

Speaking note for press conference, 19 May 2021

Telecommunications and digital issues

The past year has shown very clearly the importance of nationwide, high-speed broadband networks, including in rural areas. Broadband networks are the "digital arteries" of a modern society.

People generally used the telephone more in 2020 and there was another considerable rise in data usage as well.

It was evident that the networks could handle the greater demands placed on them, which can be counted a success.

Looking back, some critics should ask themselves what would have happened if the Bundesnetzagentur had not made it possible to use much higher bandwidths at short notice with its balanced vectoring decision.

The next step now is flexible regulation to support the expansion of fibre.

Market figures

The rollout of the fibre network made good progress last year. The number of customers passed with FTTB/FTTH (fibre to the building/fibre to the home) increased to 6.6m, a rise of 1.3m from the year before.

The mobile broadband rollout picked up speed last year, too.

In the mobile networks, the number of mobile base stations increased by 18% to 224,554. There was also a considerable increase in the number of 5G base stations, from 139 at the end of 2019 to 19,510 at the end of 2020.

Above all, the Bundesnetzagentur enabled a fourth mobile network operator to enter the market.

1&1 Drillisch can set up its network with the spectrum it acquired at auction.

1&1 has made a roaming agreement with Telefónica to provide coverage for its customers while it rolls out its network.

Coverage obligations

We have been pushing hard over the past year for operators to meet the coverage obligations for the spectrum they acquired in 2015.

All three mobile network operators have made great progress on the rollout of their networks, especially Telefónica, although it was the operator that had the most catching up to do.

All incumbent operators have now met the coverage obligations for households, but none of them has provided full coverage for main transport routes.

The coverage level there varies and is between 97% and 99% for motorways, depending on the operator, and between 96% and 99% for railways.

The operators have said that it was not possible to fulfil their obligations by the deadline in individual locations because of actual or legal obstacles.

We are looking into this now and only when we have done so will we be able to assess whether and how we can enforce the coverage obligations.

The mobile network operators have already started to expand their networks further with a view to meeting their obligations from 2019.

By the end of 2022, they will have to provide coverage of at least 100 Mbit/s to 98% of households in each federal state as well as to motorways, federal roads and rail routes with over 2,000 passengers.

Provision of spectrum

The provision of suitable spectrum is driving the expansion of the mobile networks.

Spectrum usage rights in the frequency bands relevant to mobile communications at 800 MHz, 1.8 GHz and 2.6 GHz will be expiring on 31 December 2025. In 2020 we started to think about the future availability of this spectrum and will publish different scenarios for consultation shortly. We intend to present various models for the provision of spectrum and to enter into discussion with the sector on this basis.

There have recently been a number of reports that there might not be any more auctions, but this is not accurate. While the new Telecommunications Act (TKG) removes the default status for auction proceedings, it remains the job of the Bundesnetzagentur to choose a suitable method for the provision of spectrum. We have done this in the past in each individual case and will continue to do so.

No particular decision is set out for the Bundesnetzagentur in advance. We will consider auctions, tendering processes and extensions.

When thinking about the provision of spectrum, the aspect of improving broadband coverage will be of particular importance. Coverage obligations and other means, such as reverse auctions, will be taken into consideration with the aim of deciding on the re-provision of spectrum two to three years before the usage rights run out.

Fixed networks

The Bundesnetzagentur has always stressed that voluntary, commercial agreements between market players are preferable, given the particular challenges posed by the broadband rollout.

A change in attitudes is occurring in the industry. Companies are starting to overcome their old habits and reflexes and to rely more on voluntary network access agreements.

It was not an easy road to get to this point. The Bundesnetzagentur was closely involved in the negotiations, moderating them and, where necessary, providing the parties with friendly advice to keep talking and get results.

With their voluntary agreements, the companies have created longer-term planning certainty for their large investments in the setting up and expansion of modern, gigabit networks.

New networks can be used more quickly. This will accelerate future network rollout, because it will bring returns sooner, making it more attractive for investors to provide funds to the companies.

Of course, the Bundesnetzagentur will continue to look closely at whether the agreed access charges pose a risk of anti-competitive price squeezing, taking into account retail prices for DSL connections.

The rates regulation for Telekom's layer 2 access products will be re-determined in the upcoming regulatory order.

