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Conférence des Régulateurs du
secteur des Communications
électroniques c/o Conseil supérieur
de l'audiovisuel

Rue Royale, 89
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For the attention of:
Mr Karim Ibourki
Président

Fax: +32 2 226 88 41

Subject: Case BE/2020/2242: Wholesale central access provided at a fixed location for mass-market products in Belgium - monthly rental fees for wholesale access to the cable networks

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

Dear Mr Ibourki,

1. PROCEDURE

On 6 April 2020, the Commission registered a notification from the Belgian national regulatory authority (NRA), the Conference of Regulators of the electronic communications sector (CRC)¹², concerning the Belgian market for wholesale central

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.

² The CRC is the regulatory authority for cooperation between IBPT (Federal State), Conseil Supérieur de l'Audiovisuel (CSA – French speaking Community), Vlaamse Regulator voor de Media (VRM – Flemish Community) and the Medienrat (German speaking Community).

access provided at a fixed location for mass-market products³. The measure describes the cost model and contains monthly rental prices for wholesale access to the cable networks.

The national consultation⁴ ran from 5 May 2019 to 6 September 2019.

The Commission sent a request for information⁵ to CRC on 8 April 2020, and received a reply on 14 April 2020.

Under Article 7(3) of the Framework Directive, NRAs, the Body of European Regulators for Electronic Communications (BEREC) and the Commission may make comments on notified draft measures to the NRA concerned.

2. DESCRIPTION OF THE DRAFT MEASURE

2.1. Background

The markets for wholesale network infrastructure access at a fixed location and wholesale broadband access as well as the market for access to broadcast networks in Belgium were previously notified to and assessed by the Commission under cases BE/2018/2073-2075⁶.

The notification included two separate wholesale central access markets according to the underlying network type, specifically “*the market for central access over copper and fibre networks (Market '3b-1') ('ITU SG15' standardisation) for residential and non-residential end-customers, with a national geographic dimension*” and “*the market for central access over cable networks (Market '3b-2') ('CableLabs' standardisation) for residential and non-residential end-customers, with a geographic dimension matching the coverage area of each cable operator (Brutélé, Nethys, and Telenet)*”. Finally, the measures also addressed the market for the delivery of analogue and digital TV signals over cable, and DSL broadcasting signals over copper (IPTV). Satellite TV and digital terrestrial television (DTT) were excluded from the market. CRC defined geographically distinct markets, corresponding to the coverage areas of the individual cable operators in Belgium.

In cases BE/2018/2074-2075, CRC distinguishes between central access over copper/fibre (Proximus' network) and central access over the network of the cable operators. The cable operators (Brutélé, Nethys, and Telenet) are the only providers of wholesale central access over their respective networks and therefore they each hold a market share of 100% and are assigned with SMP in their respective coverage areas. Combined, the operators have almost ubiquitous coverage in Belgium.

³ Corresponding to market 3b in Commission Recommendation 2014/710/EU of 9 October 2014 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with the Framework Directive (2014 Recommendation on Relevant Markets) (OJ L 295, 11.10.2014, p. 79).

⁴ In accordance with Article 6 of the Framework Directive.

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

⁶ C(2018) 3410 final. The market for wholesale central access provided at a fixed location was registered under case number BE/2018/2074.

CRC imposed on Telenet, Brutélé and Nethys regulatory obligations regarding access and interconnection, non-discrimination, transparency, cost accounting and price control.

Regarding prices for access to the cable networks, CRC imposed prices based on a “fair” pricing regime, but argued that the prices should be based on a cost model to maintain a link with the underlying costs. Moreover, the measure set interim prices for cable access as an interim solution until a cost model is developed. The interim prices for wholesale central access product provided by cable operators was set at EUR 20.29 for speeds below 150 Mbps and at 30.12 for speeds above 150 Mbps per line per month⁷.

As regards the price setting methodology for access to cable on market 3b and the broadcasting market, the Commission commented on CRC’s intention to allow for an extra margin on top of the strictly cost oriented rates in order to encourage NGA deployment. The Commission pointed out that NRAs shall allow a reasonable rate of return on adequate capital employed in order to encourage investments by operators, including in NGA networks. Moreover, the price of access to the terminating segments of FttH networks could include, where appropriate, a higher risk premium to reflect any additional and quantifiable risk incurred by the SMP operator. However, the Commission suggested that it might be more appropriate for CRC to take account of the investment risk in its calculation of the cost of capital, instead of an additional mark-up to the cost oriented prices resulting from the cost model.

