



*Executive Summary*  
of  
**FAC Memorandum**  
**Filed in the context of BIPT M4/M5 consultation**

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**Preserving and Enhancing Competition in Belgium**  
on  
**Markets for Telecommunications Services**  
specific to  
**Professional Users**

**18 February 2011**

1. FAC (“Fixed Alternative Carriers”) represents the interests in Belgium of (international) business providers. Current members are: BT Global Services, Colt Technology Services, and Verizon Business. The activity of each of these companies is focused specifically on meeting the needs of professional users of telecommunications services.
2. *The requirements of professional or business users of electronic communications are significantly different from those of residential users.* The needs of professional users of telecommunications services remain an important driver of telecommunications policy and regulation. The retail demand from professional users of telecommunications services in Belgium and elsewhere in Europe is specific, and the requirements of this class of users differs to a large extent from the requirements of individual consumers/families. The requirements for professional users include a.o. symmetric non-contended and low contention connectivity, guaranteed quality of service, and ultra-rapid repair time during business hours.
3. *Alternative operators must be able to match, but also to differentiate from the dominant operator’s services.* In order to achieve dynamic markets in which the evolving demand expressed by customers is effectively met, alternative operators must be able both, to: (i) differentiate their services from those of the dominant operator, i.e. be able to define their own product specifications and pricing, i.e. be able to introduce technical and commercial innovations, and, (ii) to replicate services provided by the dominant operator, i.e. at least be able to match the incumbent on product without the risk of being margin-squeezed by the dominant operator. This applies both to self-supplied wholesale inputs, and to wholesale inputs acquired from the incumbent/dominant operator.
4. *The specificity in requirements for professional users results in a specific wholesale demand for the operators aiming to meet professional users’ needs.* In order to meet the specific requirements of professional users, the derived wholesale demand for wholesale inputs required by business operators, whether self-supplied or supplied by third parties, is specific.
5. *The alternative operators are in need of physical access and wholesale broadband access products from Belgacom to connect their customers to their own European backbone and Belgian metropolitan fibre infrastructure.* Even though the FAC members heavily

invested in their own fibre-optic infrastructure, these operators need to rely on a variety of cost-oriented and business grade physical and broadband access products provided by the dominant operator, as the limited geographic customer density is preventing them from achieving economics of density that are required for providing the same on-net access to every location demanded by professional users in Belgium based on their own self-supply. However, the regulated wholesale access products today available on the Belgian market do not suffice to meet the specific needs of the business users.

6. *The structural changes in Belgacom's network and the marketing by Belgacom of the Ethernet based Explore offering to business customers will fundamentally change the competitive landscape in Belgium.* As a result of Belgacom's structural changes in its network (phase out a number of LEXs, the creation of mini-MDFs only in some cases, and with only limited coverage, and the phase out of PDH/SDH leased lines), the alternative operators focused on professional users will lose a substantial part of their ability to differentiate their services from those of the incumbent. At retail level, there is a serious risk for a violation of the principle of non-discrimination whereby Belgacom would self-supply certain wholesale access (and possibly backhaul) inputs to enable it to provide the Explore product which are either not available externally at all, or are not available on equivalent terms. At the wholesale level, the implications of the phase-out of physical network and transmission network elements will result in: (a) the complete end of BRUO copper local loop unbundling where no mini-MDF is created, (b) the partial end of BRUO copper local loop unbundling where a mini-MDF is created (the mini-MDF will only serve the shortest loops, whereas the longer loops will be cut-off from the mini-MDF), (c) the termination of BROBA SDSL and (d) the termination of BROTSOLL PDH/SDH terminating segments.
7. *The risk is that the alternative operators would be put in the same or even worse situation as was the case before 2001/2002.* The likely outcome of the structural changes in Belgacom's network will be that FAC members, either have to withdraw from certain market segments or reduce their offerings, or may have no other choice than being forced to purchasing Belgacom's bundled retail products (e.g. Explore) if they prefer to continue to serve their customers and/or to continue to provide retail offers to professional users

which are competitive with those of Belgacom. This situation would be highly similar or even worse than what they experienced in the period up to 2001/2002.

