



EUROPEAN COMMISSION

Brussels, 4.8.2006

**SG-Greffe (2006) D/204471**

Institut Belge des services Postaux et  
Télécommunications (IBPT)  
Avenue de l'Astronomie 14 - Bte 21  
B-1210 Bruxelles  
Belgium

For the attention of:  
Mr. Eric Van Heesvelde  
Chairman of the Board

Fax: 02 226 88 41

Dear Mr Van Heesvelde,

**Subject: Cases BE/2006/0439, BE/2006/0440 and BE/2006/0441: Call origination on the public telephone network provided at a fixed location, Call termination on individual public telephone networks provided at a fixed location, and Transit services in the fixed public telephone network in Belgium.**

**Article 7(3) of Directive 2002/21/EC<sup>1</sup>: No comments**

## **I. PROCEDURE**

On 7 July 2006, the Commission registered three notifications from the national regulatory authority ("NRA") of Belgium, *Institut Belge des Postes et Télécommunications* (IBPT), covering the market for call origination on the public telephone network provided at a fixed location in Belgium (case BE/2006/0439), the markets for call termination on individual public telephone networks provided at a fixed location in Belgium (case BE/2006/440) and the market for transit services in the fixed public telephone network in Belgium (case BE/2006/0441).

A national consultation<sup>2</sup> ran from 7 February to 10 April 2006. The deadline for the Community consultation is 7 August 2006. On 18 July 2006 a request for information was sent to IBPT. The reply was received on 20 July 2006.

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<sup>1</sup> 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.

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.

## II. DESCRIPTION OF THE DRAFT MEASURES

### II.1. Market definition

The notified draft measures concern the wholesale fixed telephony markets in Belgium. They cover the market for call origination on the public telephone network provided at a fixed location, which corresponds to market 8 listed in the Recommendation on relevant markets<sup>3</sup>, the markets for call termination on individual public telephone networks provided at a fixed location, which correspond to market 9 listed in the Recommendation and the market for transit services in the fixed public telephone network, which corresponds to market 10 listed in the Recommendation.

#### *II.1.1. The market for call origination on the public telephone network provided at a fixed location in Belgium*

IBPT defines the relevant product market as call origination on the public telephone network provided at a fixed location, which regroups:

- originating services for the provision of telephone, data and VPN services;
- originating services for calls using 0797 numbers of an alternative operator;
- originating services for the provision of value added services by an alternative operator;
- local and trunk calls;
- call origination for carrier preselection and selection.

IBPT considers that the territory of Belgium should be defined as the geographic market.

#### *II.1.2. The market for call termination on individual public telephone network provided at a fixed location in Belgium*

IBPT defines the relevant product market as comprising the termination of local, intra and extra area calls. An area is defined in respect of the incumbent's network topology as being the area covered by a regional switch. Call termination services to non-geographic numbers are outside the scope of the relevant market.

IBPT defines a separate market for each fixed network operator providing call termination services over its network<sup>4</sup>.

Finally, IBPT finds that the geographic dimension of the market corresponds to the geographic coverage of each operator's network.

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

<sup>3</sup> 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, OJ L 114, 8.5.2003, p. 45.

<sup>4</sup> Belgacom, BT, Coditel, COLT, MCI, Mobistar, Scarlet, Telenet and Versatel.

### *II.1.3. The market for transit services in the fixed public telephone network in Belgium*

IBPT considers that the market for transit services includes both services for intra area and extra area access transit (single and double tandem), as well as transit services for calls to geographic, non-geographic and mobile numbers.

IBPT considers that the territory of Belgium should be defined as the geographic market.

All the market definitions proposed by IBPT are consistent with the Recommendation.

## **II.2. Finding of significant market power (“SMP”)**

### *II.2.1. The market for call origination on the public telephone network provided at a fixed location in Belgium*

IBPT proposes to designate Belgacom as having SMP on the market for call origination on the public telephone network provided at a fixed location in Belgium on the basis of high and stable market shares (98%), the control of an infrastructure which is difficult to replicate, economies of scale and scope, vertical integration, the absence of countervailing buyer power and the limited prospects for further market evolution.