2.2. Regulatory remedies

The current draft measure sets prices based on the costs calculated by a bottom-up LRIC+ cost model, dimensioning an efficient operator with coverage equal to the footprint of each cable network operator designated as SMP in Belgium. CRC explains that the notion of fair prices refers to prices that may exceed the costs of providing the relevant service, while keeping a link with costs. In essence, there is room for a difference (margin) between the modelled costs and the final maximum wholesale rates imposed on the respective operator.

2.2.1. The cost model

For the basis of the fair prices planned for implementation, CRC has developed a bottom-up LRIC+ cost model. Initially, the cost model used relied on the so-called Regulatory Asset Base (RAB) approach for the access network.⁸ However, following comments received in the public consultation, the final cost model is based on current replacement costs and economic depreciation⁹.

⁷ The EUR 20.29/line/month price was based on Brutélé’s then relevant Wahoo 125/6.5/unlimited volume retail product, while the EUR 30.12/line/month price was based on Brutélé’s Tadoo 200/10/unlimited volume product.

⁸ The RAB methodology would value the relevant assets according to their book value instead of their replacement value, which since assets are typically written off each year, would lead to comparatively low prices, when compared to the replacement costs (taking the full costs of the asset into account).

⁹ Economic depreciation indicates the current market value of the asset, taking into account its current productivity. As alternative, accounting depreciation is strictly calculated on the basis of estimated useful life and asset’s consumption.

Replacement costs are used for all assets, including ducts, trenches and poles. In their response to the Commission's RFI, CRC clarified that RAB is only relevant for reusable assets such as ducts, trenches and poles: "*Historically, the coax distribution cables were deployed on the façades of the buildings or poles or, if underground, directly buried (without ducts). There is therefore only a part of these assets that are reusable in the sense of the Recommendation 2013/466/EU*". However, the final cost model notified does not rely on RAB for any assets, as CRC could not obtain the required accounting data from the cable operators to implement the RAB approach for these reusable assets and furthermore the difference is not significant.¹⁰

The cost model assumes scorched node and dimensions of an efficient operator with coverage equal to respective footprints of each cable network operator (Brutele, Nethys and Telenet). This approach aims to account for different levels of economies of scale as well as the geographical properties of each footprint. Several technical details on construction of each network, the layout, plans for analogue television etc. are taken into account by the developed cost model. Further, specific operator requirements for node splitting has been incorporated in the model, to facilitate the capacity needed in each footprint.

Regarding TV-signals, the cost model is capable of modelling a cable network both with and without the provision of analogue TV signals. According to CRC, Telenet plans to switch off analogue TV in 2022. CRC considers the early switch off of analogue TV broadcasting as efficient, which is reflected in the cost model. As the two other operators have not announced such plans, CRC considers that the costs of providing analogue TV remains relevant throughout entire regulatory period. As further explained by CRC in its reply to the RFI, the effect on the final prices in the case of Telenet's analogue switch-off in 2022, is insignificant (of a magnitude of around EUR 0.5 on the final prices either upwards or downwards, depending on the use-case).

The cost model also assumes two additional mark-ups on costs, reflecting cost-elements not modelled in the bottom-up LRIC+ cost model, namely general overhead cost (G&A) of 5% and IT overhead costs of 7.5%¹¹. According to CRC's response to the Commission's RFI, these percentages reflect those representative for an efficient Belgian operator and verified by benchmarks to ensure their robustness. Specifically, CRC collected the real IT and G&A overhead data from all four Belgian SMP operators (the three cable operators and Proximus) and calculated the mark-ups costs, and subsequently compared them with other sources, including the French and Spanish cost models. Subsequently, CRC concludes, that the mark-ups of 5% and 7.5% for G&A and IT respectively are representative of an efficient Belgian operator.

¹⁰ In the reply to the RFI, CRC estimates that relying on replacement costs (rather than the Regulatory Asset Base –RAB- approach) for the reusable assets (ducts, poles and trenches) only has a limited impact on the total costs, where the impact generally is below 1% and does not exceed 3% of the total costs of the network.

¹¹ These mark-ups are similar to those currently applied to Proximus in relation to modelling of DSL and FttH.

