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Institut Belge des services postaux et des
télécommunications (IBPT)
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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/2007/0665: Amendment to the price control remedy and further justification of the internal non-discrimination remedy related to the decision concerning voice call termination on individual mobile networks in Belgium
Comments pursuant to Article 7(3) of Directive 2002/21/EC¹

I. PROCEDURE

On 16 July 2007 the Commission registered a notification by the Belgian national regulatory authority, the Institut Belge des services postaux et de télécommunications, ("IBPT"). The notification concerns the wholesale market for voice call termination on individual mobile networks in Belgium. IBPT had already notified a draft measure relating to this market in 2006². The final measure was adopted by IBPT on 11 August 2006. The currently notified draft measure is an amendment to the adopted final measure relating to the price control obligation and contains further justification of the internal-non discrimination obligation.

The national consultation³ regarding the amendment ran between 6 April 2007 and 2 May 2007. The deadline for the Community consultation is 16 August 2007.

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 (the "Framework Directive"), OJ L 108, 24.4.2002, p. 33.

² Registered under case number BE/2006/0433 on 7 July 2006.

³ 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"), OJ L 108, 24.4.2002, p. 33.

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.

II. DESCRIPTION OF THE DRAFT MEASURE

II.1. Amendment to the price control obligation

In its comments letter in case BE/2006/0433 the Commission considered that the glide path proposed in the notified measure does not fully comply with the objective to bring down mobile termination rates ("MTR") to the cost-level of an efficient operator. Therefore the Commission invited the IBPT to implement sooner than envisaged in the draft measure notified in 2006 the principle of forward-looking economic efficiency and to reduce further the maximum MTRs to be applied by Mobistar and Base during the period of this review covering the period from 11 August 2006 to 10 August 2009. In this regard, the Commission invited the IBPT to determine the level of the MTRs of each operator, so as to reach symmetry between Proximus and Mobistar within the period of the current review (i.e. by 2008), and so as to reach symmetry between all operators shortly after the timeframe of this review, unless IBPT were of the view that objective cost differences outside the control of the operators as discussed in the previous paragraphs justified the maintenance of a small degree of asymmetry. The Commission noted that this would in any case imply that the termination rates of Base would have to be reduced more steeply already during this period of review.

According to its currently notified draft measure IBPT has re-examined the mobile termination rates and has adjusted those and extended the timeframe of the glide path so as to achieve symmetry between Proximus and Mobistar as from July 2008 and a reduced asymmetry between Base and the two other mobile network operators as from July 2009. The method chosen was to calculate cost-oriented prices on the basis of the operators' original top-down LRIC models. The additional calculations made by IBPT aimed to:

- Determine the sources of asymmetry in the call termination costs of the operators;
- Derive the costs of an efficient scale operator in Belgium;
- Determine the allowable differences in the costs of Base and the two other operators, as a result of factors.

Pursuant to the result of these calculations - IBPT now proposes to set the following MTRs to be applied as from 1 January 2008.

	01-Jan-08	01-Jul-08	01-Jan-09	01-Jul-09
Belgacom Mobile	8,03 €ct	7,96 €ct	7,85 €ct	7,73 €ct
Mobistar	9,06 €ct	7,96 €ct	7,85 €ct	7,73 €ct
Base	10,76 €ct	8,75 €ct	8,62 €ct	8,49 €ct

IBPT proposes to maintain the asymmetry in respect of Base. IBPT justifies maintaining the asymmetry by identifying differences in costs which arise as a result of Base's network configuration determined by its different spectrum allocation (the use of the 1800 MHz frequency).

Furthermore IBPT adds that as from 1 January 2008 MTRs (i) shall be independent of the hour of the call (no differences between peak / off peak / week end), and (ii) the price/call shall be strictly proportional to the duration of the call (no set-up charges may be applied).

II.2. Further justification of the internal non-discrimination obligation

In the underlying previous measure⁴ IBPT proposed to impose an obligation of internal non-discrimination on Belgacom Mobile and Mobistar. This obligation is considered necessary by IBPT to avoid cross subsidization of downstream activities. As mentioned by IBPT, the non discrimination obligation does not require on net calls to be priced above the MTR, if this does not result in an abusive cross-subsidisation. Abusive cross-subsidisation could occur, if the retail offers taken in their entirety (price for the subscription including the communication basket included) are sold below costs if the internal transfer price for the termination of the calls is taken into account. In addition, IBPT states that this obligation is necessary to justify another obligation, namely the accounting separation obligation.

In its current draft measure IBPT underlines that the threat of cross-subsidization will be reduced due to cost-oriented MTRs. Furthermore, it reiterates that the obligation of accounting separation would be meaningless without the obligation of non-discrimination.

Already on 4 August 2006 the Commission made a comment on the proposed internal non-discrimination obligation, inviting IPBT to further substantiate the underlying risks of distortion of competition justifying the imposition of the proposed obligation, in particular in a situation where MTRs will be cost-oriented.⁵

III. COMMENTS

The Commission has examined the notification and the additional information provided by the IBPT and has the following comments⁶:

Need for a coherent European approach

The Commission welcomes that IBPT has modified its cost accounting methodology and consequently price control obligations which reduces the asymmetry in mobile termination rates in Belgium. At the same time, whilst acknowledging that termination rates imposed by IBPT are based on the model it has developed for an efficient operator, the Commission would like to draw attention to the fact that there are still wide discrepancies at the level of termination rates in different Member States which are not all justified by objective cost differences. Therefore, the Commission has invited the NRAs to work closely within the European Regulators Group ("ERG") to arrive at a coherent approach on this matter across the EU. The Commission would like to invite IBPT to revisit its analysis along the lines of a possible common approach as appropriate.

⁴ Case BE/2006/0433.

⁵ Case see the Commission's comments letter, comment n° 2, in case BE/2006/0433.

⁶ Pursuant to Article 7(3) of the Framework Directive.

Internal non-discrimination obligation

In accordance with Article 8(4) of the Access Directive, the obligations imposed on SMP operators shall be based on the nature of the problem identified, proportionate and justified in the light of the regulatory objectives laid down in Article 8 of the Framework Directive.

In the present case, while IBPT imposes as a remedy on the wholesale termination market an internal non-discrimination obligation regarding the application of the regulated termination rates, which IBPT considers an appropriate remedy to remove competition problems such as the risk of margin squeeze relating to the relevant market (call termination), the Commission invites IPBT to explain in sufficient detail why such an obligation is appropriate and proportionate. In particular, IBPT does not explain as to why this remedy is required in a situation where MTRs are considered to be cost oriented.

Moreover, the Commission would like to remind IBPT that problems identified on the retail market, namely on net/off net price differentiation, have – in the first place – to be remedied by the implementation of an effective price control mechanism ensuring that termination rates, which are wholesale prices, are no higher than the real termination costs. On this background, the need to impose an obligation to identify the internal transfer price for the cost of on net calls in addition to the imposed cost-orientated termination rates should be further justified, and, in the absence of a justification, such an obligation should not be imposed.

Pursuant to Article 7(5) of the Framework Directive, IBPT shall take the utmost account of the comments of other NRAs and of the Commission and adopt the resulting draft measures and, where it does so, shall communicate them 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/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, in accordance with Community and national rules on business confidentiality, that 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 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.

⁸ Your request should be sent Esther by email: INFSO-COMP-ARTICLE7@ec.europa.eu or by fax: + 32.2.298.87.82.