



EUROPEAN COMMISSION

Brussels, 09-VI-2006

**SG-Greffe (2006) D/203046**

Institut Belge des services Postaux et  
Télécommunications (IBPT)  
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Belgium

For the attention of:  
Mr. Eric Van Heesvelde  
General Administrator  
Fax: + 32 2 226 88 41

Dear Sir,

**Subject: Case BE/2006/0400: Access to the public telephone network at a fixed location for residential customers in Belgium**  
**Case BE/2006/0401: access to the public telephone network at a fixed location for non-residential customers in Belgium**  
**Article 7(3) of Directive 2002/21/EC : No comments**

## **I. PROCEDURE**

On 10 May 2006, the Commission registered two notifications by the Belgian national regulatory authority, Institut Belge des services Postaux et des Télécommunications ("IBPT"), concerning access to the public telephone network at a fixed location for residential customers and for non-residential customers, respectively<sup>1</sup> in Belgium. A national consultation<sup>2</sup> was conducted between 25 October and 23 December 2005.

Pursuant to Article 7(3) of the Framework Directive, national regulatory authorities (NRAs) and the Commission may make comments on notified draft measures to the NRA concerned.

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<sup>1</sup> Markets number 1 and 2 in Commission Recommendation 2003/311/EC of 11 February 2003 on relevant product and services markets within the electronic communications sector susceptible for ex ante regulation in accordance with the Framework Directive ("the Recommendation").

<sup>2</sup> In accordance with Article 6 of the Framework Directive.

## **II. DESCRIPTION OF THE DRAFT MEASURES**

### **II.1. Market definition**

The notified draft measures cover the markets for access to the public telephone network at a fixed location for residential and non residential customers, respectively.

These markets cover analogue access and the Integrated Services Digital Network (ISDN), combining two (ISDN-2) or thirty (ISDN-30) 64kbps connections. According to IBPT, there are more than 4 million fixed lines in Belgium (including both PSTN and HFC cable network lines). Analogue access represents about 3.7 million lines and digital access about 480 000 lines (400 000 ISDN-2 lines and 80 0000 ISDN-30 lines).

The access market for residential customers covers both analogue access and basic digital access<sup>3</sup>. IBPT has further refined the non-residential customers market into (i) analogue access, (ii) basic digital access (ISDN-2) and (iii) primary digital access (ISDN-30). The superior service quality of basic digital access and additional features which are unavailable for analogue access, point according to the IBPT at a lack of substitutability between these two forms of access. Furthermore, primary digital access is only used by the largest customers and requires a PABX (automatic telephone switching system).

IBPT concludes that competitive conditions are sufficiently homogeneous to consider that the geographic markets are nationwide and cover the entire territory of Belgium.

### **II.2. Finding of Significant Market Power (SMP)**

IBPT concludes that Belgacom has SMP in each of the relevant markets.

The main criteria considered by IBPT in reaching its conclusion on SMP are high market shares, sunk costs, economies of scale and scope, control over infrastructure that cannot be easily duplicated, absence of countervailing buying power and vertical integration.

With regard to the first criterion, IBPT indicates that Belgacom maintains high market shares in the access markets (in terms of number of lines). Belgacom holds around 90% in the market for residential customers<sup>4</sup>, about 95% for analogue access for non-residential customers and over 97% for basic digital access for non-residential customers. Even if on the growing market for primary digital access for non-residential customers, Belgacom's market share has dropped over the past five years from 95% to 67%, Belgacom still benefits from economies of scale, the coverage of its network<sup>5</sup> and easy access to financial markets. Furthermore, IBPT estimates that the decline in Belgacom's market share according to the latest market data appears to stabilise at the level of 60%.

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<sup>3</sup> Basic digital access lines represent 5% of the residential access market and their share is declining.

<sup>4</sup> Belgacom's main competitors are the vertically integrated cable companies Telenet and Coditel. Telenet is currently not active outside the Flanders region, whilst Coditel only covers the Brussels region.

<sup>5</sup> Belgacom's competitors focus supplying companies in high concentration areas but remain dependent on Belgacom's network outside these areas.

