators market share, it is noteworthy that in 2014 Israel and Croatia reported higher share for the leading broadband provider.

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<sup>4</sup> Note that the sample of countries has changed, e.g. Bosnia is now included.

**Chart 12. Market share of leading firm in the main retail markets**  
 (% of lines / total)



Source: EMERG

In a good number of countries alternative fixed network infrastructures are a reality. All European countries plus Turkey and Jordan have deployed FTTx or a cable infrastructure in place, but many countries have scarce alternative to the incumbent’s network. For the region as a whole 11.4% of broadband lines were supported by a cable network, 5.6% by a FTTx deployment, and still 82.9% were xDSL based. Hence, the relevance still of the legacy- incumbent- fixed network for the provision of broadband services is clear. All the European countries and some South Mediterranean ones as well have introduced unbundling of the local loop and other wholesale regulation in order to facilitate the entry of alternative operators, though as can be seen from the market shares of the leading firm, still there is a long way to go in the process of achieving more competition and benefits for the consumers derived from more players in the market.

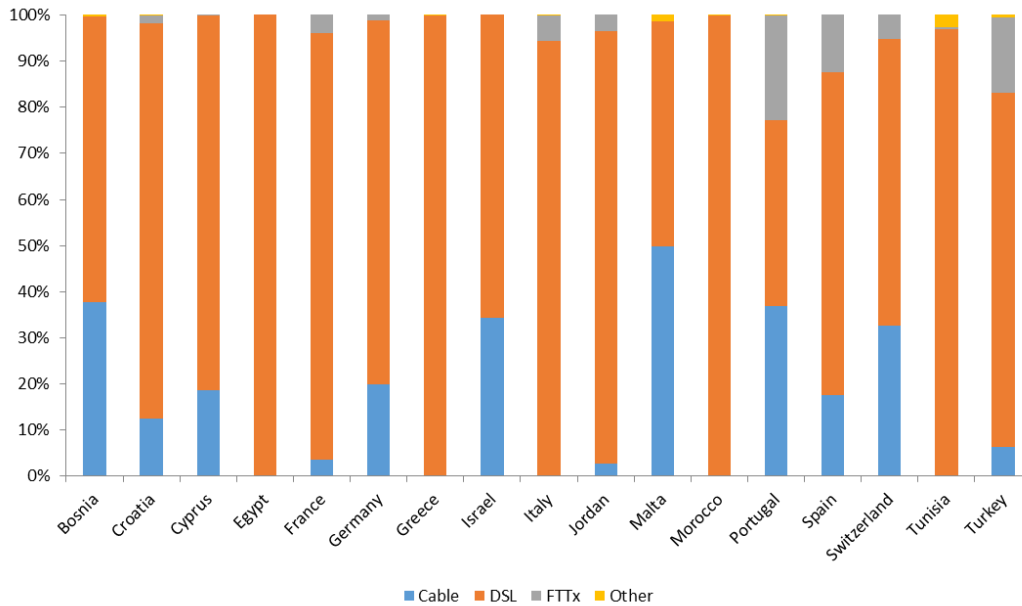
The development of alternative fixed infrastructures varies widely across countries. Whereas Bosnia, Israel, Malta, Portugal and Switzerland had alternative networks, either cable- HFC or FTTx based, providing more than 30% of broadband connections, some



other countries- Morocco, Lebanon had a mere 2% of lines in the hands of alternative network providers.

**Chart 13. Distribution of broadband lines by supporting technology**

(% of total lines)



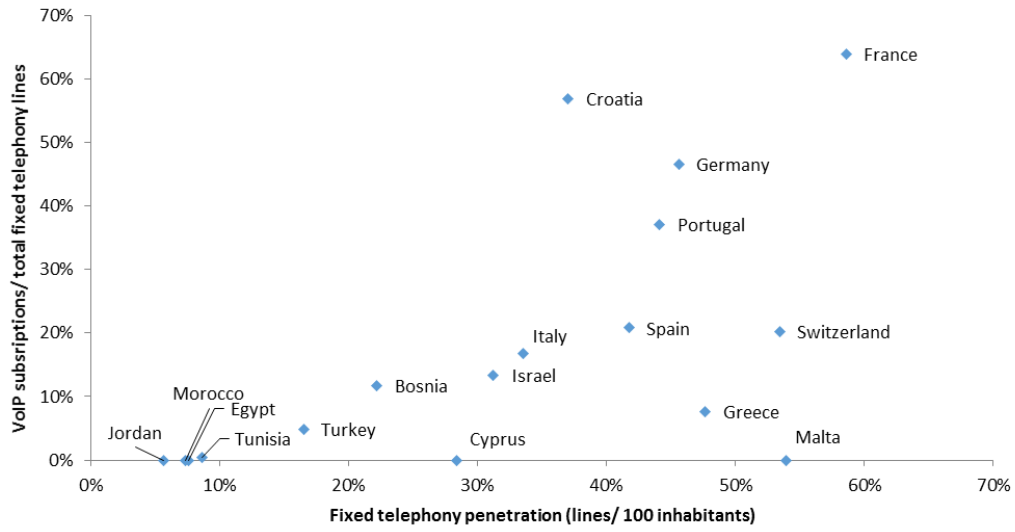
Source: EMERG

Alternative providers may construct their own independent physical network, as the cable or some FTTx operators have done, or else they may use any wholesale regulated service on the incumbents' legacy network to make entry into the market possible. In those countries where no significant deployment of an alternative physical network has been achieved it is crucial to regulate the network of the incumbent and to monitor the functioning of these wholesale services so that entry occurs and a level playing field for competition to take place is created. The regulation of the incumbent's network, based either in direct access- with the unbundling of the local loop-, or the indirect access- with a definition of a bitstream service-, has created big welfare gains in the European countries that implemented it.

Voice services are being predominantly provided based on the traditional legacy –copper wired based- network in most of the countries. However, in some countries due to unbundling of wholesale services at the local loop and, in some cases, due to the deployment of alternative fibre based infrastructures, voice over IP, VoIP services have a significant presence, as in Croatia France and Germany where about 50% of fixed active

fixed telephony lines are based on VoIP. As NGA networks are being deployed, a growth in this type of voice service is expected all across the set the countries.

**Chart 14. Fixed telephony penetration and proportion of VoIP lines  
(% of total lines)**



Source: EMERG

### 3. Regulatory developments of EMERG Members in 2014 – 2015

#### 3.1. BOSNIA AND HERZEGOVINA – CRA

##### 1. Main regulatory decisions taken by the CRA during 2014

Main Decisions issued by Communications regulatory agency of B&H (CRA) related to Telecom matters in 2014 include:

- Market analysis: 1
- Pricing: 68
- Review of reference offers: 4
- Numbering: 202
- Disciplinary proceedings: 4
- Consumer complaints: 45

By July 2015, main issued decisions related to:

- Market analysis: 1
- Pricing: 22
- Review of reference offers: 3
- Numbering: 148
- Disciplinary proceedings: 3 ( in progress)
- Consumer complaints: 27

Among the CRA main regulatory decisions, the following can be highlighted:

##### **i) Market analysis**

With a view to ensuring conditions for the promotion of further development of competition in the telecommunications market, the Communications Regulatory Agency started in 2012 a process of market analysis in accordance with Rule 54/2011 on the analysis of the electronic communications market ("Official Gazette" No. 85 / 11).

In May 2013, CRA completed the first market analysis that was done in accordance with EU methodology. Analysis related to relevant market 7: Wholesale mobile call termination. Three mobile operators were declared as operators with significant market power.

In 2013, the Agency started the process of Analysis of relevant market 3: Wholesale fixed call termination. Decision was brought in January 2014. CRA declared 13 operators as operators with significant market power.

Based on market analysis, there were established glide paths 2014 – 2017 for reduction of mobile and fixed termination rates, based on benchmarking.

In the first half of 2015 CRA conducted public consultation on Analyses of relevant markets 4 and 5: Wholesale (physical) network infrastructure access and Wholesale broadband Access. Due to large number of comments received from the operators, CRA plans to launch second round of consultation in the first half of 2016.

### **ii) Pricing**

In accordance with article 20 of Law on Communications, CRA issues approvals to the prices and business conditions for fixed and mobile telephony and leased lines services of SMP operators.

Therefore, the three incumbent operators: BH Telecom, Telekom Srpske and HT Mostar, that operate in both fixed and mobile markets, prior to the introduction of new conditions and tariffs are obliged to apply for the approval of the CRA.

### **iii) Reference offers**

According to the Rule on interconnection CRA review Reference interconnection offers of SMP operators and issues approvals for their implementation.

### **iv) Numbering**

CRA is responsible for management and allocation of telephone numbers in accordance with the Numbering Plan for Telephone Services in Bosnia and Herzegovina.

CRA issues licences for usage of blocks of number, as well non-geographic and short numbers.

#### **v) Disciplinary proceedings and dispute resolution**

Concerning sanctions, the CRA fined four operators in 2014 for infringement of CRA telecommunication obligations in 2014. Two of decisions were appealed to the CRA Council.

CRA mediated in several interconnection disputes, in which the operators came to an agreement.

#### **vi) Any other relevant information**

CRA issues licences for the provision of telecommunication networks and services.

Following licenses are issued:

- Licence for provider of public electronic communications metros;
- Licence for provider of fixed telephony services;
- Licence for provider of Internet access services;
- Registration for provider of mobile telephony services.

Number of issued /revoked licences in 2014:

- Network: 16;
- Fixed telephony: 2;
- ISP: 7;
- Mobile SP registration: 2

Number of issued /revoked licences in first half of 2015:

- Network: 9;
- Fixed telephony: 0;
- ISP: 7;
- Mobile SP registration: 1.

#### **vii) Spectrum**

The Communication Regulatory Agency has finished activities on creation of the final radiofrequency plan for network of MW links for Public Broadcasting Services in assigned bands 3.8-4.2 GHz and 11 GHz, as a part of the project of digitalisation of transmission and emission systems of Public Broadcasting Services in B&H. The Agency also made a proposal of emergency measures with aim to mitigate the effects of delay in digitalisation of broadcasting in B&H.

Based on the adopted CEPT Decision, the proposal of the Rule on Utilisation of the RF bands 3400-3600 MHz and 3600-3800 MHz was created. This proposal was adopted upon public consultations and published in the Official Gazette of Bosnia and Herzegovina, no 99/14 in December 2014.

The Rule on Radio Equipment That Can Be Used Without Individual Licenses for Equipment (i.e. “non-license” use) was updated in the part of the Table in its Annex. This Table defines RF bands and type of equipment that can use them as well as harmonised standards and basic technical limitations in non-licensing use of RF spectrum.

Changes and Amendments of the Rule on Utilisation of the RF band 11.7-12.5 GHz for MVDS/MMDS Systems was also adopted and published in the Official Gazette of Bosnia and Herzegovina.

## **2. Relevant information on appeals, judgements and case law**

### **i) Appeals:**

There have been 4 CRA decisions related to Telecom matters challenged at the Administrative Division of Court of Bosnia and Herzegovina in 2014.

Also, three appeals from previous years were in the process at the Court of Bosnia and Herzegovina during 2014.

### **ii) Judgements:**

By July 2015, there was 1 judgement:

- Case on illegal construction of public telecommunications network - appeal was rejected.

### **iii) Appeal procedure and case law:**

Decision brought by the CRA may be appealed The Board of the CRA:

The party which is not satisfied with decision on appeal brought by the Board of the CRA, can start procedure before the Court of Bosnia and Herzegovina.

## 3.2. CROATIA – HAKOM

### 1. Main regulatory decisions taken by HAKOM during 2014 - July 2015

#### i) Market analysis

According to the European regulatory framework (Art. 16 of Directive 2002/21, Framework Directive), NRAs of new member states are obliged to review the markets situation and notify all of decisions to European Commission within 2 years of accession. Since Croatia became 28th member of EU on July 1 2013, HAKOM had to finish all of the market analysis and have them notified by July 1 2015.

