Formulaire de couverture à joindre à la réponse à une consultation publique organisée par l'IBPT

INFORMATIONS GÉNÉRALES

Titre et date de la consultation : Ontwerpbesluit van de raad van het BIPT van 20 december 2010 betreffende de analyse van de breedbandmarkten.

Antwoordtermijn : 18 februari 2011.

À: SMP@bipt.be

Dénomination de la personne morale répondant: **Mobistar SA/NV & Mobistar Enterprise Services SA/NV**

Personne physique de contact du répondant:

Jean-François Waignier	**jean-francois.waignier@mail.mobistar.be**	**+32 485 779 202**
Vasiliki Mitrias	**vasiliki.mitrias@ @mail.mobistar.be**	**+32 494 857 270**

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NOM, DATE ET SIGNATURE

Mobistar's comments to the BIPT's draft decision concerning the Market analysis of the Broadband Market

We thank the BIPT for this consultation on the "Draft decision regarding the Market analysis of the Broadband Market"[1].

Preliminary remarks:
Please note that some parts of this document are confidential. These confidential passages, pictures and graphs have been removed from this public version. They are referred to by a space highlighted with a grey background.

This document constitutes a joined contribution of Mobistar SA and Mobistar Enterprise Services SA (MES). All references to *Mobistar* should be understood as Mobistar SA and Mobistar Enterprise Services SA. A reference to a specific company is done using *Mobistar SA* or *MES.*

Executive Summary.

The retail market associated with market 4 (wholesale market of physical access to infrastructure) and market 5 (wholesale market for access to broadband) is the retail market for broadband services.

Mobistar agrees with the conclusions reached in the draft decision that on the retail market for broadband services there are distinct markets for residential and business customers, that – as from 2 Mbit/s – low speed and high speed broadband services belong to the same market, and that broadband services supplied by different technologies (VDSL, cable, fibre, radio/wireless but not mobile) belong to the same market. We concur with the BIPT that mobile broadband services (including LTE/4G-services) and public WIFI access services belong to different markets and/or will not have an impact within the frame of this market analysis.

The retail broadband services market is dominated by Belgacom (with nearly 50 % market share). While the cable network operators are increasing their market share, alternative operators offering services building on the regulated wholesale offers on the Belgacom network are losing market share (now below 10%) and this while the market as a whole is still growing. Two trends drive this decreasing level of competition: a growing importance of bundled offers (especially of telecommunication services bundled together with television) and an increasing marketing focus on broadband speeds.

While this evolution clearly points to inadequacies in the existing regulatory framework, the competitiveness of the alternative operators is also jeopardized by the upgrading of the Belgacom network. Belgacom's "move to all IP" (including the phasing out of a number of existing technologies), the continued development of VDSL2 offers (including the possible integration of bonding and vectoring technology to further increase the network speed), and the closure of local exchanges all have a major impact on the earlier investments made by the alternative operators and the customers of the alternative operators.
The abovementioned two elements (bundled offers and Belgacom's network upgrade plans) must drive the future regulatory requirements in the context of market 4 and 5.

[1] http://www.bipt.be//ShowDoc.aspx?objectid=3382&lang=en

Regarding market 4 :

Mobistar agrees with the definition of the wholesale market as it was made in the previous market analysis (including the exclusion of cable as well as fibre[2]), and we share the conclusion that the geographical scope of the market is national. On this wholesale market Belgacom has a market share of 100%, and its market dominance is definitely not questioned when considering additional indicators of market power.

As this market belongs to the EC recommendation on markets susceptible to ex ante regulation, the 3-criteria test is not required.

Remedies

Mobistar understands that the obligation to provide physical unbundling (including subloop unbundling) is continued. This is mandatory to protect the historical investments already made by alternative operators building on this regulated service.

Regarding the closure of local exchanges (LEX), we note that the existing obligation to provide real alternatives is not being met so far by Belgacom (a large number of questions regarding the characteristics and operations regarding the "mini-MDF" remain unanswered until today). We also suggest to differentiate the remedies in case of LEX closure depending on whether the LEX is replaced to a mini-MDF or whether it is dismantled. We consider that the financial mechanisms in case of LEX closure should be subject to further assessment as, at the moment, many questions regarding this remain unanswered. In addition, it is unclear how Belgacom's cost savings (and possibly even revenues) through the closures of LEXes will be reflected in the network cost models for its wholesale services.

We welcome that the BIPT has included obligations regarding 'equivalence of inputs'. In our view this will provide a major improvement to ensure a non-discriminatory and transparent approach by Belgacom when supplying to its own internal customers and towards wholesale customers. At the moment, Mobistar does not ask to introduce functional separation but it insists to closely guarantee the 'equivalence of inputs' requirements.

Finally, while we basically agree with the removal of the sub-loop unbundling obligations, Mobistar requests that Belgacom must continue to answer to reasonable requests for physical unbundling of the local loop (at the level of the local exchange and the local distribution frame) and the subloop at the level of the streetcabinet (in the case of specific use-cases only).

In summary, we agree with the headlines of the draft decision for market 4, especially with respect to the market definition and the associated findings of SMP. While we support the obligations put forward, we are concerned that Belgacom's network upgrades may induce additional burden on the alternative operators without adequate replacement services and/or compensations, potentially leading to a worsening of the competitive positioning of these alternative operators. Therefore we request the BIPT to possibly clarify a number of obligations further and to stay vigilant regarding any adverse effects that Belgacom's network changes may have on its competitors.

Regarding market 5

Mobistar agrees that the wholesale market for access to broadband services consists of the various BROBA offers (BROBA ADSL with/without voice, BROBA II ADSL, BROBA II

[2] Fibre can be excluded under the current assumptions regarding the retail market evolution.

SDSL, WBA VDSL, WBA VDSL with/without voice), while not including cable networks and wholesale leased lines services. It is clear that Belgacom is the dominant player on this market, which is national in geographical scope.

As for market 4, Belgacom's dominance on this market is not questioned when considering additional indicators of market power, and the application of the 3-criteria test is not required.

Remedies

Taking the evolutions of Belgacom's physical network into account, and as put forward by the BIPT, the need for continued and even enforced obligations in the context of market 5 persists. Therefore we fully support the BIPT proposal with respect to the obligations regarding the mandated wholesale offer of full or shared bitstream access, with or without voice.

Given the importance of the bitstream offer, it is critical that real alternatives exist in case Belgacom makes substantial changes to the service specifications. As –in spite of the existing obligations– such alternatives are not yet provided by Belgacom we urge the BIPT to extend Belgacom's obligations when making material changes to its service as part of the remedies in the context of this market.

For similar reasons as for market 4, we welcome that the BIPT has included an additional obligation regarding 'equivalence of inputs' in the context of market 5.

The price control change for VDSL2 from reasonable prices to cost-oriented prices was required since long and we appreciate that this is now included in the draft decision. Also the requirement to have reference offers approved before the commercial launch of related retail services is a proportionate measure required to improve the competitiveness of the alternative operators. To be fully effective, and given past experience, we ask that a waiting period of 6 months would apply between the approval of a reference offer and the launch of the related retail service.

Mobistar welcomes the obligations for a full-fledged bitstream offer on Ethernet as this will be increasingly important to deal with the impact of Belgacom's network evolution. As implied by the BEREC report on NGA wholesale products, this also covers support for multicast functionality. Taking the evolution towards bundled offers in combination with Belgacom's network evolution into account, the multicast functionality is an absolute minimum necessity to ensure that alternative operators will be able to effectively compete with the dominant operator. In order to allow future content differentiation, we propose to expand this obligation with the obligation to allow the re-use of multicast flows.

We agree with the obligation imposed on Belgacom to offer the possibility to aggregate the backhaul of several LEXes to a nearby located LEX. To avoid future discussions, we suggest to clarify that this must allow that the alternative operators develop an interconnection network at least similar to what is currently the case for ATM. In addition, the costs for access lines aggregating traffic from different LEXes should be cost-oriented, and, taking the amount of earlier investments into account, we also request the BIPT to review the Ethernet transport cost levels.

Remedies common to market 4 and 5

Overall, we support the need for and the proportionality of the remedies which are common to market 4 and 5. This applies to the auxiliary access obligations (collocation, access to supporting systems), the requirement for fair negotiation, the rules in the context of the removal of existing access. On the other hand, we stay concerned about the overly short notification period imposed on Belgacom in the context of network changes, and ask to expand these periods to minimize the impact of such changes on the alternative operator's business. We remain also concerned about the lack of detail in the context of Belgacom initiated network updates and migration projects regarding :

- the full compensation for alternative operators,
- the practical execution modalities and exception handling,
- the timely availability of real alternatives.

Table of Content

1 Introduction & General comments

As a preliminary note, we consider that the current reference offers and all related decisions in the frame of the past market analysis decisions remain applicable as long as they are not replaced by other decisions.

2 Comments on the Retail Broadband market

2.1 The retail market

2.1.1 Definition of the product market

The retail market corresponds to the provision of broadband access services to end users. The wholesale markets that can be associated with these services are the wholesale market of physical access to network infrastructure (market 4) and the wholesale market for access to broadband (market 5). The retail market covers all broadband services independently of the network used (xDSL, cable, fiber and wireless/radio and is independent of the technology applied (VDSL, eurodocsis 3, FTTH).

The draft decision puts forward that not all retail broadband services are part of the same market. This applies for :

- broadband services for business and residential customers,
- low speed internet services and broadband (high speed) services,
- broadband DSL services and mobile broadband services,
- broadband DSL services and broadband services on public WIFI networks.

We agree with the conclusion of distinct markets of residential versus business customers. The same applies for the distinction between low speed and broadband internet services (which concurs with the previous retail internet access market as analysed in the decision on market 11 and 12). We support the extension of the substitutability assessment to include mobile broadband services and broadband services on public WIFI in order to properly address the evolution of these technologies.

Mobistar supports the elements put forward by the BIPT to exclude substitutability between mobile broadband services and broadband DSL services (different coverage, lower and less stable speed, different billing approaches, the low end user interest in a mobile internet broadband service, no substitutability from the supply side…), as well as the reasons to exclude substitutability between internet provided through WiFi hotspots (due to coverage, end-user interest, no supply side substitutability…).

Mobistar equally shares the view that broadband services provided through different technologies (cable, DSL, fiber and wireless) belong to the same market. Independently on the underlying network technology, these technologies provide – from the end-user point of view – comparable service characteristics and comparable auxilliary services.

We concur with the inclusion of broadband services at different speeds in the same market. Indeed most applications are available for end users as from the moment a reasonable speed level (eg 2 Mb/s download) is reached and higher speed offers do not necessarily imply higher prices.

2.1.2 Market analysis, market players and geographic market

The highest market shares in the retail broadband market are held by Belgacom on the one hand (47,5%) and by the cable operators together on the other hand (Telenet, VOO and Numericable have 44% of which 36,2% are held by Telenet). The sum of the alternative operator market shares is very low, far below the two other categories of operators at 8,5%. This is especially striking as – cf also the BIPT economic analysis of the telecom market in 2009 – the retail broadband market is still growing. Obviously, the market growth is only to the benefit of Belgacom and the cable operators.

This evolution is also confirmed by Mobistar's own market research, the main two actors on the broadband retail market are clearly Telenet and Belgacom (see Figure 1).

Figure 1: Confidential -

This evolution appears to be – at least partially - driven by the increasing importance of bundled offers that include TV and broadband as well as by an increasing marketing focus on speed as non-price differentiator.

2.1.3 Evolution of offers and tariffs

The BIPT concludes on the retail market that although the broadband internet offers become more and more powerful (because of increasing speed and increasing data volumes), the monthly fees remain high and the prices of the most preferred offers (Belgacom's Favorite and Telenet's Comfort) have not decreased. Although alternative operators offer cheaper tariffs or more important dowload volumes, they lose market share. This is mainly driven by the increasing importance of bundled offers.

The BIPT rightly identifies the impact of bundled offers on customer acquisition and retention. It is this trend towards bundled offers that has driven Mobistar to launch packs that combine mobile services together with other telecom services in order to maintain its competitiveness for its mobile activities.

2.2 Importance of bundles

We fully share the regulator's analysis concerning the growing importance of packs. They are not only requested by the customer but also pushed by the service providers.

First, the demand of end-users for bundles is increasing. Our market studies show that 80% of the customers are willing to combine Internet and digital TV with fixed telephony if they had to choose an internet and digital TV provider tomorrow. This is probably driven by the facility to have one provider, one customer service, one bill and likely a discounted price for several services. This results in an increasing share of packs on the market (see Figure 2).

Figure 2: Confidential -

Television clearly constitutes the driving element for bundled services as shown in Figure 3. Two third of the residential users are indeed bundling at least two services. The evolution is clearly towards packs including TV which are progressing by more than 20% in one year.

Figure 3: Confidential -

Secondly, bundling services in general and television in particular has a positive effect for the service providers as it does not only reduce the churn but also protects other revenue streams. This is also noticed by Robert van Apeldoorn in his article "*Pourquoi les opérateurs télécoms passent à la télé"* in the Trends-Tendances of 14 October. In this article the reporter notes that television is not as such the primary target of Belgacom[3] but that television is (and we quote) : "*a loss leader in a bundled offer which will play a role to ensure other revenue categories*"[4]. He concludes that : "*the battle for television hides a war to maintain revenues of fix and mobile telephony*"[5].

Mobistar is convinced that triple and quadruple play packs with a television component are becoming essential not only for television providers but also for telecom operators. This is the reason why Mobistar has decided to develop its own TV offer.

Bundles with a television component are becoming increasingly important. The end-user desires to bundle broadcast and telecommunication services.

2.3 The battle for speed

Apart from bundling, another set of evolutions in the market are mainly driven by the battle for speed. Customers are increasingly targeted with arguments concerning the speed of their broadband service.

This explains why Belgacom is increasing the number of services based on the VDSL2 network, launched in April 2008 (Belgacom has recently announced a coverage of more than 76%)[6].

The cable operators are also heavily promoting the speed of their offers. See section 7 for some examples.

We note that the operators that are currently gaining customers (Belgacom and the cable operators) are those that can provide the highest broadband speeds on the market.

The end-users' request for higher speed is not only confirmed by the elements above but is also confirmed by Mobistar's own market research and customer surveys.

Finally, the trend towards higher speed is also promoted by the European Commission in the fourth pillar of the Digital Agenda "*…Europe needs download rates of 30 Mbps for all of its citizens and at least 50% of European households subscribing to internet connections above 100 Mbps by 2020.*"[7]

In summary,

Mobistar fully agrees with the BIPT's analysis that the future evolution of the retail market will be based on three major elements:

1. Increase towards even higher speeds.
2. Growing importance of bundles (especially bundles with television).

[3] We note that is is indirectly confirmed by Belgacom's own commercials, where Belgacom is offering TV *for free* when the end-user is purchasing a bundle with at least two products (fix or mobile telephony with a broadband connection)
[4] Free translation of: "[…] *joue de plus en plus un rôle de produit d'appel dans une offre combinée, qui va jouer un rôle dans d'autres catégories de revenus*."
[5] Free translation of *"la bataille de la télé cache donc une guerre de tranchées pour maintenir les revenus du mobile et du fixe."*
[6] http://www.belgacom.com/group/gallery/content/shared/Q3_2010/2010_Q3_results_en.pdf "
[7] http://ec.europa.eu/information_society/newsroom/cf/pillar.cfm?pillar_id=46&pillar=Very%20Fast%20Internet

3. Technological convergence (any service, anywhere, on any device).

As a side-note, we agree with the BIPT that the auctioning of new mobile licences for 3G and 4G mobile services will impact the mobile internet market, but that this will not impact the retail broadband market in the time frame of this market analysis, as :

(1) The auctioning of licences will have no impact on the perception of the substitutability of the services for the end-user.

(2) There will be an important delay between the auctioning of the licences and the commercial launch of services by the new-entrant

(3) There is no evidence yet that mobile broadband services can effectively compete with fixed broadband services in terms of price/volume/speed.

