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Institut Belge des Poste et
Télécommunications (IBPT)

35 Boulevard du Roi Albert II
B-1030 Brussels
Belgium

For the attention of:
Mr. Luc Hindryckx
Président du Conseil

Fax: +32 2 226 88 41

Dear Mr Hindryckx,

Subject: Commission decision concerning case BE/2011/1174: transit services in the public telephone network provided at fixed locations in Belgium

Article 7(3) of Directive 2002/21/EC:¹ No comments

I. PROCEDURE

On 20 January 2011, the Commission registered a short notification from the Belgian regulatory authority, *Institut Belge des Postes et Télécommunications* (IBPT), concerning the market for wholesale market for transit services in the public telephone network provided at fixed locations in Belgium.

The national consultation² was launched on 22 October 2009 and ended on 23 November 2009. The deadline for the Community consultation is 21 February 2011.

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.

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.

² In accordance with Article 6 of the Framework Directive.

II. DESCRIPTION OF THE DRAFT MEASURES

II.1. Background

The wholesale market for transit services in the public telephone network provided at fixed locations³ was previously notified to and assessed by the Commission under case number BE/2006/0441. In its final measure, IBPT designated Belgacom as having SMP on the basis inter alia of a market share of 59% in terms of volume and 78% in value, economies of scale and scope, and vertical integration, and imposed the following obligations on Belgacom: i) access and interconnection, ii) non-discrimination, iii) transparency, iv) accounting separation and v) price control and cost accounting. The Commission issued a no comments letter.

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

In the present notification, IBPT considers that the three cumulative criteria⁴ for markets to be susceptible to ex ante regulation are no longer met. Although IBPT indicates that barriers to entry remain high, it comes to the conclusion that the second and third criteria are not fulfilled anymore, based on market shares of alternative operators in the market⁵, and the number and diversity of direct interconnections. Further, IBPT indicates that no abuse practices have been brought to the attention of IBPT and that therefore the transit market does not need a regular follow-up by the regulator to avoid discriminatory practices or excessive prices. IBPT concludes that *ex ante* regulation is no longer justified in this market and proposes the withdrawal of the existing obligations after a transition period of 6 months.

III. NO COMMENTS

The Commission has examined the notifications and has no comments.⁶

Pursuant to Article 7(5) 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.

³ Corresponding to market 10 of the first Commission Recommendation 2003/311/EC of 11 February 2003 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with the Framework Directive, OJ L 114, 8.05.2003, p. 45. This market has been removed from the currently applicable list of relevant markets that may warrant *ex ante* regulation (see 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 the Framework Directive, OJ L 344, 28.12.2007, p. 65).

⁴ I.e. the market shows high and non-transitory barriers to entry, the market structures do not tend towards effective competition within the relevant time horizon, and the application of competition law alone would not adequately address the market failure concerned.

⁵ One operator has managed to acquire and retain a share of the market greater than 20% and another has acquired a share greater than 5% over a 3 year-period.

⁶ In accordance with Article 7(3) of the Framework Directive.

Pursuant to Point 15 of Recommendation 2008/850/EC⁷ 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 Commission⁸ 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 publication⁹. You should give reasons for any such request.

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

⁷ 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.

⁸ Your request should be sent either by email: INFSO-COMP-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

⁹ The Commission may inform the public of the result of its assessment before the end of this three-day period.