#### 2014:

- In March 2014 HAKOM issued Decision on price for sub-loop unbundling. Price is based on BU-LRAIC+ model.
- In April 2014 HAKOM conducted three criteria test of retail market for leased lines and deregulated the same after conclusion that there is effective competition on the relevant market.
- In July 2014 HAKOM adopted new margin squeeze test methodology.
- In July 2014 HAKOM issued decisions on BSA prices and prices for terminated and trunk segments of leased lines. All prices are based on BU LRAIC+ models.
- In November 2014 HAKOM carried out three criteria test of retail markets for publicly available local and/or national telephone services provided at a fixed location both for residential and non-residential customers. HAKOM deregulated both markets, but competition on these markets is still safeguarded by obligation of margin squeeze test, imposed on Hrvatski telekom d.d. (HT) as operator with significant market power on market of access to the public telephone network at a fixed location for residential and non-residential customers and on its affiliated companies, Iskon Internet d.d. (Iskon) and OT-Optima Telekom d.d (Optima).
- In November 2014 HAKOM also carried out analysis of market for access to the public telephone network at a fixed location for residential and non-

residential customers, where HT was designated as operator with significant market power on relevant market. Following regulatory obligations were imposed on HT: non-discrimination, transparency, price control, cost accounting and accounting separation. In addition to these obligations, HT and affiliated companies Iskon and Optima, were imposed obligation of margin squeeze test for all retail packages that contain access service.

- In December 2014 HAKOM issued decision on monthly fees for WBA FTTH service, which are based on BU-LRAIC+ model.

## 2015:

- In March 2015 HAKOM conducted a three criteria test of call origination from public communications networks provided at a fixed location market (this market is not a part of EC Recommendation 2014/710/EU). Since all three criteria were met, HAKOM issued decision stating that the relevant market is susceptible to ex ante regulation and imposed regulatory obligations on HT as a SMP operator on that relevant market.
- In March 2015 HAKOM conducted a market analysis of the relevant market of wholesale voice call termination on an individual mobile network and imposed regulatory obligations on operators HT, Tele2 and Vipnet as SMP operators on the relevant market. HAKOM also defined that the regulated MTRs refer only to the calls originating from A numbers within the EU/EEA area, regardless of where the end user is located. For calls originating from A numbers outside the EU/EEA area price control obligation was withdrawn with other obligations maintained.
- In March 2015 HAKOM conducted a market analysis of the relevant market of wholesale call termination on an individual public telephone network provided at a fixed location and imposed regulatory obligations on SMP operators on the relevant market. Same as for mobile wholesale market, HAKOM defined that the regulated FTRs refer only to the calls originating from A numbers within the EU/EEA area. For calls originating from A numbers outside the EU/EEA area price control obligation was withdrawn.



- In May 2015 HAKOM passed a decision on the IP interconnection conditions placing Croatia among the small number of EU countries that have IP interconnection rules between operators. These conditions will ensure that all the operators' users have a guaranteed interoperability once their operators switch to IP. The above-mentioned decision is the result of several workshops organized by HAKOM in 2014 and 2015 in order to take into account, as much as possible, all the operators' views.
- In June 2015 HAKOM conducted a three criteria test of Broadband access market and decided, since 2 of the criteria were not met, that the relevant Broadband retail market and TV program transmission market should not be subject to ex ante regulation and that specific regulatory requirements for Hrvatski Telekom, Iskon and Optima should be abolished. At the same time, as a part of regulatory obligations imposed on HT on wholesale markets M3a and M3b, HAKOM has determined that HT, as well as companies under its control (Iskon and Optima), still have an obligation to submit retail prices for the Broadband internet access and IPTV services so that HAKOM can check whether they can pass or not the margin squeeze test. Final decision was issued in July 2015 but it was notified to EC in June 2015.
- In June 2015 HAKOM conducted analysis of the market of wholesale local access provided at a fixed location (M3a) and analysis of the market of wholesale central access provided at a fixed location for mass-market products (M3b). HAKOM issued decision stating that the relevant markets are susceptible to ex ante regulation and imposed regulatory obligations on HT as a SMP operator on these relevant markets. Final decisions were taken in July 2015 but they were notified to EC in June 2015.
- In June 2015 HAKOM conducted analysis of the market of wholesale high-quality access provided at a fixed location. HAKOM issued decision stating that the relevant markets are susceptible to ex ante regulation and imposed regulatory obligations on HT as a SMP operator on this relevant market. Final decision was issued in July 2015 but it was notified to EC in June 2015.
- In June 2015 HAKOM conducted a three criteria test on the market of wholesale trunk segments of leased lines and decided it is not susceptible to

ex ante regulation since the criteria weren't met. Final decision was issued in July 2015 but it was notified to EC in June 2015.

## **ii) Conflict between operators**

During 2014 HAKOM solved 16 disputes between undertakings.

In 10 cases the subject matter was the right to a penalty for delays in the provision of a regulated wholesale services and delays in the repairs by the incumbent operator HT. NRA partially adopted claims in all of the 9 cases. In these decisions the clarification was given as regards the responsibility for the delays in different situations. Towards the end of the year a number of these cases diminished.

In 2 cases the subject matter was the payment for the co-location services to the incumbent operator for the interconnection between incumbent operator and the alternative operators. NRA partially granted claims.

In 2 cases the subject matter was the arrangements for the sharing of the infrastructure. One complaint was rejected as out of competence of HAKOM and in other proceedings the claim was granted.

In 1 case the subject matter was the withdrawal of the proceeds from the interconnection because of the alleged fraud. The complaint was rejected as ill founded.

In 1 case the subject matter was the proper call direction in the context of the Interconnection agreement and the claim was adopted.

There have been no regulatory disputes from January until July 2015.

## **i) Other relevant information**

### **Consumer related issues**

HAKOM resolved 1177 disputes between consumers and operators in 2014 and 779 from January till 1 of July 2015.

## Numbering

HAKOM provides Prior notifications and assignments of addresses and numbers via e-Operator, web application (<http://www.hakom.hr/default.aspx?id=815>). At the end of 2015, the figures are as follows:

- Registry of operators/authorisations: 271
- Numbering: From 1 January 2014 till 30 June 2015 there's been 226 primary assignments of addresses and numbers, 11 transfers of rights to use addresses and numbers and 41 revocations of assigned addresses and numbers.

## Spectrum

Concerning spectrum issues, in 2015 HAKOM has assigned the rest of 1800 MHz spectrum to mobile operators. Now, the whole band is assigned to three operators. All assigned licenses are technology neutral so operators are allowed to deploy GSM, UMTS and LTE technologies.

Strategy for transition to DVB-T2 technology and release of 700 MHz band is under way. Consultations with responsible institutions, market players, including mobile operators and broadcasters, are in progress. The outcome is expected by the end of 2016. International coordination has also already started.

## 2. Relevant information on appeals, judgements and case law

### i) Appeals:

#### 2014:

- Number of challenged decisions in 2014 - 78
- Regulatory issues - 33
- Consumer disputes and other issues - 45
- Number of rendered judgments in 2014 - 21
- Upheld - 18
- Annulled - 3 (procedural reasons)

#### 2015 (until July):

- Number of challenged decisions 2015 (until July) - 40
- Regulatory issues - 13

- Consumer disputes and other issues - 27
- Number of rendered judgments in 2015 (until July) - 51
- Upheld – 43
- Annulled- 8 (mostly in consumer cases, 4 procedural reasons, 4 on merits)

**ii) Case law:**

- On 22 January 2014 the High Misdemeanour Court of the Republic of Croatia rendered a final judgment confirming the first instance judgment imposing a penalty to the incumbent operator HT in the amount of 2.000.000 HRK for the breach of a regulatory obligation concerning the application of a “retail minus” price in its BSA reference offer. The judgment is available in Croatian on the HAKOM web page.
- On 6 February 2014 the High Administrative Court of the Republic of Croatia rendered a final judgment confirming the HAKOM’s decision establishing the breach of a price control and cost accounting regulatory obligation by the Iskon Internet d.d, an operator owned by the incumbent operator HT. Subsequently, on 18 November 2014 the Misdemeanour Court in Zagreb rendered a final judgment imposing a fine in the amount of 50.000 HRK for the mentioned breach. Both judgments are available in Croatian on the HAKOM web page.
- On 16 May 2014 the High Misdemeanour Court of the Republic of Croatia rendered a final judgment confirming the first instance judgment imposing a penalty to the incumbent operator HT in the amount of 1.700.000 HRK for the breach of a regulatory obligation concerning the interconnection and access to numbers for value added services. The judgment is available in Croatian on the HAKOM web page.
- On 11 September 2014 the High Administrative Court of the Republic of Croatia rendered a ruling rejecting a request to grant an interim measure for the postponing of the application of the HAKOM’s decision imposing provisional measures to Optima to prevent market

distortion after HT's acquisition of management rights over Optima.  
The ruling is available in Croatian on the HAKOM web page.

- Analysis of the 2015 case law is not yet available.

### 3.3. CYPRUS – OCECPR

#### 1. Main regulatory decisions taken during 2014 - July 2015

##### i) OCECPR's main decisions in 2014

- Market regulation: 2 regarding the universal service (minimum set of services and designation of USO) and 1 regarding the collocation procedures.
- Dispute resolution: 1.
- Disciplinary proceedings: 14 regarding Electronic Communications (10 of them regarding administrative fees) and 2 regarding postal services.

##### ii) OCECPR's main decisions in 2015

- Market regulation: 10 decisions regarding the Fixed Markets, 3 decisions regarding the Market of Leased Lines, 4 decisions regarding the Market for wholesale voice call termination on individual mobile networks and 1 decision regarding the Market of Access and call origination on public mobile telephone networks.
- Dispute resolution: 1.
- Disciplinary proceedings: 15 regarding Electronic Communications and 2 regarding postal services.

## **2. Relevant information on appeals, judgements and case law**

### **i) Appeals:**

In 2014, 1 appeal has been filed.

In 2015, 3 appeals have been filed.

### **ii) Judgements:**

In 2014, 5 judgements have been delivered, 2 of them annulling Commissioner's Decisions and 3 of them in favour of Commissioner's Decisions.

In 2015, 1 judgement has been delivered annulling Commissioner's Decision.

### **iii) Appeal procedure and case law:**

Any party who has legal interest may file an appeal at first instance, at the Administrative Court, within 75 days of issuance of the Commissioner's Decisions. At second instance the appeals are filed within 42 days at the High Court.

### 3.4. FRANCE – ARCEP

#### 1. Main regulatory decisions taken by the ANR during 2014

The total number of Decisions issued by ARCEP's Board related to Telecom matters in 2014 was 1 574. Main categories are:

- Frequencies attributions: 934
- Number attributions: 310
- Market regulation: 6 (including market analysis procedures)
- Dispute resolution: 6
- Inquiries openings :21
- Registry of operators/authorisations : 257

By July 2015, a total of 791 decisions were issued:

- Frequencies attributions: 610
- Number attributions: 139
- Dispute resolution: 1
- sanctions: 37

Among ARCEP main regulatory decisions, the following can be highlighted:

#### i) Market analysis

##### **Broadband and superfast broadband**

According to the European regulatory framework (Art. 15 of Directive 2002/21, Framework Directive), ANRs are obliged to review the markets situation every 3 years. Since 2002, the European Commissions has published three Recommendations on relevant markets susceptible of ex ante regulation. A comparative table contain the description of these markets along the time is available in the Annex.

Concerning market analysis procedures, ARCEP adopted analysis decisions on the fixed broadband and superfast broadband markets for the regulatory period running from mid-2014 to mid-2017. Orange was designed as having a significative market power on markets 4, 5 and 6. This was in fact the first simultaneous review of the analyses for markets 4, 5 and 6, which made it possible to examine all of the competition issues identified in the fixed broadband and superfast broadband markets at once. The result for



ARCEP is a clearer regulatory framework, equipped to address the changes at work in the enterprise market.

Parallel to this review of asymmetrical regulation, ARCEP also worked on completing the symmetrical regulation - i.e. which applies equally to all operators - governing fibre-to-the-home (FttH) networks. The aim was to shore up the effectiveness of the regulatory framework which, for superfast access networks, rests on two pillars: asymmetrical regulation for existing infrastructure (copper local loop and associated resources, civil engineering) and symmetrical obligations relating to new networks, insofar as they will be deployed by a large number of private and public sector undertakings.

### **Fixed and mobile termination**

ARCEP adopted its analysis of the market for fixed and mobile voice call termination in Metropolitan France and the overseas territories, from 2014 to 2017. To promote the conditions that will ensure fair and balanced trade between the regions, ARCEP has imposed a similar maximum termination rate for Metropolitan France and the French overseas territories - thus finishing closing the gap between voice call termination rates in mainland France and the French overseas markets. The MTR set are from 0.78 c€ in 2015 to 0.74 c€ in 2017. The FTR set are from 0.079 c€ in 2015 to 0,077 c€ in 2017.

#### **A) SMS termination**

ARCEP had notified a draft decision on SMS termination market analysis, proposing to maintain current regulation for an additional three years. Nevertheless ARCEP and European Commission failed to achieve a consensus on competition risks and the regulatory measures necessary to prevent them. In consequence, ARCEP withdrew its draft decision and decided to place SMS termination markets under supervision.