3 General comments on the wholesale markets

3.1 Importance of Infrastructure-Based Competition

The European Regulatory Framework promotes the competition based on infrastructure rather than competition based on services. In this view, the regulatory measures should promote investments in infrastructure based on the principle of the "ladder of investments". The principles, as illustrated in the figure below, result in increasing investments in function of the growth of the alternative operators. First, the alternative operators start with a resale offer, once a sufficient customer base has been build, they start investing in a transport network and build retail products on a wholesale bitstream offer. As pre-final step the alternative operators invest in an own network via unbundling.

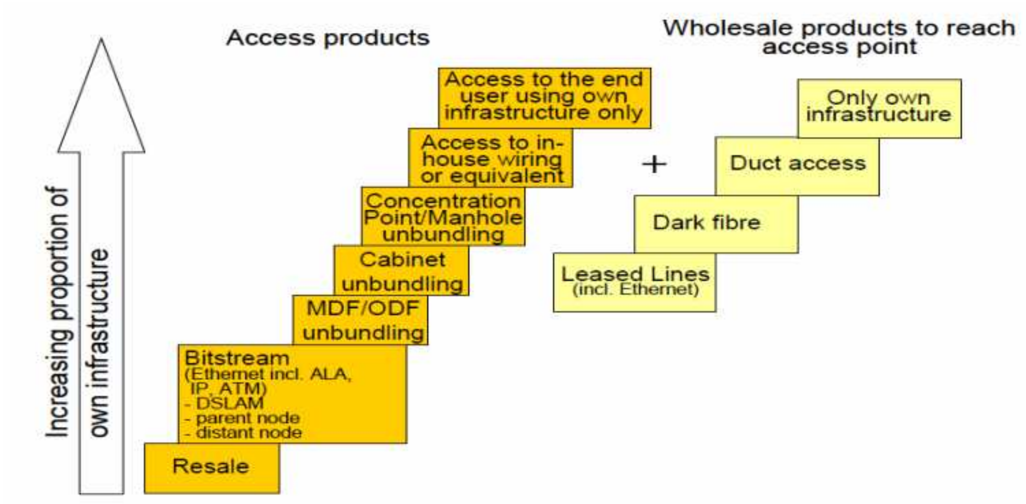

Figure 4: Principle on of the ladder of investment (source: ERG)

The final aim is to have the alternative operator to invest in a fully owned infrastructure and thus to have infrastructure based competition.

The different steps' costs are very important and need to be sufficiently low in order to allow the alternative operator to compete with a vertically integrated SMP operator, but at the same time sufficiently high (compared to the next step) in order to stimulate the alternative operators to climb the ladder.

The current broadband market suggests that strong and enforced regulatory obligations on the SMP operator should be imposed. Indeed Figure 5 below shows a clear decrease in the alternative operators' market shares. .

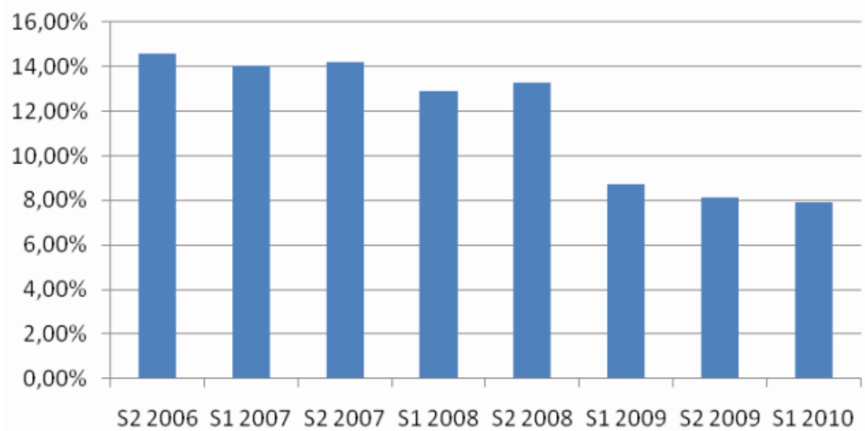

Figure 5: Marketshare alternative operators (excl. Scarlet)

3.2 Wholesale market evolution

The European SMP operators' access networks are currently being upgraded. This is also referred to as Next Generation Access (NGA)[8]. The upgrade will affect the alternative operators who benefit from access to the SMPs' current non upgraded networks in a very important way.

In Belgium the SMP operator's network upgrade started in 2003 (Belgacom's Broadway project). Belgacom is upgrading its network by rolling out VDSL and bringing fiber to the streetcabinets. This network upgrade is combined with a Move to All IP plan (MAIP) which will migrate all the services to a single IP network – voice services, transport technologies- ATM/SDH, PDH, mobile bakchaul…[9]) and will lead to the closure of several local exchanges.

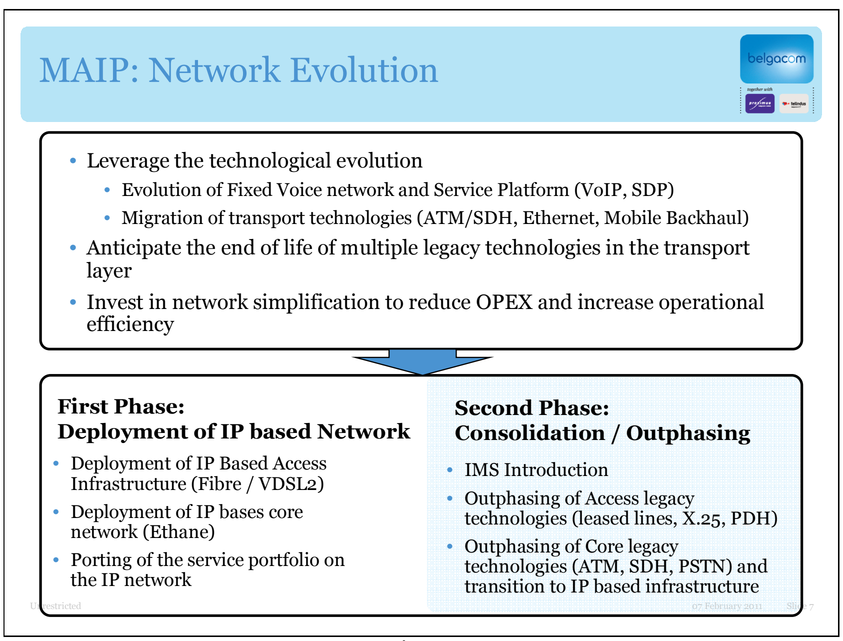

Figure 6: Belgacom's presentation on MAIP

[8] Aware of this issue, the European Commission has examined the impacts of existing networks' upgrades in the *commission recommendation of 20 September 2010 on regulated access to Next Generation Access Networks (NGA)* http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:251:0035:0048:EN:PDF

[9] We refer to the slides presented by Belgacom on 9 October 2008 http://www.belgacomwholesale.be/wholesale/gallery/content/documents/ngn/NGN_presentation.ppt

Belgacom's public communication as to its intention to further use copper is clear. In a public statement July 2010, Scott Alcott, Executive Vice-President Service Delivery Engine & Wholesale, in charge of Belgacom's network, announced[10] that he does not believe that copper is done. Instead, he believes that the near future will be driven by the further enhancement of the available speed on copper via different techniques.

However, Belgacom does also proceed with opportunistic FttH roll-outs, especially in new allotments where Belgacom, under its universal service obligations, must execute civil works in order to install (copper) cables. Alternative operators are not informed by such developments while being negatively affected by them. Athough NGA networks are excluded from the current market analysis, the regulator should ensure that the existing alternative operators are not impeded to benefit from their current access rights.

These above evolutions also impact Mobistar which has to adapt its systems (IT systems and network) and also its products to its end users. As an illustration of the complexity this entails, see the internal organisation for Mobistar to deal with this in the next figure.

Figure 7: Confidential -

We will hereafter briefly describe the impacts of the major upcoming evolutions

Upcoming evolutions on copper

As described by the BIPT in its draft decision, we also believe that Belgacom will further develop their offer on enhancements of the VDSL2 technology.

We believe that the recently defined technical evolutions *bonding (G.998.2)* and *vectoring (G.993.5)* will be used by Belgacom to further enhance their offer. Additionally, Belgacom has announced plans to install the VDSL2 DSLAM even closer to the end-user compared to what is currently the case. They indeed plan to move the DSLAM from the so-called Remote Optical Platforms (ROP), currently installed next to the streetcabinet, to the so-called VDSL Boost Box (VBB), which will be installed even closer to the end-user).

We note that the usage of vectoring implies that all the VDSL2 lines are connected to DSLAMs belonging to the same alternative operators in order to ensure coordination of the vectoring technique between the DSLAM and thus correct working. These future evolutions do not allow the different operators to operate at the sub-loop level (sub-loop unbundling).

Lex closure

In April 2008, simultaneously with the commercial launch of VDSL2 offers, Belgacom announced plans for the closure of local exchanges. A list of 65 local exchanges has been presented, which will greatly impact the alternative operators. We note that the BIPT evaluates that the 65 Local exchanges, which represent 10-15% of the total amount of local exchanges, will impact 40% of the unbundled lines and 15% of the bitstream lines. On top of this 80% of the local exchanges that will be closed have collocation facilities.

The immediate impact for the alternative operators are evident: investment losses, reduced degree of network deployment (decrease on the ladder of investment), etc…

[10] http://www.belgacom.com/group/gallery/content/shared/investor_doc/Belgacom_network_strat05072010.wmv

It is obvious that a suitable alternative must be provided by Belgacom in order to allow the alternative operators to continue their service the end-users in the context of the LEX-closures project.

Out-phasing existing technologies

In conjunction with its *Move to All IP* plan Belgacom plans the out-phasing of the existing technologies (SDH, Leased Line, ATM/FR, ISDN, PDH, …) in the coming years (see Figure 8)[11].

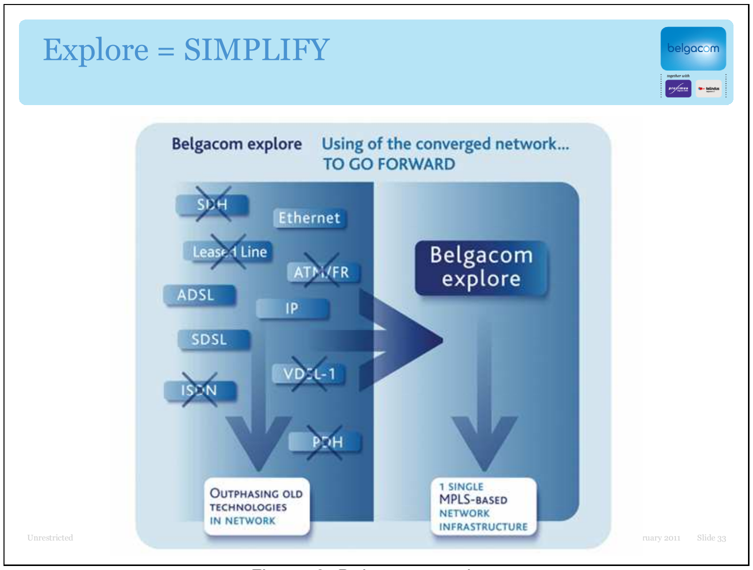

Figure 8: Belgacom explore

These major changes in the SMP-operator network topology will inevitably have huge impacts on the alternative operators and their network architecture as it implies (inter alia) that all the interconnections will have to be modified. In addition these changes are planned to occur in a very short time frame.

Taking into account that in the future some services (for instance leased lines) will be delivered on Belgacom's Explore network, Mobistar requests the extension of Belgacom's reference offers with a wholesale equivalent for Belgacom Explore.

Fiber to the home

Concerning the evolution of the FttB/FttH, we request the highest vigilance from the BIPT as the plans from the incumbent are far from clear. In its press-release of 9 September 2009[12] Begacom states that it"*[…] does not intend to rest on its laurels and*

[11] http://www.belgacomwholesale.be/wholesale/gallery/content/documents/ngn/NGN_presentation.ppt

[12] *Belgacom's network among world leaders* (http://www.belgacom.com/group/6/20090909_ngn/en/Belgacom%27s-network-among-world-leaders.html) *"Eleven years ago, Belgacom became one of the first operators in the world to launch ADSL. This technology is now an indispensable part of everyday life. Through the years, DSL technology has become faster and more powerful, with an increasing number of applications.But technology does not stand still. As Belgacom always wants to keep a step ahead of market demand, the group invested, in the past five years, around EUR 500 million in its "Broadway" project. This placed Belgium among the world's leaders in terms of fiber-optic coverage, together with Hong Kong, Switzerland, South Korea and Japan.But Belgacom does not intend to rest on its laurels and is examining the possibility of bringing optical fiber even closer to the customer, i.e. fiber to the home. At the Broadband World Forum in Paris, Belgacom communicated a few results from the tests it has been conducting for one year in Rochefort and announced the launch of more extensive tests this year in other locations (including Sint-Truiden and La Louvière). In this way Belgacom continues to maintain Belgium's position among the world leaders."*

is examining the possibility of bringing optical fiber even closer to the customer, i.e. fiber to the home".

We regret to note that experience has learned the BIPT that Belgacom's communication towards the BIPT sometimes is a miscommunication about its network evolution plans.[13]

[13] We refer to the NGN/NGA consultation (http://www.bipt.be/ShowDoc.aspx?objectID=2593&lang=en):

> *"The Institute notes that Belgacom has included the following formulation regarding the phasing out of the current ATM network in its BROBA 2008 proposal of 29 September 2007:*
> *Belgacom informs the Beneficiary that ATM is susceptible of being gradually out phased in the Belgacom network and replaced by other technology starting 1st January 2009. As a consequence the current BROBA offering could cease to exist.*
>
> ***The Institute asked Belgacom for an explanation as to its phase-out plans but Belgacom denied that there already existed an actual phase-out planning** and that the clause is only meant to inform the beneficiaries beforehand to provide enough transparency.*
>
> ***However, the Institute had to find out through the newspapers** mid-October 2007 that Belgacom's CEO Didier Bellens and Executive Vice-President of Operations Scott Alcott had confirmed in a joint press interview with Bloomberg **that the analogue network will cease to exist by 2012**."*

4 Comments on Market 4

As the European Commission notes it, the "*key aim of the regulatory framework is to enhance user and consumer benefits in terms of choice, price and quality by promoting and ensuring effective competition. It is only where consumer harm could be expected in the absence of regulatory intervention that a market should be susceptible to ex ante regulation.*"[14]

As a result, the starting point of regulatory intervention is *"therefore a characterisation of retail markets, followed by a description and definition of related wholesale markets.[…] However, regulatory controls on retail services should only be imposed where NRAs consider that relevant wholesale or related measures would fail to achieve the objective of ensuring effective competition. […]The identification of a retail market (as part of the value chain) for the purposes of ex ante market analysis does not imply, where there is a finding of a lack of effective competition by a NRA, that regulatory remedies would be applied to a retail market. Regulatory controls on retail services can only be imposed where relevant wholesale measures would fail to achieve the objective of ensuring effective competition at retail level"*[15]

From the above, it results that, after the difficulties that the BIPT has pointed out on the retail market, the BIPT needs first to determine whether the most upstream wholesale market functions properly. If not, than remedies would need to be adopted at the wholesale level in the first place.

