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Institut belge des services postaux et  
des télécommunications (IBPT)  
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Belgium

For the attention of:  
Mr. Michel Van Bellinghen  
Président du Conseil

Fax: +32 2 226 88 41

Dear Mr. Van Bellinghen,

**Subject: Commission Decision concerning Case BE/2018/2117: wholesale call termination on individual public telephone networks provided at a fixed location in Belgium - market review**

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

## 1. PROCEDURE

On 4 October 2018, the Commission registered a notification from the Belgium national regulatory authority, Institut belge des services postaux et des télécommunications (IBPT)<sup>1</sup>, concerning the market for wholesale call termination on individual public telephone networks provided at a fixed location<sup>2</sup> in Belgium.

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<sup>1</sup> Under Article 7 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), OJ L 108, 24.4.2002, p. 33, as amended by Directive 2009/140/EC, OJ L 337, 18.12.2009, p. 37, and Regulation (EC) No 544/2009, OJ L 167, 29.6.2009, p. 12.

<sup>2</sup> Corresponding to market 1 in Commission Recommendation 2014/710/EU of 9 October 2014 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (Recommendation on Relevant Markets), OJ L 295, 11.10.2014, p. 79.

The national consultation<sup>3</sup> ran from 28 December 2017 to 16 February 2018.

On 12 October 2018, a request for information (RFI)<sup>4</sup> was sent to IBPT and a response was received on 17 October 2018.

## 2. DESCRIPTION OF THE DRAFT MEASURE

### 2.1. Background

The second review of the market for wholesale call termination on individual public telephone networks provided at a fixed location in Belgium was previously notified to and assessed by the Commission under case BE/2012/1279<sup>5</sup>.

The market definition covered termination on each public telephone network of 16 operators offering fixed termination in Belgium, irrespective of the origin of the call and the technology used (PSTN and VoB). IBPT designated all 16 undertakings as individually having SMP on their relevant markets. IBPT imposed the following obligations on all operators: (i) access to, and use of, certain network elements and associated infrastructure; (ii) transparency<sup>6</sup>; (iii) obligation of non-discrimination and (iv) price control based on cost orientation<sup>7</sup>. Regarding Belgacom (now Proximus), IBPT imposed in addition: (i) a transparency obligation requiring it to inform on future network evolutions five years in advance and a migration rule obliging it to send a formal closure notice one year in advance and (ii) an obligation of cost accounting. The Commission commented on the need to include in the final measure the timetable for the imposition of BU-LRIC based termination rates.

The details of the price control remedy imposed under case BE/2012/1279, including fixed termination rates (FTRs) based on the recommended LRIC model, were notified to and assessed by the Commission under case BE/2016/1875. The Commission issued a comments letter requesting IBPT to stand by its commitment to amend the originally notified measure and align national and local/regional FTRs.<sup>8</sup> It urged IBPT to carry out a new market analysis and to notify it as soon as possible. However, in 2017 a national Court of Appeal annulled IBPT's final measure on procedural grounds.

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<sup>3</sup> In accordance with Article 6 of the Framework Directive.

<sup>4</sup> In accordance with Article 5(2) of the Framework Directive.

<sup>5</sup> C(2012) 749

<sup>6</sup> Only the incumbent operator, Belgacom, was obliged to publish a reference offer.

<sup>7</sup> The measure set symmetrical rates based on a "top-down" model. They were not BU-LRIC based.

<sup>8</sup> IBPT had initially proposed to set two price caps for FTRs differentiating between local/regional and national levels of interconnection. Only the former would have been calculated following the pure LRIC cost model. In particular, IBPT proposed 0.092 €/minute for interconnection at the local and regional (intra-area) level and 0.909 €/minute for the national (extra-area) level.

Additionally, the cost of capital for wholesale fixed call termination in Belgium was notified to be assessed by the Commission under case BE/2015/1696<sup>9</sup>. This decision concerned the estimation of the weighted average cost of capital (WACC) for fixed (and mobile) operators for the period 2015-2017 in Belgium. IBPT estimated the pre-tax nominal WACC at 8.13%. The Commission had no comments.

## **2.2. Market definition**

The relevant product market includes: (i) call termination provided at fixed locations to geographic numbers, emergency numbers and 078 irrespective of the origin of the call or the technology used; (ii) call termination independent from the level of network at which the operators are interconnected, i.e. termination may consist in regional (intra-area) and national (extra-area) termination.

The relevant geographic markets coincide with the coverage area in which each operator provides a fixed call termination service (within the territory of Belgium)

## **2.3. Finding of significant market power**

Based on market shares, countervailing buyer power, entry barriers and market concentration, IBPT proposes to designate 27 operators as having SMP in their relevant market.<sup>10</sup>

## **2.4. Regulatory remedies**

IBPT proposes to impose on all SMP operators the following remedies: (i) access and interconnection obligations<sup>11</sup>; (ii) non-discrimination; (iii) transparency<sup>12</sup>; and (iv) cost-oriented price control<sup>13</sup>.