#### **B) Fixed telephony market**

ARCEP adopted a final decision on its analysis of the markets for access to fixed telephony services and call origination at a fixed location (4th round: 2014-2017).

For this fourth round of analysis, ARCEP has prolonged the obligation imposed on Orange to provide a wholesale line rental product (VGAST) at cost-based prices. At the same time, the decision introduces a gradual relaxation of the pricing obligations imposed

on Orange for straight carrier selection offers, i.e. excluding VGAST wholesale line rental, whereby the customer continues to have a landline telephone subscription with Orange.

### **Value added services**

As part of two dispute settlement decisions, ARCEP specified in 2014 the conditions for implementing reforms to value added services, starting on 1 October 2015. These two disputes, between the firms Prosodie and Bouygues Telecom on the one hand, and between Colt and Orange on the other, concerned the conditions for implementing these reforms in the wholesale market, for the three number categories listed in the reform: premium rate numbers, numbers with neutralised rates and free-phone numbers.

#### **ii) Dispute resolution**

In 2014, ARCEP solved 4 disputes regarding the wholesale market of value-added services in the context of the reform of SVA in France with the adoption of a pricing model referred to as "C+S" which includes two components: the price of the call ("C") which is to be the same as the price of a call to a fixed line number, and the price of the service delivered by the provider ("S").

ARCEP also took position on the technical and tariff conditions of wholesale access for a mobile virtual network operator (MVNO).

#### **iii) Technical decisions**

##### **VDSL 2**

The expert committee on copper networks - an independent body whose members include the different operators, including the owner of the copper network, Orange, as well as equipment manufacturers - delivered a favourable opinion by consensus on July 10 2014, enabling VDSL2 to be introduced on all lines emanating from a cabinet in the Orange copper local loop. This opinion extended the authorised perimeter of use for this technology, which had been confined to only certain lines up until that time.

## **Mobile coverage and quality of service**

ARCEP introduced a scoreboard for mobile coverage and quality of service that includes operators' coverage levels and network coverage maps. The purpose of the scoreboard is to provide a clear picture of the differences in mobile operators' coverage and quality levels, to allow users to make an informed choice between the plans available in the marketplace. If it is easy for users to compare price points, coverage and quality of service are concepts that may be harder to understand.

## **Spectrum**

End of 2014, ARCEP launched a public consultation on a strategic review of spectrum for ultra-high-speed mobile systems. This public consultation followed up on the Prime Minister's press release of 10 December 2014, announcing the main stages for releasing the 700 MHz band, used by digital terrestrial television, to mobile systems.

## **Power to sanction**

On 5 July 2013, the Constitutional Council considered the legal provisions concerning ARCEP's power to impose sanctions in the electronic communications sector to be unconstitutional. On 12 March 2014, the French Government published an order which introduces a new sanctions procedure in the postal and electronic communications sectors.

ARCEP initiated 19 proceedings against operators, thereby after its restored sanctioning powers.

### **1. Relevant information on appeals, judgements and case law**

The system of national competent courts for appeals in France is the following:

- For dispute settlement decisions, the appeal is to the Court of Appeal of Paris, which has a specific chamber for economic regulation and competition.

- For decisions made by Arcep in the exercise of its missions of control or regulation, the appeals are to the Council of State, the highest administrative jurisdiction, in first and last instance.
- Other contentious cases are tried before the courts such as the Administrative Court and the Administrative Court of Appeal.

### i) Appeals

**Court of Appeal of Paris:** Since early 2014, there were 5 Arcep dispute settlement decisions (related to pricing, value-added services, contract terms) subject to appeal to the Court of Appeal of Paris among which:

- 3 were dismissed by the Court as abandoned applications;
- The Court also dismissed one company's petition;
- One case (access to optical networking) is still pending.

There were 3 decisions in 2015 (dismissed by the Court as abandoned applications) and 1 in 2014 where the Court ruled in favour of Arcep.

**Court of Cassation:** 1 judgment in 2014 concerning hosting performances and pricing offers.

**Council of State:** Since 2014, there were 9 judgments relating to Arcep regulatory decisions in the field of electronic communications, including 8 cases where the Council of State ruled in favour of Arcep, concerning notably:

- unbundling of local loop;
- broadcasting transmission services (dismissal of 3 appeals);
- refarming of the 1800 MHz band;
- measuring of quality of service;
- publication of a report on quality of service in internet access.

In 1 case, concerning a roaming agreement, the Council of State ruled in favour of the company.

**Administrative court of appeal of Paris:** Since 2014, 31 judgments, concerning the fees for right of use; in 23 of these cases, the Court ruled in favour of Arcep.

**Administrative Tribunal of Paris:** Since 2014, 40 judgments, mostly involving the fees for right of use; in 24 of these cases, the Tribunal ruled in favour of Arcep.

## ii) Judgments

See answers to questions iii) and v).

## iii) Case law

### Council of State case-law

On January 31, 2014, the Council of State rejected a request by the French association of network and telecommunications services operators (AFORST) against Arcep decision 2012-0007 modifying durations amortization of copper local loop assets of France Telecom (case n° 361150).

On June 11, 2014, the Council of State rejected 3 appeals against the market analysis decision on wholesale terrestrial broadcasting service television programs in digital mode filed by TDF, Towercast and Multiplex R5 (cases n° 363920, 363949, 365455).

On June 18, 2014, the Council of State rejected an appeal filed by Orange France against the decision authorizing Bouygues Telecom to reuse the 1800 MHz band, previously limited to the GSM technology, with other technologies ("refarming") (case n°369077).

On July 8, 2015, the Council of State rejected applications for interim measures against Arcep sanctions taken against three overs-sea operators (Guadeloupe, Guyane, and Martinique Téléphone Mobile). Arcep has withdrawn the frequency use authorizations granted in 2008 to the three companies for breaches of their obligations under their frequency use authorizations (absence of 2G and 3G deployment in each department; failure to pay part of the frequency usage fees) (cases n°390765, 390766, 390767).

On October 9, 2015, the Council of State rejected an appeal filed by Bouygues Telecom on ARCEP methodology for calculation and verification of mobile coverage obligation and quality of services for Free Mobile (CE, 9 oct. 2015, *Bouygues Telecom*, case n° 384231). The Council annulled decisions by which Arcep refused to determine the conditions in which the roaming agreement between Orange and Free Mobile should end. The Council did not however control the opportunity for Arcep to intervene on the contract; the annulment was solely based on the motivation by the Authority of its refusal of the request of Bouygues Telecom (cases n° 382945, 379579).

### **Court of appeal of Paris case-law**

On September 17, 2015, the Court rejected an appeal by TDF against Arcep decision n°2011-0809 settling a dispute between TDF and Towercast. The previous Court of appeal decision on the case (25 October 2012) had been annulled by a judgment of the Court of Cassation rendered March 25, 2014. The Court of appeal confirmed that Arcep was competent to impose, to an operator exercising a significant influence on a market, remedies which applied to previously made contracts (case n°2014/07616).

On March 19, 2015, the Court annulled Arcep decision n°2010-0742 settling a dispute between companies Mobius and La Réunion Numérique (LRN) on procedural grounds (the delegating authority was not summoned to the case) (case n°2012/22629).

### 3.5. GERMANY – BNETZA

#### 1. Main regulatory decisions taken by the BNetzA during 2014

##### i) BNetzA's main decisions

The total number of Decisions issued by BNetzA related to Telecom matters in 2014 was 253. Main categories are:

- Market analyses and regulatory orders (general access obligations): 22
- Decisions on individual access requests: 4
- Decisions on rate regulation 150
- Dispute resolution: 1
- Reference offers: 3
- Inquiries into refusals of access: 72
- Enforcement: 1

The total number of Decisions issued by BNetzA related to Telecom matters in 2015 was 243. Main categories are:

- Market analyses and Regulatory orders (general access obligations): 20
- Decisions on individual access requests: 3
- Decisions on rate regulation: 139
- Dispute resolution:
- Reference offers: 3
- Inquiries into refusals of access: 78
- Enforcement:

##### ii) Market analyses and regulatory orders

On the market for wholesale call termination on individual public telephone networks provided at a fixed location (market 1 of Recommendation 2014/710/EU), 19 additional alternative operators were found to have significant market power. Obligations of access, non-discrimination, transparency and ex-ante rate control were imposed by means of a regulatory order.

On the market for wholesale voice call termination on individual mobile networks, an additional MVNO was subjected to obligations of access, non-discrimination, transparency and rate control.

The market for wholesale central access provided at a fixed location for mass-market products (market 3b of Recommendation 2014/710/EU) was analyzed. The BNetzA identified Telekom Deutschland GmbH as an undertaking having significant market power on a national market for bitstream access with handover at layer 2 and a subnational market for bitstream access with handover at layer 3. The subnational market consists of all but 20 cities, for which the President's Chamber has found that there is sustainable competition on the market for bitstream access with handover at layer 3, provided that in these regions bitstream products with handover at layer 2 are available under the conditions set out by an approved reference offer. Obligations of access, non-discrimination, accounting separation, transparency and rate control were imposed for handover at layer 2 (ex-ante-rate approval) and layer 3 (ex-post rate control) by means of a regulatory order.

On the markets for the provision of terrestrial transmitters for the transmission of analogue VHF-radio signals for content providers and the Use and/or sharing of antennas (Sub-markets of market 18 of the Recommendation 2003), Media Broadcast GmbH was found to have significant market power, and obligations of access, non-discrimination and rate control were imposed by means of a regulatory order.

On the market for access to the public telephone network at a fixed location for residential and non-residential customers (market 1 of Recommendation 2007/879/EG) obligations of ex post rates regulation, carrier selection and carrier preselection, non-discrimination rule in regards to carrier selection and carrier preselection were imposed by means of a regulatory order.

### **iii) Reference offers**

On the market for wholesale call termination on individual public telephone networks provided at a fixed location (market 1 of Recommendation 2014/710/EU) and call origination, the reference offer for IP-interconnection and the revised reference offer for PSTN-interconnection was approved, specifying the conditions of access via IP-interconnection and the gradual winding down of access via PSTN-interconnection to the network of Telekom Deutschland GmbH.

Concerning the market for wholesale local access provided at a fixed location (market 3a of Recommendation 2014/710/EU) a reference offer concerning access to the local loop and its replacement products after the introduction of vectoring was finally approved.

The first stage of approving the reference offer on market 3b of Recommendation 2014/710/EU for Bitstream Access to the network of Telekom Deutschland GmbH was



completed in 2015. The decision obliged Telekom Deutschland GmbH to amend the proposed offer on many points.

On the markets for the provision of terrestrial transmitters for the transmission of analogue VHF-radio signals for content providers and the Use and/or sharing of antennas (Sub-markets of market 18 of the Recommendation 2003), the first step of approving the reference offer of Media Broadcast GmbH was concluded with a decision obliging Media Broadcast GmbH to amend its reference offer.

The first stage of approving the reference offer on the market for wholesale terminating segments of leased lines, irrespective of the technology used to provide leased or dedicated capacity (market 6 of Recommendation 2014/710/EU) was completed in 2014. The second stage was completed in 2015. The decisions obliged Telekom Deutschland GmbH to amend the proposed offer in many points.

#### **iv) Rate regulation**

The rates of Telekom Deutschland GmbH for call origination and call termination, both for PSTN- and IP-interconnection, were approved; the basic rates were reduced by ca. 20%. Identical rates were approved for call termination in the networks of alternative operators.

The rates for mobile termination, interconnection infrastructure and the granting of collocation of the mobile network operators on the German market were approved in 2014.

The mobile termination rates of all four operators are:

1 December 2014 till 30 November 2015: 1,72 Cent/Min.

1 December 2015 till 30 November 2016: 1,66 Cent/Min.

The rates of Telekom Deutschland GmbH for bitstream access (market 3b), which have to be notified to the BNetzA before they can be applied, were repeatedly assessed in ex-post regulation proceedings, but no abuse of significant market power was found.

Beside of these core issues of rate regulation, many rates for services and infrastructures connected to interconnection or access to the local loop were approved in different proceedings.

For the first time, rates were approved for the provision of terrestrial transmitters for the transmission of analogue VHF-radio signals for content providers and the use and/or sharing of antennas (Sub-markets of market 18 of the Recommendation 2003) by Media Broadcast GmbH.

The rates of Telekom Deutschland GmbH for wholesale terminating segments of leased lines, irrespective of the technology used to provide leased or dedicated capacity (market 6 of Recommendation 2014/710/EU) were approved in 2014. Rates were approved for leased lines SDH and leased lines with ethernet-interfaces and conveyance services. The approval has been granted for a limited period only. Therefore a new approval was required in 2015.