4.1 Market evolution

In its description of the retail access market, the BIPT notes that apart from Belgacom and Telenet, the market share of alternative operators on the retail internet access market is still limited. In fact, the alternative operators do not manage to attain a larger share of the DSL market. In that respect, the BIPT states correctly in its consultation that the high broadband penetration rate in Belgium is to be ascribed mainly to the success of the cable operators, and much less to the success of the unbundling or bitstream access offers. On the contrary, we even see decrease of unbundled lines and this while the wholesale prices decrease (Figure 9)

[14] Explanatory Memorandum, P. 19
[15] *Ibidem*

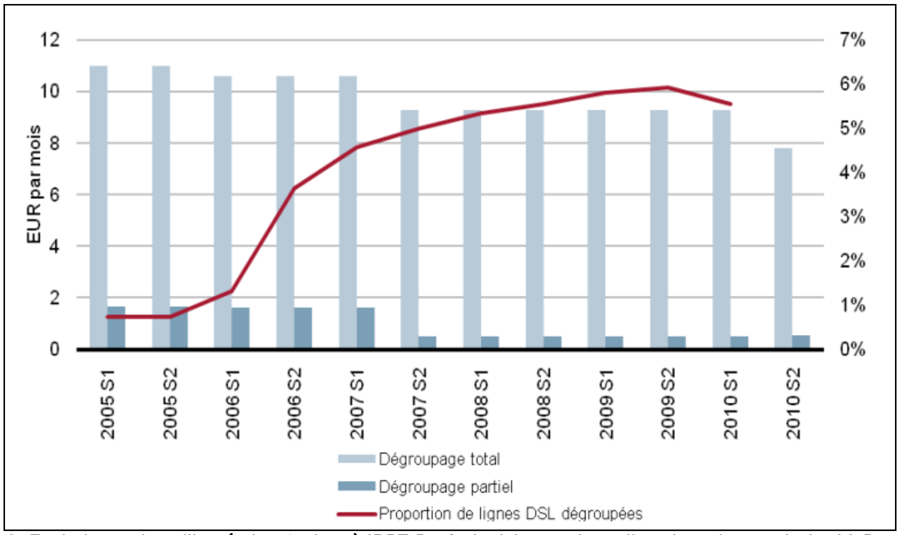

Figure 9: Evolution unbundling (price & share) IBPT Draft decision on broadband market analysis, 20 December 2010, Figure 4.11

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4.1.1 Product

Concerning the definition of the wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location as identified by the European Commission in its Recommendation on relevant markets, the BIPT has proceeded to substitutability tests for the different modes of unbundling (ULL/SLU, partial or total unbundling), for the unbundled access to the local loop and cable and for the unbundled and bitstream access. While the BIPT has found the wholesale product market to include the different forms of unbundling, it concludes to the absence of substitutability of unbundled access with the cable and with bitstream access.

Doing this, the BIPT confirms the definition of the wholesale market made in its previous analysis. Mobistar concurs with this definition of the market.

Cable, today, does not allow an efficient unbundled access (through the unbundling of the spectrum) as this would reduce the spectrum bandwidth in an important way and therefore it would negatively impact the quality of the retail service. Furthermore, a resale offer would not give control over the broadband service for the reseller while policy-based routing, implying the sharing of the same bandwidth, impacts as well the retail services for the cable operator providing the wholesale access as well as the alternative operator receiving such access. This analysis is also followed by the French Telecom regulator, which states (free translation) that due to the nature of the cable operators' infrastructure, unbundling is not possible, notably because of constraints related to signal amplifications and this in technical and economic conditions which are similar to those of the unbundling of the copper local loop.[16]

[16] ***« Du fait de cette architecture, le « dégroupage » du réseau local de câble coaxial ne peut s'envisager, notamment pour des contraintes liées à des questions d'amplification du signal, dans des conditions techniques et économiques comparables au dégroupage de la boucle locale cuivre »,*** **, http://www.arcep.fr/uploads/tx_gspublication/adm-4-adlc-infra-240111.pdf, p. 17**

As to the exclusion of the fiber from the market, Mobistar agrees with it to the extent that within the three coming years no retail offers are put on the market on the basis of FTTH.

We also note the existence of technological evolutions allowing the two landline technologies (copper and cable) to increase their performance. Should these succeed, Mobistar draws the BIPT's attention on the need to examine whether, on the one hand, this would entail a possible requirement for wholesale access to the cable and, on the other hand, whether alternative operatives should get access to the improved VDSL2 offers in order to ensure that the market evolves towards an effectively competitive situation. In the past Belgacom has indeed refused to give access to technological network evolutions (e.g. ADSL2+), and the BIPT's attempts to impose such access have not been successful.

4.1.2 Geographic

Given the product market as described above (with the exclusion of the cable and fiber), the only operator providing such access is Belgacom. Based on this definition, the geographic market is national. The geographic market covers indeed a territory in which conditions of competition are similar or sufficiently homogeneous, and Belgacom's network coverage as well as Belgacom's offers are national.

We welcome the BIPT's position not to follow a sub-definition of the geographic market. Such subdivision of markets according to areas where unbundling is economically sustainable would be arbitrary and too much subject to errors.

As a result, the current geographic market corresponds to the geographic market identified in the previous market analysis. Mobistar fully concurs with this definition.

4.2 Significant Market Player definition (SMP)

Whenever an undertaking has significant market power on a wholesale or a retail market, the regulatory authority needs to impose at least one obligation. It is thus important to determine whether Belgacom has such significant market power.

1. Presumption of dominance due to Belgacom's market share of 100%

On the wholesale market for the supply of physical access to the network infrastructure in Belgium, Belgacom is the only actor. Its market shares amounts to 100 % and entails according to the European Court of Justice a strong presumption of dominance. The BIPT has examined whether other factors could rebut or strengthen such dominance. It concluded that most other factors reinforce rather than rebut its dominance.

The development of unbundled access is rather limited in Belgium, only 5.5% of the DSL lines are unbundled lines. This is very low compared with the EU average (35 %)[17]. Nevertheless unbundled access remains important for Mobistar who has made substantial investments to make use of unbundled services. Mobistar agrees with the BIPT's analysis as to the importance of unbundling for the promotion of an efficient competition on the downstream markets.

2. No rebuttal of dominance by other factors

[17] BIPT draft broadband market analysis, Figure 4.9

The presumed dominance of Belgacom has been assessed against factors such as *(I) Barriers to entry or to expansion* such as (1) sunk costs, (2) economies of scale, (3) economies of scope, (4) the control of infrastructure hard to duplicate, (5) privileged or easy access to specific assets, (6) privileged or easy access to capital markets, (7) legal and regulatory constraints (8), technological developments or superiority, (9) vertical integration but also as against *(II) countervailing buying power.*

(I) Barriers to entry or to expansion

Firstly, market 4 is characterized by important sunk costs. Belgacom's network represents huge investments that would be lost if an operator decided to leave the market. As a result, there are no incentives for an operator to duplicate Belgacom's network.

Secondly, Belgacom also benefits from large economies of scale resulting from a broad network and large customer base. Such economies of scale enabled Belgacom to recover its investments on all its subscribers. A new entrant would not benefit of such economies of scale.

Thirdly, important economies of scope also favour Belgacom as it can allocate common costs to the different services it provides (TV, Internet, Telephone). Around 44% of Belgacom clients are taking several services together.[18] Belgacom's strategy regarding multi-play products is significative in this respect.

Fourthly and fifthly, Belgacom has privileged access to specific assets due its very local and capillar network on the one hand, and on the other hand its privileged access to capital is undeniable[19].

Furthermore, legal and regulatory constraints impede the duplication of the network either by a landline technology (because of engineering works and building permit issues) or by a radio technology (because of the difficulties encountered when constructing radio base stations).

In other respects, Belgacom importantly benefits from its vertical integration and its presence on different markets (wholesale market of broadband supply, retail telephony, internet market and broadcasting) gives it a substantial competitive advantage.

(II) Countervailing buying power

Countervailing buying power would be measured by the negotiation power of the alternative operators (OLO) on market 4. Such countervailing buying power does not exist. No OLO would be able to refuse access from/to Belgacom. The negotiation power of OLOs is also limited as Belgacom does not need any service provided by the OLOs. The BIPT correctly concludes thus that no countervailing buying power exists.

3. Absence of the three criteria tests for a relevant market identified by the European Commission

In the present analysis, the BIPT has not examined the three-criteria test (the existence of high and non-transitory barriers to entry, the market does not tend to effective competition, the insufficiency of the competition law to remedy market failures). This

[18] Belgacom roadshow 1er semestre 2010, slide 12
[19] BIPT draft broadband market analysis,§§ 430-432

approach is correct.[20]. As the market belongs to the relevant markets identified by the European Commission, the BIPT was right not to examine the three-criteria test.

4.3 Comments on the existing remedies

Physical unbundling can be provided at three different levels in the network:
- The local loop at the level of the local exchanges (LEX)
- The local loop at the level of the local distribution frame (LDC)
- The subloop at the level of the streetcabinet (KVD)

4.3.1 Full or shared unbundling access with or without voice

As SMP operator on Market 4, the obligation imposed on Belgacom to provide access to the local loop is expected. In additional Belgacom has to answer to all reasonable requests for access to local loop unbundling.

We understand that this obligation must be understood as physical unbundling which includes subloop unbundling (see also our comment in section 4.5.1).

The continuation of this obligation is justified to ensure a fair return on investment for the operators that have already invested in unbundling. It is also proportionate because either there is no unbundling and no cost exist for Belgacom, or when there is unbundling, Belgacom is compensated by the OLO.

4.3.2 Principle of technological neutrality

To ensure a level playing field, the alternative operators must be able to deploy any technology on the unbundled copper network as long as this does not interfere with the current services. We therefor welcome the BIPT's explicit reference to the technological neutrality principle.

To ensure this technological neutrality, good communication between the different stakeholders is fundamental. As correctly stated by the BIPT, all possible interference issues and applicable rules must be validated by an independent instance in order to ensure fair competition and to avoid technological foreclosure due to deliberate choices of the SMP operator.

All stakeholders must know the possible interferences and applicable rules before a new technology is deployed in the network. If this is not the case then the introduction of a new technology can impact the service of other operators, who are unaware of the interferences, in a negative way.

4.4 Comments on the new proposed remedies

4.4.1 Equivalence of input

We agree with the BIPT that Belgacom should strive to operational excellence. In that context the existing transparency and non-discrimination obligations are not sufficient to

[20] Indeed, in its explanatory note to the Commission Recommendation on relevant markets (Second edition), the Commission made clear that relevant market identified in its recommendation does entail a presumption of fulfiness of the three-criteria test.Explantory note to the European Commission's recommendation on relevant markets, 2nd edition, p. 11 http://ec.europa.eu/information_society/policy/ecomm/doc/implementation_enforcement/eu_consultation_procedures/sec_2007_1483_2.pdf

fully benefit of the same service level as what Belgacom is providing to its own retail arm.

We therefore welcome the BIPT's proposal to provide an additional obligation of *equivalence of input*. This remedy results in the obligation for Belgacom to build all internal and external processes on a set of building blocks. These building blocks need to be approved and eventually modified by the BIPT. The usage of the same building blocks for both the SMP-operato's retail services as for the wholesale customers ensures an equivalent service and non-discrimination. As a cost will be associated with these building blocks this provides further guarantees for the cost-oriented nature of the service and this also helps to avoid cross-subsidization and price-squeezes. However, this is not sufficient as also the non-regulated services should be described.

Should the additional obligations regarding 'equivalence of inputs' not be effective, then we invite the BIPT to study the opportunity to take additional measures to ensure a level playing field. We understand that a new analysis will be carried out by the BIPT after 18 months following the publication of the final decision. We invite the BIPT to inform the sector and to provide all the necessary transparency on this analysis.

We comment the complete description of equivalence of input as described in Annex 5 of the draft decision in section 6.2 of this document.

4.5 Comments on the removed remedies

4.5.1 SLU obligation

The BIPT proposes and justifies the removal of the SLU obligation for two reasons:

(i) the imposition of SLU obligation will hamper technological evolutions, and in particular the introduction of vectoring (we also refer to section 3.2);

(ii) to impose SLU is no longer economically justified and is thus not proportionate.

Although we understand the above reasons, we desire to highlight some elements.

First, the technical reason is only valid in case VDSL2 is used by the alternative operator, and does not apply for ADSL2+ nor for ADSL.[21] A similar conclusion can be drawn for other technologies that will not necessary block the vectoring mechanism.

Secondly, the economical reason is only true when considering a mass roll-out. This is not necessarily the case for opportunistic roll-outs (…). Indeed, most of the analyses conclude on the absence of economical viability for SLU mainly because of the backhaul costs and the limited numbers of customers that can be addressed.

We request the BIPT to explicitly mention that under their regulatory obligations, Belgacom must answer all reasonable requests for physical unbundling (which includes unbundling of (i) the local loop at the level of the local exchanges (LEX), (ii) the local loop at the level of the local distribution frame (LDC) and (iii) the subloop at the level of the streetcabinet (KVD). We also refer to our comment in section 4.3.1

[21] This is implicitly confirmed by the BIPT when the BIPT states that (we underline):

« Les lignes dégroupées et les lignes bitstream dans le LEX et le LDC par lesquels l'ADSL, l'ADSL2 et le SDSL et autres sont fournis à l'utilisateur final ne sont donc pas touchées. Aucun vectoring n'est appliqué à l'ADSL, l'ADSL2+ DSLAM dans le LEX ou le LDC ***et donc aucun anti-bruit n'est injecté par ces DSLAM, susceptible de bloquer les mécanismes de vectoring du VDSL2-DSLAM. Le bruit causé par ces lignes sera mesuré comme un bruit de fond par le mécanisme de vectoring, et pris en compte lors du calcul de l'anti-bruit injecté sur les lignes VDSL2*** *».*

Such obligation is justified and necessary to ensure possible developments, especially since the removal of all SLU obligations would definitively block all eventual developments and is a definitive regression on the ladder of investment.

4.5.2 Mini-MDF obligation in case of partial LEX closure

The BIPT proposes to remove the obligation for Belgacom to provide 20% of the current copper capacity in case of partial LEX closure. We assume this obligation only refers to the cases where a Mini-MDF is created or maintained when a LEX closes.

The justification put forward for the removal is the lack of proportionality of the obligation.

Mobistar requests to impose a differentiated remedy in the case of partial LEX closures:

- In the first case, the existing copper network is already present in the LEX which will be transformed to a mini-MDF. Keeping the access to the copper network is fully justified as this does not entail any costs for Belgacom.
- In the second case, the existing copper network must be re-routed towards a newly installed mini-MDF. In this case, all the copper pairs that do not benefit of a ROP and all the pairs that are directly connected to the current LEX should remain accessible in the mini-MDF.

5 Comments on Market 5

5.1 Market evolution

In its description of the retail access market, the BIPT notes that apart from Belgacom and Telenet, the market share of alternative operators on the retail internet access market is still limited. In fact, the alternative operators do not manage to attain a larger share of the DSL market. In that respect, the BIPT is right to state that the high broadband penetration rate in Belgium is to be ascribed mainly to the success of the cable operators, and much less to the success of the unbundling or bitstream access wholesale offers. On the contrary, we even see a decrease of customer based on bitstream access (.Figure 10).

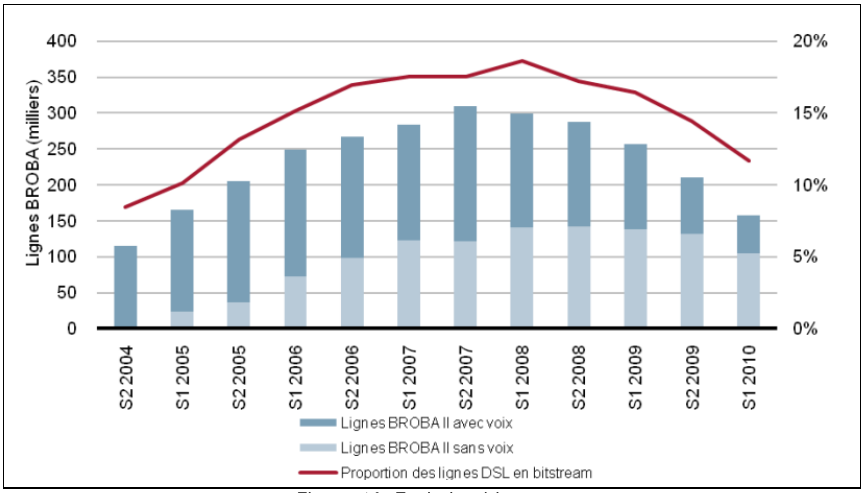

Figure 10: Evolution bitstream

5.1.1 Product

The analysis of the markets by the NRA has to follow the "modified greenfield method" which implies that the market that has to be analysed first is the most upstream market in the supply chain. This is precisely what the BIPT did when looking first at market 4 and afterwards at market 5.