The model derives the costs unique for each network and the costs estimates as well as maximum rates per network varies.

The cost model further takes into account the latest estimated WACC for the cable networks in Belgium, as notified to the Commission under case BE/2019/2185. In this decision, the competent Belgian regulatory authority notified WACC values for copper, FttH, cable TV and mobile networks, and the WACC of 7.12% is applied in the current notification.

2.2.2. *The notified prices*

To reach the final notified prices, CRC applies a number of calculations to the results of the cost model, including a split into fixed and variable cost elements, adding margins for higher speeds, tiering, broadband profiles and capacity price.

Following feedback from the market, the tariff structure was split in a way, so that most costs are allocated to a “fixed” part of the costs, whereas a variable cost is incorporated through the capacity costs. CRC argues that this provides both certainty for cost recovery for the cable operators whilst preventing bill-shocks for the access seeker (as the majority of the total cost is fixed). The variable capacity part is implemented as a price per Mbps in peak per consumer and further varies per footprint, as seen in table 1.

Table 1: Capacity costs per Mbps for each modelled network

| EUR/mbps/month | Brutélé | VOO SA | Telenet |
|----------------|----------------|---------------|----------------|
| 2020 | 1.03 EUR | 1.23 EUR | 0.53 EUR |
| 2021 | 0.83 EUR | 1.19 EUR | 0.49 EUR |
| 2022 | 0.72 EUR | 1.10 EUR | 0.46 EUR |
| 2023 onwards | 0.75 EUR | 1.07 EUR | 0.43 EUR |

As visible in table 1, the capacity price defined in each network, differs between the footprints and hence the relative difference between the variable part of the costs will also differ between the networks. In the reply to the RFI, CRC explains that the variable part reflects the incremental costs related to additional capacity required in the transmission/core network as well as the required investments needed to split the optical nodes when this reaches its maximum capacity. The differences in capacity costs result from economies of scale and scope, which is most outspoken in the case of Telenet. Since the number of customers with Telenet is larger than for Brutele and Voo, Telenet has lower average variable costs.

CRC underlines, that the variable part of the total cost is much smaller than the fixed part, meaning that these differences result in limited actual variance of the final prices per footprint.

For the fixed part, CRC defines two adjustments in order to ensure a sufficient differentiation between different speeds for broadband profiles. First, CRC uses so-called tiering, which makes a greater tariff difference between the different speeds, while ensuring full cost recovery across the entire portfolio. For the purpose of tiering, CRC defines four speed categories, which act as groups to which a certain tiering is applied by use of multipliers. These multipliers have been chosen, by performing a benchmarking exercise, comparing the multipliers to the current price-differences in the different speeds for wholesale FttH.¹² As the multipliers are higher for higher speeds categories and lower for lower speeds categories, this leads to reduction of the costs for the lower speeds while increasing the costs for the higher speeds. This tiering and the multiplying factor¹³ is presented in table 2.

Table 2: Tiering groups and multiplying factor

| Category | Defining speed in 2020-2021 | Defining speed in 2022-2023 | Multiplying factor |
|----------|-----------------------------|-----------------------------|--------------------|
| A | <= 100 Mbps | <= 150 Mbps | 1.00 |
| B | <= 150 Mbps | <= 250 Mbps | 1.14 |
| C | <= 400 Mbps | <= 650 Mbps | 1.56 |
| D | > 400 Mbps | > 650 Mbps | 2.08 |

As seen in the third column, the speed categories changes in year 2022, providing an incentive to supply even higher speeds to access seekers. This occurs, as the “threshold” for the various categories and accompanying multipliers shifts upwards in year 2022.

The second addition to the costs is a separate margin added to the fixed part of the costs related to the traffic component of the broadband profile. The applicable margin and time periods are visible in table 3.

¹² Based on this, CRC concludes that the calculated tiering curve for cable networks do not differ significantly from the price curve for different FttH speeds supplied in Belgium.

¹³ Multiplying factors fix the relative price difference between the different categories and not the absolute level of the tariffs.

