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Institut belge des services postaux et  
des télécommunications (IBPT)

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B-1030 Bruxelles  
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/2014/1640: Wholesale terminating segments of leased lines in Belgium – modification of remedies**

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

## **I. PROCEDURE**

On 4 July 2014, the Commission registered a short notification from the Belgian national regulatory authority, *Institut belge des services postaux et des télécommunications* (IBPT)<sup>1</sup>, concerning a modification of remedies on the wholesale market for terminating segments of leased lines in Belgium<sup>2</sup>.

The national consultation<sup>3</sup> ran from 7 February 2014 to 5 March 2014.

On 10 July 2014 a request for information<sup>4</sup> was sent to the IBPT and a response was received on 14 July 2014.

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<sup>1</sup> 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.

<sup>2</sup> Corresponding to market 6 in 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.

<sup>3</sup> In accordance with Article 6 of the Framework Directive.

<sup>4</sup> In accordance with Article 5(2) of the Framework Directive.

## II. DESCRIPTION OF THE DRAFT MEASURE

### II.1. Background

The wholesale market for terminating segments of leased lines in Belgium was notified to and assessed by the Commission for the first time under case BE/2006/0552. The IBPT found the wholesale market for terminating segments of leased lines to include all bandwidths, backhaul lines, interconnection (or partial circuit) leased lines, and traditional as well as alternative<sup>5</sup> interfaces providing a dedicated point to point transmission capacity. Belgacom was designated with significant market power (SMP). A full set of obligations except accounting separation was imposed on the SMP operator. The Commission invited the IBPT to elaborate, notify and implement its cost accounting system in a shorter time frame than proposed.<sup>6</sup>

The second round analysis was notified to and assessed by the Commission under case BE/2013/1474. The IBPT included partial circuit terminating segments and backhaul terminating segments, irrespective of bandwidth and either with traditional interface or next generation leased line (NGLL) interface, both of which use the same optical infrastructure (fibre or wavelength). As to the geographic scope of the market, the IBPT recognised that the optical fibre lines deployed by alternative operators might introduce some difference in competitive conditions at local level, but found the overall competitive dynamics sufficiently homogenous to confirm that the markets were national. The circumstantial and potentially rapidly variable geographical differences in competitive conditions which the IBPT had noticed in some areas, were reflected by means of a differentiation in remedies. Belgacom was designated with SMP.

The IBPT proposed to maintain the following obligations on Belgacom: access and interconnection (for all bandwidths provided by Belgacom, and including backhaul and partial circuit services), non-discrimination (internal and external, same conditions and delays, and including service level agreements), transparency (including the publication of a reference offer with key performance indicators and provision of information on future network developments), accounting separation (although the division according to bandwidths is withdrawn), price control and cost accounting. The Commission urged the IBPT to closely monitor technological developments, investments by the alternative and incumbent operators, competitive conditions, and uptake of lower bandwidth services vis-à-vis higher bandwidth services, and to review the assessment of the wholesale terminating segments of leased lines market accordingly, as soon as national circumstances warrant this.

The Commission also underlined the obligation of the IBPT to notify any future draft measures that may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States in a manner which may create a barrier to the single market, under Article 7(3) of the Framework Directive. The Commission pointed out that such notifiable measures would include, *inter alia*, cost methodologies related to the relevant wholesale market at hand as well as adjustments thereto. The Commission also recalled the possibility for regulators to notify changes or updates of details which do not

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<sup>5</sup> i.e. using Ethernet technology.

<sup>6</sup> The Commission did not have comments on IBPT's draft remedy (notified to and assessed by the Commission under case BE/2009/0882) on key performance indicators for the wholesale market for terminating segments of leased lines.

change the nature or the scope of the remedies, by means of a short notification form as set out in the Procedural Recommendation<sup>7</sup>.

## **II.2. The draft measure notified by way of a short form**

The notified changes relate to non-price related modifications to the SMP operator's reference offer for terminating segments of leased lines (BROTSoLL) which IBPT considers as necessary for the implementation of remedies previously imposed<sup>8</sup>. The notified modifications concern (i) minor corrections to the main body of the BROTSoLL; (ii) an addendum relative to estimates for the installation of fibre drop cables; and (iii) an addendum on technical specifications for the NGLL<sup>9</sup>.

## **III. NO COMMENTS**

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

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.

Pursuant to Point 15 of Recommendation 2008/850/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 EU and national rules on business confidentiality, this document contains confidential information which you wish to have deleted prior to such publication.<sup>13</sup> You should give reasons for any such request.

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<sup>7</sup> 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.

<sup>8</sup> In this context IBPT refers to its market analysis decision of 8 August 2013.

<sup>9</sup> IBPT indicates that in the future it may have to propose further alterations of the Reference Offer in relation to certain details of Service Level Agreements (SLAs) as well as the terms of access to manholes. In its response to the request for information, however, IBPT has indicated that these additions do not affect the coming into force of the Reference Offer, which is operational without them.

<sup>10</sup> In accordance with Article 7(3) of the Framework Directive.

<sup>11</sup> 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.

<sup>12</sup> Your request should be sent either by email: CNECT-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

<sup>13</sup> The Commission may inform the public of the result of its assessment before the end of this three-day period.

Yours sincerely,  
For the Commission,  
Robert Madelin  
Director-General