In order to define market 5, the BIPT proceeded to substitutability tests with seven different services. Referring to its analysis of market 4, the BIPT excludes from market 5 the unbundled access to the local loop. As stated under the analysis of market 4 and for the same reasons, we fully support the exclusion of the unbundled access from market 5.

The BIPT also identifies as a separate market the wholesale resale offer to the suppliers of internet access exactly as was done in the previous market analysis under market 11 and 12. From the demand side, the BIPT concludes to the absence of substitutability with internet resale offers since the suppliers of internet access do not own a network and can therefore not easily turn to a bitstream offer. Conversely, bitstream customers cannot turn to resale offers without losing all the benefits of their investments at the wholesale level. From the supply side no alternative operator offering a wholesale offer can propose an offer comparable to Belgacom's wholesale offer.

Due to the specificities of wholesale leased lines with regard to wholesale bitstream access (among other things capacity offers between two given points versus point to multipoint offers, independently developed networks, …) the BIPT correctly concludes to the existence of two separate markets for the wholesale of leased lines and for the wholesale of bitstream access.

Finally, cable networks are not included in the market. Substitutability from the demand side does not exist due to important operational and technical obstacles from bitstream customers to turn to cable wholesale offers (modems adaptation, development of operational process, absence of national cable offers, …). The Court of appeal of 7 May 2009 confirmed this point, as quoted by the BIPT. From the supply side, substitutability is also limited. The BIPT also examines the possibility of indirect constraints exerted by cable operators on Belgacom's wholesale prices for market 5. It concludes that no indirect constraints exist. Should an increase in price of Belgacom's wholesale offer be applied, the ultimate increase in price at the retail level would benefit to Belgacom and not to the cable operator. We agree with this analysis.

The BIPT includes in market 5 Broba ADSL offers with and without voice and Broba ADSL offers with SDSL offers due to supply side substitutability. From the demand side, both offers have specificities that render these services not substitutable. From the supply side, it is easy for the alternative operator to deliver the service on the market on which it is not active because of its presence on either of the markets. An alternative operator supplying Broba ADSL without voice can decide to supply other operators with ADSL with voice. WBA VDSL offers with voice and without voice are substitutable for the same reasons. Broba ADSL and WBA VDSL offers belong to the same market due to their similar characteristics and usage. Mobistar agrees with this analysis of the market.

5.1.2 Geographic

The wholesale product market, as above analysed, excludes cable networks and wholesale leased lines. The only player on the market is Belgacom. Based on this definition, the geographic market is national. The current geographic market corresponds with the geographic market identified in the previous market analysis. Mobistar fully concurs with this definition.

5.2 Significant Market Player definition (SMP)

Whenever an undertaking has significant market power on a wholesale or a retail market, the regulatory authority needs to impose at least one obligation. It is thus important to determine whether Belgacom has such significant market power.

1. Presumption of dominance due to Belgacom's market share of 100%

On the wholesale market for the supply of broadband as defined above, Belgacom is the only actor. Its market share amounts to 100 % and entails according to the European Court of Justice a strong presumption of dominance. The BIPT has examined whether other factors could rebut or strengthen this dominance. It concluded that most other factors reinforce rather than rebut this.

2. No rebuttal of dominance by other factors

The presumed dominance of Belgacom has been assessed against different factors *(I) indirect constraints exerted by the cable on the retail market*, *(II) factors forming barriers* *to entry or to expansion* such as, (1) sunk costs, (2) economies of scale, (3) economies of scope, (4) the control of infrastructure hard to duplicate, (5) privileged or easy access to resources or specific assets, (6) privileged or easy access to capital markets, (7) technological developments or superiority, (8) vertical integration, (9) barriers to change from the users side, *(III) potential competition* but also against *(IV) countervailing buying power*.

(I) Indirect constraints exerted by the cable on the retail market

The BIPT concluded to the absence of such constraints when defining the product market. Mobistar agrees with the BIPT's analysis.

(II) Barriers to entry or to expansion

The entry on the bitstream market requires important investments in network infrastructure, either directly linked to the bitstream offers or already incurred for the unbundled offers. Such investments cannot be recovered when leaving the market and do therefore represent sunk costs.

As to economies of scale, although alternative operators benefit from Belgacom's economies of scale through the BRUO offers which are cost oriented, Belgacom still has a significant advantage over its competitors through the economies of scale resulting from its large client base. OLOs will never attain a customer base as broad as Belgacom.

Important economies of scope also favour Belgacom as it can allocate common costs across the different services it provides (TV, Internet, mobile & fix telephony, leased lines, …). As already mentioned under the analysis of market 4, around 44% of Belgacom clients are taking several services together. Belgacom's strategy regarding multi-play products is significative in this respect[22].

In addition, the BIPT concludes that Belgacom's infrastructure remains hard to duplicate.

Furthermore, the BIPT identifies a privileged access from Belgacom to specific assets but this advantage would tend to disappear with the closure of LEX and migration of active equipment to street cabinets.

The privileged access of Belgacom to capital is also undeniable and remains strong. Mobistar concurs with the BIPT's conclusion concerning this point.

Belgacom does not derive any specific advantage linked to technological developments or superiority but rather from the ownership of an infrastructure hard to duplicate.

Belgacom importantly benefits from its vertical integration and its presence on different markets gives it a substantial competitive advantages. Despite the possibility for OLOs to be active on market 4, Belgacom's advantage concerning provisioning and the repair of lines remains a significant competitive advantage versus alternative operators.

(II) Barriers to change from the users

Wholesale users of Belgacom's bitstream offers would hardly move to another operator offering similar bitstream offers. Apart from Belgacom no other operator has national coverage, so this would limit the attractiveness of another operator's offers.

[22] Belgacom Roadshow, 1er semestre 2010, slide 12

Furthermore, contract termination costs act as a deterrent for Belgacom's wholesale customers to move towards another wholesale bitstream provider.

(III) Potential competition

The BIPT concludes to the absence of potential competition given that currently no other operator apart from Belgacom is active on market 5 and this is the case since the beginning of the regulation. Should one consider the highly hypothetical entry of OLOs on market 5, such operator would gain only very low market shares leaving Belgacom with market shares well above 50%. We fully support the analysis from the BIPT on this point.

(IV) Countervailing buying power

Countervailing buying power would be measured by the negotiation power of OLOs on market 5. Such countervailing buying power does not exist. No OLOs would be able to refuse access from/to Belgacom. Exactly as analysed under market 4, as OLOs deploy activities on the whole territory, none of them can afford not to benefit from the national coverage of Belgacom. The negotiation power of OLOs is also limited as Belgacom does not need any services provided by the OLOs.

<u>3. Absence of the three criteria tests for a relevant market identified by the European Commission</u>

As already indicated under the market 4 analysis, the three-criteria test analysis is not compulsory for markets that do belong to a relevant market identified by the European Commission in its recommendation on relevant markets. There is indeed a presumption that the criteria are met for a relevant market identified by the European Commission[23]. Market 5 does belong to the list of markets identified by the European market as the wholesale broadband access market.

In this context the BIPT was right not to examine the three-criteria test.

5.3 Comments on the existing remedies

5.3.1 Full or shared bitstream access with or without voice

As SMP operator on Market 5, the obligation imposed on Belgacom to provide access to full or shared bitstream access is expected and supported by Mobistar.

Such access to bitstream must ensure that the alternative operator is able to effectively compete with the SMP operator. It must therefore be able to develop innovative services in order to differentiate itself. Following elements are absolutely necessary:

- possibility to develop high and very high speed offers,
- possibility to develop retail offers independently of the SMP operator (which means that all technical possibilities should be provided to develop a differentiated offer),
- interdiction to limit the access to technical components (for example by forbidding the use of equipment with specific capabilities),
- possibility to differentiate itself via QoS or other possibilities,
- provide enough flexibility to address the B2C & B2B markets with their own characteristics.

[23] We refer to footnote 4

In a nutshell, the bitstream offer should not only allow to provide the same retail services as the SMP operator, but should also allow to develop other services.

This obligation is reasonable and justified as this is the only way in order to be able to compete with the SMP operator, especially in the frame of the "move to all IP" (MAIP) plan and the LEX closures as well as the impossibility to use sublooop unbundling (we refer to section 3.2 & 4.5.1). Bitstream access remains the sole access option as correctly analysed by the BIPT[24].

5.4 Comments on the new proposed remedies

5.4.1 Equivalence of input

We agree with the BIPT that Belgacom should strive to operational excellence. In that context the existing transparency and non-discrimination obligations are not sufficient to fully benefit of the same service levels as what Belgacom is providing to its own retail arm.

We therefore welcome the BIPT's proposal to provide an additional obligation of *equivalence of input*. This remedy results in the obligation for Belgacom to build all internal and external processes on a set of building blocks. These building blocks need to be approved and eventually modified by the BIPT. The use of unique building blocks for both the SMP's retail services as for the wholesale customers ensures an equivalent service and non-discrimination. The fact that a cost will be associated with these building blocks provides further guarantees for compliance with the cost-orientation obligation and should also avoid cross-subsidization and price-squeezes, but it is not sufficient. Mobistar requests that also the non-regulated services should be described.

Should this additional obligation not be effective, we invite the BIPT to study the opportunity to take additional measures to ensure a level playing field. We understand that a new analysis will be carried out by the BIPT 18 months after the publication of the final decision. We invite the BIPT to inform the sector and to provide all the necessary transparency on this analysis.

We comment the complete description of equivalence of input as described in Annex 5 of the draft decision in section 6.2 of this document.

5.4.2 Price Control

General comments on price control are formulated in section 6.6. We will hereafter provide some specific comments in relation to this obligation in the frame of bitstream access (Market 5).

We welcome and fully support the BIPT's proposal to change the price control for VDSL2 from reasonable prices to cost-oriented prices. As indicated several times in past consultations, we consider that the concept of reasonable price is not relevant for the WBA VDSL2 and that such offer must be strictly cost-oriented in particular taking into account the LEX closure and the removal of the SLU obligation. Such cost-orientation is fully justified as the WACC already takes into account a fair retribution and that a NGN/NGA risk premium is not relevant in the case of VDSL roll out, especially in

[24] § 963 of the draft decision

the current market conditions as Belgacom is migrating a majority if not its entire customer base towards VDSL (we refer to Belgacom's Move to All IP plan – cfr section 3.2).

5.4.3 Transparency

We welcome the BIPT's proposal to further strengthen the transparency obligation by imposing an approved and full-fledged reference offer before the commercialisation of a retail product.

<u>Approved reference offer before the commercial launch of the retail product</u>

To ensure a level playing field, ensuring the replicability of the regulated operator's retail offers by the alternative operators is crucial. The principle of replicability of offers within a reasonable timeframe (6 months) has been stated by the European Commission in its NGA recommendation[25]. Although applied within the framework of next generation access networks, the principle has a general scope which is also valid in the current situation. The principle of replicability has also been pointed out by the French Competition Council[26].

We regret the past situation where Belgacom was able to launch a retail offer based on VDSL2 without an equivalent reference offer. This is not acceptable (Belgacom launched around mid 2008 a very high speed retail internet offer based on VDSL2 while the alternative operators received almost *all*[27] required wholesale offer elements only by mid-2010[28]. The OLOs could thus only benefit of a complete reference offer for VDSL2 two years after the launch of Belgacom's retail offer) and it is clearly discriminatory.

We deplore that in the present draft decision the replicability principle is limited to the publication of an approved reference offer before the commercial launch of the related retail service. We therefore request that retail services may not be launched until **6 months** after the publication of an approved wholesale reference offer necessary to replicate the retail service.

We also provide some general comments on transparency in section 6.

<u>Full-fledged bitstream offer</u>

A full-fledged bistream offer on Ethernet is especially required in the frame of the network evolutions to allow the alternative operators to (1) continue to serve their end-customers; (2) to continue addressing the different markets (B2C & B2B). This requirement is confirmed by the BIPT in the NGN/NGA decision of 12 November 2008 (stipulating that Ethernet based reference offers should provide enough level of interconnections and provide equivalent technical functions of what is available in BRUO)[29] and it is also in line with the European NGA recommendation[30] and with BEREC's opinion[31].

[25] The recommendations provides that "…*wholesale broadband offers should be available at least six months before the SMP or its subsidiary markets its corresponding NGA retail service"* 2010/572/EU: Commission Recommendation of 20 September 2010 on regulated access to Next Generation Access Networks (NGA) - http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32010H0572:EN:NOT

[26] Avis n° 05-A-03 du 31 janvier 2005 relatif à une demande d'avis présentée par l'Autorité de régulation des télécommunications en application de l'article L. 37-1 du code des postes et communications électroniques, § 27, http://www.autoritedelaconcurrence.fr/pdf/avis/05a03.pdf

[27] "all" with the noticeable exception of the VDSL2 modem issue, which we will not address here

[28] Press release BIPT of 10/08/2010: "Following an extensive analysis and consultation process, BIPT has put the final touches to the regulation of Belgacom's wholesale offer based on which alternative operators are capable of offering VDSL2 products on the Belgian market by using Belgacom's network."

[29] "Belgacom moet een bitstreamreferentieaanbod dat aangepast is aan het nieuwe Ethernetnetwerk ter goedkeuring voorleggen aan het BIPT en vervolgens publiceren. In dit aanbod moet in voldoende mogelijkheid tot diversificatie voorzien worden. Onder

We note that the obligation for a full-fledged Ethernet bitstream access offer includes multicast as confirmed by BEREC in their report on NGA wholesale products[31]:

We provide some general comments on transparency in section **6.4**

5.4.4 Multicast

As described in section 2.2, television is becoming an essential element in the offers requested by the end-users.

Mobistar had no other alternative than to provide a television service which combines satellite for broadcasting and DSL for the interactive services (see 2.2 of *Mobistar's comments on the Media regulator's - VRM, CSA, Medienrat, BIPT- draft decision concerning the Market analysis of the Broadcast Market*[32])

As correctly stated by the regulators, an alternative operator cannot make use of unbundling in order to create its own IPTV offer.

IPTV is not possible for alternative operators

As mentioned in the draft decisions the only effective IPTV operator in Belgium is Belgacom. Only a marginal part of the market can be addressed by the alternative operators for an IPTV offer besides Belgacom's. Two main reasons explain this situation.

(i) In the current regulatory framework it is impossible for an alternative operator to build an IPTV service based on Belgacom's bitstream offer (BROBA[33]). Multicast, being an essential functionality, is indeed explicitly forbidden in the reference offer. Without the multicast functionality, the alternative operators can only create an IPTV service based on Belgacom's unbundling offer (BRUO[34]), but such alternative only addresses a marginal part of the market.

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andere minimaal dezelfde kwaliteitsniveaus als het huidige bitstreamaanbod moeten mogelijk blijven en er moeten voldoende niveaus van interconnectie zijn. Anderzijds moeten er gelijkaardige mogelijkheden zijn om alle functies van de DSLAM te gebruiken zoals in BRUO."

