

# SUMMARY NOTIFICATION FORM: RELEVANT MARKET 13

## 1 MARKET DEFINITION

### 1.1 Affected relevant product/service market

- 1 Relevant market 13 is the wholesale market of the provision of terminating segments of leased lines. The demarcation line between market 13 and 14 lies between the first network level and the levels below it. For the incumbent Belgacom, the first level corresponds to the 4 Express rings which cover 12 cities (nodes): leased line segments between any two nodes on the first level are defined as trunk segments whereas leased line segments whose two ends are subsidiary to the same node on the first level are defined as terminating segments.
- 2 This market includes:
  - 2.1 all terminating segments irrespective of capacity;
  - 2.2 "backhaul" lines;
  - 2.3 interconnection links.
- 3 This market does not include:
  - 3.1 trunk segments;
  - 3.2 bitstream access of the BROBA II SDSL type;
  - 3.3 unbundled access
  - 3.4 cable networks
  - 3.5 dark fibre.

### 1.2 Affected relevant geographic market

- 4 The relevant geographic market is national.

### 1.3 Summary of opinion of national competition authority

- 5 The NCA points out that the argumentation that there is supply substitution for a range of products because a company offers all of them is problematic.
- 6 The NCA wonders whether a subdivision into separate markets according to capacity would have led to the same conclusion that bitstream access products are no substitutes because their capacity is limited to 2 Mbit/s.

### 1.4 Overview of the results of the public consultation

- 7 Five stakeholders sent comments during the public consultation (from 28 April to 12 June 2006). These stakeholders were (in alphabetical order):
  - 7.1 Belgacom;
  - 7.2 BT Belgium;
  - 7.3 FAC (Fixed Alternative Carriers);
  - 7.4 Mobistar;
  - 7.5 Tele2 - Versatel.
- 8 As far as the general approach is concerned, the following remarks were made:
  - 8.1 old regulation is just renewed and inefficient market players are maintained in the market;
  - 8.2 ex ante regulation is justified as there is an abuse of a dominant position;
  - 8.3 the fact that some obligations can only be implemented after the adoption of a Royal Decree is considered to be a lack of independence of the NRA.

9 The following comments were made as to the market definition:

- 9.1 the distinction between terminal and trunk segments is not appropriate and usually invisible to the customers;
- 9.2 the demarcation between terminal and trunk segments should be at a different network level;
- 9.3 there is a high degree of substitutability between bitstream access and leased lines;
- 9.4 opinions are divided on the inclusion of backhaul lines and IC links in the wholesale market and the same goes for lit and dark fibre.

## 1.5 Deviation from relevant markets listed in the Recommendation

10 Market 13 corresponds to the thirteenth relevant market listed in the Recommendation.

## 2 DESIGNATION OF UNDERTAKINGS WITH SIGNIFICANT MARKET POWER

### 2.1 The names of the undertakings designated as having significant market power

11 Belgacom has been designated as an undertaking with significant market power on relevant market 13.

### 2.2 The criteria relied upon

12 The following criteria were relied upon:

Criterion	Result
market share incumbent (H1 2005)	95% in number of lines and 60 % in capacity
sunk costs	very substantial; the availability of unbundling, bitstream access or dark fibre lowers the barriers to entry but not sufficiently
economies of scale	highly influenced by economies of density
economies of scope	infrastructure capable of providing terminating segments can also be used for access to the public telephone system, broadband and other data services
control of infrastructure not easily duplicated	the incumbent has a highly ramified network that covers the whole country
vertical integration	advantage for incumbent
barriers to change	high non-recurring costs are strongly dissuasive
countervailing buyer power	the countervailing buyer power of the alternative operators is insignificant

## **2.3 The names of the main undertakings (competitors) present/active in the relevant market**

- 13 The main undertakings on market 13 (in alphabetical order):
- 13.1 Belgacom;
  - 13.2 BT;
  - 13.3 Colt;
  - 13.4 Mobistar;
  - 13.5 Scarlet;
  - 13.6 Telenet;
  - 13.7 Verizon;
  - 13.8 Versatel.

## **2.4 The market shares of the undertakings mentioned above**

- 14 Basis of their calculation: number of lines and capacity in 1st half of 2005.
- 15 Market shares of undertakings:
- 15.1 Belgacom: 95 % (number of lines) and 60 % (capacity).

## **2.5 The opinion of the national competition authority**

- 16 The NCA expresses some doubts concerning the method of calculating the market shares on the wholesale markets from the markets shares on the downstream retail market. It is not against the use of self supply but wonders whether this warrants a correct calculation of the market shares.

## **2.6 The results of the public consultation**

- 17 The following remarks were made about the analysis and the designation of SMP operators:
- 17.1 the inclusion of self supply is contested by some stakeholders but approved by others;
  - 17.2 the incumbent has significant market power as its network is complete, the numerous tariffication schemes impede the development of effective competition;
  - 17.3 cable networks should be included in the market.

## **3 REGULATORY OBLIGATION**

- 18 The following wholesale obligations are being imposed:
- 18.1 Non-discrimination;
  - 18.2 Transparency;
- 19 The following retail obligation are being imposed:
- 19.1 Minimum set of leased lines;
  - 19.2 Price control and cost accounting obligation.

### 3.1 The legal base for the obligations

- 20 The obligations are based on the Belgian Electronic Communications Act (**BECA**) of 13 June 2005. The corresponding articles in the Access Directive (**AD**).

Obligation	BECA	European Directives
Access and interconnection obligations	art. 61, §1-§2	art. 12(1)-(2) AD
Non-discrimination	art. 58	art. 10 AD
Transparency including reference offer	art. 59	art. 9 AD
Accounting separation	art. 60	art. 11 AD
Price control and cost accounting	art. 62	art. 13 AD

### 3.2 Proportionality and justification of the obligations

- 21 Proportionality and justification:

Obligation	Proportionality and justification
Access and interconnection obligations	Without this obligation, the SMP operator can deny new connections or interrupt existing ones.
Non-discrimination	Without non-discrimination obligation, vertically integrated operator can favour its retail branch (tariffs, times, procedures, information and quality of service).
Transparency including reference offer	Allows verification of the compliance with other obligations; facilitates negotiations.
Accounting separation	Without accounting separation, the non-discrimination obligation would be rendered ineffective and cross subsidies would be facilitated.
Price control and cost accounting	Price control prevents the SMP operator from charging too high prices.

### 3.3 Obligations not found in the Access Directive

- 22 Retail obligations are imposed pursuant to article 65 of the BECA (transposition of article 18 of the Universal Service Directive).

## 4 COMPLIANCE WITH INTERNATIONAL OBLIGATIONS

### 4.1 Obligations provided for in Article 8(5) of Access Directive

- 23 Not applicable.

### 4.2 Names of the undertakings concerned

- 24 Not applicable.

### 4.3 International commitments that need to be respected

- 25 Not applicable.