#### v) Dispute resolution and decisions on individual requests for access

In several cases, requests by alternative operators for improved and expanded conditions for the construction of master street cabinets to access the local loop of Telekom Deutschland GmbH to offer higher-performing broadband services were granted.

In two other cases, BNetzA mandated individual access requests to terrestrial transmitters for the transmission of analogue VHF-radio signals and use of antennas of Media Broadcast GmbH.

The BNetzA is empowered to grant rights of way and the approval of the Government is not necessary to grant spectrum licences. Additionally the BNetzA is the authority for frequency management.

In 2015, BNetzA auctioned in total 270 MHz of spectrum from the 700 MHz, 900 MHz, 1500 MHz and 1800 MHz bands for mobile broadband within the framework of the broadband strategy of the Government. The auction resulted in Telefónica Deutschland GmbH & Co. OHG, Telekom Deutschland GmbH and Vodafone GmbH winning the following spectrum in line with their business models:

Undertaking:	Amount of spectrum:	Awarding price:
Telefónica Germany GmbH & Co. OHG	700 MHz: 2 x 10 MHz 900 MHz: 2 x 10 MHz 1800 MHz: 2 x 10 MHz	€1,198,238,000
Telekom Deutschland GmbH	700 MHz: 2 x 10 MHz 900 MHz: 2 x 15 MHz 1800 MHz: 2 x 15 MHz 1500 MHz: 20 MHz	€1,792,156,000
Vodafone GmbH	700 MHz: 2 x 10 MHz 900 MHz: 2 x 10 MHz 1800 MHz: 2 x 25 MHz 1500 MHz: 20 MHz	€2,090,842,000
<b>Total</b>	<b>270 MHz</b>	<b>€5,081,236,000</b>

## **2. Relevant information on appeals, judgements and case law**

### **i) Appeals**

In 2014 there were 29 appeals (first instance) against 20 different decisions by BNetzA's ruling chambers related to telecommunication matters. In 9 cases the applicant withdrew the lawsuit and the proceedings were terminated. In 1 case there was no need to adjudicate. 1 lawsuit was dismissed for procedural reasons. 1 case was won by the applicant for substantive reasons. 2 lawsuits were mainly won by the applicants for procedural reasons. 15 lawsuits are still pending.

Subject matter of 23 cases are charge approval decisions. Subject matter of 4 cases is concerned with frequency issues. Subject matter of 2 cases is the reference offer "Vectoring".

In the first semester of 2015 there were 39 appeals (first instance) against 23 different decisions by BNetzA's ruling chambers related to telecommunication matters. In 9 cases the applicant withdrew the lawsuit and the proceedings were terminated. 30 lawsuits are still pending.

Subject matter of 37 cases are charge approval decisions. Subject matter of 2 cases are concerned with frequency issues.

The duration of appeal proceedings varies substantially. The average duration of appeal proceedings of first instance is about 2 years.

### **ii) Judgements**

In 2014 there were around 100 judgements (first instance) concerning decisions by the ruling chambers related to telecommunication matters.

Subject matter of around 80 % of the judgements are charge approval decisions. Subject matter of around 10 % of the cases is requirements for call termination. Access Requirements and the review of the reference offer for termination services are subject matter of around 5 % of the cases each.

In the first semester of 2015 around 30 judgements (first instance) concerning decisions by the ruling chambers related to telecommunication matters.

Subject matter of around 85 % of the judgements are charge approval decisions. Subject matter of around 15 % of the cases is about frequency issues, especially frequency issues concerning a merger and the merger itself.

### iii) Appeal procedure and case law:

The relevant national courts for decisions by the ruling chambers are the Administrative Court Cologne (first instance) and the Federal Administrative Court in Leipzig (second instance).

#### Relevant national case law:

- The Federal Administrative Court in Leipzig ruled that discontinuance charges are long run incremental costs of efficient service provision and therefore generally permitted.
- The Federal Administrative Court in Leipzig submitted a question on the interpretation of Art. 7 (3) Framework Directive to the ECJ.
- The Federal Administrative Court in Leipzig ruled the legal provision about limited retroactive effect of charge approval to be unconstitutional.
- The Administrative Court Cologne annulled several decisions by the ruling chambers because of incorrect reasoning of discretion ("Beurteilungsspielraum"), for instant concerning the method of determination of investment.
- The Administrative Court Cologne decided on the legality of ordering a procurement procedure for the allocation of certain frequencies.

### 3.6. ISRAEL – MOC

#### 1. Main regulatory decisions taken by the NRA.

##### i) MOC'S main decisions

- a. In February 2015 a wholesale market was launched in Israel over the incumbent (Bezeq) infrastructure. The wholesale services are based on the ladder of investments concept including Bit Stream Access (BSA), Sub Loop Unbundling (SLU), dark fibers, access to ducts, miniducts, microducts etc. The maximum tariffs of those services are regulated.

Currently there are 7 operators that offer Internet services based on BSA including Bezeq international (Bezeq's subsidiary), Cellcom (significant cellular operator), Partner (another significant cellular operator), 018 Xfone (ISP operator) and others.

By December 31<sup>st</sup> 2015 newcomers offer internet services to 210,000 subscribers which are around 14% of bezeq's internet access lines (not including Bezeq International). Please note that Hot (the Cable Operator) also offers internet services over its own infrastructure to an additional 700,000 subscribers. According to the regulation Hot also will be obliged to provide wholesale services to newcomers in the near future.

- b. In early 2015 the Ministry of Communications successfully concluded a tender for fourth generation mobile frequencies. Four operators were awarded frequencies. The allocations include a requirement to use the frequencies within a specified time frame, and minimum coverage requirements. The tender was accompanied by a policy on network sharing, which will allow operators to build joint networks.

##### **Wholesale Market**

A wholesale market was created, providing access BSA, physical infrastructure services (ducts, man-holes, poles, etc.) and dark fibers. Fixed telephony is planned to be implemented in the coming year.

## **Mobile Market**

A tender for 4G licenses was completed and 4 mobile operators were granted licenses to deploy 1800 MHz bands for 4G services.

In addition a policy for spectrum sharing was developed and 1 spectrum sharing agreement was ratified so far by the MOC.

## **Authorization**

A combined general license superseded a number of individual licenses, including MVNO, international telephony and special general fixed line services.

In addition, a general authorization for ISPs was created.

## **Net Neutrality**

The telecommunication law was amended to impose Net Neutrality in all the telecommunication sectors.

## **Fixed Terminal Equipment**

Fixed terminal equipment e.g. telephone, facsimilia and modem was exempted from ex-ante authorization, provided that it conforms to a recognized international standard e.g. CE, FCC, ETSI, etc.

## **Dispute resolution**

Several disputes regarding the wholesale market were resolved by the MOC, in its semi-judicial role.

## **Sanctions and fines**

### **1. Fixed line operator – Wholesale Market fine (2.125 Million EUR):**

The issues we found related to the Bezeq (the fixed incumbent) breaching an important regulation and the Ministry's directives:

- Initiating customer retention calls to customers before the portability was completed, and convincing them not to leave because they'll receive better service from the operator.

- Not allowing a manual portability process, before the automatic process was established
  - Exceeding the maximum service time for portability
- Not providing a (Human) Call Center for wholesale operator (ISP's)
2. Fixed line operator – Charging tariffs different than those that were set by the Ministry of Communications (2 fines with the total amount of 1.625 Million EUR).
  3. 2 Operators that used telephone numbers out of the range they were allowed to use (18,000-225,000 EUR).
  4. Operator that started to charge the subscribers payments for a router if they abandoned the service, an act which is forbidden according the regulation (225,000 EUR).
  5. A mobile operator which did not answer subscribers claims about overcharging, according to the regulatory framework (160,000 EUR)
  6. 2 mobile operators that did not give their subscribers the required disclosure in contracts and invoices (80,000-93,000 EUR)
  7. 2 operators that did not report about technical faults as they are required to do (12,000-34,000 EUR)
  8. 8 Operators not reporting on time about implementing a new regulation as they were requested (2,000-27,000 EUR)
  9. Overseas calls operator that for few quarters did not report the data that such providers are obliged to report (3,500 EUR)
  10. An operator reported that it is ready for the implementation of a new regulation and we discovered that it was not implementing it. We assessed a fine for breaching the regulation (20,000 EUR).

**ii) Any other relevant information**

**Spectrum**

A tender for 4G service in the 1800 MHz band was published in July 2014.

Four winners were announced in January 2015. Frequencies were assigned in August 2015.

An approval for RAN sharing between two of the existing operators was issued in April 2015 and an approval for sharing of their respective assigned frequencies was issued in August 2015.

## **2. Relevant information on appeals, judgements and case law**

Bezeq, the incumbent fixed operator, appealed to the High Court of Justice against the implementation of the wholesale market, claiming a lack of jurisdiction, unreasonable tariffs, and technical inability to implement wholesale telephony in the manner the Minister had mandated. The court upheld the jurisdiction of the Minister of Communications; and the Ministry and Bezeq subsequently reached agreement on an alternate manner of provision of wholesale telephony. This alternate arrangement is, at the time of this writing, being considered in consultation.

### **i) Judgements, appeal procedure and case law:**

In accordance with Israeli law any citizen who considers himself aggrieved by a decision made by state authorities, can attack the decision by filing an administrative appeal. Such appeals can be served to a District Court presiding as an Administrative Court or to the Supreme Court depending on the subject of the appeal and the authority that made the decision.

During 2014 and the first semester of 2015 nine administrative appeals were filled against regulatory decisions made by the Ministry of Communications. In 6 of the appeals the regulatory decisions were upheld, 1 appeal was withdrawn by the petitioner and two are still open.

The topics of the above mentioned appeals are:

Numbering plan;

Content providers;

Premium services and tariffs;

Spectrum use;

Monetary sanctions;

Bit Stream Access



### 3.7. JORDAN – TRC

#### 1. Main regulatory decisions taken during 2014 - 2015

##### i) TRC's main decisions

###### In 2014

- TRC approved licensing extra 10+10MHz in the 2100MHz frequency band for 3G services and 20+20MHz in the 1800MHz frequency band for 4G Services to the benefit of Zain.
- TRC assigned 3 Channels in the 600MHz frequency band for the national Digital Terrestrial TV (DTT) Broadcasting Project operated by Jordan Television based on DVB-T2 Technology supporting high definition Programs, and this project is expected to be launched by 2016.
- It was approved to grant a Class License to new Telecom company according to decision of the board of commissioners No. (4-14 / 2014) Dated of 05/28/2014, according to the new Instructions for the granting of public telecommunications licenses.
- The adoption of the draft instructions for the application procedures and criteria for selection of licensed public telecom operators according to the Board of Commissioners decision No. (2-3 / 2014) Date of 02/05/2014, where after receiving and evaluating comments received on the draft instructions for the application procedures and criteria for selection of licensed public telecom operators the instructions have been approved according the Commissioners Council decision No. (5-5 / 2014) date of 03/10/2014.
- The TRC has approved the renewal of public telecommunications license (individual license) for the company “Petra Jordanian Mobile Telecommunications” – Orange Mobile – the Board of Commissioners decision No. (2-6 / 2014) dated 08/04/2014 for a period of fifteen years from the current license end date which is on expiration date 08/ 05/2014.
- Reference offers for wholesale broadband access and mobile termination services.

- Compelling dominant licensees to share their infrastructures with other licensees at prices approved by TRC using the long run incremental costs (LRIC) methodology which set prices up to the end of 2014.
- TRC signed a memorandum of understanding with the Central Bank of Jordan for cooperation and coordination in the area of monitoring and overseeing providers of pay-by-phone services and mobile telecommunications networks operators; while TRC will monitor operators' provision of services to ensure high-tech, secure, efficient and reasonably priced electronic payment services.
- TRC published the Instructions Related to Licensing and Accrediting Electronic Authentication Entities and then set up a committee to consider responses of interested parties in the sector, employ their contributions and comments in the instructions and draft them in accordance with best international practices in this respect.
- Approval of the updated "IPstream Service Schedule 2.02" and the wholesale tariff of the two new speeds as follows:

Service		Speed	Rate Unit	2014
Monthly rental charges	Bit-stream (national), with modem	40 Mb/s	JD/month	22.439
		80 Mb/s	JD/month	27.539
	Bit-stream (national), without modem	40 Mb/s	JD/month	18.285
		80 Mb/s	JD/month	23.386
Modem Fee /VDSL		JD on Cancellation per user		21

- Issuance of "Instructions on the top-down Fully Allocated Cost accounting system", TRC Board Decision No. (5-22/2014) dated (4/Dec/2014).
- Issuance of "Instructions on Long Run Incremental top-down Cost accounting system",
- TRC Board Decision No. (5-22/2014) dated (4/12/2014).
- Starting to implement the regulatory decision on the prices of postal services exclusive to Jordan Post Company
- The TRC Granted 4 Postal licenses as a Private Postal Operator (local category).