[30] 2010/572/EU: Commission Recommendation of 20 September 2010 on regulated access to Next Generation Access Networks (NGA) - http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32010H0572:EN:NOT

[31] "Currently SMP-operators are migrating their aggregation networks from ATM to Ethernet technology. A Layer 2 Ethernet bitstream product typically needs the following elements: Flexible allocation of VLANs, control of customers' service speeds and service symmetry, security enabling, ability to support different QoS levels according to current industry standards, flexible interconnection and aggregation at regional & local level, flexible choice of customer premises equipment, <u>support for multicast functionality</u>." (we underline).BoR (10) 08 BEREC Report on NGA wholesale products - http://www.erg.eu.int/doc/berec/bor_08.pdf

[32] The VRM, CSA, Medienrat and the BIPT's consultation on the "Draft decision regarding the Market analysis of the broadcast Market" , hereafter referred as Broadcast Market Analysis

BIPT: Draft decision of the BIPT Council on the analysis of the television broadcasting market (http://www.bipt.be/ShowDoc.aspx?objectID=3385&lang=en)

VRM: Ontwerpbeslissing marktanalyse (http://www.vlaamseregulatormedia.be/media/14460/ontwerpbesluit%20marktanalyse.pdf)

CSA: Projet de décision concernant l'analyse du marché de la radiodiffusion télévisuelle (http://www.csa.be/system/document_consultation/nom/99/CSA_20101221def_Projet_de_d_cision_march__radiodiffusion_tv.pdf)

Medienrat: Den Beschlussentwurf der Beschlusskammer des Medienrates zur Regulierung des Fernsehmarktes im Gebiet deutscher Sprache finden (http://www.medienrat.be/pdf/Medienrat-FRZ-211210-mit-BRF.pdf)

[33] Belgacom's Reference Offer for Bitstream Access (http://www.belgacomwholesale.be/wholesale/en/jsp/dynamic/product.jsp?dcrName=nws_broba)

[34] Belgacom Reference Unbundled Local Loop Offer (http://www.belgacomwholesale.be/wholesale/en/jsp/dynamic/product.jsp?dcrName=nws_bruo)

(ii) IPTV is possible based on the BRUO offer, as the operator has full control of the network. However, Mobistar as national operator can not deploy IPTV in a meaningful way on BRUO due to the very low addressable market.

Mobistar is the operator who has deployed the biggest broadband infrastructure based on unbundling. […].

In order to provide a competitive TV offer (providing simultaneous watch & record of two different high-definition channels and multi-room), a minimum bandwidth of 10 to 12 Mbps is mandatory.

[…][35].

Furthermore, the effective BRUO coverage of the alternative operators will decrease with the migration of Belgacom's network to an all IP network. Indeed, Belgacom's plan to close several local exchanges reduces the possibility for unbundling and thus the BRUO coverage.

As a result, only a very limited coverage can be addressed via IPTV by an alternative operator. There is currently only one operator (niche player) active on this market which is Billi with has a very limited footprint[36].

<u>Satellite television is not a real alternative for IPTV</u>

Although satellite is an excellent technology that offers nearly unlimited channels capacity (including HD and 3D) and although it is the first access technolog for television broadcasting in Europe[37], it is not an equivalent alternative to cable TV or IPTV in the Belgian markets.

<u>Customers' reluctance to opt for a satellite TV offer</u>

First from the customer perspective, satellite TV is negatively perceived[38]. Different market researches carried out by Mobistar demonstrate the negative impact of the "satellite" component of our TV offer. […]The result showed that satellite is not appealing to the end-user:

Figure 11: confidential -

[…]

Financial analysts confirm this analysis. In the article "*Pourquoi les opérateurs télécoms passent à la télé"* (Trends-Tendances of 14 October), Nico Melsens, financial analyst for KBC Securities confirms: *"I do not expect an important impact on the short term for Belgacom and Telenet. The Mobistar TV offer is a very nice product, but it is not sure that it will seduce. The offer is based on satellite and, in Belgium, people do not like the fact to install a satellite dish."*[89]

Another recent study providing a split per region shows that satellite solutions are particularly unpopular in Brussels and in Flanders.

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[35] […]

[36] Partly 9 municipalities in Brussels and 10 in Wallonia (http://www.billi.be/-villes-couvertes-.html?lang=fr)

[37] SES Astra & Eutelsat Hotbird have together approximately 120mio households connected in DTH for DTV

[38] We also refer barriers to the satellite dish mentioned by the end-user.

[39] Free translation of : "*Je n'anticipe pas d'impact important à court terme sur Belgacom et Telenet. L'offre Mobistar TV est un beau produit, mais rien ne dit que le switch s'opérera. Il s'agit d'une offre satellite, et, en Belgique, les gens n'aiment pas trop le fait d'installer une antenne."*

Figure 12: Confidential -

[…]

Interactivity is provided by combining satellite services with broadband technology
Customers expect more than classical linear TV when opting for digital TV. Interactivity of services, such as EPG or VOD, is perceived as an intrinsic component of digital TV. However, for satellite TV services, interactivity is only possible when combined with a broadband technology.

Mobistar had therefore to combine the satellite TV with a broadband connection.

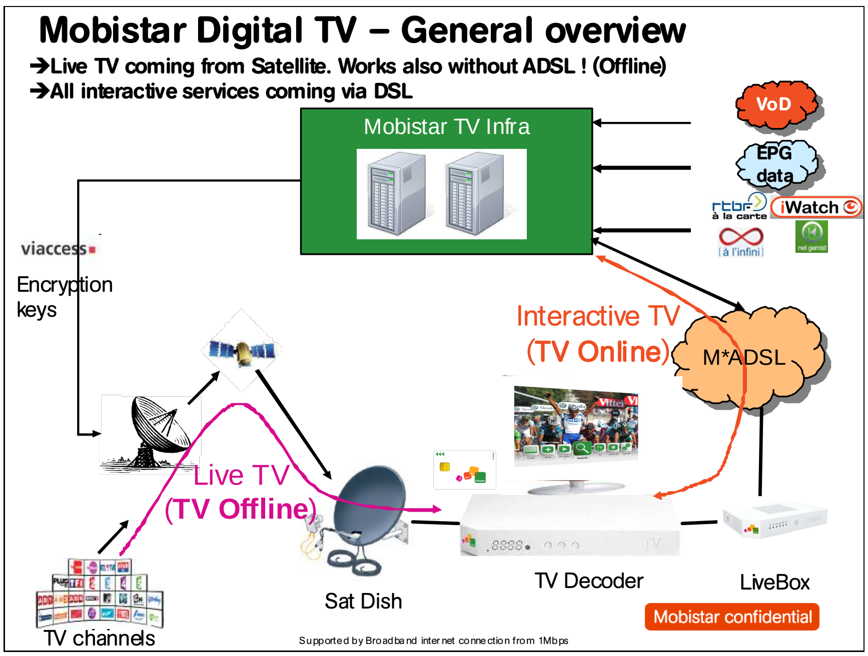

Figure 13: General overview Mobistar digital TV

This combination of two accesses (one for TV broadcasting and one for the interactive services) results in a significant increase of not only the activation and operating costs but also in additional operational difficulties. These difficulties exist for Mobistar as well as for the end-user (for example the installation of a satellite dish, the need for additional cables between the dish and the set-top box and the broadband modem, …). Other TV service providers, already present in the end user's living room either via the telephone or the cable plug, don't encounter the same difficulties

Limited differentiation possibilities
Satellite TV access limits also the possibility to access any TV channel and to easily change the offers from what is currently available on the different satellite constellations.

Indeed, as shown in the figure below, Mobistar is using two pairs of satellite constellations for its broadcast television among three satellites with potentially interesting Belgian content: Hot Bird 13°E, Astra 19°E and Astra 23°E. One pair of satellite constellations is used for the French TV bouquet (Hot Bird 13°E & Astra 19°E) and a second pair is used for the Dutch TV bouquet (Astra 19°E & Astra 23°E).

Mobistar offers two different sets of satellite dish kits[40]: one for the FR bouquet and one for the NL bouquet.

The dish installation is done for either the French bouquet or for the Dutch bouquet, as the azimuth directions are not the same for both bouquets.

As a result, a customer with a Dutch bouquet cannot have access to Hotbird 13°E channels, and conversely, a customer with a French bouquet cannot have access to the TV channels available on Astra 23°E.[41]

The customer has to decide which bouquet he wants to subscribe to before the installation of the dish. Changing of bouquet FR⇔NL imposes to change the antenna head (LNB) and the azimuth, which is operationally and financially not feasible (need to change equipment on the roof).

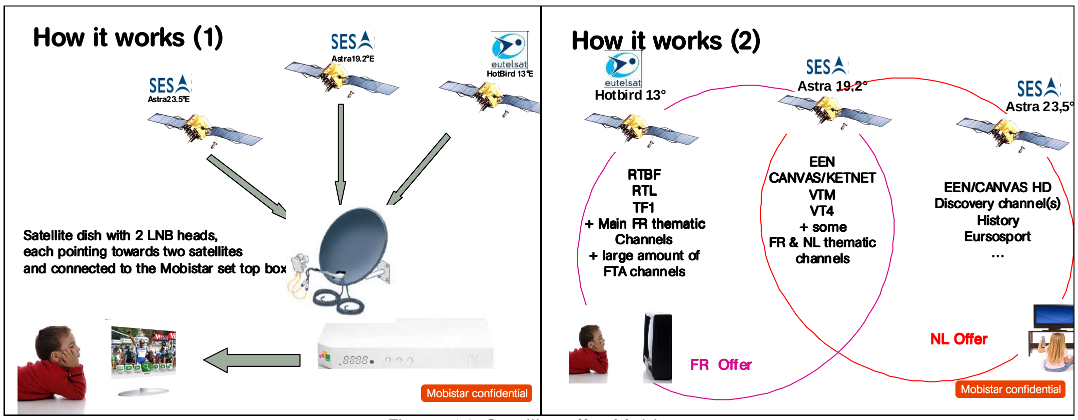

Figure 14: Satellite offer Mobistar

Access to multicast is therefore essential

Mobistar is convinced that multicast is essential to fully compete with Belgacom and the cable operators. Both Belgacom and the cable operators are able to bundle a television broadcasting service with a broadband service using only one technology. The use of a single technology is not only operationally easier and financially cheaper for the operator, but it is also not suffering from the barriers that a satellite solution has overcome.

It is fully justified that the alternative operators should be able to benefit from the same services as Belgacom's retail arm itself. As Belgacom is using multicast to provide Belgacom TV, it is legitimate that the alternative operators are able to make use of the multicast service.

Should Belgacom not be able to provide such access, then Belgacom has to provide an alternative allowing alternative operators to provide television broadcasting services.

The reuse of Belgacom's multicast flows with the possibility, for alternative operators, to add or remove additional television channels is such alternative.

This is schematically presented in Figure 15. A more detailed description of the different technical options can be found in annex.

[40] In reality, only the dual heads LNB (=active part of the antenna) differs from FR kit to NL kit as the delta angle between both constellations are different: 6° for Fr bouquet, 4° for NL bouquet

[41] on the satellite market some specific dishes that support 3 or 4 different LNBs exist, however this solution is unrealistic for the residential retail market due to the installation complexity and price.

Figure 15: Confidential -

5.4.5 Aggregation of traffic of several LEXes on one access line

We welcome the BIPT's proposal to provide the possibility to aggregate the backhaul traffic of several LEXes to a nearby located LEX where the alternative operator is collocated[42].

We understand that such obligation is introduced in order to cope with the disappearance of the possibility for local interconnection with the move from an ATM backbone network to an IP backbone network (due to Belgacom's MAIP plan).

We note that this issue has been highlighted since the first discussions on Ethernet transport by both Mobistar and the Platform of alternative operators. The current Ethernet cost structure, with only five regional interconnections, sanctions operators that have invested in their own network. Mobistar, as operator which has invested the most in terms of network (LEX footprint, local interconnection, etc…)[43], is most likely suffering the most from this situation. We therefore welcome BIPT's proposal to re-introduce intermediary interconnection points for Ethernet transport via this obligation.

As indicated in the past consultations on Ethernet transport, the interconnection points should be located in the same LEXes as the current ATM POI, in order to avoid losing the investments that have been made already.

The BIPT should confirm that this obligation allows the alternative operators to develop an interconnection network similar to the current network in ATM and that the tariff for the service is cost-oriented.

5.4.6 One national interconnection point

Mobistar has a limited interest for this remedy and has no particular comment.

5.5 Comments on the removed remedies

5.5.1 Obligation to provide VDSL1 where VDSL2 not available

Seen the current coverage of VDSL2 and the (near) future disappearance of VDSL1, we agree with the BIPT that the imposition to provide a VDSL1 bitstream offer where VDSL2 is not available is not justified anymore.

5.5.2 Obligation to provide Managed IP access

[42] L'IBPT impose la mise en place, 6 mois après la publication de la présente décision, d'une offre backhaul GigaEthernet pour établir une liaison entre les bâtiments Belgacom. Elle consistera en une fibre ou une longueur d'onde avec le minimum d'équipements actifs entre le nœud Ethernet de Belgacom dans un LEX et celui de l'opérateur alternatif dans un autre LEX proche, elle comprendra les prestations de maintenance et un SLA adaptés en fonction de cette architecture minimaliste.

[43] As a consequence of those investments, Mobistar transports costs are shared between local and non local costs […]

Given the absence of usage of the managed IP access and the apparent lack of interest by the alternative operators in this offer, Mobistar agrees with the BIPT to remove this obligation as it is not justified.

6 General remedies

6.1 Auxiliary access obligations

6.1.1 Collocation

This section addresses the collocation obligation as described in section 4.6.1.2.2 & 5.6.1.1.2 of the "Draft decision regarding the Market analysis of the Broadband Market""

Access to collocation is mandatory to benefit from an effective access obligations. It is for example needed for the interconnection between the alternative and the SMP operator.

The SMP operator must provide the necessary backhaul possibilities to allow the alternative operator to connect its collocation area with its core network. The alternative operator must also have the possibility to use backhaul services from another operator than the SMP operator.

6.1.2 Access to supporting systems

For an alternative operator, access to the SMP-operator's supporting systems is a mandatory facility in order to become a real alternative to this operator. Indeed, access to the SMP operator's OSS/BSS[44] systems is necessary in order to ensure fast and automated servicing of the end-user.[45]

The access to the OSS/BSS systems must be non-discriminatory and equivalent to the access provided to the retail arm of the vertically integrated SMP operator. Hence access time and the quality of the processes should be similar. The imposition of a SLA on the OSS/BSS systems should be enforced in order to guarantee the quality and non-discrimination (see also further).

Effective processes and procedures are crucial for the successful implementation of the access obligations. In this frame the regulators should pay attention to the limits of the non-discrimination obligation which may be insufficient when some services are only provided to alternative operators.

We also refer to section 6.2.1 (in particular the part describing the obligations in the frame of SLAs & compensations for supporting systems) and section 6.2.4.

6.1.3 Fair negotiation

This section applies to the collocation obligation as described in section 4.6.1.2.3 & 5.6.1.1.4 of the "Draft decision regarding the Market analysis of the Broadband Market".

The regulator considers that an access request within the scope of the reference offer should be granted at the latest 14 days after the formal access request.

For an access request outside the scope of a reference offer, a period of 4 months is reasonable. This 4 months period should be considered as a maximum period to

44

OSS (Operations support systems):
computers used by telecommunications service providers to administer and maintain network systems
BSS (Business support systems):
components that a telecom operator uses to run its business operations towards customer

45 The information provided by the OSS/BSS systems allows the alternative operator to verify the possibility to provide the service to the end-user but also to proceed to the ordering and, if necessary, the notification and follow-up of an issue on the line.

complete the agreement and should not be used by the SMP operator as a way to intentionally delay the negotiations.

In any case and especially with the removal of the SLU obligation (see section 4.5.1) all reasonable access requests made by alternative operators should be positively answered by Belgacom except for justified technical reasons. We strongly invite the BIPT to take all the necessary measures to intervene should this not be the case.

6.1.4 Interdiction to remove existing access

This section addresses the interdiction to withdraw existing access as described in section 4.6.1.2.5 & 5.6.1.1.5 of the "Draft decision regarding the Market analysis of the Broadband Market".