The Bundesnetzagentur, in its role as an impartial referee, will continue to pay attention to compliance with the legal framework for voluntary agreements as well, ensuring that competition remains fair and the interests of consumers are upheld.

Universal service/"right to high-speed internet"

In the new Telecommunications Act, the universal service will include access to broadband internet. All end users will have the right to an internet access service fulfilling at least the requirements of a basic service.

These requirements are to be designed so as to permit all consumers to use all services they need to participate in society and the economy, such as online banking, standard quality video calls, online shopping, working from home and a reasonable amount of video streaming.

It must also be considered what minimum bandwidth is used by 80% of consumers in Germany and how the requirements affect operators' expansion using their own resources and state support.

The minimum requirements are going to be published as a legal ordinance by the Federal Ministry of Transport and Digital Infrastructure by 1 June 2022, with the option of delegating this task to the Bundesnetzagentur. In any case, the relevant parliamentary committee and the Bundesrat will need to give their approval.

The Bundesnetzagentur has already started preliminary work for the necessary determinations. As these issues are technically, economically and legally complex, this work will take some months.

Initial findings will be put out for consultation with stakeholders as soon as possible.

This also applies to the question of affordability, since the Bundesnetzagentur not only has to look at the quality of the offers but also to develop principles for reasonable prices.

Role in digitalisation

We are playing a growing role in the digital revolution. Last week we announced that in the GAIA-X funding competition, 131 consortia representing business, science and the public sector had submitted project outlines in ten domains to the Bundesnetzagentur.

We are now evaluating these outlines and will invite the applicants with the most promising proposals to present their ideas to an expert committee from 9 to 11 June 2021.

We have brought together our digital expertise in a new division for digital affairs, where we are working on developments in Germany and Europe such as the digital platform economy, artificial intelligence, blockchain, DNS blocking and the Internet of Things.

We have been implementing regulatory approaches successfully in areas like net neutrality and geo-blocking for years already.

Our areas of focus there are consumer protection, securing long-term competition and promoting innovation. We place a particular emphasis on small and medium-sized enterprises, which are to be supported with specific measures in the future.

Digital platforms

Digital platforms such as search engines, e-commerce platforms and app stores are taking on a pre-eminent position for many digital business models today.

The coronavirus pandemic has further strengthened the position of platform-based business models. SMEs are especially dependent on e-commerce platforms to be able to keep reaching their customers, as shown by the findings of our consultation of commercial customers:

over three quarters (77%) of business customers consulted would see themselves having considerable difficulties competing successfully in the German market without the use of digital platforms.

Over half of business customers (56%) assume they would not even be able to exist in the market without digital platforms. At the same time, however, the companies report experiencing various difficulties with them.

A balanced regulation is therefore necessary to combat these structural problems and abusive practices.

Means of intervention that are efficient and, most importantly, can be implemented promptly are not yet available.

The future regulatory approach must be to prevent abuse rather than just punishing it when the damage has already occurred.

The proposed laws reforming the digital field from the European Commission (Digital Markets Act, Digital Services Act) are moving in the same

direction, away from ex post punishment towards ex ante regulation.

Flexible regulation to prevent abuse in network industries is a core task of the Bundesnetzagentur.

Given the multitude of small and medium-sized business platform users, we believe that a national point of contact is needed to coordinate and step in quickly to deal with complaints.

We feel we are in a good position to do this.

The Bundesnetzagentur, with its legal-economic and technical focus, already has a great deal of experience to channel into future platform regulation.

Consumer issues

In 2020 there was a significant increase in the number of complaints made to the Bundesnetzagentur about unsolicited marketing calls, reaching more than 63,000. The trend has continued in 2021, with around 30,000 complaints up to the end of April (18,000 in the same period last year). Complaints about nuisance marketing calls for insurance and financial products or energy supply are particularly common.

So far in 2021, fines amounting to €800,000 have been imposed. In 2020 the Bundesnetzagentur imposed fines totalling some €1.35m for nuisance calls.

Given the rising number of complaints, the Bundesnetzagentur welcomes the entry into force of the Fair Consumer Contracts Act in the near future. The law envisages the transparent documentation and presentation of consent to advertising, representing an important improvement in consumer protection as well as legal certainty for advertising companies. We also assume that the requirement to confirm the conclusion of energy supply contracts will put a stop to dubious telephone sales practices in this area.

