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Télécommunications (IBPT)  
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Belgium

For the attention of:  
Mr. Eric Van Heesvelde  
Chairman of the Board

Fax: 02 226 88 41

Dear Mr Van Heesvelde,

**Subject: Cases BE/2006/0551, BE/2006/0552 and BE/2006/0553: Retail leased lines including the minimum set of leased lines up to and including 2Mbit/s in Belgium, wholesale terminating segments of leased lines in Belgium and wholesale trunk segments of leased lines in Belgium**  
**Comments pursuant to Article 7(3) of Directive 2002/21/EC<sup>1</sup>**

**I. PROCEDURE**

On 5 December 2006, the Commission registered three notifications from the national regulatory authority ("NRA") of Belgium, *Institut Belge des Postes et Télécommunications* (IBPT). They cover the markets for the minimum set of leased lines with specified types of leased lines up to and including 2 Mbit/s and for wholesale terminating and trunk segments of leased lines in Belgium<sup>2</sup>.

A national consultation<sup>3</sup> ran from 28 April to 12 June 2006.

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<sup>1</sup> 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.

<sup>2</sup> Markets 7, 13 and 14 of the Commission Recommendation 2003/311/EC of 11 February 2003 on relevant product and services markets within the electronic communications sector susceptible for *ex ante* regulation in accordance with the Framework Directive, OJ L 114, 8.5.2003 ("the Recommendation on relevant markets").

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

On 14 December 2006 a request for information was sent to IBPT. The reply was received on 19 December 2006.

Pursuant to Article 7(3) of the Framework Directive, national regulatory authorities (“NRAs”) and the Commission may make comments on notified draft measures to the NRA concerned.

## II. DESCRIPTION OF THE DRAFT MEASURES

### II.1. Definition of the relevant product markets

#### *The minimum set of leased lines*

IBPT defines the relevant product market as a retail market for the provision of the minimum set of leased lines, comprising both analogue and digital lines up to and including 2 Mbit/s corresponding to the Commission's decision on the minimum set of leased lines<sup>4</sup>. IBPT excludes data transmission services (such as VPN, VLAN, SDSL and switched Ethernet based data transmission services) from the relevant market on the basis that they do not offer a guaranteed bandwidth and therefore present different functionalities when compared to the minimum set of leased lines. IBPT however includes in the relevant market connections using any transmission technology such as ATM, Frame Relay, IP/MLPS, Ethernet if the lines in question provide for a dedicated access between two points of the telecommunication network with a guaranteed bandwidth (such as emulation of circuits AAL1 of ATM networks). IBPT also includes galvanic leased lines<sup>5</sup>.

#### *Wholesale terminating and trunk segments of leased lines*

IBPT draws the delineation between retail and wholesale leased lines markets on the basis of the type of operators buying the leased line: if the operator is itself an operator offering telecommunications services, the leased line offered to this operator will be considered a wholesale leased line.

IBPT delineates the market for trunk segments of leased lines by defining trunk leased lines as being part of the interurban circuits covering the twelve main cities in Belgium<sup>6</sup>. Leased lines connecting two nodes which are both situated on this first network level are defined as trunk leased lines. IBPT defines one single market for wholesale trunk leased lines irrespectively of their bandwidth.

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<sup>4</sup> Commission Decision 2003/548/EC of 24 July 2003 on the minimum set of leased lines with harmonised characteristics and associated standards referred to in Article 18 of the Universal Service Directive, OJ L 186, 25.7.2003, p. 43.

<sup>5</sup> Analogue leased lines which connect end users without passing through a switch, generally cover less than 10 km distance and use the entire spectrum. IBPT includes galvanic leased lines in market 7 on the basis of supply side substitutability since an identical infrastructure is used to offer galvanic leased lines.

<sup>6</sup> The interurban circuits are composed by the four "express rings" of Belgacom and equivalent infrastructure of alternative operators connecting the 12 trunk cities Brussels, Antwerp, Mechelen, Hasselt, Leuven, Liege, Namur, Charleroi, Mons, Courtrai, Gent and Bruges.