The BIPT differentiates two different cases:

Removal of existing access due to contractual breach

We agree with an access withdrawal linked to a contractual breach only after a formal prior approval of the BIPT and subject to the following conditions

- The alternative operator must be informed of the end of the service at least 15 working days prior the execution of the withdrawal.
- The BIPT must be informed of the detailed notice sent to the alternative operator.
- Belgacom must cooperate with the alternative operator for the migration of the end-users.

This is necessary to avoid hurried services withdrawals which would greatly harm the alternative operator. Fifteen working days are however too short in order to take the necessary legal actions against Belgacom's decision when this is necessary.

Removal of existing access or services due to unilateral changes by the SMP operator

The SMP operator's network evolution might lead to changes causing access withdrawal. Such changes must be subject to prior approval by the regulator. Access withdrawal can only occur after a reasonable notice period to the alternative operators

Such changes are currently going on in the context of Belgacom's MAIP project. It will result in LEX closures and migrations to Ethernet Transport Network which will substantially impact the alternative operators and the structure of market 4 and 5.

In any case, as well for unbundling as for bitstream, the costs incurred by the alternative operators to adapt or migrate their customers to alternative solutions should be borne by Belgacom.

We note that these forced adaptations have important operational and financial impacts for the alternative operatos (IT developments, the migrations of customers, changes in investment business cases, changes in strategy, …)

Mobistar requests that in case of mandated migration driven by the SMP operator's own decision :

- the alternative operator is compensated for the lost investments,
- the SMP operator pays all the costs related to the migration. This covers, for instance, collocation costs (tie cables, fiber intro, etc…), migration costs

(activation, deactivation, migration of VP/VC, VLANS or end-users, extra manpower costs due to the migration - technicians, back-office staff, customer care,…), equipment overhead (additional equipment required before the migrated equipment can be recuperated), CPE costs (some CPE will have to be swapped), etc…

– a reasonable notice period to allow the alternative operator to adapt to the changes

For the wholesale market of physical access to network infrastructure (Market 4)

In this consultation the BIPT considers a five year notice period as reasonable. In any case the SMP operator must provide an appropriate alternative and migration path.

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We request a prior notice of 8 years, which, in our view, is required to allow us to fully integrate the changes in our business model and to proceed to the necessary adaptations. Such imposition is justified given the highly important impoact of these changes on our business activies.

Note that, despite the currently applicable minimum notice period of 5 years (as imposed by the BIPT in its NGN/NGA decision of 12 November 2008), the first LEX will be closed earlier.

In this first case a mini-MDF (so-called atropos) will be created for a part of the subnetwork (we refer to the presentation by Belgacom in November 2009 in annex)[46].

Mobistar notes that despite the existing obligation on Belgaocm to provide a real alternative in the case of a LEX closure – obligation which is confirmed in the present draft decision[47] - such alternative has not yet been provided.

For the lines that will be migrated to the mini-MDF, until now we did not receive a clear view from Belgacom on :

a) the collocation : the details concerning the ordering of the tie-cables, the fiber intro, etc are not provided yet;
b) the real existence of an alternative. It is still unclear if the services currently provided can be delivered via the mini-MDF (eg what will happen if the lines become to long, are there enough lines for all the services in zone 1 ?).
c) the alternative for the lines that are not covered by the mini-MDF, eg can currently provided services be delivered via another technology; if not, what can be offered to the end-user ?
d) the migration plan, for instance :
    a. how will the end-users be migrated for those that will be moved to the mini-MDF ?
    b. how will the end-users be migrated for those that will not be moved to the mini-MDF ?
    c. how will the migration happen in detail (eg CPE swap,…) ?
    d. how long will the service be interrupted ?

For the wholesale market of bitstream access

The BIPT considers that one year is a reasonable notice period as this should correspond to the necessary period for an alternative operator to adapt itself to the change. In any case the SMP operator must provide an appropriate alternative and migration path.

[46] http://www.belgacomwholesale.be/wholesale/gallery/content/products/documents/workshop_building_outphasing_301109.zip

[47] §532 of the draft decision

We consider that a prior notice of 1 year is not sufficient to allow the alternative operator to make the necessary adaptations. We consider that a period of 2 year should be applied in order to reduce the burden caused by SMP-operator initiated actions.

We underline the need for an enriched bitstream offer. The technologies that will disappear have some characteristics which are currently used (for example VC switching for business applications, leased lines for connections with a synchronisation, SDSL for symmetrical profiles, etc…). Similar characteristics must be supported by the future technology.

Mobistar notes that despite the existing obligation on the SMP-operator to provide a real alternative in case of a substantial change of the bitstream offer – obligation which is confirmed in the present draft decision[48] - such alternative has not yet been provided.

Mobistar requests that in case of removal or substantial change of the bitstream offer :

- no bitstream removal is allowed without a **real** alternative for the existing service and **real** visibility on the migration path must be provided at least **2 years** before the migration. Such visibility is necessary to plan all the actions required by the migration process (information to end-users, technical adaptations, staffing of the call-center, etc…).
- Belgacom must pay all costs related to the migration. This cover, inter alia, costs related to the migration process as such (activation, deactivation, migration of VP/VC, VLANS or end-users, manpower costs for technical, back-office and customer care support,…), equipment overhead costs (as additional equipment needs to be installed before the "old" equipment can be recuperated), CPE related costs (some CPE will have to be swapped), etc…
- Belgacom is in charge of the coordination and project management of the migration.

6.2 Equivalence of input

Based on its past experience when imposing wholesale obligations on SMP operators the BIPT has included a specific annex regarding "equivalence of input".

The BIPT concludes that despite the formal obligations for non-discrimination and transparency, the service provided by Belgacom to its wholesale customers is not equivalent to the service provided to its retail department. The BIPT therefore proposes to impose *equivalence of input*.

The quality of service that can be supplied by an alternative operator depends on the quality of the wholesale service provided by the SMP operator. Inefficient procedures or IT processes can have disastrous effects not only on the alternative operators' internal operations and finances[49], but also on the wider market functioning given that these deficiencies will also directly impact the end-users.

The impact should not be underestimated: it will negatively influence the end-user perception of its chosen operator, it is very likely to lead to higher churn, more calls to customer service, more complaints and in general a worse image and reputation of the alternative operator, finally resulting in higher acquisition costs to attract new customers.

[48] §1077 of the draft decision (we also refer to section 5.4.3)
[49] for example because of the need of extra manpower to follow-up of issues or by having extra wholesale costs

In the present broadband draft decision, the BIPT has concluded that equivalence of input must be ensured for all the processes involved in the service delivery flow (cfr figure below).

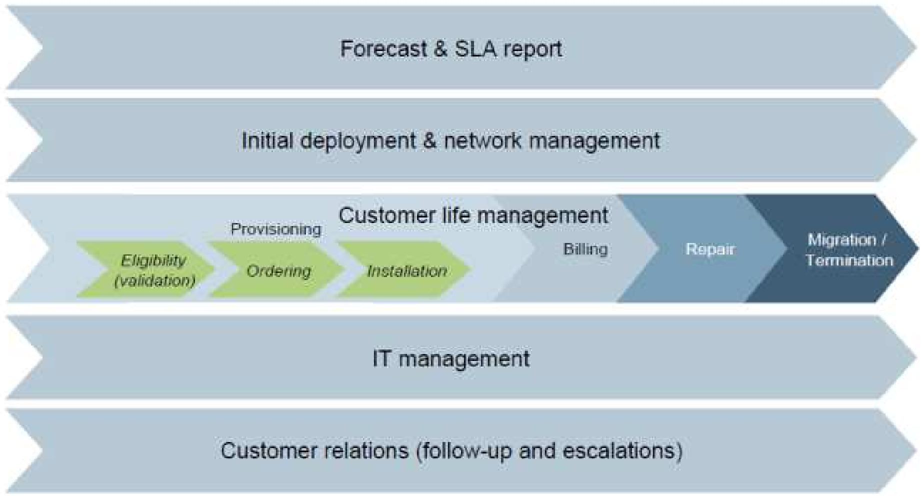

Figure 16: Different aspects for service delivery

Equivalence of input means that an operator provides the same products and services for both its internal and external customers, with the same timings, the same conditions (in terms of price and service levels), using the same processes and with the same reliability and performance. In addition, all the internal and external customers should have the same information concerning the products, services, systems and processes.

The obligation for Belgacom to develop efficient processes directly results from its regulatory obligations for access, non-discrimination and transparency, but we nevertheless have to witness that even if these obligations exists, the service provided by Belgacom to its wholesale department is not equivalent to the service provided to its own retail arm.

An example of this situation are the operational issues that the alternative operators had to face with the introduction of a new IT system (PILA) by Belgacom. The alternative operators have been highly impacted by a bug in the '*amend'* process which has lasted for more than 2 years[50] (!!!) before being fixed (see also our comments to the *Draft decision concerning the BRUO/BROBA/WBA 2010/BROTSoLL 2010 reference offers*). We cannot imagine that a similar bug affecting Belgacom's retail customers would have taken so much time before being solved.

Quality of service towards the end-users and end-user satisfaction are key priorities for Mobistar (cf Mobistar's decision to appoint a Chief Customer Loyalty Officer[51][52]). Although in its Corporate Responsibility Report Belgacom defines *operational excellence* as well as *customer satisfaction* as key elements, our experience does not allow to confirm this, as for instance proven by the two notice of defaults issued in 2006 and 2007 by the BIPT against Belgacom.

[50] PILA was introduced in May 2007 and Belgacom has confirmed that the OLOs could restart sending the Amend per XML as of 22/06/2009.
[51] Press release available on http://corporate.mobistar.be/go/en/media_center/news/news_details.cfm?news_id=180
[52] We quote and underline : "*But it is not only at the level of technology that Mobistar aims to be the most innovative provider on the Belgian market. At the level of customer experience Mobistar also wants to distinguish itself from the competition by delivering "best in class" services. That is why Mobistar has decided to create the new post of Chief Customer Loyalty Officer in order to be even more receptive to its customers and responsive to their needs.*"

The inefficiency of Belgacom's wholesale processes is also demonstrated by the impressive *Draft decision concerning the BRUO/BROBA/WBA 2010/BROTSoLL 2010 reference offers* (hereafter referred as *BRxx consultation*), which aims to review and enhance the operational processes for the different regulated offers of Belgacom.

We also understand that the results of the operational audit performed by the BIPT (and for which the alternative operators have not received any information on the findings), tend to confirm operational inefficiencies for the wholesale processes on all levels (end-to-end customer management, supporting IT systems & IT management, forecasting & SLA, customer relations & network management)[53].

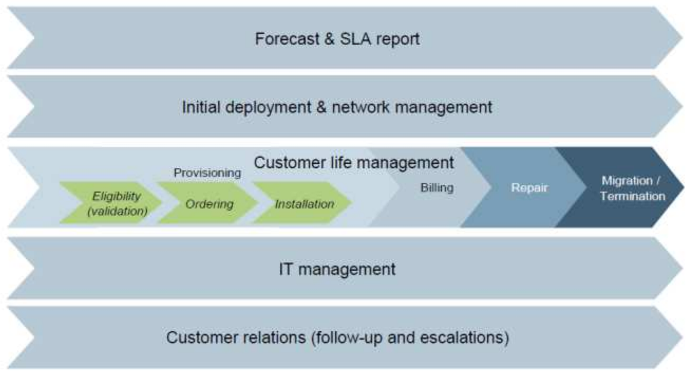

Figure 17: Different aspects for service delivery

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Taking the abovementioned elements into account, we request that the following elements are imposed :

Non-discriminatory evaluation of the priorities of IT-projects

The prioritisation of IT-projects should not result in a discrimination between the wholesale department and the retail department. In the context of the broadband market, the alternative operators have already faced situations where they had to wait over two year before IT-system bugs were fixed.

Software & process adaptations and developments in cooperation with beneficiaries

All the software & process adaptations and developments must be done on the basis of clear agreements and communications between the different stakeholders. Additionally the stakeholders' interests and wishes should be taken into account from the beginning of the process. The alternative operators must be informed about the IT projects that relate to wholesale products.

This is needed by the alternative operators to allow them to start IT developments and adaptations at the same time as the SMP operator. Otherwise extra delays will occur for the alternative operator. Because such information is existing and provided internally, it is proportionate and reasonable to provide such information to the alternative operators. The alternative operators must also be able to test the new service/adaptation before it is implemented.

Obligations in the frame of billing

An efficient, correct and clear wholesale billing process is mandatory as it would otherwise result in a huge operational burden[54] for the alternative operators.

[53] The different aspects for the delivery of a service to a end-user are illustrated in the figure
[54] A lot of man-power could be required in order to verify and follow-up the invoices and credit-notes send by the cable operator

6.2.1 Forecast & SLA

Obligations in the frame of Forecast

We support the BIPT's position on the need for proportionate and adequate forecast obligations. Forecasts should never be used by an SMP operator to block the commercial activities of an alternative operator or to escape from SMP SLA obligations. The forecast mechanism put in place in the past by Belgacom where the alternative operators had to provide 984 different values[55] for the forecast and where any deviation (either under-run, either over-run) was used by Belgacom to reduce the amount of orders subject to a SLA, is therefore completely unjustified. It could be interpreted as a deliberate manoeuvre in order to reduce its SLA obligations and to induce unnecessary burden on the alternative operators. We note that this analysis is also shared by the ERG in their *Report on ERG Best Practices on Regulatory Regimes in Wholesale Unbundled Access and Bitstream Access*.

Welldefined and enforceable SLAs

As confirmed by the ERG[56], Service Level Agreements are an essential tool to measure and ensure a satisfying service level for the services provided by an SMP operator to its wholesale customers.
SLAs are essential to ensure non-discrimination and quality of service. Without SLA, alternative operators would not be able to guarantee a specific quality of service to their end-users (for example to be able to provide a maximum installation time for a new service).

In order to guarantee that the SLAs are effective the measured KPIs should be chosen with utmost care. The selected KPIs should be transparent, pertinent and allow the verification of the internal and external non-discrimination obligations.

Obligations in the frame of SLAs & compensations for technical interventions

SLAs should cover all the operational aspects for service delivery (cf before): provisioning of access, handling of repairs, timers for installation & repair, quality of the installation & repair (for example first time right installations), the possibility to choose an installation date, …

Compensation must be foreseen to enforce that SLAs are respected. These compensations must be high enough in order to stimulate the SMP operator to respect the SLA requirements. These compensations must be easy to calculate and when applicable they must be made fast.

To ensure transparency and non-discrimination, Key Performance Indicators should be made available every month by the SMP operator and when SLAs are not met all the elements to calculate the associated compensation should be provided by Belgacom

To avoid undue discrimination the SLA-requirements for wholesale services should allow alternative operators to provide as a minimum the same SLA to their end-users than what Belgacom is providing to its own retail customers. This implies that the SLA requirements for wholesale services should be more demanding and stricter than Belgacom's own retail SLA[57].

[55] We refer to our comment to the *Draft decision concerning the BRUO/BROBA/WBA 2010/BROTSoLL 2010 reference offers*
[56] http://www.erg.eu.int/doc/publications/erg_07_53_wla_wba_bp_final_080604.pdf
[57] For instance, we note that currently the SLA for BRUO lines is identical to the SLA provided by Belgacom for their retail customers

SLAs covering the functional and operational support systems which are used for the service delivery (OSS – Operational Support Systems – and BSS – Business Support Systems) are needed. These supporting systems are used in order to assist or to automate the execution of all the aspects for service delivery and are critical. The accuracy and availability of these systems are essential for the alternative operators to adequately serve the end-user.

The imposition of SLAs (and associated penalties) for these systems is therefore necessary and fully justified.

6.2.2 Initial deployment & network management

Information on the evolution of Belgacom's network is important for the alternative operators. We therefore support that the obligation to provide such information is maintained. The update of the "Network transformation outlook" document, is therefore required.

6.2.3 Customer life Management

Customer Life Management is the most important part for end-user satisfaction. It can be split in different sub-processes listed hereafter :

- Eligibility
- Ordering
- Installation
- Billing
- Repair
- Termination/migration

We agree with the BIPT on the need for following measures:

- Obligations concerning provisioning & repair orders and auxiliary procedures,
- Obligations concerning activations, migrations and repairs
- Obligations concerning customer visits,
- Obligations concerning billing,
- Obligations concerning mass migrations.