- The TRC renewed 6 Postal licenses were granted as a Private Postal Operator (local category).

**In 2015**

- TRC approved licensing 10+10MHz in the 1800MHz frequency band for 4G services to the benefit of Orange
- TRC approved licensing 10+10MHz in the 1800MHz frequency band for 4G services to the benefit of Umniah
- TRC approved licensing 10+10MHz in the 3500MHz frequency band for Fixed Broad Band Access services to the benefit of Umniah.
- In January 18, 2015 TRC has issued the decision No. 4-1/2015, by which Jordan Telecommunication Company was directed to correct its state of affairs, by providing the International IP Capacity service to all licensees exists inside Hashem Station or any companion site the same price that is used for the affiliated companies falls within the Jordan Telecommunication Group, without any discrimination regardless any time commitment and/ or contracted capacity.
- 2011 TSLRIC+ rates extended till the end of 2015 by decision dated 29th Jan 2015.
- Modification of Termination of Incoming International Calls rates to be as follows:

Service	Rates/Fixed networks (fils/minute)	Rates/Mobile networks (fils/minute)
a. Termination of Incoming Int'l calls to Jordan between Local licensees and Int'l Operators	87.6	103.0
b. Termination of Incoming Int'l calls to Jordan between Local licensees	73.0	85.9

Decision dated 15th Nov. 2015, rates to be implemented starting 1st Dec. 2015, impact of this modification will be measured six months after implementation.

- The TRC has finalized the draft of the “Instructions to regulate public communications in real estate Compounds”, where it is expected the adoption of these instructions by the Board of Commissioners of the Commission during the first quarter of 2016.

- The TRC Granted 17 Postal licenses as a Private Postal Operator (local category).
- The TRC revoked 4 Postal licenses as a Private Postal Operator (local category).
- The TRC renewed 1 Postal licenses were granted as a Private Postal Operator (local category).
- The TRC renewed 2 Postal licenses were granted as a Private Postal Operator (international category).

## **2. Relevant information on appeals, judgements and case law**

### **ii) Appeals:**

Regarding the TRC regulatory decisions, 12 decisions had been challenged under the jurisdictional specialized courts of Jordan during 2014-2015:

#### **By December 2014**

- Revendication action (7 cases)
- Judgment resolution (2 cases).

#### **By December 2015**

- Revendication action (3 cases)

In accordance to article (9) of Jordan High Court of Justice LAW of 1992 (replaced by Administrative Court Law No.27 for 2014) all administrative decisions shall be appealed to the high court of justice unless the claims are related to financial matters therefor decisions shall be subject to the civil courts of Jordan.

### **iii) Judgements:**

Along 2014, there were 2 judgments against TRC decisions related to telecom matters, while no judgment reached for any claim registered to the courts in 2015.

### **iv) Auxiliary Factors to strengthen the previous QoS instructions and regulatory decisions regarding international termination rate to Jordanian Networks**

#### **In 2014**

- TRC achieved Technical audit campaign to monitor the quality of Mobile communication services (Voice & Data) in Jordan through a third party

(specialized company in this field), in addition to collecting the statistics and information relating to the quality of services on a semi-annual basis.

#### **In 2015**

- TRC implemented fraud control project by taking action against illegal termination of international voice calls through GSM VOIP Gateways “SIM Boxes” activities in Jordanian market, because this activity has several negative consequences to national telecom market including revenue loss, quality of service degradation, and weakening of security.

### 3.6. ISRAEL – MOC

#### 1. Main regulatory decisions taken by the NRA.

##### i) MOC'S main decisions

- a. In February 2015 a wholesale market was launched in Israel over the incumbent (Bezeq) infrastructure. The wholesale services are based on the ladder of investments concept including Bit Stream Access (BSA), Sub Loop Unbundling (SLU), dark fibers, access to ducts, miniducts, microducts etc. The maximum tariffs of those services are regulated.

Currently there are 7 operators that offer Internet services based on BSA including Bezeq international (Bezeq's subsidiary), Cellcom (significant cellular operator), Partner (another significant cellular operator), 018 Xfone (ISP operator) and others.

By December 31st 2015 newcomers offer internet services to 210,000 subscribers which are around 14% of bezeq's internet access lines (not including Bezeq International). Please note that Hot (the Cable Operator) also offers internet services over its own infrastructure to an additional 700,000 subscribers. According to the regulation Hot also will be obliged to provide wholesale services to newcomers in the near future.

- b. In early 2015 the Ministry of Communications successfully concluded a tender for fourth generation mobile frequencies. Four operators were awarded frequencies. The allocations include a requirement to use the frequencies within a specified time frame, and minimum coverage requirements. The tender was accompanied by a policy on network sharing, which will allow operators to build joint networks.

#### Wholesale Market

A wholesale market was created, providing access BSA, physical infrastructure services (ducts, man-holes, poles, etc.) and dark fibers. Fixed telephony is planned to be implemented in the coming year.

## **Mobile Market**

A tender for 4G licenses was completed and 4 mobile operators were granted licenses to deploy 1800 MHz bands for 4G services.

In addition a policy for spectrum sharing was developed and 1 spectrum sharing agreement was ratified so far by the MOC.

## **Authorization**

A combined general license superseded a number of individual licenses, including MVNO, international telephony and special general fixed line services.

In addition, a general authorization for ISPs was created.

## **Net Neutrality**

The telecommunication law was amended to impose Net Neutrality in all the telecommunication sectors.

## **Fixed Terminal Equipment**

Fixed terminal equipment e.g. telephone, facsimilia and modem was exempted from ex-ante authorization, provided that it conforms to a recognized international standard e.g. CE, FCC, ETSI, etc.

## **Dispute resolution**

Several disputes regarding the wholesale market were resolved by the MOC, in its semi-judicial role.

## **Sanctions and fines**

### **1. Fixed line operator – Wholesale Market fine (2.125 Million EUR):**

The issues we found related to the Bezeq (the fixed incumbent) breaching an important regulation and the Ministry's directives:

- Initiating customer retention calls to customers before the portability was completed, and convincing them not to leave because they'll receive better service from the operator.
- Not allowing a manual portability process, before the automatic process was established
- Exceeding the maximum service time for portability

Not providing a (Human) Call Center for wholesale operator (ISP's)

2. Fixed line operator – Charging tariffs different than those that were set by the Ministry of Communications (2 fines with the total amount of 1.625 Million EUR).
3. 2 Operators that used telephone numbers out of the range they were allowed to use (18,000-225,000 EUR).
4. Operator that started to charge the subscribers payments for a router if they abandoned the service, an act which is forbidden according the regulation (225,000 EUR).
5. A mobile operator which did not answer subscribers claims about overcharging, according to the regulatory framework (160,000 EUR)
6. 2 mobile operators that did not give their subscribers the required disclosure in contracts and invoices (80,000-93,000 EUR)
7. 2 operators that did not report about technical faults as they are required to do (12,000-34,000 EUR)
8. 8 Operators not reporting on time about implementing a new regulation as they were requested (2,000-27,000 EUR)
9. Overseas calls operator that for few quarters did not report the data that such providers are obliged to report (3,500 EUR)
10. An operator reported that it is ready for the implementation of a new regulation and we discovered that it was not implementing it. We assessed a fine for breaching the regulation (20,000 EUR).

## ii) Any other relevant information

### Spectrum

A tender for 4G service in the 1800 MHz band was published in July 2014.

Four winners were announced in January 2015. Frequencies were assigned in August 2015.

An approval for RAN sharing between two of the existing operators was issued in April 2015 and an approval for sharing of their respective assigned frequencies was issued in August 2015.



## 2. Relevant information on appeals, judgements and case law

Bezeq, the incumbent fixed operator, appealed to the High Court of Justice against the implementation of the wholesale market, claiming a lack of jurisdiction, unreasonable tariffs, and technical inability to implement wholesale telephony in the manner the Minister had mandated. The court upheld the jurisdiction of the Minister of Communications; and the Ministry and Bezeq subsequently reached agreement on an alternate manner of provision of wholesale telephony. This alternate arrangement is, at the time of this writing, being considered in consultation.

### i) Judgements, appeal procedure and case law:

In accordance with Israeli law any citizen who considers himself aggrieved by a decision made by state authorities, can attack the decision by filing an administrative appeal. Such appeals can be served to a District Court presiding as an Administrative Court or to the Supreme Court depending on the subject of the appeal and the authority that made the decision.

During 2014 and the first semester of 2015 nine administrative appeals were filled against regulatory decisions made by the Ministry of Communications. In 6 of the appeals the regulatory decisions were upheld, 1 appeal was withdrawn by the petitioner and two are still open.

The topics of the above mentioned appeals are:

Numbering plan;

Content providers;

Premium services and tariffs;

Spectrum use;

Monetary sanctions;

Bit Stream Access

### **3.8. MALTA – MCA**

#### **1. Main regulatory decisions taken by the MCA during 2014**

##### **i) MCA's main decisions**

The total number of Decisions issued by the MCA and related to telecoms matters in 2014 were 11.

The main categories were:

- Market regulation: 5 (including market analysis procedures, pricing and review of Reference offers)
- Dispute resolution: 2
- Disciplinary proceedings: 3
- Universal service: 1

By July 2015, a total of 5 decisions were issued. These included:

- Market regulation: (including market analysis procedures, pricing and review of Reference offers) 1
- Dispute resolution: 1
- Universal service: 3

Among the MCA's main regulatory decisions, the following can be highlighted.

#### **Market analysis**

During 2014, the MCA published two decisions regulating the wholesale voice termination markets. In March, the MCA issued its decision on the wholesale regulation of mobile termination rates, where it is adopting a pure LRIC model to regulate mobile termination rates. Similarly, in April, the MCA published its decision on the fixed termination rates (FTR), adopting a pure LRIC model to set FTR at cost-oriented rates. Both models follow the Recommendation on the treatment of termination rates.

In April 2015, the MCA issued its final decision on the retail fixed access market where it is deregulating the market, given that the incumbent operator faces competition from the cable network and from indirect constraints such as mobile telephony.

During the same month, the MCA also opened a consultation on how access to the FTTH network is to be provided by the incumbent on a virtual basis (VULA). The final decision is to be adopted later, following notification to the EU Commission.

### **Universal service**

Following a consultation process, in May 2015 the MCA published a decision entitled *Universal Service Obligations on Electronic Communication Services*. The decision specified that the undertaking designated to provide access at a fixed location, is to do so only in the case when there are no other public communications networks in a position to provide connection at a fixed location to the end-user in any given area.

Following an extensive analysis to identify whether to retain or withdraw the printed telephone directory as a universal service, due to the availability of an electronic comprehensive directory (which is a universal service in itself) and directory enquiry services, it was decided not to include the printed directory as a universal service. Moreover, the undertaking designated to provide the electronic comprehensive directory services is required to enable end users to search both fixed and mobile telephone numbers by means of a smart phone app. This development would not exclude entities willing to publish a printed directory on a voluntary commercial basis in the future.

The universal service decision also includes obligations on the provision of public payphones, specific measures for disabled users, reduced tariff options and ensuring users can control expenditure.

### **Financing of the Universal Service**

In October 2014, the MCA published a decision on the first USO financing claim made by GO plc (the Universal Service Provider) for 2010, which included a summary of the auditor's findings. Following this decision, in April 2015, the MCA published a consultation and a decision on the source of funds, stating that USO costs for 2010 were to be financed by means of public funds.

The designated undertaking submitted another claim for the net cost incurred in providing universal services during 2012. In October 2015, the MCA published its consultation on

the review of the application for USO financing claim for 2012, which was based on the same methodology applicable to the claim of 2010 as depicted earlier.

### **Dispute resolution**

In 2014, there was one dispute between the cable operator and the traditional copper infrastructure provider. This related to the alleged breach of a regulatory decision issued by the MCA entitled “Pricing of leased lines and Ethernet connection decision” issued in 2013. A final decision was issued whereby the traditional copper infrastructure provider was found to have acted in breach of the aforesaid decision and fined by the MCA. The MCA decision imposing the fine was not contested and the fine was paid.

There were no inter-operator disputes during the first half of 2015.

### **Sanctions and fines**

During 2014, the MCA fined the cable operator in separate instances, first in June and subsequently in December. In both instances the operator was fined for failing to adhere to termination procedure requirements relating to the provision of services with its subscribers. In the first instance, the operator chose not to contest and pay the fine. In the second instance it decided to contest the decision imposing the fine. The case is currently pending before the competent review forum – the Administrative Review Tribunal.