IBPT delineates the market for terminating segments by defining terminating segments as being composed of those leased lines for which the ends both depend on the same first network level node. Terminating leased lines have either only one end on this first network level or have both ends situated at a lower network level. Thus, leased lines that depend on two different first network nodes necessarily comprise one trunk and one terminating part. IBPT does not further refine the market for terminating segments given the homogeneity of the competitive conditions and the fact that one operator, Belgacom, offers products of all bandwidths. The defined market also includes backhaul lines, interconnection leased lines and alternative interfaces using Ethernet technology as these provide dedicated point to point transmission capacity between two points of the network<sup>7</sup>.

## **II.2. Definition of the relevant geographic markets**

For all three markets defined, IBPT concludes that the geographic scope of the market is the territory of Belgium.

## **II.3. Finding of significant market power (“SMP”)**

### *The minimum set of leased lines*

IBPT intends to designate Belgacom as an undertaking having SMP in the retail market for the minimum set of leased lines. The finding of SMP in the market for retail leased lines is based on market shares<sup>8</sup>, barriers to market entry and control of infrastructure not easily duplicated, lack of countervailing buyer power and vertical integration<sup>9</sup>.

### *Wholesale terminating segments of leased lines*

IBPT intends to designate Belgacom as an undertaking having SMP in the wholesale market for terminating segments. The main criteria considered are:

- (i) The market shares of Belgacom: In its reply to the request for information, IBPT indicated that the market share of Belgacom, calculated on the basis of merchant sales is [...] % in terms of number of lines. However, IBPT considers that taking into account self supply would allow establishing a more conclusive market share and would allow to quantify the external wholesale market more precisely. The market

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<sup>7</sup> Under the product name "BLES" (Belgacom LAN Extension Solution) Belgacom currently offers retail alternative interfaces. Those lines are based on the new technologies DWDM (Dense Wavelength Division Multiplexing) and CWDM (Coarse Wavelength Division Multiplexing). In its reply to the request for information, IBPT confirmed that the wholesale market 13 is defined by IBPT including all products covering alternative interfaces which are an input to "BLES".

<sup>8</sup> As of the first semester of 2005, Belgacom had a market share of 94% in volume and 83 % in value. Market shares for analogue lines were 100%, for digital leased lines below 2 Mbit/s 90% in volume and 87% in value and for digital leased lines of 2 Mbit/s 51% in volume and 58% in value. For retail digital leased lines above 2 Mbit/s (not included in market 7) market shares are 20% in volume and 25% in value.

<sup>9</sup> IBPT also relies on the observed stability of prices since 2001 with the exception for 2 Mbit/s lines.

share of Belgacom including self supply is calculated by IBPT to be in excess of 95% in terms of number of lines and 60% in terms of capacity<sup>10</sup>.

- (ii) Barriers to entry: IBPT indicates that the availability of unbundling, bitstream access and the existence of dark fibre lower the barriers to entry which mainly consists in the sunk costs necessary to deploy an access network capable of providing terminating leased lines. However, such alternatives are not yet sufficiently used by ANOs to have an effect on the market entry barriers.
- (iii) Infrastructure difficult to duplicate: IBPT underlines that only Belgacom owns a deployed infrastructure covering all routes in Belgium while ANOs have deployed metropolitan networks only in some urban area with a concentrated demand for terminating leased lines.
- (iv) Vertical integration
- (v) Insignificant countervailing buying power of alternative operators.

#### *Wholesale trunk segments of leased lines*

IBPT concludes that no operator has SMP in the wholesale market for trunk segments of leased lines. While IBPT indicates that this market is characterised by high market entry barriers, the following criteria are nevertheless decisive in its analysis:

- (i) No operator has a market share indicative of SMP. The incumbent operator Belgacom has a market share below 22%<sup>11</sup> if self supply is included, and an estimated market share below 20% in a merchant market excluding self supply<sup>12</sup>.
- (ii) The infrastructure of Belgacom has been duplicated on 100% of all trunk routes at least by one alternative operator, and 75% of the routes are covered by at least three alternative operators.