This set of measures is necessary to ensure a level playing field for the alternative operators:

***Obligations concerning provisioning & repair orders and auxiliary procedures*.**
We welcome the BIPT's description of what should be included in the provisioning and repair orders as well as how these should be executed. The information provided to/from Belgacom must be complete to understand the current status of the order and to remedy reasons for rejects as well as for repairs.

An alternative operator's request can only be amended by the same alternative operator and not by Belgacom. Neither the refusal of installation by the end-user nor contractual issues between the former Belgacom's customer and Belgacom are valid exceptions.

Obligations in the frame of activations, migrations and repair
The alternative operators expect fully operational lines after Belgacom's intervention for provisioning or repair. The quality of the delivered line must correspond to the expected quality based on distance/attenuation. The quality of the service in BRUO should be equal to what can be provided in BROBA and be identical to what Belgacom is

providing to its own retail arm (see our comments to the *BRxx consultation* in particular in section 6.1).

In addition, when an end-user wishes to change provider (migrate from one provider to another), the migration must be efficient and swift. In addition the down-time during the migration should be limited to what is strictly necessary to perform the migration. In case several services are bundled with an end-user who wishes to change provider for all his services, all the services should be migrated at the same time in order to minimize the down time as well as the operational impact for the end-user (see our comments in section 6.6 of the *BRxx consultation*).

The repair process should be executed as fast as possible. In addition, in the process of identifying the root cause of a problem, Belgacom must use all the useful information provided by the alternative operator which will guarantee efficiency and reduce the down-time. In such process, the alternative operator should be informed of the differents steps in order to properly keep the end-user informed (see section 7 of our *BRxx consultation*).

<u>Obligations concerning customer visits</u>

The visit date of Belgacom technician should be fixed with the same efficiency and flexibility as for a visit to Belgacom's own end-users.

The end-user should be correctly informed about the visit date as he has to be at home. Date and time of the appointment need to be fixed in cooperation with the end-user. This appointment must also be respected by the technician. In case the end-user is absent, the technician should inform the customer about the visit exactly as what happens for water, gas or electricity visits.

The importance of this process is confirmed by Belgacom in its 2009 CSR report[58] where Belgacom states (we underline) in the section "*Focused on improving our customer experience and servicing*":

> *A priority for 2009 has been our Care & Ease program. "Care" measures the 'end-to-end' satisfaction of our clients. … <u>The introduction of new and more precise appointment slot choices during</u> the day,…have contributed to the easyness to do business with the customer operations.*

<u>Obligations concerning billing</u>

An efficient, correct and clear wholesale billing process is mandatory as wholesale billing would otherwise result in a huge operational burden[59] for the alternative operators. We also refer to the comment made in section 11.3 of Mobistar's contribution to the *BRxx consultation*.

<u>Obligations concerning mass migrations</u>

As correctly stated by the BIPT, the migration process must be easy, efficient and executed with a limited service interruption for the end-user. The process must be developed without hampering competition. This will be crucial in the context of the MAIP and the related LEX closures as an important fraction of the alternative operator's end-users will have to be migrated (see also section 3.2). Migration processes only affect wholesale services (and not the vertically integrated operator internally). The non-

[58] http://www.belgacom.com/group/gallery/content/annual_report/2009/en/csr_2009.pdf
[59] A lot of manpower could be required in order to verify and follow-up the invoices and credit-notes send by Belgacom

discrimination obligation on its own is therefore an insufficient guarantee for an efficient and smooth migration process [60]

6.2.4 IT Management

Non-discriminatory evaluation of the priorities of IT-projects

The prioritisation of IT-projects should not result in a discrimination between the wholesale department and the retail department. In the context of the broadband market, the alternative operators have already faced situations where they had to wait for over two year before IT-system bugs were fixed.[61]

Software & process adaptations and developments in cooperation with beneficiaries

All the software & process adaptations and developments must be done on the basis of clear agreements and communications between the different stakeholders. In addition the stakeholders' interests and wishes should be taken into account from the beginning of the process. The alternative operators must be informed about the IT projects that relate to the wholesale products.

This is needed by the alternative operators to allow them to start IT developments and adaptations at the same time as the SMP operator. Otherwise, extra delays will occur for the alternative operator. Because such information is existing and provided internally it is proportionate and reasonable to provide such information to the alternative operators. The alternative operators must also be able to test new services/adaptations before these are implemented.

6.2.5 Customer relations

Customer relations depict all the contacts between the wholesale department of Belgacom and their wholesale customers (the alternative operators). The alternative operators must benefit of the same information as Belgacom (both qualitative as quantitative).

Adaptations to the regulated wholesale offers must be communicated to the beneficiaries in a clear and efficient way. The information provided should be sufficiently detailed to allow the alternative operators to assess (business case), build, develop and maintain their own product offerings.

Description of the operational processes

Alternative operators depend directly on Belgacom's processes. Therefore they need an up-dated and precise description of the different processes. Furthermore, this will also allow the BIPT to assess the wholesale service cost-models and the related costs.[62]

Identification of the fixed line connection

Fixed line identification must be unique, transparent, unambiguous and efficient. There is currently no clear manner to identify a fixed line connection. The only way to identify the fixed line is the Circuit-ID (CID) which is not appropriate because the CID is changing over time and not necessarily known by the alternative operators.[63] A unique

[60] we also refer to our comments in section 8 of our BRxx contribution

[61] Concerning the bug fixing, the past experience with the *amend bug* that has been introduced with the introduction of a new IT system (PILA) by Belgacom and that was only affecting the alternative operators has lasted for more than 2 (!) years ![61]

[62] We also refer to our comment to the *Draft decision concerning the BRUO/BROBA/WBA 2010/BROTSoLL 2010 reference offers*).

[63] We also refer to our comment to the *Draft decision concerning the BRUO/BROBA/WBA 2010/BROTSoLL 2010 reference offers*)

identification of a fixed line similar to an EAN number in the electricity sector should be imposed.

6.3 Non-discrimination

This section will address the collocation obligation as described in section 4.6.2 & 5.6.2 of the "Draft decision regarding the Market analysis of the Broadband Market"

Non-discrimination is an essential remedy in the frame of wholesale access obligations. First it is important to underline that non-discrimination should be applied both internally (between the retail arm and the beneficiaries) but also externally (between different beneficiaries).

Secondly, we support the BIPT analysis on the need for strict non-discrimination. Indeed, without this obligation the SMP operator would be able to intentionally favour or disadvantage a specific beneficiary. The non-discrimination obligation is important on different aspects:

Non-discrimination on technical aspects
Especially in the context of technological developments the non-discrimination principle plays an essential role. As the alternative operators must be able to compete with the SMP operator it is required that the relevant technological evolutions that the SMP operator uses for itself should be provided on a wholesale basis to the alternative operators.

In addition, the alternative operators should be able to participate to test-cases or studies on new technologies at the same time than the SMP operator.

Non-discrimination on operational aspects
Also the operational aspects should be subject to non-discrimination. This means that all services that Belgacom provides to itself should be provided in an equivalent way to the beneficiaries[64].

Non-discrimination regarding both aspects should ensure that the alternative operators are able to launch a similar retail product at the same time as Belgacom launches its own retail product. Past experiences demonstrate that new obligations concerning equivalence of input should be imposed.

6.4 Transparency

This section addresses the transparency obligation as described in section 4.6.3 & 5.6.3 of the "Draft decision regarding the Market analysis of the Broadband Market"

Reference offer
Mobistar supports the obligation for Belgacom to publish a reference offer as it allows an alternative operator to develop a business case and its offer based on well defined elements (technical and financial conditions, operational procedures, IT processes and interfaces, …).

The reference offer should be detailed enough in order for the alternative operator to purchase only the required services. In addition, it should contain all the necessary

[64] This is applicable to for example the delay for delivery or repair, the capacity to migrate end-users, the applicable procedures, the applicable tariffs, etc…

information in relation with the service provided: service description, ordering information, price, SLA, related processes and procedures, etc…

We note that all the necessary elements and information must be provided in the reference offers[65]. The reference offer should be kept up to date by Belgacom and the BIPT should be entitled to adapt the reference offers on its own initiative or on a beneficiary request. Prior approval of all modifications by the BIPT is fully justified and required.

In order to ensure transparency we suggest the BIPT to request that Belgacom provides the adapted reference offers with the suggested adaptations in track changes.

Communication of contracts to the BIPT

In order for the BIPT to ensure that the contracts are in accordance with the regulatory obligations, the BIPT must have the possibility to verify the contracts. The only way to ensure that there is no discrimination between two beneficiaries is indeed to compare the contracts of both beneficiaries.

Performance indicators

Performance indicators are essential for the measurement of the quality of the service provided. Without this obligation Belgacom would be able to intentionally reduce the service quality. This would have disastrous effects for the beneficiary. We fully support the requirement to publish Key Performance Indicators (KPI) as well as Service Level Agreements (SLA) in reference with these KPIs.

We confirm the BIPT analysis on the need for strict and enforceable SLAs. We also note that our past experience demonstrates that the sole non-discrimination obligation is insufficient. We believe that a new obligation concerning equivalence of input should be imposed.

Replicability

To ensure a level playing field, ensuring the replicability of Belgacom's retail offers by the alternative operators is crucial. The principle of replicability of offers within a reasonable timeframe (6 months) has been stated by the European Commission in its NGA recommendation.[66]. Although applied within the framework of next generation access networks, the principle has a general scope which is also valid in the current situation. The principle of replicability has also been pointed out by the French Competition Council[67].

We deplore that in the present draft decision the replicability principle is limited to the publication of an approved reference offer before the commercial launch of Belgacom's retail service. We therefore request that retail services may not be launched before **6 months** after the publication of the approved reference offer.

Additionally, the reference offer must contain all elements to adequately address the different markets. This is especially true in the frame of bistream offers in the light of NGN/NGA adaption as confirmed by BEREC.[68]

[65] A list of informations that should be provided in the reference offer is listed in section 7.2

[66] The recommendations provides that "…w*holesale broadband offers should be available at least six months before the SMP or its subsidiary markets its corresponding NGA retail service"* 2010/572/EU: Commission Recommendation of 20 September 2010 on regulated access to Next Generation Access Networks (NGA) - http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32010H0572:EN:NOT

[67] Avis n° 05-A-03 du 31 janvier 2005 relatif à une demande d'avis présentée par l'Autorité de régulation des télécommunications en application de l'article L. 37-1 du code des postes et communications électroniques, § 27, http://www.autoritedelaconcurrence.fr/pdf/avis/05a03.pdf

[68] "Currently SMP-operators are migrating their aggregation networks from ATM to Ethernet technology. A Layer 2 Ethernet bitstream product typically needs the following elements: Flexible allocation of VLANs, control of customers' service speeds

Mobistar also underlines the importance to receive information on Belgacom's network developments. Such developments can impact Mobistar, as an alternative operator, at different levels: the network level (adaptation in the network topology or interconnection (for example: ATM to Ethernet, TDM Voice to VoIP, etc…), the business level (adaption of the business models and business cases), strategic level: adaptation of the strategic plans and investments (for example: drop investments in ULL because of LEX closure). We therefore support the continued obligation on Belgacom to provide information to the alternative operators.

6.5 Separate accounts

This section addresses the separate accounts obligation as described in section 4.6.4 & 5.6.4 of the "Draft decision regarding the Market analysis of the Broadband Market"

Separate accounts are necessary in order to avoid cross-subsidization and price discrimination between the internal and external transactions. Such remedy is especially important when the SMP operator is vertically integrated.

As already commented, Belgacom has a very specific situation in the Belgian market since it is fully vertically and horizontally integrated and has SMP on numerous markets. This dominant position is even more strengthened by the recent decision to integrate Proximus, Telindus and Skynet subsidiaries within Belgacom. It will become more and more difficult to understand how Belgacom Group is building its offers and whether or not there are unlawful cross subsidizations or discriminations. We therefore request the BIPT to strengthen its day to day monitoring of Belgacom retail offers to ensure Belgacom Group is compliant with its obligations and that its competitors are enabled to replicate its retail offers, in particular bundled offers.

To ensure the respect of the transparency and non-discrimination obligations, Mobistar expects to see the following matters to be imposed on Belgacom :

- The obligation to clearly identify separated markets and services, and provide more detailed information about this.
- To define transfer charges: a transparent and verifiable transfer charging system is required to calculate internal costs and revenues. In previous years, some alternative operators expressed their concerns regarding the BIPT draft decisions regarding Belgacom's accounting separation in this respect. We request detailed publications an in particular clear visibility and justification of transfers among the different lines of business.
- To provide reconciliation and control statements (to ensure that costs are not covered twice and agree back to the statutory accounts of their total corporate entity).
- To publish detailed guidelines for the cost base (HCA; CCA) and the methodology to use for cost allocation (FAC/LRIC)

6.6 Price control

and service symmetry, security enabling, ability to support different QoS levels according to current industry standards, flexible interconnection and aggregation at regional & local level, flexible choice of customer premises equipment, support for multicast functionality." (we underline).BoR (10) 08 BEREC Report on NGA wholesale products - _http://www.erg.eu.int/doc/berec/bor_08.pdf For more details we refer to section7.2

This section addresses the price control obligation as described in section 4.6.5 & 5.6.5 of the "Draft decision regarding the Market analysis of the Broadband Market"

Cost-orientation

We welcome the BIPT's decision to impose cost-orientation on Belgacom for both markets 4 & 5., in particular the introduction of a price control for VDSL2 based on real cost-orientation instead of reasonable prices. (see also our comments in section 5.4.2)

The costs considered should be those of an efficient operator to avoid that the alternative operators pay for the inefficiencies of the SMP operator.

We therefore urge the BIPT to verify that (i) the reference offer is detailed enough to avoid unfair costs, (ii) that only the costs of an efficient operator are taken into account for the definition of the prices of the wholesale services.

Prohibition of tariffs that could cause a price-squeeze

The price squeeze test should ensure that there is enough economical space between the upstream costs and the downstream revenues in order for an efficient alternative operator to compete on the retail market with the SMP operator.

Price squeeze tests should not only be performed between the unbundling offers and the bitstream offers but also between the bitstream offers and the retail offers.

Such obligation is especially important as the economical space for the alternative operators is also limited by the costs incurred for the bitstream offer at the wholesale level.

We therefore request the BIPT to verify that alternative operators are able to replicate Belgacom's retail offers by the execution of a price squeeze test before the commercial launch of new products and before the launch of new marketing campaigns.

Impact of NGN/NGA on price control

We welcome the BIPT's proposal to provide additional remedies on the price control in the NGN/NGA changes and more particularly concerning the LEX closure.

Each operator should indeed be in charge of the dismantling of its own equipments and no cost should be invoiced by Belgacom. In addition, OLOs costs should be borne by Belgacom in case of early closing

Finally we note that in case of a complete LEX closure, a bitstream offer is the only solution for the alternative operator to continue to provide retail services. As correctly identified by the BIPT, this constitutes a regression on the ladder of investment and a deterioration of the margin and freedom of the alternative operator.[69]:

As extensively commented in this document, the Move to All IP Plan from Belgacom will have an important impact on the alternative operators. It is of the utmost importance to provide the alternative operators stability and guarantees on the applicable costs during the NGN/NGA migration period.

[69] *« Le dégroupage nécessite des investissements importants mais permet des économies d'échelle lorsque le nombre de lignes dégroupées dans un centre dépasse un certain seuil. Un opérateur dégroupeur maîtrise mieux ses coûts qu'un opérateur dépendant d'une offre d'accès à débit binaire. »*§501 of the draft broadband decision

Furthermore, these changes, which are caused by the sole decision of the SMP operator, can have major financial impacts on top of the operational impact for the alternative operators and their end-users (migrations with interruptions, CPE swap, etc…).