### II.3. Regulatory remedies

On the basis of the SMP designation, IBPT proposes to maintain or impose on Belgacom the following wholesale obligations: (i) carrier selection and pre-selection (CS/CPS)- except for Voice over Broadband<sup>6</sup>; (ii) transparency including publication of a reference offer; (iii) non-discrimination; (iv) wholesale line rental (WLR); (v) price control and cost accounting<sup>7</sup> and (vi) accounting separation.

IBPT justifies the imposition of the WLR obligation to foster competition and the uptake of CS/CPS, especially as local loop unbundling (ULL) is not yet mature. Also, WLR will allow competitors to establish a direct commercial relationship with the customer, as it enables to charge the customer for both the subscription and the communications through a single invoice. Finally, the obligation will allow competitors to offer innovative pricing schemes (such as Belgacom's Discovery Line)<sup>8</sup>. Indeed, the WLR obligation needs to be seen in the Belgian context of slowly declining CS/CPS (20% of market volume at its peak) and nearly inexistent ULL (currently accounting for 0,5% of market volume). The WLR obligation is not imposed in the primary digital access market for non-residential customers in view of the higher degree of competition in this market.

IBPT assesses that the above measures in themselves are not sufficient to protect consumer interests and to guarantee effective competition. Therefore IBPT proposes, in addition, to impose the following retail obligations:

- accounting separation;
- information and notification obligations, including the obligation to inform the IBPT in advance *inter alia* of new offers and price modifications (including promotions and special offers) and the obligation to provide upon request information enabling the IBPT to verify for example whether the obligation not to apply predatory prices is respected<sup>9</sup>.

By contrast, IBPT considers that the cost orientation obligation, which currently exists with regard to the retail access markets, is no longer required and can be rolled back.

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<sup>6</sup> CS/CPS obligation has already been in place since 2000, and is considered to remain necessary given the lack of competition in the market.

<sup>7</sup> For CS/CPS, IBPT will continue using the top-down model already in place when approving the tariffs submitted by Belgacom. As regards WLR, Belgacom will develop a reference offer prior to October 2006 on the basis of a retail minus methodology, which avoids the occurrence of a margin squeeze whilst preserving the potential for infrastructure competition and the uptake of ULL. This measure will be re-evaluated 18 months after being implemented. IBPT will publish a decision including a detailed description of the cost accounting system of Belgacom, which will have to be notified under Article 7 of the Framework Directive.

<sup>8</sup> Compared to Belgacom's 'Classic' subscription, 'discovery line' is offered at a significantly lower price, with higher costs per communication (additional charge of €0,15 per minute).

<sup>9</sup> IBPT will develop the methodologies for assessing predatory pricing and margin squeeze. These methodologies will be consulted at a later stage and have to be notified under Article 7(3) of the Framework Directive.

### **III. NO COMMENTS**

The Commission has examined the notification and the additional information provided and has no comments<sup>10</sup>.

Pursuant to Article 7(5) of the Framework Directive, IBPT may adopt the resulting draft measures and, where it does so, shall communicate them to the Commission.

The Commission's position on this particular notification is without prejudice to any position it may take vis-à-vis other notified draft measures.

Pursuant to Point 12 of Recommendation 2003/561/EC<sup>11</sup> the Commission will publish this document on its website. The Commission does not consider the information contained herein to be confidential. You are invited to inform the Commission<sup>12</sup> within three working days following receipt whether you consider that, in accordance with Community and national rules on business confidentiality, this document contains confidential information which you wish to have deleted prior to such publication. You should give reasons for any such request.

Yours faithfully,  
For the Commission,  
Philip LOWE  
Director General

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<sup>10</sup> Pursuant to Article 7(3) of the Framework Directive.

<sup>11</sup> Commission Recommendation 2003/561/EC of 23 July 2003 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC, OJ L 190, 30.7.2003, p. 13.

<sup>12</sup> Your request should be sent either by email: [INFSO-COMP-ARTICLE7@cec.eu.int](mailto:INFSO-COMP-ARTICLE7@cec.eu.int) or by fax: +32.2.298.87.82.