During the period in question, another fine was imposed on the traditional copper infrastructure provider further to the dispute filed by the cable operator, whereby the MCA decided that the traditional copper infrastructure provider acted in breach of a regulatory decision entitled “Pricing of leased lines and Ethernet connection decision” issued in 2013 [see above under ‘Dispute Resolution’].

In 2015, another fine was imposed on the cable operator further to its failure to provide information about the provision of so-called hybrid mobile telephony services. The operator again contested the decision imposing the fine before the Administrative Review Tribunal.

## **ii) Any other relevant information**

### **Spectrum**

In view of Commission Implementing Decision 2012/688/EU, in July 2014, the MCA amended the technical annex of the relevant licenses granting the rights of use of radio

frequencies for the establishment and operation of a third generation mobile communications network to reflect the conditions established in the 2012/688/EU Decision. As a result of this amendment, licensees will be in a position to deploy new technologies, such as LTE, in the 2100 MHz band.

In September 2014, the MCA published a Decision which defines the methodology for the assignment of spectrum in the 800 MHz (790-862 MHz), the 1800 MHz (1710-1785 MHz / 1805-1880 MHz) and the 2.5 GHz (2500-2690) bands, together with the applicable license conditions.

In February and September 2015, Government approved and published revisions to the National Frequency Plan. A Legal Notice to amend the General Authorisation (Radiocommunications Apparatus) Regulations (SL399.40) was also published. These amendments served to align national frequency allocations with those of the ITU and CEPT, as well as to implement a number of CEPT deliverables and EU Decisions. The EU Decisions related to short range devices, programme making and special events (PMSE) equipment and mobile communication systems on board aircraft.

## **2. Relevant information on appeals, judgements and case law**

### **i) Appeals**

During the period in question, six appeals were lodged whereby different operators contested regulatory decisions issued by the MCA. All these appeals were filed before the Administrative Review Tribunal. Of these appeals:

- One case related to the contestation of mobile termination rates;
- Two cases related to contestations of administrative fines imposed by the MCA;
- Two cases related to the contestation of retail access findings in the fixed telephony market;
- One case related to the contestation of a directory services regulatory decision.

### **ii) Judgements**

During the period in question, the Administrative Review Tribunal decided two cases:

- One case was a preliminary ruling where an operator requested the suspension of a regulatory decision on mobile termination rates;

- The other case related to the contestation of a market decision. The Administrative Review Tribunal's decision is being contested by the operator before the Court of Appeal.

### **iii) Appeal procedure and case law**

The system of national competent courts for appeals in Malta is the following:

- The Administrative Review Tribunal is the competent forum before which contestations of regulatory decisions taken by the MCA can be lodged.
- There is a right of appeal from a final decision of the Administrative Review Tribunal before the Court of Appeal (Inferior Jurisdiction).

### **3.9. MOROCCO – ANRT**

#### **1. Main regulatory decisions taken by the NRA**

During 2014, ANRT issued 14 regulatory decisions:

- 3 decisions related to dispute resolution
- 11 decisions related to market regulation (Relevant market, SMP, Domain name, unbundling reference offer, sharing infrastructures etc...).

During 2015, ANRT issued 7 regulatory decisions:

- 1 decision related to the modification of the framework related to number portability
- 1 decision related to the parks accounting methods for mobile subscribers of public telecommunications network operators
- 1 decision related to identification of SMP operators
- 1 decision related to technical and tariff modalities of access to civil engineering of the SMP operator
- 3 decisions related to Reference offer of unbundling of local and sub local loop.

The main decision taken during 2014 and 2015 concern the unbundling reference offer of the SMP operator which focuses on the technical and tariff aspects which should be addressed by the SMP operator in order to allow alternative operator to have access to local and sub local loop but also to all the essential facilities of the SMP especially the civil engineering.

One of the main decisions taken by ANRT during 2015 concerns the modification of number portability framework in terms of amelioration of the delay for porting operation and reducing the obstacle and constraints for an efficient portability and to launch up of the migration to a centralized data base for ported number.

#### **2. Relevant information on appeals, judgements and case law**

No appeals, judgments of case law to present during 2014 and 2015.

### 3.10. SPAIN – CNMC

#### 1. Main regulatory decisions taken by the ANR during 2014 - 2015

##### i) CNMC's main decisions

The total number of Decisions issued by CNMC's Board related to Telecom matters in 2014 was 138. Main categories are:

- Market regulation: 28 (including market analysis procedures, pricing and review of Reference offers)
- Dispute resolution: 21
- Disciplinary proceedings: 24
- Reports and inquiries: 20
- Universal service: 5
- Taxes: 32
- Other: 8

By July 2015, a total of \*\*decisions were issued:

- Market regulation: (including market analysis procedures, pricing and review of Reference offers)
- Dispute resolution: 9
- Disciplinary proceedings:
- Reports and inquiries:
- Universal service: 1
- Taxes:
- Other:
- Registry of operators/authorisations: 36
- Numbering: 14
- Registry of TDT parameters: 1

Among the CNMC main regulatory decisions, the following can be highlighted:

#### **Market analysis**

According to the European regulatory framework (Art. 15 of Directive 2002/21, Framework Directive), ANRs are obliged to review the markets situation every 3 years. Since 2002, the European Commission has published three Recommendations on relevant markets susceptible of ex ante regulation. A comparative table containing the description of these markets along the time is available in the Annex.



Concerning market analysis procedures, CNMC regulation on analysis of the wholesale markets for call termination on individual public telephone networks provided at a fixed location (Market 1 EU Recommendation 2007) was approved. The CNMC adopted its final resolution on the review of market 3 (Rec. 2007), with an average 85 % reduction for fixed termination rates (almost 89 % for alternative providers and 80 % for Telefónica). The price for fixed termination rates (€0.0817/min.) was calculated using the bottom-up pure-LRIC cost model developed in 2013, in line with the Commission Recommendation on termination rates.

A public consultation on a draft regulation for broadband markets (Markets 4 and 5 Rec. 2007) was published. The draft regulation identifies a number of administrative units (municipalities) where Telefónica would be obliged to just provide access to its FTTH at the level of civil infrastructure and no further new VULA like access product would be required. The measure is foreseen to be adopted by the CNMC's Board by the end of 2015.

### **Economic replicability test**

According to the European Framework (Art. 13 of Directive 2002/19, Access Directive), one of the remedies to be imposed on SMP operators is the price control and cost accounting obligations. In this context, NRAs shall ensure that a description of the cost accounting system is available, showing at least the main categories under which cost are grouped and the rules for allocation costs. Such information allows the NRA to verify the economic replicability of the incumbent's commercial offers before cleared and been launched to the market.

The CNMC updated its methodology for analyzing Telefonica's commercial offers to refine its analysis of bundles including audiovisual services.

### **Universal service**

On universal service, the cost for 2011 was fixed (31,9Million€) and two sentences on the universal service cost for 2001 and 2002 were executed. The CNMC has adopted a new cost estimation methodology to enhance cost allocation and transparency. This is to be applied to costs incurred from 2012, when 1 Mbps functional internet access was included in the scope of universal service.

### Technical issues

On access regulation, the Board took several measures to assure a correct service, e.g. Measures on nodes deployment; on the New Ethernet Broadband Service (NEBA<sup>5</sup>) availability and on the close of two central points.

Operators' technical conflicts were solved, on Local loop unbundling (LLU) and portability topics mainly.

Finally, related to pricing, several reference offers were reviewed. CNMC reduced the prices for the existing legacy bitstream offers (GigADSL and ADSL-IP) by an average of 18 %. It also set the prices for the new enhanced L2-bitstream offer (NEBA) significantly (up to 55 %) lower than the interim prices set in 2012. NEBA includes bitstream access to the new FTTH network. Moreover, the reference offer on access to broadcasting tv centres and wholesale access to Telefonica line (AMLT Offer) were updated.

### Dispute resolution

Between October 2014 and March 2015, the CNMC solved 3 disputes about prices of in-building fibre infrastructure (regulation on symmetric obligations for in-house wiring is in place since 2009): Orange/Vodafone vs Telefonica; Vodafone vs. Jazztel and Orange vs. Jazztel.

Moreover, the CNMC intervened in several disputes related to interconnection withholding payments due to irregular traffic.

### Sanctions and fines

Concerning sanctions, the Board fined several operators for infringement of CNMC's obligations. CNMC fined Telefónica of € 250.000 for non-compliance with the obligation of communication of broadband commercial offers under the existing broadband markets regulation. It fined Vodafone € 3.1 million for failure to comply with its obligations under the Roaming Regulation. CNMC also fined Ooiga due to the breach of conditions to

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<sup>5</sup> NEBA refers to an enhanced L2 bitstream wholesale offer.

assign public number resources and Orange on the breach of the fix portability technical specifications.

## ii) Any other relevant information

After the approval of the CNMC's creation (October 2013), some issues that were previously submitted to the CMT's Board are not submitted any more to the CNMC's Board, but delegated to the Board's Secretary. This is the case of the following delegated decisions:

- Registry of operators/authorisations: 1.514
- Numbering: 330
- Registry of TDT parameters: 15

## Spectrum

Concerning spectrum issues, although in Spain this topic is responsibility of the Ministry of Industry, it is worth mentioning that in September 2014, the Spanish Government approved the new National Technical Plan for Digital Terrestrial Television (DTT) (second migration). The Plan set the rules for releasing the 800 MHz bands frequencies, currently used by DTT channels, to 4G deployment, that was completed on 31 March 2015.

According to the Plan, eight new high definition multiplex channels would be created, with private broadcasters operating five multiplexes, RTVE managing one and a half multiplex, and regional broadcasters operating one multiplex. As for the cost of the new DTT migration, the Government agreed to pay the bill for readjusting DTT aerials. 13 million households have retuned their antennas to comply with the new digital dividend plan. A third migration will need to take place before 2020 to release the 700 MHz band for next generation mobile services.

## 2. Relevant information on appeals, judgements and case law

### i) Appeals:

There have been 60 CNMC's decisions related to Telecom matters challenged at administrative level\* during 2014:

- For procedural reasons: 5 ("recurso de alzada").
- For taxes: 55 ("recurso de reposición").

By July 2015, the following appeals have been filed:

- For procedural reasons: 3
- For taxes: 12

\*Article 36 of Act 3/2013, creating the Spain's National Authority for Markets and Competition (Comisión Nacional de Mercados y Competencia-CNMC) states that decisions adopted by the President and the Board of the CNMC can only be challenged at administrative level. The Law no longer provides for substantive appeals directly before CNMC.

**ii) Judgements:**

Along 2014, there were 62 judgments against CNMC decisions related to telecom matters:

- 6 on access conflict;
- 9 on wholesale offers;
- 14 on administrative penalties;
- 4 on Universal service obligations;
- 29 on taxes.

By July 2015, there were 30 judgements:

- 6 on access conflicts;
- 2 on wholesale offers;
- 1 about market analysis;
- 10 on administrative penalties;
- 3 on universal service obligations;
- 5 on taxes;
- 4 about audio-visual matters.

**iii) Appeal procedure and case law:**

The system of national competent courts for appeals in Spain is the following:

- "*Audiencia Nacional*" is the relevant national court for appeals in Spain. It is a national and centralised administrative court.
- Its decisions can be challenged at the Supreme Court ("*Tribunal Supremo*").
- Regarding taxes, there is also the "*Tribunal Económico Administrativo Central*" (TEAC) which is an administrative entity specialised in financial and

economic issues. Appeals of CNMC decisions regarding payment notices of telecom taxes and related tax/fees issues must first be brought to “TEAC” before a jurisdictional appeal at “*Audiencia Nacional*”.

Along 2014, 63 sentences related to CNMC’s activities were published:

- 43 from the ‘*Audiencia Nacional*’
- 20 from the ‘*Tribunal Supremo*’

Regarding the topics, the main sentences were about:

- Reference offers;
- Universal service;
- Market related (price discrimination and glide path);
- Sanctions challenged;
- Roaming frauds;
- Dispute resolution;

### 3.11. SWITZERLAND – OFCOM

#### 1. Main regulatory decisions taken by OFCOM during 2014 and the first semester 2015

##### i) Main decisions

No statistics is available on the total number of decisions issued by OFCOM related to telecom matters. In any case, mainly due to the small number of cases quantitative data would hardly contribute to a better understanding of the Swiss case law system. However, some relevant or additional information can be accessed in the annual report 2014 (published in English, cf. [here](#)).

