



Brussels, 10.9.2014
C(2014) 6499 final

Institut belge des services postaux et
des télécommunications (IBPT)

Ellipse Building - Bâtiment C, 35
Boulevard du Roi Albert II
1030 Bruxelles

For the attention of:
Mr. Jack Hamande
Président du Conseil

Fax: +32 2 226 88 41

Dear Mr Hamande,

Subject: Commission Decision concerning case BE/2014/1641: Retail markets for publicly available telephone services provided at a fixed location for residential and non-residential customers in Belgium

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

I. PROCEDURE

On 11 August 2014 the Commission registered a notification from the Belgian national regulatory authority, Institut belge des services postaux et des télécommunications (IBPT)¹, concerning the retail markets for publicly available telephone services provided at a fixed location for residential and non-residential customers² in Belgium.

The national consultation³ ran from 29 January to 3 March 2014.

On 20 August 2014, a request for information⁴ was sent to IBPT and a response was received on 25 August 2014.⁵

¹ 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.

² Corresponding to markets 3 and 5 in Commission Recommendation of 11 February 2003 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 communication networks and services, OJ L 114 of 8.05.2003, p. 45-49.

³ In accordance with Article 6 of the Framework Directive.

⁴ In accordance with Article 5(2) of the Framework Directive.

⁵ Autorité belge de la Concurrence, Avis No 2014-A/A-01, from 26.5.2014

II. DESCRIPTION OF THE DRAFT MEASURE

II.1. Background

The last (second) round of market reviews of the retail markets for publicly available telephone services provided at a fixed location for residential and non-residential customers in Belgium was notified to and assessed by the Commission under cases BE/2008/0798⁶ and BE/2008/0799⁶, respectively. IBPT concluded at the time that Belgacom had SMP on the markets in question and imposed, as a result, obligations regarding transparency and a retail price control on Belgacom.

II.2. Market definition

In the current notification, IBPT identifies two separate markets, i.e. one for publicly available telephone services supplied at a fixed location for residential customers and one for publicly available telephone services supplied at a fixed location for non-residential customers.

The relevant geographic scope for both markets is national.

II.3. The three criteria test

As the markets in question have been removed from the Recommendation on relevant markets in 2007⁷, IBPT carried out the three criteria test⁸. In its notification, IBPT concluded, as far as the first criterion is concerned, that entry barriers continue to exist for both relevant markets, in particular given the tendency towards bundling. Bundling serves as an entry barrier for alternative operators, as considerable technical and financial resources are required in order to enter the market as a "multiple play" operator.

However, as far as the second criterion is concerned, IBPT concluded that the market tends towards effective competition⁹. In this respect, IBPT pointed out that there is a noticeable reduction in per minute rates, both for residential and non-residential customers,¹⁰ as well as a gradual decrease of the number of call minutes. In addition, unmanaged VoIP operators entered the market offering services at much lower rates than operators using PSTN or managed VoIP networks while increasing further the pressure

⁶ SG-Greffe(2008)D/206380, 20.10.2008

⁷ Commission Recommendation 2007/879/EC of 17 December 2007 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 OJ L 344, 28.12.2007, p. 65.

⁸ I.e. IBPT assessed (1) the existence of high and non-transitory entry barriers, (2) a tendency of the relevant market towards effective competition and (3) the fact as to whether the application of competition law alone could not adequately address the market failure(s) concerned with regard to the notified markets.

⁹ According to IBPT, even certain regulatory interventions by the IBPT in other markets such as decisions on broadband, call and lease line markets generate positive effects, namely: the multicast obligation imposed on Belgacom has (at least indirectly) ensured that it entered into a commercial agreement with KPN for the delivery of dual play and triple play-products, the obligation to deliver NGLL-lines will make it possible for the operators on the business market to lower the connection cost of their business customers in the same way that Belgacom replaces its classic architecture with an Ethernet architecture.

¹⁰ Mostly as a result of the launch of all inclusive offers, which vary and often include (free) "fixed to mobile" (F2M) minutes.

on prices from related markets such as mobile telephony¹¹ and peer to peer services¹². Furthermore, in IBPT's view the level of competition is likely to increase over the foreseeable future due to the already high broadband penetration in Belgium.¹³

The market share of the incumbent, Belgacom, in the relevant market for *residential customers* amounts to slightly above 50%, albeit decreasing continuously for several years.