Table 3: Margins per speeds group and year

| Margin | 2020-2021 | 2022-2023 |
|--------|---|---|
| 0% | Up to 200 Mbps (included) | Up to 400 Mbps (included) |
| 5% | Higher than 200 Mbps and up to 600 Mbps | Higher than 400 Mbps and up to 900 Mbps |
| 10% | Higher than 600 Mbps | Higher than 900 Mbps |

CRC explains that the above outlined margins is in addition to the “base cost” from the model and hence before tiering is applied.

Due to the pricing structure, the final prices result from a number of elements and depend on category, year, capacity and the network supplying the connection. The largest part of the total cost is the access part, as shown in tables 4 and 5 below for year 2020 and 2023 respectively. The prices in tables 4 and 5 include tiering, but do not include capacity costs or price profile.

Table 4: Access price for 2020 per network and category

| | Brutélé | VOO SA | Telenet |
|-----------------------------|----------------|---------------|----------------|
| Broadband access category A | EUR 12.02 | EUR 14.90 | EUR 14.32 |
| Broadband access category B | EUR 13.69 | EUR 16.97 | EUR 16.31 |
| Broadband access category C | EUR 18.70 | EUR 23.17 | EUR 22.28 |
| Broadband access category D | EUR 25.04 | EUR 31.03 | EUR 29.84 |

Table 5: Access price for 2023 and onwards per network and category

| | Brutélé | VOO SA | Telenet |
|-----------------------------|----------------|---------------|----------------|
| Broadband access category A | EUR 14.35 | EUR 17.42 | EUR 17.10 |
| Broadband access category B | EUR 16.34 | EUR 19.85 | EUR 19.48 |
| Broadband access category C | EUR 22.32 | EUR 27.11 | EUR 26.60 |
| Broadband access category D | EUR 29.89 | EUR 36.30 | EUR 35.62 |

The prices shown in table 4 and 5 are only the fixed access part and the variable cost for capacity as well as the price-profile should be added to the access prices above to reach the final price.

To further illustrate the different effects, the Commission received from CRC a summary of the impacts of the various steps per network. These are presented below in table 6. The “base price” refers to the estimated cost directly from the cost model, per speed and network and is without tiering and margin. The “addition of capacity” is where the variable consumption is added, where CRC has assumed a ██████ in peak.

Table 6: The steps to reach the final prices (2020 prices)

| Brutele | Base price from the cost model | Base + margin | Base + margin + tiering | Addition of capacity | final price |
|----------------|--------------------------------|---------------|-------------------------|----------------------|-------------|
| 100 Mbps | █████ | █████ | 12.51 € | █████ | █████ |
| 150 Mbps | █████ | █████ | 14.42 € | █████ | █████ |
| 200 Mbps | █████ | █████ | 19.68 € | █████ | █████ |
| 300 Mbps | █████ | █████ | 20.97 € | █████ | █████ |
| 500 Mbps | █████ | █████ | 28.34 € | █████ | █████ |
| 1 Gbps | █████ | █████ | 31.89 € | █████ | █████ |
| Nethys | Base price | Base + margin | Base + margin + tiering | Addition of capacity | final price |
| 100 Mbps | █████ | █████ | 15.28 € | █████ | █████ |
| 150 Mbps | █████ | █████ | 17.55 € | █████ | █████ |
| 200 Mbps | █████ | █████ | 23.95 € | █████ | █████ |
| 300 Mbps | █████ | █████ | 25.30 € | █████ | █████ |
| 500 Mbps | █████ | █████ | 33.97 € | █████ | █████ |
| 1 Gbps | █████ | █████ | 37.11 € | █████ | █████ |
| Telenet | Base price | Base + margin | Base + margin + tiering | Addition of capacity | final price |
| 100 Mbps | █████ | █████ | 14.85 € | █████ | █████ |
| 150 Mbps | █████ | █████ | 17.10 € | █████ | █████ |
| 200 Mbps | █████ | █████ | 23.33 € | █████ | █████ |
| 300 Mbps | █████ | █████ | 24.81 € | █████ | █████ |
| 500 Mbps | █████ | █████ | 33.47 € | █████ | █████ |
| 1 Gbps | █████ | █████ | 37.36 € | █████ | █████ |

The total sum of additions to the base costs has a significant effect on the final estimated total cost. The final prices for the lower speeds are fairly close to (or even below) the base price, whereas for the higher speeds, the effects of margin, tiering and capacity can be even up to ██████ from the base price to the final price. This intention is to reduce the costs for the lower speeds and increase costs for the higher speeds.