IBPT envisages imposing specific transparency measures on Proximus only, including the publication/communication of: a Reference Offer (including IP interconnection); adaptations of wholesale offers to network or IT developments; infrastructural changes having an impact on the interconnection service; quality

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<sup>9</sup> C(2015) 1347

<sup>10</sup> The designated SMP operators: Proximus NV (including Scarlet Belgium NV); 3Stars Net NV; Belgian Telecom (Centrea CVBA); 3BILLI BVBA (Favco); Brut el  S.C. Nethys (VOO); BT Ltd; COLT Technology Services NV; Destiny NV; Dialoga Servicios Interactivos S.A.; EDPnet NV; Hexios BVBA; Intellinet BVBA; IP Nexia NV; Join Experience Belgique; LCR Telecom NV; Orange Belgium; Orange Business Belgium NV; OVH sas; Schedom NV; SORS Europe BVBA; United Telecom NV; Telenet Group BVBA (more specifically Telenet BVBA and Coditel SPRL); TeleVoIP BVBA; Verizon Business NV; Voxbone NV; Weepe NV; X2COM Belgium BVBA.

<sup>11</sup> This includes the obligation to interconnect with third operators using an internet protocol (IP) on a pair of redundant interconnection points (1+1).

<sup>12</sup> Transparency measures proposed for all SMP operators include the communication of information regarding tariff changes service plans and of access and interconnection agreements.

<sup>13</sup> The termination of calls outside the EEA is not subject to price regulation and can be set on the basis of bilateral commercial negotiations.

indicators; plans for the introduction of an NGN architecture; the closing of interconnection points<sup>14</sup>.

Proximus will also be subject to a cost accounting obligation.

In the notified draft measure, IBPT defines the pure LRIC methodology used for setting symmetrical FTRs in Belgium. The applicable WACC is 8.13% in nominal value, as notified in 2015.<sup>15</sup>

IBPT models an existing efficient operator similar in scale and scope to Proximus but not reflecting its network architecture, costs or services offer. IBPT model takes into account the transition from TDM to an all-IP network.<sup>16</sup>

BIPT proposes to set the new FTRs at 0.116 eurocent/minute<sup>17</sup>, calculated based on the arithmetic average of termination costs over the period 2018-2020.<sup>18</sup>

<b>Year</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>Average</b>
FTR « pure LRIC » (eurocent/minute)	0.118	0.116	0.115	0.116

### **3. NO COMMENTS**

The Commission has examined the notifications and the additional information provided by IBPT and has no comments.<sup>19</sup>

Pursuant to Article 7(7) of the Framework Directive, IBPT may adopt the draft measure and, where it does so, shall communicate it to the Commission.

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<sup>14</sup> The other SMP operators will be subject to lighter requirements, namely the obligation to publish termination rates and the obligation to provide contractual, accounting and technical information.

<sup>15</sup> According to the response to the RFI, IBPT's draft decision on the WACC is currently under public consultation. IBPT plans to revise the WACC in the first quarter of 2019 and plans to adjust FTRs accordingly.

<sup>16</sup> According to the response to the RFI, the newly proposed cost model and the cost model proposed under case BE/2016/1875 present the following key differences: (i) changes in the years of reference as the model was adapted to express results in 2018 values and the proposed rate is now an average of the results over the period 2018-2020; (ii) errors identified during the national appeal procedure were corrected; (iii) adaptations were made to align the IP interconnect access remedy to the cost model; (iv) comments received during the public consultation on price trends and traffic treatment were taken into account. These adjustments are reflected in the proposed rates.

<sup>17</sup> IBPT considers that interconnection at the local level is no longer relevant, since Proximus closed the last local interconnection point in 2017. Nor is it appropriate to distinguish between regional (intra-area) and national (extra-area) interconnection levels, given that the "transport" component is a negligible component of the pure LRIC outcome. Further, the differentiation among interconnection levels is in any case irrelevant in the context of IP interconnection based on a single pair of interconnection points.

<sup>18</sup> The objective is to avoid systematic annual revisions of the FTRs (the cost model for the period under consideration foresees low evolution of the tariffs).

<sup>19</sup> In accordance with Article 7(3) of the Framework Directive.

The Commission's position on this particular notification is without prejudice to any position it may take *vis-à-vis* other notified draft measures.

Pursuant to Point 15 of Recommendation 2008/850/EC<sup>20</sup> the Commission will publish this document on its website. The Commission does not consider the information contained herein to be confidential. You are invited to inform the Commission<sup>21</sup> within three working days following receipt whether you consider that, in accordance with EU and national rules on business confidentiality, this document contains confidential information which you wish to have deleted prior to such publication.<sup>22</sup> You should give reasons for any such request.

Yours sincerely,

For the Commission,  
Roberto Viola  
Director-General

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<sup>20</sup> Commission Recommendation 2008/850/EC of 15 October 2008 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, OJ L 301, 12.11.2008, p. 23.

<sup>21</sup> Your request should be sent either by email: CNECT-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

<sup>22</sup> The Commission may inform the public of the result of its assessment before the end of this three-day period.