

**Communication of the BIPT Council
of 10 October 2023
on cooperation agreements to roll out FTTH networks**

1. Context

1. As part of its "Digital Decade" programme, the European Union has set the objective of a connectivity of 1 Gbps for all households by 2030. The roll-out of fibre networks as close as possible to the end users, possibly up to the dwellings ("fibre to the Home" or FTTH), is an important factor to achieve this objective.
2. Over the past few months, several operators have made statements about the interest, or even the need, to cooperate rather than duplicate fibre infrastructures, in order to reduce roll-out costs and speed up and/or extend fibre coverage.
3. Until now, Belgium has experienced competition between two broadband infrastructures: a national FTTC network operated by Proximus and an HFC network operated by cable operators (Telenet in the north of the country, VOO in the south). The promotion of effective infrastructure-based competition is one of the general objectives that the regulatory framework sets for national regulatory authorities¹.
4. The BIPT nevertheless acknowledges that duplicating FTTH infrastructures may have a significant economic impact. The preliminary results of a study conducted by the BIPT² confirm that the parallel roll-out of two FTTH networks has an important impact on the profitability of the investments, in particular in less densely populated areas of the Belgian territory. The BIPT stresses that this study is carried out for information purposes only; it is not intended to promote or, on the contrary, to prohibit cooperation between operators in certain (types of) geographical areas.

2. Conditions for a cooperation

5. Without prejudice to the application of competition law, the BIPT is prepared to assess, in collaboration with the media regulators (CSA, VRM and Medienrat) any agreement or draft agreement the operators would intend to conclude, concerning all possible geographical areas, be it limited or not to less densely populated areas of the territory.
6. Given that they would be concluded between competing operators, or even between operators currently identified as having significant market power, the regulators will pay particular attention to the fact that these agreements are designed in such a way as to ensure effective and sustainable competition for the benefit of end-users.

¹ Article 3.2 of the European Electronic Communications Code.

² Tender on the sustainability of competition between FTTH infrastructures in Belgium, <https://www.bipt.be/operators/publication/tender-2022telvhoverbuild>

7. In particular:
 - 7.1. Any infrastructure rolled out in cooperation must be, and remain in the long term, open to all operators and not only to the cooperating parties.
 - 7.2. This openness will have to be ensured by the availability of active wholesale services but also, wherever the topology of the infrastructure allows it and, in any case for new roll-outs, passive wholesale services.
 - 7.3. The operators responsible for such an infrastructure will have to ensure to all operators using it or wishing to use it, a high level of transparency and non-discrimination, amongst others in terms of quality of service, provision and repair times, functionalities, or provided information.
 - 7.4. Wholesale tariffs for access to such infrastructure will have to allow for effective competition (including on prices) on the retail market, to the benefit of consumers and businesses. In particular, these tariffs will have to reflect the higher take-up rate that can be expected over time on a single FTTH infrastructure.
 - 7.5. The roll-out of this infrastructure will have to be at least as fast and achieve coverage at least as extensive as foreseen in the plans of the operators in the absence of cooperation.
 - 7.6. Compliance with the above conditions will have to be ensured by an adequate monitoring regime.
8. Moreover, contacts and exchanges of information between competitors with a view to cooperating must of course comply with competition law and be limited to what is strictly necessary for that purpose. Operators must take all appropriate measures in this regard, if necessary in consultation with the competition authorities.

3. Consequences of a cooperation

9. If, by 15 May 2024, operators reach agreements complying with the principles listed above, the BIPT will take (in collaboration with the media regulators) these into account in its next market analysis in order to assess the need for regulation and/or the form that regulation should take.
10. If agreements would be reached in a later phase, the BIPT will have to assess (in collaboration with the media regulators) whether their impact is significant enough to require a new market analysis or whether it is necessary to review the obligations that may have been previously imposed.
11. Until such agreements are potentially concluded, the BIPT continues (in collaboration with the media regulators) to implement the regulation in place (in particular the review of wholesale FTTH tariffs) and the preparation of the next analysis of the broadband and broadcasting markets. The publication of draft decisions on these subjects will not take place before 15 May 2024.

12. The BIPT is prepared to reconsider the date of 15 May 2024 if operators would inform the BIPT that they intend to finalise one or several agreements within a reasonable period of time after that date.

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