As the following description shows, there were not enough significant decisions taken by ComCom that would give an additional value to an illustration in numbers for the period 2014/2015 first semester. Concerning disputes regarding access: At the beginning of 2014 an access procedure concerning interconnect peering was pending at ComCom. In the course of 2014 different companies submitted five new access applications which – apart from bitstream access – relate to all forms of network access listed in Article 11 of the [Telecommunications act](#) (TCA). Nevertheless, no decisions were taken in the before mentioned period of time. For more detailed information please refer to the ComCom annual report (cf. [here](#)).

Among ComCom and OFCOM decisions, the following can be highlighted. For a more comprehensive understanding some related developments (based on decisions by the Federal Council) are mentioned as well.

##### **Market analysis**

There was no new market analysis decision by ComCom in 2014 or 2015. According to the Swiss Telecommunications Act, a market analysis is conducted only on request of a market player (alternative operator or incumbent).

##### **Economic replicability test**

According to the new Swiss Ordinance on Telecommunications Services (came into force in 2015), an economic replicability test is conducted only on request of an alternative operator. There was no corresponding request of an alternative operator so far. In case of a negative result, the wholesale prices of the incumbent would be adapted to guarantee the economic replicability.

### **Universal service**

The minimum transmission rate of this broadband internet connection was increased by the Federal Council to 2000/200 kbit/s as of 1 January 2015. The Federal Council set the upper price limit for this internet connection at CHF 55 per month (excl. VAT).

The current universal service licence was awarded in 2008 and runs until the end of 2017. It has been held by Swisscom since it was first awarded in 2003. Swisscom again complied with the quality criteria laid down by the Federal Council, as the inspection of the quality of the universal service by OFCOM indicated.

### **Technical issues**

In the mobile networks, the rollout of LTE technology is proceeding very quickly and by the end of 2014 the coverage of the networks had already reached between 85% and 94% of the population, depending on the operator. Operators have begun to introduce the successor to this technology, LTE-Advanced (LTE-A), which makes it possible to achieve theoretical speeds of 300 Mbit/s for data transmission.

On the basis of technological advancements, ComCom welcomed the publication at the end of November 2014 of the new Federal Council report entitled “Evolution of the Swiss telecommunications market”, which will lead to a revision of the Telecommunications Act and the adoption of a legal basis tailored to the recent technological developments.

ComCom has reduced the times allowed to arrange the porting of numbers to one day, instead of the former 5 days.

ComCom also welcomed the easing of certain conditions concerning cancellation of contracts implemented by the operators in 2014.

### **Dispute resolution**

Between January 2014 and June 2015 all disputes on access were pending. One decision dealing with interconnection and the other with access to ducts were subsequently taken in December 2015 (cf. ComCom main decisions: <http://www.comcom.admin.ch/themen/00500/00782/index.html?lang=en>).

### **Sanctions and fines**

The legal ground for sanctions and fines can be found in Art. 58 on surveillance and Art. 60 on administrative penalties of the TCA.

On these legal grounds no significant sanctions or fines were imposed. The procedures mainly concerned breach of duties in the field of statistics. At last, a few fines were imposed due to “slamming” or “spoofing” practices. However, it is to be noted that the Competition Commission has dealt with more substantial matters in the field of telecommunication.

## **ii) Any other relevant information**

ComCom has approved the commercial transfer of the mobile radio licences of Orange Network SA (Orange Switzerland). By doing so, it has enabled the mobile radio licensee to continue to use its spectrum rights after the takeover by a Xavier Niel company. Sunrise entered the stock-market in February 2015.

### **Spectrum**

GSM frequencies expired at the end 2013.

Four UMTS licences were auctioned in 2000. These licences will run until the end of 2016. Currently, one UMTS licence is being used by Salt (formerly called Orange), Sunrise and Swisscom respectively. All three operators are complying with their licence conditions.

Technology-neutral mobile radio licences: In February 2012, all mobile radio frequencies currently available in Switzerland were awarded anew. The frequencies in the 800 MHz, 900 MHz, 1800 MHz, 2100 MHz and 2600 MHz were auctioned. In June 2012, the new licences, with a term extending to 2028, were awarded. All three mobile operators – Orange (Salt), Sunrise and Swisscom – acquired a much larger, future-proof frequency entitlement in the auction. Because of the auction in 2012, some mobile radio frequencies were assigned to a different operator. This resulted in frequency refarming in the 900 MHz and 1800 MHz bands.

## **2. Relevant information on appeals, judgements and case law**

### **i) Appeals:**

Along 2014 and the first semester 2015 there have been no significant appeals in telecom matters against decisions from ComCom or OFCOM.

### **ii) Judgements:**

There were no significant judgments against decisions from ComCom or OFCOM.



### iii) Appeal procedure and case law:

The system of national competent courts for appeals in Switzerland is the following:

- The Federal Administrative Court (Bundesverwaltungsgericht) is the relevant national court for appeals. It is a national and centralised administrative court.
- According to Art. 44 of the [Federal Act on Administrative Procedure](#) any ruling shall be subject to an appeal. This also refers to any rulings from ComCom or OFCOM. Decisions from the Administrative Court can be appealed to the Federal Court (Bundesgericht). However, this does not include decisions on granting access or decisions granting licences that were subject to an invitation to tender (Art. 83 lit. p. Federal Courts Act, [Bundesgerichtsgesetz](#)). The reason is the excessive duration of the proceedings.
- Since January 2014 a dispute on granting access has been pending (concerning fully unbundled access to the local loop; rebilling for fixed network local loops; interconnection; leased lines; and access to cable ducts). This case is primarily marked by adjustments by the Federal Council to the calculation methodology in the [Ordinance on Telecommunication Services](#) (OTS) and by a change in technology introduced by ComCom. The Telecommunications Act (TCA) stipulates that a market-dominant provider must offer the forms of access listed in Article 11 at costbased prices. If an application for price fixing has been made, ComCom calculates it using the “Long Run Incremental Cost” (LRIC) method, which was defined by the Federal Council in Article 54 of the OTS. The price calculation takes into account those costs which a new competitor would have to bear if they were to create a new network with modern technology – modern equivalent assets (MEA, therefore not the historical costs of the incumbent).
- Some information on the access procedures current since 2013 concern “interconnect peering”: the Init7 (Switzerland) company applied to oblige Swisscom to grant it free-of-charge peering. The background to this procedure is the conclusion of the peering agreement between the two parties and the change required by Swisscom from free-of-charge peering to paid-peering. After the exchange of correspondence in 2014, a very extensive market survey was conducted by OFCOM and the Competition Commission (ComCom) was consulted regarding the question of market dominance.

### 3.12. TUNISIA – INTT

#### 1. Main regulatory decisions taken by the ANR during 2015

##### i) INTT 's main decisions

The Decisions issued by INTT's Board related to Telecom matters in 2015, are as follows:

- Market regulation: 3 (market analysis procedures guidelines, LLU, Interconnection).
- Dispute resolution: 50
- Disciplinary proceedings: 30
- Reports: QoS Mobile/Internet; Market observatory (Monthly reports).
- Number portability: 1

Among the INTT main regulatory decisions, the following can be highlighted:

##### **Market analysis**

According to Decree N°53 of January 10, 2014, INTT started the works to elaborate the guidelines related to the Market Analysis. A decision was published in September 2015.

##### **Economic replicability test**

INTT was always applying the symmetric regulation on all operators, for this reason the price control is done according to rules specified by Decision N°54 of 2014. This Decision guaranties the economic replicability of the commercial offers before cleared and been launched to the market.

##### **Universal service**

The Ministry of Communication Technologies and Digital Economy created on 2014 a Committee of Universal service. INTT is involved in this Committee and is dealing with the cost estimation methodology to enhance cost allocation and transparency.

### **Technical issues**

The Board took a decision on Local loop unbundling (LLU), infrastructure sharing & collocation.

### **Dispute resolution**

During 2015, the INTT solved several disputes about pricing and competition issues.

### **Sanctions and fines**

Concerning sanctions, the Board fined all the operators for infringement of INTT's obligations. INTT fined Ooredoo Tunisie of € 5 million, Tunisie Telecom of € 0.5 million and Orange Tunisie of € 1.25 million for non-respect of Tariff's Transparency in the commercial offers and essentially non-compliance with Decision N°54.

### **Spectrum**

Concerning spectrum, it is not the responsibility of INTT.

## **2. Relevant information on appeals, judgements and case law**

### **i) Appeals:**

There have been 6 INTT's decisions related to Telecom matters challenged at administrative level during 2015, the administrative Court judged Stays of execution on:

- Portability 2
- LLU 1
- Fines 4
- Interconnection 1

### **ii) Judgements:**

Along 2015, there were 6 judgments against INTT decisions, 5 judgments are in favour of INTT and 1 lost, related to telecom matters:

- 1 judgement on LLU.
- 2 judgements on portability
- 3 judgements on fines

**iii) Appeal procedure and case law:**

The appeal against the INTT's decisions shall be done in two manners depending on the nature of the decision:

- Administrative decision: in the Administrative Court.
- Decision of dispute resolution: Court of Appeals.

Please note that some administrative decisions are attacked to the Appeals Court.

### 3.13. TURKEY – BTK

#### 1. Main Regulatory Decisions taken by BTK during 2014 and 2015-Q1

##### i) Market regulation

The total number of Decisions taken by BTK's Board related to telecommunication sector in 2014 and first quarter of 2015 was 42. Main categories are:

- Market regulation (Revision of reference offers, approval of promotion offers, market analyses procedure, etc.): 30
- Dispute resolution: 5
- Consumer related issues: 5
- Fine and sanctions: 1
- Information society services: 1

##### **Access Regulation and Pricing**

Türk Telekom Reference Offer for Facility Sharing and Dark Fibre which includes terms, conditions and prices of facility sharing and dark fiber services was approved in June 2014 and entered into force in August 2014. With the approval of the reference offer, facility sharing services, which had been previously discussed in the Türk Telekom Reference Co-Location and Facility Sharing Offer, was regulated exclusively. In addition; terms, conditions and prices of dark fibre service was determined within this reference offer.

In addition, several promotion offers submitted to BTK by Turk Telekom and these promotions came into force with the approval of Board Decisions on various dates.

##### **Reference Interconnection Offers**

Draft reference interconnection offers of the three mobile operators (Avea, Turkcell, Vodafone) and Türk Telekom were submitted due to their obligation to publish reference access offer(s) and were examined under the framework of relevant legislation and opinions submitted within the public consultation process, and approved with the necessary amendments requested by BTK. Reference Interconnection Offers are revised in case of necessity in line with the dynamics of the sector. Reference interconnection offers approved by BTK are published on both BTK's and related operators' website.

### **Dispute Resolution**

In accordance with the relevant legislation, in case that the operators cannot reach an agreement on access, including interconnection, any of the parties may apply to the Authority for running the dispute resolution procedure.

From January 2014 to March 2015, within the framework of dispute resolution procedures carried out by the Authority, the settlement applications of operators' access and interconnection disputes were evaluated, and 5 (five) cases were concluded in 2014.

### **Sanction and Fines**

BTK's Board fined some operators for the violation of related timeout period for the churn process.

### **Market analysis**

BTK conducts market analyses every three years. Bylaw on Market Analysis, in line with European regulatory framework, set out the procedures and principles to be taken into consideration while conducting of market analysis. BTK has been regularly performing market analysis since 2005 and expecting to finalize 4<sup>th</sup> round of the market analysis in 2016.

Regarding the regular market analysis, EU Funded Project (IPA) titled "Technical assistance for achieving the information society and stimulating high-speed broadband services to the benefit of consumer" is being carried out. The project includes improvement of cost models, reference offers and market analyses within the EU regulatory framework and national legislation. The project also includes a report on preparation of national broadband plan and the studies related to market analyses are being carried out in this context.

In the current market analyses (3<sup>rd</sup> round) incumbent operator, Turk Telekom, has been designated with SMP in all fixed markets (call origination & termination, broadband & LLU and leased lines markets) defined in 2007 Recommendation. As to access to fixed telephony market (M1 of 2007 Recommendation), there has been complete deregulation in residential segment whereas some obligations still exist in non-residential segment. Wholesale line rental obligation and price squeeze obligation are imposed in call origination in fixed networks markets (M2 of 2007 Recommendation).

All three mobile network operators have SMPs in mobile call termination market. Leading mobile operator, Turkcell, has SMP in mobile access and origination market.

In line of the memorandum of understandings signed between BTK and regulatory authorities of other countries, to enhance cooperation possibilities through capacity building and technical assistance, we have provided various seminars and trainings on market analysis and competition regulations for the authorities of regional neighboring countries.

