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C(2013) 8182 final

Institut Belge des Poste et
Télécommunications (IBPT)
Ellipse Building - Bâtiment C
Boulevard du Roi Albert II 35
1030 Bruxelles

For the attention of:
Mr Jack Hamande
Head of Authority

Fax: +32 2 226 88 41

Dear Mr Hamande,

Subject: Commission Decision concerning Case BE/2013/1514: Wholesale (physical) network infrastructure access at a fixed location and wholesale broadband access in Belgium - Remedies

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

I. PROCEDURE

On 18 October 2013, the Commission registered a notification from the Belgian national regulatory authority, the *Institut Belge des Poste et Télécommunications* (IBPT)¹, concerning remedies in the markets for wholesale (physical) network infrastructure access at a fixed location and wholesale broadband access² in Belgium.

The national consultation³ ran from 21 December 2012 to 23 January 2013.

II. DESCRIPTION OF THE DRAFT MEASURES

II.1. Background

The markets for wholesale (physical) network infrastructure access at a fixed location and wholesale broadband access in Belgium were previously notified to and assessed by

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 markets 4 and 5 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.

³ In accordance with Article 6 of the Framework Directive.

the Commission under cases BE/2011/1227&1228⁴.

At the time CRC⁵ included in the market for wholesale physical network access at a fixed location shared and fully unbundled access to local loops and sub-loops. The provision of Bitstream services, FTTH based access and access to cable was excluded from the market definition. The market was defined as national in scope. CRC designated Belgacom as the SMP operator in the market and proposed to impose on it the following obligations: (i) access to network elements and associated facilities, (ii) non-discrimination, (iii) transparency, (iv) price control and cost accounting and (v) accounting separation.

The wholesale broadband access market included Bitstream access provided through ADSL, SDSL and VDSL, irrespective of whether the SMP operator provides its end customers with voice services. CRC excluded resale products, leased lines services as well as cable based access from the relevant market. The geographic market was defined as national. CRC designated Belgacom as the SMP operator and imposed the following obligations: (i) access to broadband services, (ii) non-discrimination, (iii) transparency, (iv) price control and cost accounting and (v) accounting separation.

The Commission invited CRC to monitor the market, namely with regard to the evolution of local exchange dismantling by Belgacom and the implementation of VDSL2, to ensure that, in the transition to NGA networks, competition is safeguarded and new bottlenecks are avoided in the broadband markets. Moreover, the Commission drew CRC's attention to the potentially varying levels of competitive pressure exercised at retail level by cable operators in different areas of the Belgian market, which, together with the proposed physical access remedies, could potentially warrant reducing the intensity of downstream regulation in certain areas.

In 2011⁶ IBPT notified the review of the technical details of the implementation of the previously imposed obligation to use the customer premises equipment (CPE), such as modems, of alternative operators on the incumbent's network, and in 2012⁷ the Commission received a notification relating to the exact implementation of the transparency requirement, introducing an alternative to the multicast functionality. The Commission did not comment on these notifications.

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

The currently notified draft measure amends the reference offers of BRUO⁸, BROBA⁹ and WPA VDSL2¹⁰. IBPT underlines that the draft measure implements its final decisions of 2011 with regard to the imposed access, transparency and non-

⁴ C(2011) 4535.

⁵ In Belgium, competencies related to electronic communications are shared between the Federal State and the Communities. The CRC was established by the 2006 Cooperation Agreement as the body for cooperation between IBPT (Federal State), Conseil Supérieur de l'Audiovisuel (CSA – French speaking Community), Vlaamse Regulator voor de Media (VRM – Flemish Community) and the Medienrat (German speaking Community).

⁶ Case BE/2011/1276, C(2011) 9873.

⁷ Case BE/2012/1362, C(2012) 6763.

⁸ Reference offer for local loop unbundling.

⁹ Reference offer for Bitstream services for xDSL technologies over ATM or Ethernet network, with the exception of the VDSL2 technology.

¹⁰ Reference offer for Bitstream services for VDSL2 over Ethernet network.

discrimination obligations without imposing any new obligations. The proposal aims at improving the internal consistency, transparency and readability of reference offers. In particular, the draft measure provides details concerning Service Level Agreements, compensations, pricing and billing, and the improvement of planning and operational processes. IBPT carried out a sector consultation and set up several working groups to discuss Belgacom's proposal and to make the necessary changes before entering into national consultation pursuant to Article 6 of the Framework Directive. The other Belgian authorities responsible for electronic communications under the CRC did not have comments on the draft decision.

III. NO COMMENTS

The Commission has examined the notifications and has no comments.¹¹

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/EC¹² 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 Commission¹³ 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.¹⁴ You should give reasons for any such request.

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

¹¹ In accordance with Article 7(3) of the Framework Directive.

¹² 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.

¹³ Your request should be sent either by email: CNECT-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

¹⁴ The Commission may inform the public of the result of its assessment before the end of this three-day period.