In the relevant market for *non-residential customers* Belgacom's market share is above 70% both in terms of volume and value in 2013. In its answer to the Commission's request for information IBPT stated that even though the market shares in this market do not show a clear downward trend, there are market characteristics which suggest a strong trend towards effective competition. In particular, a recent IBPT decision on terminating segments of leased lines has improved connectivity on the market for fixed telephony, and voice and data can now be offered as an integrated solution to large business customers.¹⁴

On the basis of the above, IBPT considers that the three criteria are not cumulatively met and the relevant national retail calls markets (both for residential and non-residential customers) are no longer susceptible to ex ante regulation.

II.4. Regulatory remedies

Since none of the relevant markets fulfil the three criteria test, IBPT proposes to withdraw the existing obligations imposed on Belgacom.

III. NO COMMENTS

The Commission has examined the notifications and the additional information provided by IBPT and has no comments.¹⁵

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.

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

¹¹ From the increase of the number of mobile call minutes on the one hand and the decrease of the number of fixed call minutes on the other hand, the IBPT concludes that there is an increasing shift from fixed to mobile, particularly on the market for residential users. Moreover, the price decrease of the mobile telephony services, as a consequence, among others, of the decrease of the mobile call termination tariffs, can also further contribute to the importance of mobile telephony services in the future and for both the market for residential and non-residential users.

¹² According to IBPT, although Skype and other peer-to-peer networks are not substitutable with fixed telephony services, they can also exercise pressure on the prices of fixed call services. Just as with unmanaged VoIP services, the high broadband penetration in Belgium results in a significant growth of these services.

¹³ According to IBPT, in July 2013 the fixed broadband penetration in Belgium amounted to 33.6 % compared to an European average of 29.4 %. The number of households that have an internet connection showed a slight increase compared to the previous year: 77.7 % in 2012 compared to 76.5 % in 2011.

¹⁴ IBPT states that 96.7% of Belgian companies are connected to internet.

¹⁵ In accordance with Article 7(3) of the Framework Directive.

Pursuant to Point 15 of Recommendation 2008/850/EC¹⁶ 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 Commission¹⁷ 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.¹⁸ You should give reasons for any such request.

Yours sincerely,
For the Commission,
Robert Madelin
Director-General

¹⁶ 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.

¹⁷ Your request should be sent either by email: CNECT-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

¹⁸ The Commission may inform the public of the result of its assessment before the end of this three-day period.



EUROPEAN COMMISSION

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Belgisch Instituut voor postdiensten
en telecommunicatie (BIPT)

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Ter attentie van:
De heer Jack Hamande
Voorzitter van de Raad

Fax: +32 2 226 88 41

Dear Mr Hamande,

**Subject: CORRIGENDUM of Commission Decision concerning case
BE/2014/1641: Retail markets for publicly available telephone
services provided at a fixed location for residential and non-
residential customers in Belgium**

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

Please note that the above decision is amended as follows:

1) The **footnote 5 on page 1** is deleted without being replaced:

"Belgische mededingingsautoriteit, avis nr. 2014-A/A-01 van 26.5.2014."

2) In **footnote 9 on page 2** "bellijn" is being replaced by "omroep":

"Volgens het BIPT hebben ook bepaalde regelgevingsmaatregelen die het op andere markten heeft genomen, zoals besluiten inzake de breedband-, omroep- en huurlijnmarkt, positieve gevolgen."

3) In **section II.3. on top of page 3** "op" is being replaced by "vanaf":

"die diensten tegen veel lagere tarieven aanbieden dan exploitanten die gebruikmaken van PSTN- of beheerde VoIP-netwerken, waardoor er nog meer druk wordt uitgeoefend op de prijzen vanaf aanverwante markten, zoals mobiele telefonie en "peer-to-peer"-diensten."

4) In **footnote 12 on page 3** "leidt" is being replaced with "bevordert":

"Net als bij onbeheerde VoIP-diensten bevordert de grote breedbandpenetratie in België tot een aanzienlijke groei van deze diensten."

Yours sincerely,
For the Commission,
Robert Madelin
Director-General