In 2020 around 92,000 complaints were made about number misuse. There has been a marked increase in 2021, with more than 70,000 complaints from January to the end of April.

By the end of April 2021, a total of 214 numbers had been cut off and billing and collection bans had been issued for around 4,304 telephone numbers because of number misuse.

In recent weeks we have been conducting intensive investigations of companies that have been sending out large numbers of impermissible faxes advertising masks and Covid-19 rapid tests.

We have ordered many numbers used by the companies to be shut down. However, a few companies have not stopped their activities.

We have therefore issued prohibition orders with penalties to three companies. Each further unsolicited fax could cost them €15,000.

Energy

Progress of electricity grid expansion

There was great progress in the expansion of the electricity grid in 2020. However, the Covid-19 pandemic affected our approval procedures, as well.

We adapted quickly to the situation, with pandemic-related restrictions leading to only minor delays in some stages of the approval procedures.

We provided several additional opportunities for participation in the course of the federal sectoral planning. We do this when new alternatives are added at a later point in the process.

This additional participation is important for a good result, but it takes time. We accept this in the interest of achieving a grid expansion that is satisfactory and acceptable to as many of those affected as possible.

Nevertheless, at the end of 2020 a total of about 3,524 kilometres of electricity lines were in the approval procedure. We have also already approved a route corridor for key projects like the SuedLink and the SuedOstLink.

We are pressing ahead with these and the approval procedures will continue at top speed in 2021.

Phase-out of coal

In December, we announced the first successful bids in the tendering phase in accordance with the Act to Reduce and End Coal-Fired Power Generation (KVBG).

The tendering received a good response from operators. The first two rounds were significantly oversubscribed, with the average price of the bids awarded a tender well below the maximum price set by law.

We are currently examining whether two plants are essential for the system and whether their generators have to be converted to rotating phase shifters. A decision is expected by the end of the month.

Monitoring security of supply

The Bundesnetzagentur took over the task of monitoring the security of supply from the Federal Ministry for Economic Affairs and Energy at the beginning of the year.

We will present our first report by 31 October 2021 and every two years after that.

We will assess security of supply as regards both adequate electricity generation and the grid. That means we need to find out not only whether enough electricity is generated inside and outside Germany, but also whether this electricity can be transported by the grid at all times.

To pre-empt our conclusions: the answer to both questions is likely to be "yes" for the foreseeable future.

The many, expensive network restrictions tend to occur not when little electricity is produced, but when a lot of electricity is on offer and all customers want the cheap, clean electricity from renewables.

Our grid models are already of a very high standard thanks to annual system analyses and the Network Development Plan. We are developing and implementing our own electricity market and investment models for the generation side, including our European neighbours.

We have also commissioned an external consultant to assist us with the calculations.

The findings from the calculations and models will make an important contribution to upholding

the very high level of security of supply in Germany, even as we phase out the use of coal.

Gas Network Development Plan

The transmission system operators submitted the draft Gas Network Development Plan 2020-2030 in July 2020. A highlight of it is the first ever inclusion of green gas projects in the special green gas variant.

With the request for amendment in March 2021, we confirmed 175 of the proposed measures with an investment volume of about €7.83bn.

The Bundesnetzagentur also particularly welcomes the inclusion of hydrogen projects in the network development planning.

Among the confirmed measures are ten projects enabling the TSOs to start setting up a hydrogen network without delay and without neglecting their transport duties in the natural gas network.

Pure hydrogen infrastructure is not part of the binding Gas Network Development Plan at this time.

This approach, together with the ad hoc demand assessment foreseen in the draft revision of the Energy Industry Act (EnWG), will help to expand hydrogen infrastructure swiftly and in line with requirements. It will soon be possible to start putting hydrogen infrastructure in place.

Electricity network charges

In a positive development, the electricity network charges of the distribution system operators hardly changed in 2021 from 2020 on a national weighted average.

The network charge for a typical household customer, for the network operators regulated by the Bundesnetzagentur, is 7.65 cents per kilowatt hour in 2021, compared to 7.60 ct/kWh a year earlier (+0.7%).

Commercial customers continue to pay 5.80 ct/kWh. Small and medium-sized industrial customers have to pay network charges of 2.64 ct/kWh in 2021, compared to 2.62 ct/kWh the year before (+0.8%).

However, we have observed considerable cost increases in some distribution networks caused by investment

in the networks, for example due to the expansion needed for the energy transition. This expansion is by no means needed in all distribution networks, so the spread of network charges of individual network operators is widening.