### **Margin-Squeeze Remedy and Procedures & Principles Regarding Determination and Remedies of Margin Squeeze**

In order to create effective competition in the sector and to prevent price-based anticompetitive conducts by ensuring that the relevant tariffs do not lead to margin squeeze, within the context of Market for Call Origination on Fixed Telephony Networks, Margin Squeeze Remedy was imposed on fixed incumbent (SMP operator) Türk Telekom who still keeps its position of vertically integrated in the market, with ICTA Board Decision No. 2014/DK-SRD/171 and dated 26.03.2014. In the context of Procedures and Principles Regarding Determination and Remedies of Margin Squeeze, which lays down the principles that apply to the said (margin squeeze) remedy, was entered into the force by 01.07.2014 with ICTA Board Decision No. 2014/DK-SRD/332 and dated 26.06.2014. The margin squeeze tests must be performed at least at the end of every quarter unless otherwise determined by the Authority by taking into account the “flagship products” on the basis of the reports that include necessary information (including income, traffic, subscriber number, etc.) to be submitted monthly by Türk Telekom to BTK as a general and primary rule. Within the scope of this remedy, in the course of the year, 2015, the margin squeeze tests were performed at the end of every quarters.

### **Views Given to the Competition Authority**

The Article 7 of the Electronic Communication Law numbered 5809 and dated 05.11.2008 states that “The Competition Board while performing examinations and supervisions and while making any decisions on electronic communications sector, including decisions about merger and takeovers, takes into consideration primarily the Authority’s view and the regulatory procedures of the Authority.” By taking into account of this provision, it has been ensured that mutual cooperation and continuous coordination became more efficient within the context of “the Cooperation Protocol Between Competition Authority (CA) and Information and Communication Technologies Authority (ICTA)” entered into force on November 2nd, 2011, and the required studies have been realized in 2014 accordingly.

In this context, with the entry of Postal Services Law numbered 6475 into force, regarding the new tasks assigned for the regulation of postal services to ICTA, the Cooperation Protocol was revised on January 22, 2015. In addition to this, in accordance with that provision and protocol, Competition Authority (CA) requests view and information from ICTA whilst investigating and making decisions about electronic communications sector. In this context, in 2015, a total of 8 Authority (ICTA) view and information in response to the applications made before CA about merger/takeovers and breaches of competition were sent to CA by ICTA.

### **Regulations Regarding The Rights Of Consumers**

#### *Regulations Regarding Disabled Users*

In 2014, two Board Decisions have been issued regarding disabled users and the operators were to fulfill certain obligations through those decisions.

According to mentioned Board Decisions GSM/IMT-2000/UMTS operators, fixed telephony operators, Internet service providers and satellite platform service providers are obliged to;

- Provide tariff offerings which include economic advantages for disabled consumers,
- Redesign their web sites as to be accessible for disabled ones,
- Allocate a certain section in their web sites, which includes all services designed specifically for disabled consumers,
- Send an informative SMS to all subscribers which includes the link of the specialized section of their web sites.

Additionally GSM/IMT-2000/UMTS operators are obliged to:

- Provide free of charge application which informs the disabled consumers' location,
- Make the disabled consumers' location information available free of charge for at least one additional number if requested by the disabled person,
- Provide data-only plans/packages/tariffs for disabled subscribers.



### *The Obligation for the Operators to Maintain a Consumer Complaints System on their Web Sites*

With the aim of consumer complaints can be made and to be answered via Internet and also the resolution of the consumer complaints in an effective manner, BTK has set an obligation for the operators to build and maintain a consumer complaints system on their web sites.

According to the obligation, the subscribers will be able to deliver their complaints directly to the operators and the complaints will be replied within at most 10 working days. In case of repetition of the consumer complaint on the same subject, this complaint will be automatically transmitted to BTK by the system that is built between the operators and BTK. With this method BTK can be able to supervise the consumer complaints and potential misdemeanors in the BTK sector.

### *Procedures and Principles Regarding the Bills in the Electronic Communications Sector*

Regulation regarding the principles and procedures related to the bills in the electronic communications sector to ensure delivery of bills to the consumers clear, simple, covering the necessary details, and in a common structure, approved with a Board Decision taken in 2014. It is determined that principles, procedures, and guides to follow by fixed and mobile telephony service operators while preparing the bills for individual subscribers.

According to the regulation main principles are as following;

- The bills should be prepared simple, plain and be readable,
- The tariffs (fees) on the bill must be clear enough for not to cause any hesitation,
- Bills should provide adequate information for subscribers to enlighten about the fees,
- The bills should be prepared as people with color blindness can read and dark colored text on light-colored or white paper should be used.

### *Providing the Right to Subscribers for Accessing to the Contracts that they Signed on Operators Websites*

According to the two Board Decisions taken in 2013, the subscribers will be able to access the contracts signed by them on operators' websites. This facility came into force

01/07/2014. From this date on, the subscribers will be able to access an electronic copy of their own contracts that is signed by them in 3 months. And for the contracts signed before 01/07/2014 the operators are obliged to make the contracts accessible by 01/04/2015.

#### *Regulation Regarding How to Calculate Prorated Charges*

Based on the consumer complaints related to the bills which reflect a full month of charges for a partial month of service in case of subscription cancellation, number porting or suspending the subscription etc, BTK decided to regulate the prorated charges. In order to protect the rights of consumers in the sector, how to calculate prorated charges according to the actual amount of service received rather than a standard sum is regulated by the Board Decision taken in 2014. According to the Board Decision, prorated charges will be calculated;

- According to the number of days and amount of service received put together,
- Only for main electronic communication postpaid services (voice, SMS and data),
- In cases of subscription cancellation, new services or features that were added during a billing period, number porting, suspended subscriptions and change of ownership etc.

#### *Regulation regarding Interrogation of the Debt and Credit Information*

Regulation regarding Interrogation of the Debt and Credit Information was adopted by a Board taken in 2014. This regulation was decided to come into force in 2015.

The regulation enabled subscribers to learn easily the amount they owe operators or any leftover credits in their accounts via the agencies of operators or their websites. Additionally, citizens that have e-government password will be able to inquire the amount they owe operators or amount left over in their account through e-government portal.

Moreover, if the bills are not paid in time by the customer, before the execution proceedings being commenced against them, operators will allow customers additional 15 days following the receipt of a warning notice to make the payment.

## ii) Any other relevant decisions

### Authorization

In 2014, BTK's board had taken decisions regarding the authorization process of IMT services. In 2015, the Ministry of Transport, Maritime Affairs and Communications had defined the politics and strategies for the IMT authorization and the auction process had been carried out by BTK.

### **4.5G Authorization**

Mobile electronic communications market has shown significant progress within the scope of mobile data services together with the authorization of 3G. In addition, wide spread usage of smart phones has increased the consumers' demand. Increasing demand of the consumers has brought higher data consumption.

In this point, the tender for International Mobile Telecommunications (IMT) Authorization (publicly known as 4.5G), considered as of great importance not only for the development of market and meeting the consumers' expectations but also for meeting the goals of our country proceeding in the way of becoming an information society was carried out on August 26, 2015, just after a while all winning operators are authorized on October 27, 2015. Total number of frequencies allocated for mobile electronic communications services are risen threefold after the aforementioned authorization, and a revenue of 3.960.212.918,74 Euro (VAT included) is obtained as a result of the tender.

Actual IMT services would be started on April 1 of 2016 by the winner operators. It is aimed that with the aforementioned authorization to form a competitive and innovative electronic communications market providing more developed and much faster broadband services.

### Information Society Services

Board Decision on "Procedures and principles regarding interoperability between Registered Electronic Mail Service Providers (REMSPs)" was taken on 09.09.2014. The aim of the Board Decision is to increase the security of the relevant services and to ensure interoperability between REMSPs in order to enhance the active usage of Registered e-Mail. Two REMSPs were authorized by the Board in 2014.

An Electronic Certificate Service Provider (ECSP) was authorized by the Board in 2014.

“By-Law on Network and Information Security in Electronic Communications Sector” came into force in 13 July 2014. The By-law was essentially based on the international information security standards like ISO / IEC 27001, 27002 and 27011. All operators are required to establish an information security management system and to take necessary measures in order to ensure security of their services and information systems. Depending on their authorization types and yearly net sales, some operators are also required to comply with the additional requirements about disaster recovery and cyber security. According to the By-law the NRA has the power to supervise the activities of the operators and to enforce sanctions in necessary circumstances.

### **Spectrum**

As previously mentioned, the auction for IMT services was held in August 2015 and before that the frequency plan for IMT services was prepared. Additionally, in the first quarter of 2015, 800 MHz and E-GSM were cleared from analog broadcasting and military services, respectively.

## **2. Relevant information on appeals, judgements and case law**

### **i) Appeals:**

#### **A short summary of the administrative appeal procedure (appeal to the superior authority) of Turkey:**

According to the Article 11 of the “Procedure of Administrative Justice Act” numbered 2577 (the “Law No. 2577”), published in the Official Gazette in January 20, 1982 and No. 17580); bringing an action the person concerned may request the abolishment, withdrawal, alteration of the administrative act or the implementation of a new act from the superior authority, if there is no superior authority, from the authority that implements the act. In this context, the person concerned may request for abolishment, withdrawal, alteration of the related administrative act or the implementation of a new act from the Board. If no response is given within sixty days, the request shall be deemed to be dismissed.

- Challenged Board decisions related to Telecom matters at administrative level: 5
- Upheld: 4
- Annulled: 1

**Subject matter of appeals and average duration of appeal proceedings:** 2 of the appeals mainly about the periods specified in the related Board Decisions. And the other one is about the wording of the Board Decision.

## ii) Judgments and iii) Case Law

### **A short summary of the national judicial appeal procedure of Turkey:**

According to the Article 12 of the Law No. 2577; the persons concerned may bring directly a full remedy action or a full remedy action together with an annulment action to the Council of State, administrative and tax courts, against an administrative act that violates their rights. On the other hand, the Law regarding the Amendments on Turkish Criminal Code and Certain Other Codes (the “Law No. 6545”) (published in the Official Gazette in June 28, 2014 and No. 29044), makes several amendments to “the “Law No. 2577”. Briefly, within the scope of the old administrative procedures system, a two-stage judgment system is applied. With Law No. 6545, a three-stage judgment system has been introduced to the practice of the administrative procedures system and the objection process to District Administrative Courts is abolished. Instead of the objection right, the appeal right to District Administrative Courts as a preliminary appeal before moving to the Council of State is enabled for the parties to a lawsuit. Therefore, according to new regulation, District Administrative Courts will have the jurisdiction, to a certain extent, to decide on the judgments of the first instance courts which are appealed by the parties. Under the new regulation, it will not be possible to directly appeal the judgments of courts of first instance to the Council of State. It is noteworthy that, appealing to District Administrative Court becomes a mandatory step before appealing to the Council of State in accordance with the new regulation. According to amended Article 45 of Law No.2577, even if there is a contrary provision in other laws, the final judgments of administrative and tax courts may be appealed before District Administrative Courts within thirty days from the notification date. However, judgments as to lawsuits in which the subject matter does not exceed TL 5.000 (five thousand Turkish Liras) are considered definitive, and they may not be appealed under any circumstances. The District Administrative Court will reject the appeal if it finds the judgment of the court of first instance not to be in

accordance with the law. It can also decide an appeal by correcting an error of fact in the judgment. On the other hand, if District of Administrative Court finds the judgment contrary to the law, it enters a new judgment after revoking the judgment of the court of first instance. Moreover, in cases where i) the District Administrative Court finds the appeal request admissible or ii) the lawsuit has been examined by an unauthorized court or a court without jurisdiction, or iii) the judgment has been rendered by a rejected or forbidden judge (e.g.; in cases where a judge (a) gives advice or leads any one of the parties of the lawsuit, (b) declares his opinion regarding the lawsuit to any third party or any one of the parties of such lawsuit, or (c) acts as a witness or as an expert in the lawsuit and the other situations where the objectivity of a judge is damaged in the lawsuit); the District Administrative Court revokes the judgment of the court of first instance and sends the file back to the relevant court. The provisions that are introduced under these new laws will be applied for the judgments ruled after the new District Administrative Courts start to function in the entire country. However, the District Administrative Courts have not already started to function, so the Council of State is temporarily enabled for the appeal procedure.

**In 2014, 135 judicial judgements related to BTK's activities were published:**

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- 109 from the "Administrative Courts"
- 26 from the "the Council of State"

**Regarding the topics, the main sentences were about:**

- Reference offers,
- Dispute resolution,
- Penalties and/or sanctions arising from the audits,
- Market related issues,
- Regulatory administrative acts like By-laws,
- Administrative fees,
- The consumer rights issues.