8. *Gaps in the definitions of Markets 4, 5 and 6 should be avoided and closed where needed.* FAC is concerned that the wholesale markets as defined by the BIPT with regard to Markets 4 and 5, and involving the BIPT's existing and future work on wholesale leased line terminating segments, could cause gaps to appear, i.e. that some aspects would fail to be covered, on account of: (i) errors or omissions in market definitions, and (ii) insufficient joint consideration of the markets in question. *Any gaps must be closed without any delay, i.e. in the currently considered market definitions/analyses.*
9. *A segmented market analysis to cater for the needs of operators serving professional users is indispensable.* FAC requests the BIPT to conduct, prior to the finalisation of its Market 4 and Market 5 analyses, an explicit examination of the facts and possible justifications for segmenting Market 4 and Market 5 along the specific wholesale input requirements of operators serving professional users. *This must logically lead to the inclusion of Fibre-to-the-Premises (FttP) in Market 4, and to the inclusion of Wholesale Broadband Access over 'Ethernet First Mile' (EFM) in Market 5.*
10. *If the BIPT decides against segmenting markets, remedies should be specifically differentiated and enhanced.* If the BIPT were to conclude that it would not be justified to segment Markets 4 and 5 along the lines set out above, FAC requests the BIPT to re-assess in-depth the differentiated requirements of professional users and the specialist operators that serve them, and to adopt far more detailed differentiated remedies, to ensure that competition on the markets for services to professional users is not harmed, and thereby to prevent harm being inflicted on professional users.
11. *Belgacom has SMP both on Markets 4 and 5.* Irrespective how the markets are defined, (whether according to the BIPT's draft, or in the manner proposed by FAC), there is no doubt that these markets pass the three criteria test, and that Belgacom should be found to hold Significant Market Power on the relevant markets.
12. *BIPT needs to actively avoid gaps in remedies.* FAC requests the BIPT to specifically ensure, prior to the finalisation of its Market 4 and Market 5 analyses, that no gaps

exist/appear in the necessary remedies that result from its ex-Market 13 analysis, the proposed Market 4 and Market 5 analyses, and the future Market 6 analysis. *Any gaps must be closed without any delay, i.e. in the currently considered remedies.*

13. *Remedies for Market 4.* As far as the remedies for Market 4 are concerned, in addition to currently applicable remedies and the remedies put forward by the BIPT, Belgacom should be required to provide fibre unbundling at the mini-MDF locations and at a higher aggregation point, with pricing along a coherent ladder of investment. Note: Verizon has a different view on fibre unbundling.
14. *Remedies for Market 5.* As far as the remedies for Market 5 are concerned, in addition to currently applicable remedies and the remedies put forward by the BIPT (e.g. WBA VDSL2), Belgacom should be required to provide a Wholesale Broadband Access offer suitable for the delivery of services to professional users, including broadband access based on Ethernet in the First Mile, at the mini-MDF locations and at a higher aggregation point, with pricing along a coherent ladder of investment. In addition, in order to ensure not only innovation by alternative operators, but also replication to preserve competition, this Wholesale Broadband Access offers should be made explicitly subject to an Equivalence of Input requirement. *In essence, WBA over EFM needs to be mandated by the BIPT.*
15. *Market 6 needs to be addressed, in full coherence with Markets 4 and 5.* Last but not least, FAC urges the BIPT to conduct a *Market 6 analysis as soon as possible*, ensuring full coherence with the final conclusions reached for Markets 4 and 5. Particular attention is needed to product definition, and to cost-orientation for all products, and to maintaining a coherent ladder of investment, across the entire portfolio of mandated wholesale access products.