Setting rates of return on equity

Every five years, the Bundesnetzagentur determines the imputed rates of return that network operators receive on their equity employed. These rates ensure that network operators can invest in the energy networks and receive adequate returns. Investing in the networks thus remains attractive.

At the same time, the rates cannot be too high or consumers, who cannot avoid paying network charges, would incur unnecessary costs.

The equity rates of return for the fourth regulatory period, which starts on 1 January 2023 for gas network operators and on 1 January 2024 for electricity network operators, will be set in 2021.

We expect them to be determined this autumn.

ECJ proceedings

We anticipate that the European Court of Justice (ECJ) will issue its judgment on questions of the independence of the Bundesnetzagentur in the field of energy in the near future.

If the court follows the opinion of the Advocate General, we – the industry, the Bundesnetzagentur and politicians – will face major challenges.

We will deal with the judgment from Luxembourg very responsibly. It is in the interests of both the Bundesnetzagentur and the energy sector to ensure that the European requirements are met as quickly and with as much legal certainty as possible.

No one wanted this situation. But it is important to bear in mind that the Advocate General's opinion refers to regulation in the strict sense of the word, that is to say, access and charges regulation. Other key areas of the energy transition, such as the planning approval of the new electricity lines, are unaffected.

In any case, there is no question of a possible judicial review of the Bundesnetzagentur's decisions.

As things stand at the moment, there would be two main topics to clarify following a judgment.

First, there would be a need for a transitional phase with viable, legally secure administrative action until such time as the new requirements from Luxembourg were laid down in German law. We are conducting intensive preparation for this situation.

Second, it is not yet clear which type of access and charges regulation will result from the implementation of the ECJ judgment and, in particular, how regulations will be made in the future.

Post

Corona

The Covid-19 pandemic has shown how important postal services are for people and the economy. It was good to see parcel and letter dispatching guaranteed across Germany in 2020.

The coronavirus has not only increased the logistical demands on all parcel companies but forced them to change and expand their working methods as well. All service providers have responded quickly and flexibly to the special circumstances.

People generally seem to have accepted the necessary measures well. Certainly, we have not registered a particular uptick in complaints regarding these.

The strong growth in e-commerce had already led to a rise in parcel volumes before the pandemic broke out, a trend which accelerated further in 2020.

The volume of parcels is set to increase by about 17% (3.6bn items) and revenues by about 19% (€14.4bn) in 2020, based on forecasts made by the service providers surveyed.

The figures clearly show a move towards online shopping.

The problems in international postal services seem to be easing off, too. These were primarily caused by the large reduction in air transport capacities, as well as other countries refusing to accept items and border controls.

For a while, it was only possible to send items to the USA by sea or at much higher prices than usual. All postal items can now be sent to the USA by air and at the normal rates again.

Letter postage

The current rules for letter postage for basic products of Deutsche Post AG expire on 31 December 2021.

The ruling chamber responsible for this area has already launched a benchmarking procedure on the basis of the new legal requirements, with a decision expected to be made in early November 2021.

Rail

Effects of the Covid-19 pandemic

By contrast, the coronavirus pandemic has led to a decline in traffic volumes in the railway market.

Passenger rail transport, in particular, is still severely affected. In the first half of 2020 demand in the regional passenger segment fell by 36% and in the long-distance passenger segment by as much as 47%.

We put economic losses incurred because of the pandemic by undertakings in the German railway market at a total of around €3bn for the whole of 2020.

Activities of the Bundesnetzagentur

In the course of numerous individual proceedings last year, we specified and improved the conditions for access to railway infrastructure and service facilities.

The charges for the use of DB Station & Service AG's passenger stations and DB Netz AG's 2021 track access charging system were approved.

We also proposed adding a "pilot clause" to the Rail Regulation Act, which will permit railway operators to test new models of usage concepts on selected routes with a view to a nationwide synchronised timetable. The pilot projects may be understood as a first step towards a comprehensive pre-design of a nationwide synchronised timetable, which is not yet secured under EU law.

Conclusion

All in all, the Bundesnetzagentur has had a successful 2020. We have done a great deal to promote and secure competition in the sectors of energy, telecommunications, post and railways. We have focused intensely on the expansion of the networks and we have worked for the interests of consumers in these markets.