Mobistar requests that in case of LEX closure (being partial or not) – a compensation is granted for the lost investments (fiber-intro, collocation, tie-cabling,…)[70] – Belgacom pays all the costs related to the migration, collocation costs (tie cables, fiber intro, etc…), customers migration costs (activation, deactivation, migration of VP/VC, VLANS or end-users, extra manpower costs due to the migration (technician, back-office, customer care,…), equipment overheads (additional equipment needed to be installed before the “old” equipment can be recuperated), CPE costs (some CPE will have to be swapped), etc… – Belgacom is responsible for the coordination and project management of the migrations – no LEX closure is allowed without a **real** alternative for the existing service and a **real** visibility on the migration path at least **2 years** before the migration must be provided. Such visibility is necessary to plan all the actions related to the migration process (informing the end-users, proceeding to technical adaptations, upstaffing of the call-center, etc…) – an update of the cost-models for the wholesale services is performed to take the cost-reductions (OPEX & CAPEX) into account. The LEX closure will mostly result in resale of Belgacom real-estate implying substantial cost-reduction for Belgacom (less power consumption, less taxes, less maintenance costs, etc…) and even net-income (revenue of the resale of the building).

[70] A compensation for the lost investments (intro, collocation, tie-cabling,…) is fully justified as these investments concern items that are written off in periods that are significantly longer that 5 years (20 years for , 30 years for fiber, etc…).

7 Annexes

7.1 Specific comments on multicast

Mobistar will provide in a distinct annex information concerning multicast which describes in detail the technical options for the provisioning of multicast

7.2 Additional Comments

Speed evolution of Belgacom's internet offers

Belgacom has been increasing its retail speed several times in the last few years:

- Belgacom makes the Internet even more convenient[71]

  From 1 July 2008, Belgacom will increase the speeds and monthly volumes provided with its access rate plans for broadband Internet to enable its customers to surf the Net even more conveniently. The download speed and/or monthly volume provided with the rate plans ADSL Budget, ADSL Light, ADSL Go, ADSL Plus, VDSL Boost and ADSL Pro Compact will increase considerably.
- Belgacom launches a completely revamped Internet offer[72]

  As from the 1st of March 2010, Belgacom will carry out major changes in order to meet customer needs even better: a radically updated and future-oriented Internet offer with more speed, more volume and a package without volume limits.
- Belgacom again sets the tone and boosts the Internet still further[73]

  On 1 June 2010, Belgacom will again increase the volumes. Moreover, customers with Internet Start, Comfort and Favorite will then be able to download without limits thanks to the new Volume Pack Unlimited option.

  On 1 March, only three months ago, Belgacom already set the tone, introducing a number of significant changes in its Internet offering: more volume, more speed and a package without any volume limits.

  Belgacom is now giving its offering a further substantial boost, making the Internet even more accessible.

Figure 18: "Belgacom Booste l'Internet" campaign

- Belgacom boosts the Internet even more, for the third time this year[74]

  On 1 September 2010, Belgacom will again increase speeds, leaving most of the Belgian cable operators far behind in terms of upload speeds for similar internet offerings.

[71] http://www.belgacom.com/group/6/20080625_adslspeed/en/Belgacom-makes-the-Internet-even-more-convenient.html
[72] http://www.belgacom.com/group/6/20100205_internetaanbod/en/Belgacom-launches-a-completely-revamped-Internet-offer.html
[73] http://www.belgacom.com/group/6/20100528_belgaInter/en/Belgacom-again-sets-the-tone-and-boosts-the-Internet-still-further.html
[74] http://www.belgacom.com/group/6/20100827_prideIII/en/Belgacom-boosts-the-Internet-even-more--for-the-third-time-this-year.html

List of elements to be provided in the reference offer

We note that all the necessary elements and information must be provided in the reference offers. Among other, following information should be provided:

- Technical and financial conditions for the access
  - Description of the network elements to which access is granted
  - Information on the network, the network infrastructure and the physical locations of these elements (for example list of the KVD's with VDSL2)
  - Information on the technical limitations of the equipments
  - Procedures for ordering, delivery and usage of the granted access
  - Procedures for troubleshooting and ordering, follow-up and closure of trouble tickets
  - Description of all the financial aspects
  - Description in which cases an access can be denied
- Technical and financial conditions for Collocation
  - Description in which cases collocation can be denied and description of the alternative
  - Description of the operational procedures for access to the sites
  - Information on the technical limitations of the equipments
  - Description of the security rules & procedures
- Technical and financial conditions for access/usage of the Information systems
  - Description of the access to the operational supporting systems (OSS)
  - Description of the access to the business supporting systems (BSS)

  OSS/BSS systems represent the IT tools and databases used for pre-qualification, ordering, provisioning and follow-up of the processes as well as for maintenance, repair and billing of the service.
- Technical and financial conditions for the delivery of access/service
  - Description of the timers & SLA for pre-qualification, ordering, provisioning of a line and/or service
  - Description of the timers & SLA for maintenance & repair
  - Description of the escalation procedure with timers & SLA
  - Description of the compensations in case of non-respect of the SLAs
- Technical limitations
  - Description of the technical limitations of the access/services
- Technical and financial conditions migration of access/service
  - Description of migration process with among others:
    - the mass-migrations between access type (bitsream → unbundling)
    - the migration of a service from one site to another
    - the migration of the service/access from one beneficiary to another
  - Description of the operational processes and limitations

Required elements for a bitstream offer in the NGN context

The Body of European Regulators for Electronic Communications (BEREC) believes that an Ethernet bitstream offer need the following elements:

- *Flexible allocation of VLANs to allow maximum potential for service differentiation. For example, business clients typically prefer their own private network with dedicated VLANs, while for mass market purposes, shared VLANs for all connections may be sufficient.*
- *Control of customers' service speeds and service symmetry: business traffic is generally symmetric, while mass markets usually demand asymmetry - more download than upload.*
- *Security enabling: security is enabled by separation of traffic streams and allowing wholesale-users to implement their own security measures.*
- *Ability to support different QoS levels: Competing operators need to have the ability to control QoS parameters in order to supply differentiated retail products and also to respond to the requirements of end-users. The ability to distinguish between high priority and low priority traffic is needed, because for example TV & voice services are more sensitive to delays than data services. Control messages need the highest priority because they are vital for keeping the network and services up and running.*
- *Flexible interconnection and aggregation at regional & local level: interconnection at different levels in the network is needed to give alternative operators the possibility to lower their backhaul costs and invest in their own backhaul infrastructure when they have critical mass or to give them the opportunity to keep using their existing backhaul infrastructure in an NGA environment.*
- *Flexible choice of customer premises equipment (CPE's) from different vendors: Interoperability between DSLAM/MSAN/OLT and modems from different vendors is needed to prevent a vendor monopoly. Alternative operators don't have the same scale advantages as the incumbent to get the same price certainly not when they are forced to buy it from a certain vendor.*
- *Support for multicast functionality allows alternative operators to compete effectively for IP-TV customers (broadcasting functionality) and to provide triple-play offers because this drives the economic distribution of audio-visual content. In some countries the provision of multicast, within the bitstream reference offer, has been imposed by considering multicast as a Layer 2 network functionality. A critical issue is the quantity of bandwidth that has to be allocated to provide IPTV. In fact, price test of bundled services, which include IPTV, have to take into account the average transport cost to provide triple play. Thus, knowledge of the amount of bandwidth required allows the regulator to correctly evaluate the network costs incurred by the alternative operators.*

We also refer to section 5.4.3

7.3 Figures

Figure 19: First page Numericable's website

Figure 20: Splash screen when accessing Telenet's website

Figure 21: First page Telenet's website

Figure 22: First page VOO's website

Figure 23: Confidential -

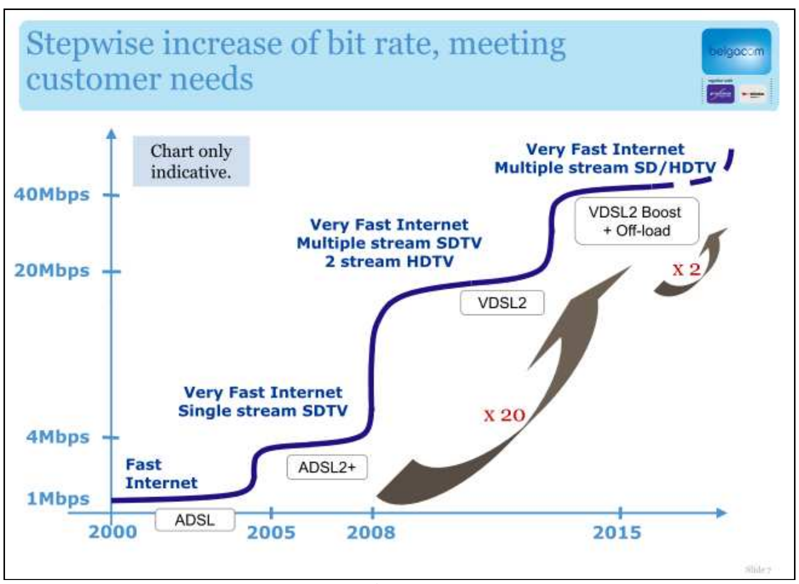

Figure 24: Belgacom's plan for bitrate increase

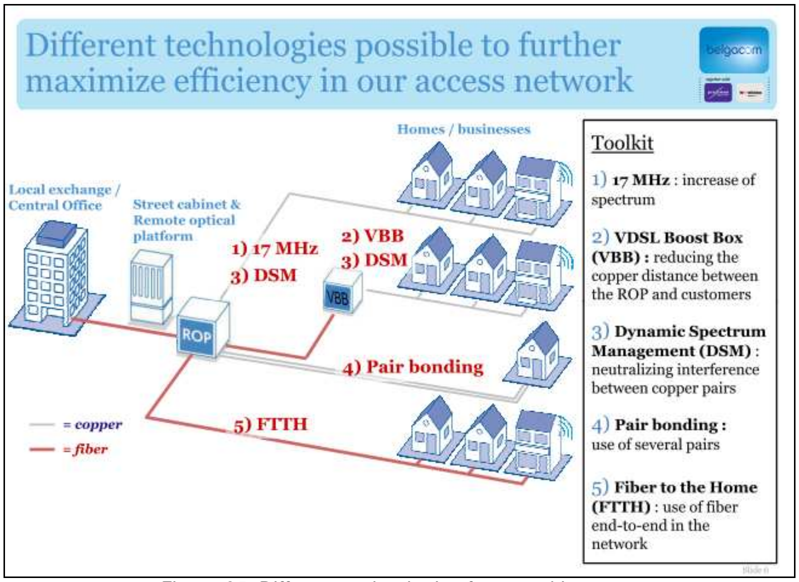

Figure 25: Different technologies for speed increase

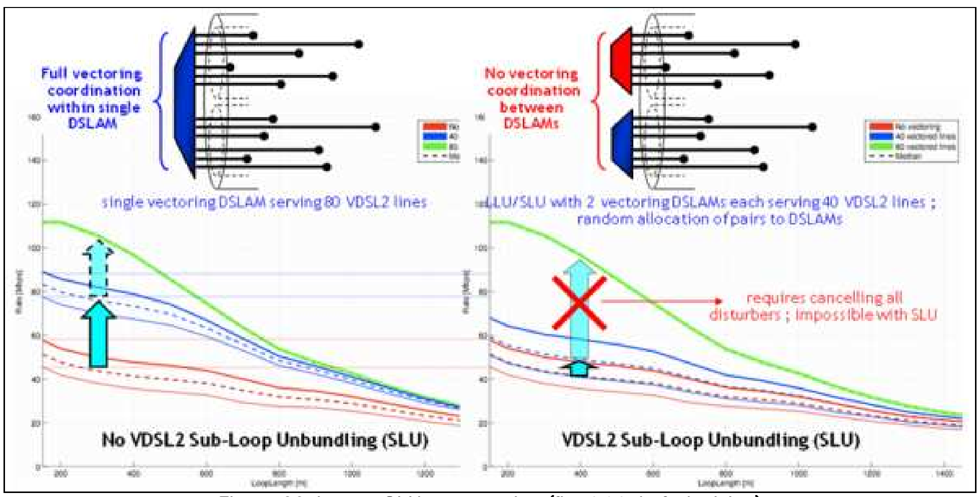

Figure 26: Impact SLU on vectoring (fig. 4.14 draft decision)

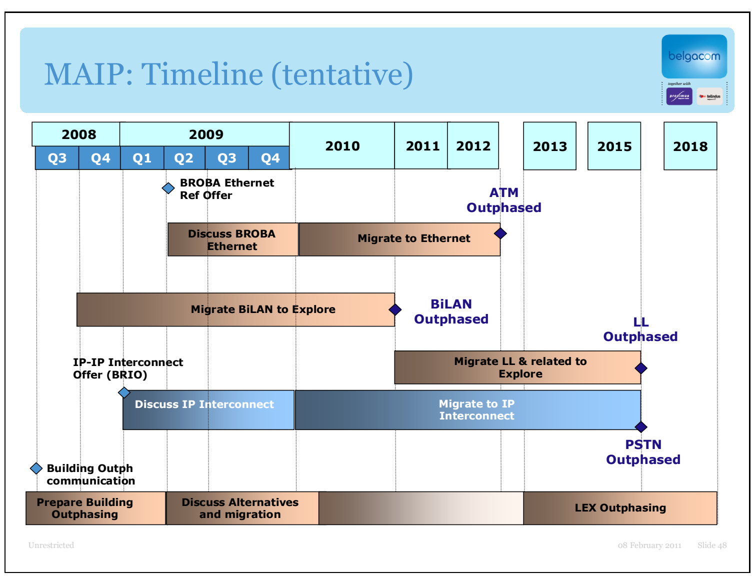

Figure 27: MAIP Timeline

Figure 28: Confidential -

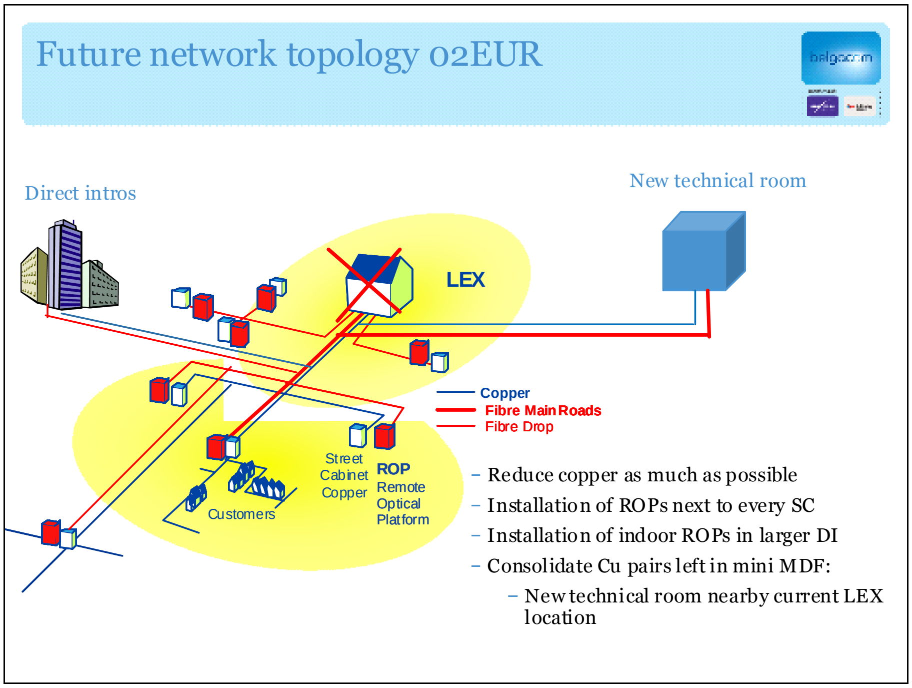

Figure 29: Future network topology 02EUR