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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/2014/1556: Wholesale broadband access in Belgium - Remedies

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

I. PROCEDURE

On 17 January 2014, the Commission registered a notification from the Belgian national regulatory authority, the *Institut Belge des Poste et Télécommunications* (IBPT)¹, concerning remedies in the market for wholesale broadband access² in Belgium.

The national consultation³ ran from 31 October 2013 to 15 November 2013.

On 22 January 2014, a request for information⁴ (RFI) was sent to IBPT and a response was received on 24 January 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 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.

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

II. DESCRIPTION OF THE DRAFT MEASURES

II.1. Background

The market for wholesale broadband access in Belgium was previously notified to and assessed by the Commission under case BE/2011/1228⁵.

At the time CRC⁶ included in the wholesale broadband access market 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 2011⁷ 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, on the incumbent's network. The draft measure introduced the possibility for alternative operators to use their own CPEs on the incumbent's network. In 2012⁸ the Commission received a further notification, relating to the exact implementation of the transparency requirement, introducing an alternative to the multicast functionality. Furthermore, in 2013⁹ IBPT notified amendments to the reference offers of BRUO¹⁰, BROBA¹¹ and WPA VDSL2¹² which aimed at improving the internal consistency, transparency and readability of reference offers. 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 concerns the implementation of the non-

⁵ C(2011) 4535.

⁶ 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).

⁷ Case BE/2011/1276, C(2011) 9873.

⁸ Case BE/2012/1362, C(2012) 6763.

⁹ Case BE/2013/1514, C(2013) 8182.

¹⁰ Reference offer for local loop unbundling.

¹¹ Reference offer for Bitstream services for xDSL technologies over ATM or Ethernet network, with the exception of the VDSL2 technology.

¹² Reference offer for Bitstream services for VDSL2 over Ethernet network.

discrimination obligation imposed on the wholesale broadband access market by the CRC decision of 1 July 2011¹³.

The purpose of the notified draft decision is to bring the regulated wholesale Bitstream offer in line with the Belgacom retail offer due to the launch of vectoring¹⁴, namely to ensure that the alternative operators may offer the same download speed as Belgacom. Moreover, the draft decision takes account of the needs of the alternative operators with regard to further vectoring developments. In this regard Belgacom is obliged to develop a roadmap which would result in a higher upload profile¹⁵ for business services in the future.

III. NO COMMENTS

The Commission has examined the notification and has no comments.¹⁶

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/EC¹⁷ 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 Commission¹⁸ 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.¹⁹ You should give reasons for any such request.

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

¹³ Case BE/2011/1228.

¹⁴ In its reply to the Commission's RFI IBPT explains that currently VDSL2 lines are not vectored, and it is only possible to guarantee a minimal download speed of 14.5Mbps in the WBA offer. After the launch of vectoring and the approval of this vectoring addendum the guaranteed speeds in the WBA offer will increase to 50Mbps in line with Belgacom's retail offer. Vectoring will be launched at the same time for Belgacom retail and wholesale.

¹⁵ As a result of the implementation of vectoring Belgacom is obliged to prepare as soon as possible and as efficiently as possible a new symmetric profile with higher bandwidth capacity.

¹⁶ In accordance with Article 7(3) of the Framework Directive.

¹⁷ 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.

¹⁸ Your request should be sent either by email: CNECT-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

¹⁹ The Commission may inform the public of the result of its assessment before the end of this three-day period.