## **II.4. Regulatory remedies**

### *The minimum set of leased lines*

On the basis of the SMP designation, IBPT proposes to impose the following obligations: (i) non-discrimination; (ii) transparency; (iii) minimum set of leased lines; (iv) price control and cost accounting obligations. IBPT intends to apply cost orientation on the basis of a top down method, the result of which is verified with a bottom up model. However, IBPT does not give further indications as to the cost accounting model applied and intends to specify this at a later stage. IBPT does not intend to impose accounting separation as it considers such remedy as disproportionate, taking into account that the leased lines retail market is a shrinking market. Further to this, IBPT

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<sup>10</sup> Calculated on the basis of a projection from the retail market - where Belgacom has a market share of 95% in number of lines and 22% in terms of capacity.

<sup>11</sup> Calculated on the basis of 2005 data (in volume) for retail trunk leased lines.

<sup>12</sup> IBPT considers the market share including self supply as the more appropriate figure as all principal providers of trunk leased lines are vertically integrated and also self supply while only exceptionally relying on the provision of trunk leased lines by Belgacom. A market share calculated on the basis of merchant sales only would therefore not adequately reflect the market conditions.

indicates its commitment to ensure that the implementation of the cost accounting obligation will sufficiently separate costs between the different activities of Belgacom.

#### *Wholesale terminating segments of leased lines*

On the basis of the SMP designation, IBPT proposes to impose the following obligations:

- (i) access and interconnection obligation (access to backhaul leased lines), including the provision of leased lines between the end user premises and the nearest point of presence situated on the express ring, or at an inferior level, or situated between two end user premises not including the interurban segment. The access obligation is independent of bandwidth and technical characteristics, includes the provision of existing alternative interfaces<sup>13</sup> and access to new types of leased lines/alternative interfaces not contained in the reference offer, provided that the request is reasonable;
- (ii) non-discrimination;
- (iii) transparency including the publication of a reference offer;
- (iv) price control and cost accounting obligations<sup>14</sup>.

#### *Wholesale trunk segments of leased lines*

As IBPT concludes that none of the undertakings active on the market for wholesale trunk leased lines holds SMP, IBPT withdraws all existing remedies and does not propose to impose further remedies.

### **III. COMMENTS**

The Commission has examined the notification and the additional information provided by IBPT and has the following comment<sup>15</sup>:

#### **Cost accounting for wholesale terminating segments of leased lines:**

The Commission notes that currently IBPT does not apply a cost accounting system for all products included in market 13<sup>16</sup> as defined by IBPT and that a consultation on the cost modelling methodology is planned to take place six months after adoption of the final measures in market 13. Given the relevance of a cost accounting system in relation to all products included in market 13 and in particular alternative interfaces, the Commission invites IBPT to shorten the

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<sup>13</sup> With the technical features of the retail product "BLES", see footnote 6.

<sup>14</sup> In its reply to the request for information, IBPT indicated that the consultation on the cost modelling methodology is planned to take place six months after IBPT's final decision on market 13. IBPT confirmed in its reply to the request for information that access to alternative interfaces (e.g. Fast Ethernet) will be regulated on the basis of the service specific costs coming out of the cost model.

<sup>15</sup> Pursuant to Article 7(3) of the Framework Directive.

<sup>16</sup> For instance, the cost accounting system currently applied by IBPT does not cover alternative interfaces.

timeframe for elaborating the details of the cost accounting model and its implementing measures<sup>17</sup>.

Pursuant to Article 7(5) of the Framework Directive, IBPT shall take utmost account of the comments of other NRA and the Commission and may adopt the resulting draft measures and, where it does so, shall communicate them to the Commission.

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

Pursuant to Point 12 of Recommendation 2003/561/EC<sup>18</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>19</sup> within three working days following receipt whether you consider that, in accordance with Community and national rules on business confidentiality, this document contains confidential information which you wish to have deleted prior to such publication. You should give reasons for any such request.

Yours faithfully,  
For the Commission,  
Fabio Colasanti  
Director General

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<sup>17</sup> To be notified to the Commission in accordance with Article 7(3) of the Framework Directive.

<sup>18</sup> Commission Recommendation 2003/561/EC of 23 July 2003 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC, OJ L 190, 30.7.2003, p. 13.

<sup>19</sup> Your request should be sent either by email: [INFSO-COMP-ARTICLE7@ec.europa.eu](mailto:INFSO-COMP-ARTICLE7@ec.europa.eu) or by fax: +32.2.298.87.82.