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Institut belge des services postaux et
des télécommunications (IBPT)

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Belgium

For the attention of:
Mr Jack Hamande
Président du Conseil

Fax: +32 2 226 88 41

Dear Mr Hamande,

Subject: Commission Decision concerning Case BE/2014/1676: Wholesale central access provided at a fixed location for mass-market products – Wholesale multicast and Ethernet transport for bitstream services in Belgium

Article 7(3) of Directive 2002/21/EC: No comments

I. PROCEDURE

On 13 November 2014, the Commission registered a notification from the Belgian national regulatory authority, *Institut belge des services postaux et des télécommunications* (IBPT)¹, concerning the market for wholesale central access provided at a fixed location for mass-market products² in Belgium and, in particular, provisions concerning wholesale multicast and Ethernet transport for bitstream services.

The national consultation³ ran from 4 July 2013 to 31 August 2013.

On 21 November 2014, a request for information⁴ was sent to IBPT and a response was received on 26 November 2014.

¹ Under Article 7 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), OJ L 108, 24.4.2002, p. 33, as amended by Directive 2009/140/EC, OJ L 337, 18.12.2009, p. 37, and Regulation (EC) No 544/2009, OJ L 167, 29.6.2009, p. 12.

² Corresponding to market 3b in Commission Recommendation 2014/710/EU of 9 October 2014 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (Recommendation on Relevant Markets), OJ L 295, 11.10.2014, p. 79.

³ In accordance with Article 6 of the Framework Directive.

II. DESCRIPTION OF THE DRAFT MEASURE

II.1. Background

The second review of the market for wholesale broadband access (WBA) in Belgium⁵ was previously notified to and assessed by the Commission under case BE/2011/1228. In this case IBPT *inter alia* obliged Belgacom to provide access seekers with a fully-fledged Bitstream product in order to allow alternative operators to sufficiently differentiate their products at retail level. Given the trend towards multiple play offers in Belgium, IBPT considered that a multicast functionality, which allows alternative operators to offer TV services, constitutes an essential element in the provision of competitive bundled offers. However, at the time it was granted that Belgacom could propose a wholesale service constituting an alternative to the multicast functionality, which would then be assessed by the Belgian regulator.

The Commission commented on the withdrawal of the SLU obligation, inviting IBPT to monitor the market. It also commented on the competitive pressure exerted by cable operators at retail level, inviting the regulator to consider whether such pressure could warrant a reduction of the intensity of downstream regulation in certain areas.

In 2012, IBPT submitted a short form notification⁶ introducing an alternative multicast functionality as the one foreseen in the 2011 market analysis. IBPT proposed that the SMP operator could, instead of the multicast functionality for Bitstream, provide a so-called IPTV platform access capacity, a change which would need to be reflected in the reference offer. The Commission had no comments.

II.2. Proposed measure

This decision concerns the pricing elements of the reference offer transmitted and amended by Belgacom in 2012 and agreed by IBPT in February 2013. This draft measure proposes therefore to set the cost-oriented prices of the different elements⁷ necessary for the provision of the wholesale multicast services. In addition, IBPT proposes to modify the prices for Ethernet transport for BROBA and WBA VDSL 2 offers, which were initially approved by IBPT in 2010.

In its proposed draft measure, IBPT indicates that the relevant prices were calculated based on its NGA/NGN cost model, which follows a BU-LRAIC+ methodology based on current costs and on an efficient existing operator (Belgacom). It relies on an economic asset depreciation method, which takes into account a return on invested capital. This return is determined by the WACC, whose value has been fixed by IBPT at

⁴ In accordance with Article 5(2) of the Framework Directive.

⁵ Corresponding to market 5 in the previous Commission Recommendation 2007/879/EC of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (Recommendation on Relevant Markets), OJ L 344, 28.12.2007, p. 65.