### *II.2.2. The market for call termination on individual public telephone network provided at a fixed location in Belgium*

IBPT intends to designate Belgacom and 8 alternative network operators (“ANOs”) as having SMP in the market for call termination on their own network. IBPT notes that each operator enjoys a monopoly position in this market. IBPT also notes that countervailing-buying power of Belgacom is not negligible but insufficient to remove the SMP of ANOs.

IBPT notes that two ANOs, Versatel and Telenet, are charging termination rates 550% higher than Belgacom's rates. The other ANOs are currently charging termination rates equivalent to Belgacom's.

### *II.2.3. The market for transit services in the fixed public telephone network in Belgium*

IBPT proposes to designate Belgacom as having SMP on the market for transit services in the fixed public telephone network in Belgium on the basis *inter alia* of a market share of 59% in volume and 78% in value, economies of scale and scope, and vertical integration. IBPT also notes that the transit market is very concentrated with two operators supplying 88% of the overall volumes of traffic. In addition, IBPT considers that the decrease of Belgacom's market share since 2001 (74% in volume, 96% in revenues) is rather due to the regulation imposed on that market than due to competition forces.

## **II.3. Regulatory remedies**

### *II.3.1. The market for call origination on the public telephone network provided at a fixed location in Belgium*

In the market for call origination, IBPT intends to impose on Belgacom the following obligations: i) access and interconnection, ii) non-discrimination, iii) transparency

(including the publication of a reference offer), iv) accounting separation and v) price control and cost accounting.

### *II.3.2. The market for call termination on individual public telephone network provided at a fixed location in Belgium*

IBPT proposes to impose the following obligations on Belgacom: i) access and interconnection, ii) non-discrimination (external and internal<sup>5</sup>), iii) transparency (including the publication of a reference offer), iv) accounting separation and v) price control (cost-orientation<sup>6</sup>) and cost accounting.

As far as the ANOs are concerned, IBPT proposes to impose the following obligations: i) access and interconnection, ii) non-discrimination (external), iii) transparency and iv) prohibition of excessive pricing.

The prohibition to set excessive prices is set in reference to Belgacom's Reference Interconnection Offer ("BRIO"), taking into account an efficient delivery of service. IBPT does not consider that an exact symmetry of tariffs would be proportionate since Belgacom enjoys higher economies of scale and scope and, according to IBPT, ANOs had to incur high fixed costs in order to set up their terminating networks. Therefore, IBPT considers appropriate to implement a mark-up on Belgacom's terminating rates. The mark-up should not be higher than 15% and it is defined on the basis of a benchmark<sup>7</sup> and in consideration of efficiency.

Since Versatel and Telenet's termination rates are strongly asymmetric in comparison with Belgacom, IBPT proposes to introduce a glide path with a view to reach the maximum mark-up of 15%<sup>8</sup>, as follows:

- 1 January 2007: BRIO+370%
- 1 January 2008: BRIO+190%
- 1 January 2009: BRIO+15%

### *II.3.3. The market for transit services in the fixed public telephone network in Belgium*

In the market for transit services, IBPT considers necessary to impose on Belgacom the following obligations: i) access and interconnection, ii) non-discrimination, iii) transparency, iv) accounting separation and v) price control and cost accounting.

The National Competition Authority ("NCA") agreed with IBPT's findings.

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<sup>5</sup> With regard to pricing and conditions as well as quality of service.

<sup>6</sup> Calculated with a "top down" approach that might be reconciled with a "bottom-up" approach.

<sup>7</sup> Data observed in Portugal and the Netherlands as well as data provided by Belgacom during the national consultation. From that benchmark, IBPT concludes that ANOs can charge higher termination tariffs than the incumbent in a range of 15% to 25%. IBPT chose the lower threshold of the range in consideration of consumers' interest.

<sup>8</sup> The mark-up would be of immediate application for calls originating from abroad (international incoming traffic).

### III. NO COMMENTS

The Commission has examined the draft measures and the additional information provided by IBPT and has no comments.

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 these particular notifications 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>9</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>10</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,  
Fabio Colasanti  
Director General

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<sup>9</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>10</sup> Your request should be sent either by email: [INFSO-COMP-ARTICLE7@ec.europa.eu](mailto:INFSO-COMP-ARTICLE7@ec.europa.eu) or by fax: +32.2.298.87.82.