SUMMARY NOTIFICATION FORM: RELEVANT MARKET 7

1 MARKET DEFINITION

1.1 Affected relevant product/service market

1 Relevant market 7 is the market of the provision of the minimum set of retail leased lines (which comprises leased lines up to and including 2 Mbit/s).

2 This market includes:

2.1 both analogue and digital leased lines;

2.2 galvanic leased lines.

3 This market does not include:

3.1 leased lines beyond 2 Mbit/s;

3.2 data transmission services.

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 compares BIPT's market definition with those of other NRAs and remarks that it does not include contended services. A wider definition, i.e. one including contended services, would probably not be in conformity with the Belgian Law, which defines a leased line as the provision of a transparent transmission capacity between two points.

1.4 Overview of the results of the public consultation

6 Five stakeholders sent comments during the public consultation (from 28 April to 12 June 2006). These stakeholders were (in alphabetical order):

6.1 Belgacom;

6.2 BT Belgium;

6.3 FAC (Fixed Alternative Carriers);

6.4 Mobistar;

6.5 Tele2 - Versatel.

7 As far as the general approach is concerned, the following remarks were made:

7.1 old regulation is just renewed and inefficient market players are maintained in the market;

7.2 ex ante regulation is justified as there is an abuse of a dominant position;

7.3 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.

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

8.1 the retail leased line market as defined by BIPT is in decline and hence needs no regulation;

8.2 demand side substitutability should be based more on the user's perception than on technical characteristics;

8.3 connectivity services, as they are substitutes for many end users, should have been included in the market definition;

8.4 for some stakeholders, the market definition is too wide: galvanic, analogue and digital lines do not belong to the same market; for others, the definition is too narrow and should also include leased lines beyond 2 Mbit/s;

8.5 some stakeholders were of the opinion that the geographical market should be split up into regional submarkets.

1.5 Deviation from relevant markets listed in the Recommendation

9 Market 7 corresponds to the seventh relevant market listed in the Recommendation. It includes all the retail leased lines up to and including 2 Mbit/s.

2 DESIGNATION OF UNDERTAKINGS WITH SIGNIFICANT MARKET POWER

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

10 Belgacom has been designated as an undertaking with significant market power on relevant market 7.

2.2 The criteria relied upon

11 The following criteria were relied upon:

Criterion	Result
market share incumbent (H1 2005)	94% in volume and 83 % in value
market dynamics	prices are stable since 2001 (decrease of 2Mbit/s line tariffs).
sunk costs	very substantial; alternative operators only roll out fibre networks confined to major conurbations
economies of scale	significant
control of infrastructure not easily duplicated	the incumbent's network is difficult to duplicate
vertical integration	advantage for incumbent
barriers to change	high due to high quantity rebates and high non-recurring costs

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

12 The main undertakings that are active on market 7:

12.1 Belgacom;

12.2 Colt;

12.3 Telenet;

12.4 Verizon;

12.5 Versatel.

2.4 The market shares of the undertakings mentioned above

13 Basis of their calculation: revenue in first half of 2005.

14 Market shares of undertakings:

14.1 Belgacom: 83 %;

14.2 Colt: [5 – 10] %;

14.3 Telenet: [1 – 5] %;

14.4 Verizon: [5 – 10] %;

14.5 Versatel: [1 – 5] %.

2.5 The opinion of the national competition authority

15 The NCA admits that the Belgian Law, which stipulates that transparency as one of the distinguishing features of a leased line, impedes the inclusion of data transmission services but questions the validity of the price difference criterion to conclude that there is no demand side substitution. It invites BIPT to consider the possibility to amend the Law.

2.6 The results of the public consultation

16 The following remarks were made about the analysis and the designation of SMP operators:

16.1 there are few competitors on this market as few operators are interested; this is particularly true for the submarket of analogue lines;

16.2 the designation of an SMP operator is probably useless as the market is vanishing;

16.3 the lack of price evolution since 2001 proves the absence of effective competition.

3 REGULATORY OBLIGATION

17 The following wholesale obligations are being imposed:

17.1 Non-discrimination;

17.2 Transparency;

18 The following retail obligation are being imposed:

18.1 Minimum set of leased lines;

18.2 Price control and cost accounting obligation.

3.1 The legal base for the obligations

19 The obligations are based on the Belgian Electronic Communications Act (**BECA**) of 13 June 2005. The corresponding articles in the Access Directive (**AD**) or Universal Service Directive (**USD**) are also indicated.

Obligation	**BECA**	**European Directives**
Non-discrimination	art. 58	art. 10 AD
Transparency including reference offer	art. 59	art. 9 AD
Price control and cost accounting	art. 65	art. 18 USD
Minimum set of leased lines	art. 65	art. 18 USD

3.2 Proportionality and justification of the obligations

20 Proportionality and justification:

Obligation	**Proportionality and justification**
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.
Price control and cost accounting	Prescribed in art. 65 of BECA.
Provision of minimum set of leased lines	Prescribed in art. 65 of BECA.

3.3 Obligations not found in the Access Directive

21 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

22 Not applicable.

4.2 Names of the undertakings concerned

23 Not applicable.

4.3 International commitments that need to be respected

24 Not applicable.