⁶ Case BE/2012/1362

⁷ These comprise the access to the IPTV platform of Belgacom; the one-time fees concerning the IPTV offer; and the Ethernet transport on Belgacom's core network. In its reply to the RFI, IBPT indicates that this draft measure concerns the prices of Ethernet transport and that a forthcoming measure will concern local loop rental and the price for the bitstream end-user line. IBPT plans to review the relevant access tariffs as soon as possible during 2015.

9.61% in nominal terms for the 2010-2013 period, and is applied in the currently notified draft measure.⁸

Regarding the pricing of services, the Ethernet transport costs are determined, and the pricing structures differentiated, according to three different connectivity levels⁹. Costs are divided in both "fixed" and "variable". In the fixed part, IBPT proposes to set the prices for the transport of both BROBA and WBA regional connectivity services. As for the variable part, IBPT proposes to set the prices for both shared and dedicated VLAN regional connectivity.

The prices for the wholesale multicast offer¹⁰ with respect to the IPTV and the transport of multicast streams are also determined in this draft measure. This includes the tariffs of one-time fees¹¹. The IPTV platform and the transport of multicast flows' prices in the wholesale multicast offer are determined based on two cost categories: (i) the cost of the IPTV platform; (ii) the cost of the Ethernet platform for multicast flows shared between Belgacom and alternative operators. The chosen pricing structure proposed is by channel¹², which, according to IBPT, is more appropriate than the pricing per user¹³.

III. NO COMMENTS

The Commission has examined the notification and has no comments.¹⁴

Pursuant to Article 7(7) of the Framework Directive, IBPT may adopt the draft measure and, where it does so, shall communicate it 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.

⁸ In the reply to the RFI, IBPT indicates that a public consultation is currently on-going to determine the WACC value for mobile and fixed operators for the period 2015-2018. The draft decision will be notified to the European Commission in the beginning of 2015.

⁹ Transport at the local, regional and national levels. The only regulated product using the national level of transport is that of multicast flows distributed from IPTV platforms.

¹⁰ This includes: (i) the monthly shared TV channel recurring fees and (ii) the monthly ordered dedicated capacity recurring fees.

¹¹ In this decision, BIPT makes reference to three specific one-time fees: (i) information on multicast services – rate per Belgacom personnel hour; (ii) wrongful repair request; and (iii) SLA documented report.

¹² Pricing by channel consists of taking all the costs of the IPTV platform and of the bandwidth and allocating them as a function of the total bandwidth used for multicast, which in practice leads to a monthly cost per Mbps, which is allocated for each channel as a function of the required bandwidth. The cost per channel is then allocated between Belgacom and the alternative operators in order to determine the price applicable to the alternative operators.

¹³ IBPT indicates that the approach per channels enables alternative operators to benefit from economies of scale by incentivising them to supply an IPTV offer to the greatest possible number of users. It also complies with the nature of costs in question and, finally, it offers alternative operators the possibility of limiting their costs, facilitating a differentiation of the offer based on the number of channels offered. A negative aspect is the fact that it could represent a significant commitment for an alternative operator facing uncertain revenues, since it involves fixed costs. However, it is a more efficient approach than the pricing per users (i.e. sharing the costs between all users) since the later approach does not enable access seekers to benefit from economies of scale when their customer base grows.

¹⁴ In accordance with Article 7(3) of the Framework Directive.

Pursuant to Point 15 of Recommendation 2008/850/EC¹⁵ 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 Commission¹⁶ within three working days following receipt whether you consider that, in accordance with EU and national rules on business confidentiality, this document contains confidential information which you wish to have deleted prior to such publication.¹⁷ You should give reasons for any such request.

<p style="text-align: center;">CERTIFIED COPY For the Secretary-General,</p> <p style="text-align: center;">Jordi AYET PUIGARNAU Director of the Registry EUROPEAN COMMISSION</p>
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Yours sincerely,
For the Commission,
Robert Madelin
Director-General

¹⁵ Commission Recommendation 2008/850/EC of 15 October 2008 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, OJ L 301, 12.11.2008, p. 23.

¹⁶ Your request should be sent either by email: CNECT-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

¹⁷ The Commission may inform the public of the result of its assessment before the end of this three-day period.