



**BELGIAN INSTITUTE FOR POSTAL SERVICES AND
TELECOMMUNICATIONS**

**SUMMARY OF THE REACTIONS
TO THE NATIONAL CONSULTATION
ON
NEXT GENERATION NETWORKS “NGN”
AND
NEXT GENERATION ACCESS “NGA”**

In this document you will find the public version of the reactions to the national consultation that was held from 3 January up to 29 February 2008 inclusive.

The Institute has received reactions from Belgacom, the Platform, Mobistar and Telenet.
The Institute has not received a public version from Telenet.

Belgacom's reaction

On 29 February 2008, Belgacom transmitted its comments on the NGN/NGA consultation, launched by BIPT on 3 January 2008.

To summarise, Belgacom deems that the grounds on which BIPT based itself to launch its consultation, are wrong. It states that there are no reasons for launching this consultation in the current situation, that the actions planned by BIPT are disproportionate and detrimental to the market and that the Institute should carry out a new market analysis.

1. The Institute's working principles

Belgacom considers that the Institute has misinterpreted certain press statements made by the company's management regarding the gradual phase-out of ATM and that it has not bothered to ask Belgacom what it was planning exactly in this field; the company also emphasises that the Institute was informed about its plans when the BROBA 2008 was communicated in September 2007.

Likewise Belgacom considers that the Institute was duly informed of the company's projects as to the VDSL2 roll-out and that it is wrong to state that the Institute has had to learn about it in the press and that this information represents a new element to be taken into account. Belgacom insists that BIPT has not deemed appropriate to organise a constructive dialogue on this matter.

According to Belgacom, the Institute blames it for not having answered its letters while these letters did not contain any questions but merely information. Belgacom argues that it has never refused to cooperate but that its cooperation was never sought for.

2. The actual consultation

Belgacom considers that the Institute has not launched an actual consultation to sound out the market but that it has drawn up a draft decision on grounds that have not been discussed with the market players and that Belgacom objects to.

According to Belgacom this consultation should have taken place in 2004 or 2005 when the company had not yet started the VDSL2 roll-out; a consultation in 2008 leads to legal insecurity as the company cannot tell what the outcome will be of its investments. Belgacom brings to mind that it asked the Institute to discuss the matter as early as 2002.

3. The definitions

Belgacom finds the definitions used by BIPT to be incomplete at the very least and technologically biased. Belgacom considers that BIPT's definition describes Belgacom's network but that it does not, at any point, take into account the other NGNs/NGAs in Belgium, of the cable operators for instance. Belgacom calls to mind that the European framework pleads for a technologically neutral approach and shows that, based on Telenet's own statements, the cable network is the leading edge when it comes to technological developments.

Belgacom emphasises moreover that the analysis of markets 11 and 12, which was finally published on 10 January 2008, states that the NGN situation still has to be examined.

4. A new analysis

Belgacom feels that the Institute should carry out a new and complete market analysis before suggesting to impose NGN and NGA obligations on Belgacom. The publication of the new EC recommendation requires a new analysis. In its opinion on the analysis of markets 11 and 12 the Commission asked BIPT to re-examine the market conditions to ensure fair competition in the future NGN environment. The company also emphasises the fact that the new version of the recommendation entails changes for certain definitions, that it no longer talks of bitstream but that it adopts a technologically more neutral phrasing: “non-physical or virtual network access including ‘bit-stream’ access at a fixed location”.

Belgacom also considers that BIPT’s references to the ERG opinion do not take into account certain important nuances and that the references to the Dutch market are not relevant as the markets have a different structure and KPN and Belgacom have different strategies regarding pace and scope of the possible phase-out of MDF locations.

5. The Belgian market

Belgacom emphasises the specific situation of the Belgian market and Telenet’s market share in Flanders. It ascribes the low penetration of local loop unbundling to the existence of another complete infrastructure and not to possibly exaggerated BRUO prices; it fears that competitors only choose the most profitable locations (cherry picking) and feels that BIPT does not take sufficient account of the necessity to ensure sustainable competition nor of the investments agreed upon. It points out that only its own investments are questioned by the regulator while other operators, such as cable operators, invest more.

Belgacom opposes BIPT’s statements in its document regarding VDSL2 and calls to mind all measures that it has taken in order to meet BIPT’s demands in this matter on the one hand and to propose discussions regarding the content, to which BIPT would not have responded on the other hand. As to FTTH, Belgacom considers that BIPT’s demands regarding analyses of possible scenarios are disproportionate.

According to Belgacom, BIPT takes up an erroneous stand by not taking into account the competition from broadband via cable networks. It thus considers the Institute’s stand ill-founded.

