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Institut Belge des Services Postaux et
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ATT.: Mr Eric Van Heesvelde
Chairman of the Board

Fax: 02-226 88 41

Dear Mr Van Heesvelde,

Subject: Case BE/2006/0435: Publicly available local and/or national telephone services provided at a fixed location for residential customers

Case BE/2006/0436: Publicly available international telephone services provided at a fixed location for residential customers

Case BE/2006/0437: Publicly available local and/or national telephone services provided at a fixed location for non-residential customers

Case BE/2006/0438: Publicly available international telephone services provided at a fixed location for non-residential customers

Comments pursuant to Article 7(3) of Directive 2002/21/EC¹

1 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.

I. PROCEDURE

On 7 July 2006, the Commission registered four notifications by the Belgisch Instituut voor Postdiensten en Telecommunicatie/Institut Belge des Services Postaux et des Télécommunications (“IBPT”). The notifications concern publicly available local and/or national telephone services provided at a fixed location for residential and non-residential customers respectively and publicly available international telephone services provided at a fixed location for residential and non-residential customers respectively (“the fixed calls markets”)².

The national consultation was carried out between 7 February and 8 April 2006³.

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

IBPT includes the following services in the fixed calls markets: fixed-to-fixed telephony, fixed-to-mobile telephony, calls over PSTN and cable-TV networks, post-paid and pre-paid services, calls made over circuit mode connections and voice over broadband (“VoB”) services⁴ as well as voice telephony and calls to service providers.

As regards the two national markets (markets 3 and 5 in the Recommendation), IBPT makes no distinction between local and national calls, since such a distinction is not made by the operators in the Belgian market.

As regards the two international markets, (markets 4 and 6 in the Recommendation), IBPT includes all calls, regardless of destination.

IBPT considers the geographic scope of the fixed calls markets to be national.

II.2 Significant market power (“SMP”)

On the basis of its market analysis, IBPT concludes that no operator has SMP in the two markets for *international* fixed calls (markets 4 and 6) whereas IBPT considers that the incumbent operator in Belgium, Belgacom, has SMP in the markets for *national* fixed calls (markets 3 and 5).

II.2.1 Absence of SMP in the markets for international fixed calls (markets 4 and 6)

² Markets number 3 to 6 in 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 (“the Recommendation”).

³ In accordance with Article 6 of the Framework Directive.

⁴ IBPT includes in the fixed calls markets VoB calls which originate from numbers included in the national numbering plan.

As regards the *market for international fixed calls for residential customers* (market 4), the main indicators considered by IBPT when concluding that there is no operator with SMP are market growth, the sharply declining market share of Belgacom⁵, low barriers to entry and expansion, the lower importance (compared to national calls) of economies of scale and scope, control of infrastructure and vertical integration respectively.

As regards the *market for international fixed calls for non-residential customers* (market 6), the main indicators considered by IBPT when concluding that there is no operator with SMP are market growth, the declining market share of Belgacom⁶, low barriers to entry and expansion, the lower importance (compared to national calls) of economies of scale and scope, control of infrastructure and vertical integration respectively as well as the fact that large corporate customers may exercise some countervailing buyer power.

II.2.2 Finding of SMP in the markets for national fixed calls (markets 3 and 5)

In its assessment of the *market for national fixed calls for residential customers* (market 3), IBPT considered the following main criteria to conclude that Belgacom has SMP: sharply declining market⁷, large market share⁸, high importance of economies of scale and scope and control of infrastructure and vertical integration functioning as a barrier to entry and a barrier to expansion and the absence of countervailing buyer power exercised by residential customers.

In its assessment of the *market for national fixed calls for non-residential customers* (market 5), IBPT considered the following main criteria to conclude that Belgacom has SMP: large market share⁹, high importance of economies of scale and scope and control of infrastructure and vertical integration functioning as a barrier to entry and a barrier to expansion.

II.3 Regulatory remedies

Considering the market power of Belgacom, IBPT concludes that the remedies imposed in the wholesale markets are insufficient to safeguard the development of effective competition at retail level. Therefore, IBPT intends to impose the following retail remedies¹⁰ on Belgacom: non-discrimination, transparency¹¹, reporting obligations¹², cost

⁵ Belgacom's market share by volume decreased from 62% at the end of 2002 to 30% in the 1st half of 2005.

⁶ Belgacom's market share by volume decreased from 72% in the 1st half of 2001 to 51% in the 1st half of 2005.

⁷ Between 2001 and the 1st half of 2005, the market decreased on average by 6% by volume and 2.8% by revenue every 6 months.

⁸ Until the end of 2003, Belgacom's market shares were above 90%. By the 1st half of 2005 the market share of the incumbent had decreased to 67% by volume and 67% by revenue.

⁹ Belgacom's market share by volume decreased from 85% in the 1st half of 2001 to 60% in the 1st half of 2005. In revenue terms, the incumbent's share decreased from 85% to 67% during the same period.

¹⁰ The same set of remedies will apply on both markets with SMP (markets 3 and 5).

¹¹ Obligation to publish information about the methodology used for cost accounting and separation of accounts.

accounting, accounting separation¹³ and a prohibition to charge excessive or predatory prices. The current obligation to charge cost-oriented prices will be withdrawn, since IBPT considers that the other remedies which IBPT intends to impose at the retail and wholesale levels will be sufficient¹⁴.

III. COMMENT

The Commission has examined the notifications and has the following comment¹⁵:

Review of the national calls markets

The Commission takes note that the review period for the notified markets is set for 3 years. Taking into account Belgacom's declining market shares in the national call markets, remedies proposed in the retail access markets (in particular wholesale line rental and carrier-selection/carrier pre-selection) and in fixed wholesale markets, the Commission invites IBPT to review the competitive situation in the national call markets within a shorter timeframe.

Pursuant to Article 7(5) of the Framework Directive, IBPT shall take the utmost account of comments of other NRAs and the Commission and may adopt the resulting draft measures and, where it does so, shall communicate it 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/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 Commission 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 publication¹⁷. You should give reasons for any such request.

¹² Obligation to report to IBPT at least 30 days before entry into force of the following measures: new or amended retail offers, tariff changes, rebate schemes for combined offers including national fixed calls. Obligation to submit, upon request, additional information to IBPT, including information about individual offers.

¹³ Obligation to keep separate accounts for wholesale and retail activities.

¹⁴ IBPT considers that the obligation to keep separate accounts which will be imposed in retail and wholesale markets in combination with the prohibition to engage in predatory or excessive pricing will be sufficient to guarantee that Belgacom's retail tariffs will be proportionate and set at efficient levels. IBPT considers that maintaining the cost orientation obligation would be disproportionate under the current circumstances.

¹⁵ Pursuant to Article 7(3) of the Framework Directive.

¹⁶ 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.

¹⁷ Your request should be sent either by email: INFSO-COMP-ARTICLE7@ec.europa.eu or by fax: +32.2.298.87.82.

Yours sincerely,
For the Commission
Philip Lowe
Director General