With the current interim costs set at EUR 20.29 for speeds below 150 Mbps and at 30.12 for speeds above 150 Mbps per line per month, the revised prices reduces costs for the lower and medium speeds. For the very high speeds, the

current measures increases the prices slightly, as all speeds above 150 Mbps is priced at 30.12€.

The final prices reached differ between speeds and networks. Across speeds, Brutélé has the lowest estimated prices for each speed, whereas Nethys has the highest final prices. There is some variance between the final prices reached between networks, caused by the network topologies, different capacity costs and total number of subscribers per network. For instance, a 1 Gbps connection has an estimated price of █████ with Brutélé whereas the same speed costs █████ with Nethys. The prices for Telenet is between the two other networks.

3. COMMENTS

The Commission has examined the notification and the additional information provided by CRC and has the following comments:¹⁴

3.1. Need to monitor the risk of potential unjustified over recovery of costs

The Commission takes note of the pricing regime as prescribed in the underlying market review decision of 2018, being the basis for the current implementing decision. The Commission recognizes that the methodology chosen allows for an extra margin above the costs, in order to encourage NGA deployment and rewards investments in high capacity networks. Under this regime, the wholesale prices for access to cable infrastructure are not strictly based on underlying costs (determined through a BU LRIC+ cost model), but maintain a link to such costs. In that regard, the Commission notes that in the notified draft measure, multiple adjustments are made to the model results, in order to achieve this objective. The Commission acknowledges, that proper incentives for operators to deploy high capacity networks is an important and well-described regulatory goal which CRC pursues in this measure. In this regard, however, the Commission points out that there is a potential risk of overcompensation due to combination of various additions on top of the modelled costs, which, in combined effect could disproportionately increase the wholesale access prices in particular for the high speed products, even after taking into account the legitimate investment incentivisation objective described above.

Firstly, the Commission points to the effects of the mark-ups for over-head costs and IT. The combined mark-up of 12.5% is in the higher end of the spectrum when compared to mark-ups applied in other Member States. Secondly, CRC allows for the additional margin on top of estimated costs of 5% and 10% for high and very high speeds. Thirdly, the effect of tiering, although as such justified, allocates yet additional margin to the high and very high speeds. Lastly, as the variable part of the costs, namely the price per Mbps in peak, increases with the consumption, it has an even greater impact on the access price for high speed category. In that regard the Commission notes that the combined effect of all adjustments leads to a relatively large gap between wholesale access prices for lower and higher speeds and therefore carries the potential risk of unjustified overcompensation for the higher speeds.

The Commission therefore asks CRC to reflect whether the proposed, significant gap between lower and higher speeds, correctly reflects the pursued policy goals, and in

¹⁴ In accordance with Article 7(3) of the Framework Directive.

any case to closely monitor the effects of the pricing structure on the market and to adjust the methodology swiftly, should the need arise in order to ensure the continued competition in the Belgian access market for cable networks.

3.2. Treatment of analogue TV switch off in the cost model

The Commission notes, that analogue tv is considered throughout the regulatory period for Brutélé and Nethys, whereas Telenet's plans for switch-off by 2022 is taken into account. The Commission further notes that the effects on prices following the analogue switch off in the case of Telenet are relatively limited. However, the Commission takes note that the model developed by CRC is based on an (hypothetical) efficient operator and therefore asks CRC to reconsider whether such efficient operator would maintain analogue tv during the full regulatory period, and consequently whether the costs associated with analogue tv should be included in the cost model based on an efficient operator.

Under Article 7(7) of the Framework Directive, CRC shall take utmost account of the comments of other NRAs, BEREC and the Commission and may adopt the resulting draft measure. Where it does so, the NRA shall communicate it to the Commission.

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

Pursuant to point 15 of Recommendation 2008/850/EC¹⁵ the Commission will publish this document on its website. If CRC considers that, in accordance with EU and/or national rules on business confidentiality, this document contains confidential information that you wish to have deleted prior to publication, please inform the Commission¹⁶ within 3 working days of receipt and give reasons for any such request.¹⁷

Yours sincerely,

For the Commission
Roberto Viola
Director-General

¹⁵ 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.

¹⁶ By email to CNECT-ARTICLE7@ec.europa.eu.

¹⁷ The Commission may inform the public of the result of its assessment before the end of this 3-day period.