Belgacom also strongly objects to BIPT’s suggestion to impose a five-year notice for information relating to planned infrastructural developments. Belgacom finds this notification period disproportionate as it does not allow for technological developments to be taken into account, it leads to legal insecurity, it causes strategies to be revealed too far in advance and it penalises innovation. Belgacom brings to mind that it has announced that it would inform the market at least twelve months in advance of the infrastructural changes it plans and it also emphasises that this procedure has repeatedly been approved by BIPT.

As regards access to street cabinets, Belgacom stresses that BIPT’s approach is a theoretical one and that it is not based on realistic grounds. Firstly, Belgacom blames the Institute for not having given any indication of the possible problems regarding

the VDSL roll-out while the latter started in 2003; the operator underlines that duct sharing could be imposed upon numerous other operators and objects to the fact that only his own investments are regulated.

Belgacom points out that the options referred to in the draft decision are contrary to the provisions in the decision regarding markets 11 and 12, which was adopted only recently. The company does not see the point of such differences in market notification periods for ATM bitstream offers while since 2001 a three month period has never caused problems. It also stresses that there has never been question of closing down the ATM network all at once. As for VDSL2, Belgacom confirms that it aims at covering 80% of the population by 2011 but that there are currently no plans to go beyond that.

In conclusion, Belgacom repeats that it feels that BIPT's draft decision has no appropriate legal grounds, that it entails disproportionate measures and that in any case a new market analysis should be carried out before any measures can be taken regarding NGN and NGA.

Reaction alternative operators (Platform / Mobistar)

First of all the alternative operators emphasise that NGN/NGA poses a new challenge for all the operators. It represents both an opportunity for innovation and also a high risk for competition. It has thus a very high importance among the preoccupation of the alternative market players.

The alternative operators fully support the BIPT analysis under which it is necessary to adopt complementary regulatory measures to safeguard competition in the broadband market. They consider that most of the BIPT proposals are well founded and justified. However, it seems necessary to amend some of them to enhance and guarantee competition.

Not providing the essential components highlighted in their additional comments would mean a de facto monopoly of Belgacom on high speed NGN networks and mean the end of Broadband competition in Belgium.

Their main concerns relate to the following items:

- Concerning the migration path and to keep alternative operators within the broadband retail market, these measures are essential:
 - o In order to avoid very high speed market foreclosure, ADSL2+ in BROBA must be granted in the shortest time in order to allow alternative operators to compete nationally and as soon as possible with very high speed Internet offers of Belgacom; new wholesale VDSL offers not being available and implemented in such a short term period;
 - o In order to allow smooth transition, all xDSL technologies currently imposed in the wholesale offers (ADSL/SDSL/ReADSL/ADSL2+) should continue to be delivered by Belgacom, whatever its changes are to its own retail offers, until the NGN/NGA new decisions are fully implemented (in compliance with the notice period before LEX/MDF closure);
 - o VDSL roll out by Belgacom should in no way impact the current xDSL technologies used and in particular ADSL2+;
 - o All the current offers should be granted at cost oriented prices even during the migration phase;

- All migration costs endured by alternative operators should be at Belgacom's expenses.
- Transparency measures proposed by BIPT are welcomed and should be completed:
 - Concerning the current network; a multilateral meeting should be held to present Belgacom's network;
 - For the coming years (including FttX plans); the 5 year information is sound but should be completed by a one year update;
- VDSL sub loop unbundling is analysed as a very costly option and will make the alternative operators' business plans even more difficult not to say impossible in the broadband market:
 - the alternative operators request a further analysis on whether the current network can be maintained in parallel with VDSL roll out by Belgacom, in particular the percentage of KVDs where co-mingling is possible;
 - in any case, the 5 years notice period before any LEX closing should be increased up to 12 years;
 - BIPT should also take into account that some LEXs could only be partially closed by Belgacom and could therefore continue to be used by alternative operators;
- Concerning the new wholesale offers, the alternative operators consider it essential that BIPT defines them in the shortest timescale:
 - Cost oriented SLU offer
 - KVD co-location issues;
 - access to its associated facilities such as duct sharing and dark fibre also under cost orientation principle;
 - BROBA xDSL offer based on IP.
- Concerning costs mutualisation, the BIPT proposals are well founded but should be amended as follows:
 - For simultaneous works, a 6 month notice period should be imposed with a 2 months period to react to be consistent with CAPEX rules;
 - For consecutive works, Belgacom's advantages in terms of passive network deployment has to be taken into account;
 - In any case, the current situation has to be treated separately by BIPT as Belgacom announced it has already equipped a large part of KVDs (60% of the population coverage); Belgacom must be imposed to deliver cost oriented access to its already equipped KVDs and associated facilities.