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

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

Fax: +32 2 226 88 41

Dear Mr Van Heesvelde,

Subject: Case BE/2008/0750: additional remedies on five markets: access to fixed networks, fixed call origination, fixed call termination and transit.

Article 7(3) of Directive 2002/21/EC¹: No comments

I. PROCEDURE

The notification was received from the Belgian national regulatory authority, the Institut Belge des Services Postaux et des Télécommunications ("IBPT") on 17 January 2008, and became effective on that day. It concerns a draft decision regarding the obligation of Belgacom to publish key performance indicators ("KPI") which complements the draft

¹ 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.

decisions notified to the Commission in cases BE/2006/0400-0401² and BE/2006/0439-0441³.

The current notification follows the ruling of the Cour d'Appel de Bruxelles ("CAB") on IBPT's decision on the markets of access to the public telephone networks at a fixed location⁴. On 1 June 2007, the CAB ruled that IBPT did not sufficiently motivate its final decision to impose on Belgacom the obligation to publish KPI.

A national consultation⁵ ran from 14 August 2007 to 17 September 2007.

On 24 January 2008 a request for information was sent to IBPT. The reply from IBPT was received on 30 January 2008.

Pursuant to Article 7(3) of the Framework Directive, national regulatory authorities ("NRAs") and the Commission may make comments on notified draft measure to the NRA concerned.

II. DESCRIPTION OF THE DRAFT MEASURE

As a result of the first round of analyses regarding the markets for access to the fixed network, fixed call origination, fixed call termination and transit, IBPT designated Belgacom as an operator with Significant Market Power ("SMP"). One of the obligations IBPT imposed on Belgacom in all these cases was an obligation to provide KPI concerning i) access to the fixed network ii) fixed call origination iii) fixed call termination and iv) transit.

Following the CAB judgment, IBPT decided to notify to the Commission a specific draft measure on KPI concerning the above mentioned markets which provides a detailed justification for imposing KPI, in the light of discussions within the European Regulators Group⁶ and the administrative practice of a number of national authorities. Moreover, IBPT considered that it was necessary to provide consistency across all its decisions in which an obligation to publish KPI was imposed.

² SG (2006) D/203046 -case related to retail access to the public telephone network at a fixed location for residential customers and for non-residential customers, i.e. markets 1 and 2 of the Commission Recommendation 2003/311/EC of 11 February 2003 on relevant product and service markets within the electronic communication sector susceptible to ex ante regulation in accordance with the Framework Directive ("The Recommendation"), O J L 114, 8.05.2003, p.45.

³ SG (2006) D 204471 - case related to wholesale call origination and termination and transit on the public telephone network at a fixed, i.e. market 8, 9 and 10 of the Recommendation.

⁴ IBPT decision concerning the analysis of the fixed access markets, which was notified to the Commission with case n. BE/2006/0400-0401 and adopted on 19 June 2006.

⁵ In accordance with Article 6 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 ("the Framework Directive").

⁶ The reference is to the ERG document "Revised ERG Common Position on the approach to appropriate remedies in the ECNS regulatory framework" Final Version May 2006, ERG (06) 33.

III. NO COMMENTS

The Commission has examined the notification and has no comments⁷.

Pursuant to Article 7(5) of the Framework Directive, IBPT may adopt the resulting 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 12 of Recommendation 2003/561/EC⁸ 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 Commission⁹ 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,
Philip Lowe
Director-General

⁷ Pursuant to Article 7(3) of the Framework Directive.

⁸ 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.

⁹ Your request should be sent either by email: INFSO-COMP-ARTICLE7@ec.europa.eu or by fax: +32.2.298.87.82.