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**SG-Greffe (2007) D/200952**

Institut belge des services postaux et  
des télécommunications (IBPT)  
Avenue de l'Astronomie 14 - Bte 21  
B-1210 Bruxelles  
Belgium

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

Fax: 02 226 88 41

Dear Mr Van Heesvelde,

**Subject: Case BE/2007/0588: Call termination on individual public telephone networks provided at a fixed location in Belgium.**

**Article 7(3) of Directive 2002/21/EC1: No comments**

## **I. PROCEDURE**

On 29 January 2007, the Commission registered a notification from the national regulatory authority ("NRA") of Belgium, *Institut Belge des services postaux et des télécommunications* ("IBPT"), concerning the market for call termination on individual public telephone networks provided at a fixed location in Belgium<sup>2</sup>.

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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> Corresponding to market 9 of 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 ("the Recommendation"), OJ L 114, 8.5.2003, p. 45

A national consultation<sup>3</sup> ran from 27 November to 27 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. Market definition**

The review of fixed termination services was undertaken earlier by IBPT, and notified to and assessed by the Commission services under case BE/2006/0440<sup>4</sup>. In that case, IBPT designated Belgacom and 8 alternative network operators (“ANOs”) as having significant market power (“SMP”) for the provision of call termination on their individual public telephone networks provided at a fixed location. IBPT has now conducted the market analysis for 11 additional ANOs<sup>5</sup>.

In line with its previous notification, IBPT defines the relevant product market as comprising the termination of local, intra and extra area calls on each operator's public telephone network. An area is defined in respect of the incumbent's network topology as being the area covered by a regional switch. Call termination services to non-geographic numbers are outside the scope of the relevant market. IBPT thus defines a separate market for each fixed network operator providing call termination services over its network and finds that the geographic dimension of the market corresponds to the geographic coverage of each operator's network.

### **II.2. Finding of significant market power (“SMP”)**

IBPT designates the mentioned 11 ANOs as having SMP in the market for call termination on their own network. IBPT notes that each operator enjoys a monopoly position in its market and does not face countervailing buying power sufficient to impair its ability to behave to an appreciable extent independently of competitors, customers and ultimately consumers.

### **II.3. Regulatory remedies**

IBPT imposes the following obligations on the ANOs mentioned: i) non-discrimination (both external and internal<sup>6</sup>), iii) transparency and iv) price control in the form of a price ceiling.

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<sup>3</sup> In accordance with Article 6 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 (the “Framework Directive”), OJ L 108, 24.4.2002, p. 33.

<sup>4</sup> Commission's “no comments” letter SG-Greffe (2006) D/204471.

<sup>5</sup> 3 Stars Net, Brutélé, Equant, Ipness, Realroot, Scarlet Extended, Sound&Motion, Tele2, Toledo, Wavecrest Belgium and Weepee Studio's.

<sup>6</sup> The internal non-discrimination obligation (i.e. the obligation of SMP operators not to discriminate between their own services and third parties) only covers quality of service.

The price ceiling is set with reference to Belgacom's Reference Interconnection Offer ("BRIO"), taking into account an efficient delivery of service. The ANOs covered by the present notification are currently charging termination rates largely equivalent to Belgacom's. IBPT does not consider that an exact symmetry of tariffs would be proportionate, firstly since Belgacom enjoys higher economies of scale and scope and, secondly, because ANOs had to incur high fixed costs in order to set up their terminating networks. Therefore, IBPT finds it appropriate to implement a mark-up on Belgacom's terminating rates. The mark-up is capped at 15%, which is justified on the basis of a benchmark<sup>7</sup> and in consideration of efficiency according to the IBPT.

### **III. NO COMMENTS**

The Commission has examined the draft measure and the additional information provided by IBPT and has no comments.

Pursuant to Article 7(5) of the Framework Directive, IBPT may adopt the resulting draft measures and, where it does so, shall communicate them 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.

Pursuant to Point 12 of Recommendation 2003/561/EC<sup>8</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>9</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,  
Philip Lowe  
Director General

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<sup>7</sup> Data observed in Portugal and the Netherlands as well as data provided by Belgacom during the national consultation. From that benchmark, IBPT concludes that ANOs can charge higher termination tariffs than the incumbent in a range of 15% to 25%. IBPT chose the lower threshold of the range in consideration of consumers' interest.

<sup>8</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>9</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.