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Institut Belge des Services Postaux et
des Télécommunications (IBPT)
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For the attention of:
M. Eric Van Heesvelde
Président du Conseil

Fax: +32 2 226 88 41

Dear Sir,

Subject: Case BE/2008/0801: Amendment to remedies on the market for wholesale unbundled access (including shared access) to local loops and sub-loops for the purpose of providing broadband and voice services (case BE/2007/0735) and wholesale broadband access (case BE/2007/0736)

Comments pursuant to Article 7(3) of Directive 2002/21/EC¹

I. PROCEDURE

On 30 September 2008 the Commission registered notifications by the Belgisch Instituut voor Postdiensten en Telecommunicatie/Institut Belge des Services Postaux et des Télécommunications (“BIPT”), concerning the markets for wholesale unbundled access (including shared access) to local loops and sub-loops for the purpose of providing broadband and voice services and wholesale broadband access in Belgium.

The national consultation² started on 3 January 2008 and ended on 29 February 2008.

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.

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 Underlying measures

BIPT had already notified its draft measures relating to these markets at the end of 2007³. At that time, the Commission issued a comments letter, in which it noted inter alia the relatively stagnant competitive situation of the retail broadband market inviting BIPT to assess the impact of the regulation of LLU and Wholesale Broadband Access in its subsequent analysis. Furthermore, the Commission, whilst acknowledging that the remedies proposed by BIPT in the wholesale broadband access market guarantee access to high speed broadband technologies (including VDSL), invited BIPT to reassess the market conditions in view of guaranteeing a level playing field in the future NGN environment. The final measure was adopted by BIPT on 10 January 2008. The currently notified draft measure is an amendment to the final measure adopted with the purpose of addressing the problems raised by the planned replacement of the incumbent's ATM/xDSL network by an NGN/NGA (VDSL) network.

The notified draft measure concerns only the remedies. The measure does not affect the market definition and the SMP designation. BIPT intends to carry out a full market analysis of the relevant markets in the first half of 2009.

II.2 Obligations proposed to be amended in Market 4 (Unbundled access to the local loop)

II.2.1. Access to and use of specific network facilities

- *Prolonged access to closed down access points*

Should Belgacom decide to close down an access point to a local loop or sub-loop, it shall leave it open for the beneficiaries of its unbundling offer for at least five years after the announcement to BIPT if there are alternative operators making use of unbundled access at that point and for at least one year if there is none. A deviation from that period is possible on the basis of a bilateral agreement with the operators concerned.

Moreover, Belgacom shall provide for a migration to a suitable alternative solution before the discontinuation of the service. If a network point is closed only partially, Belgacom shall continue to offer unbundled access at that point. If Belgacom wishes to close down a network point to which operators are interconnected, it is allowed to negotiate with these operators about an acceptable alternative solution, a migration program and the financial implications thereof. If Belgacom can reach an agreement with these operators, it can close down the network point at the end of the migration.

² 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.

³ Registered under case numbers BE/2006/0735 and BE/2006/0736 on 26 November 2007

- *Co-location at street cabinet level*

For new sites or in the case of deployment of fibre optics ducts on existing sites, Belgacom shall propose to share the work for the placement of the fibre optics ducts on the parts that are useful for access. Similarly Belgacom shall propose to operators to share the street-cabinet where the DSLAMs will be installed. The corresponding plans must be announced three months in advance and the access tariffs must be cost oriented taking into account the risks and cost reductions.

For existing sites, Belgacom shall offer to share the ducts, to lease dark fibre or to provide a backhaul option from every co-location space in the local loop. The access tariffs must be cost-oriented taking into account the reduced risks for the alternative operator and the necessary work to prepare the co-location.

Belgacom shall also provide access to the remote optical platform⁴ to permit co-location.

II.2.2 Transparency

- *Transparency regarding future network developments*

Belgacom shall communicate annually to BIPT and the alternative operators per region and for a period of five years:

- all planned adaptations to its wholesale access points;
- all planned closures of points where wholesale access is provided;
- the programme of the foreseen/planned network transformations.

II.2.3 Price control and cost accounting

- *Cost orientation during the closedown period concerns the market for wholesale unbundled access*

During the transition period Belgacom shall charge the same fees for access points that are no longer used by Belgacom retail as for access points that it is operating for its own retail services.

II.3 Obligations proposed to be amended in Market 5 (Wholesale broadband access)

II.3.1 Non-discrimination

- *New bitstream offer instead of ATM*

Belgacom shall negotiate with the beneficiaries and submit a reference offer for approval and publication by BIPT adapted to its new network and offering at least the same levels of service quality and interconnect possibilities as the current bitstream offer. The new bitstream offer should enable operators to use all DSLAM functionality that is technically feasible.

⁴ The Remote Optical Platform is a separate cabinet that is located next to the SC, in which Belgacom places its VDSL modems and which links the DSLAMs to the SC via a tie cable.

- *Bitstream VDSL1*

Belgacom's bitstream offer shall include access to the use of VDSL1 where VDSL2 technology is not available.

III. COMMENTS

On the basis of the notification, the Commission has the following comment⁵:

The exact scope of wholesale services susceptible to ex-ante regulation

The Commission notes that the BIPT intends to carry out a new market analysis of the relevant markets in the first half of 2009. Therefore the Commission invites BIPT to assess in this analysis the substitutability of VDSL bitstream access products with currently existing bitstream access in order to conclude on the exact scope of wholesale services susceptible to ex-ante regulation.

Pursuant to Article 7(5) of the Framework Directive, BIPT shall take the utmost account of comments of other NRAs and the Commission and 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/EC⁶ 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 Commission⁷ within three working days following receipt whether you consider that, in accordance with Community and other 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
Fabio Colasanti
Director-General

⁵ In accordance with Article 7(3) of the Framework Directive.

⁶ 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.

⁷ Your request should be sent either by email: INFSO-COMP-ARTICLE7@ec.europa.eu or by fax: +32.2.298.87.82.