

SUMMARY NOTIFICATION FORM: RELEVANT MARKETS 1 AND 2

1 MARKET DEFINITION

1.1 Affected relevant product/service market

- 1 Relevant market 1 is the market for access to the public telephone network at a fixed location for residential customers.
- 2 Relevant market 2, i.e. national market for access to the public telephone network at a fixed location for non-residential customers, has been divided into three submarkets according to the characteristics and capacity of the access:
 - 2.1 market 2a: analogue access;
 - 2.2 market 2b: basic digital access;
 - 2.3 market 2c: primary digital access.
- 3 These markets include:
 - 3.1 both analogue and digital access (market 1)
 - 3.2 access through HFC cable networks.

Unlike the situation in Market 1, analogue and digital access are not considered to be substitutes for business customers and hence a subdivision of market 2 has been proposed.

- 4 These markets do not include:
 - 4.1 telephone services;
 - 4.2 retail leased lines;
 - 4.3 access to a mobile network;
 - 4.4 broadband internet access.

1.2 Affected relevant geographic market

- 5 The relevant geographic markets are national.

1.3 Summary of opinion of national competition authority

- 6 The NCA takes the view that the three criteria test should have been applied even though this market figures in the list of relevant markets annexed to the Recommendation. The NCA remarks that BIPT has not delineated its markets taking into account the situation that would occur in the absence of regulation. The NCA invites BIPT to substantiate better some substitutability tests and proposes to drop the distinction between residential and non-residential markets and define instead two markets based on the capacity of the access.

1.4 Overview of the results of the public consultation

- 7 Nine stakeholders sent comments before the end of the public consultation (from 24 October to 23 December 2005). These stakeholders were (in alphabetical order):
 - 7.1 Base;
 - 7.2 Belgacom;
 - 7.3 Belgacom Mobile;
 - 7.4 BT Belgium;
 - 7.5 Euphony;
 - 7.6 Mobistar;
 - 7.7 Platform;
 - 7.8 Tele2-Versatel;
 - 7.9 Telenet.
- 8 As far as the general approach is concerned, the following remarks were made:

- 8.1 old regulation is just renewed and there is no evolution towards deregulation;
- 8.2 the proposed regulation is not favourable to infrastructure competition;
- 8.3 a cost-benefit analysis of regulation is lacking.

9 As to the market definition, there was general agreement with the exclusion of mobile access and the separation into residential and non-residential markets, some doubts were raised about the exclusion of broadband access from the market definition, and the stakeholders' opinions were divided on the geographic segmentation

1.5 Deviation from relevant markets listed in the Recommendation

10 Market 1 corresponds to the first relevant market listed in the Recommendation whereas markets 2a, 2b and 2c are subsegments of the second 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 all markets under consideration.

2.2 The criteria relied upon

12 The following criteria were relied upon:

Criterion	Market 1	Market 2a	Market 2b	Market 2c
market share incumbent (H1 2005)	± 90 %	> 90 %	> 95 %	> 65 %
market concentration: number of competitors	3	5	> 5	> 5
market dynamics	basic product: low			higher
sunk costs	very substantial even with local loop unbundling			
economies of scale	significant			
economies of scope	triple play can lower barriers to entry or expansion			
control of infrastructure not easily duplicated	the incumbent's finely mazed network is difficult to duplicate but the barriers are lowered in densely populated areas by local loop unbundling			
easy or privileged access to resources or specific assets	only incumbent's network is ubiquitous			
easy or privileged access to capital markets/financial resources	incumbent is quoted on stock exchange and has an excellent rating			
regulatory or judicial constraints	insignificant			
technological advantages or superiority	none			
vertical integration	advantage but not fully exploited			
barriers to change	low			
countervailing buyer power	very low			higher for large companies

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

13 The main undertakings that are active in markets 1 and 2:

Name	Active in	Market 1	Market 2a	Market 2b	Market 2c
Belgacom		✓	✓	✓	✓
Telenet (Solutions)		✓	✓	✓	✓
Coditel		✓	✓		
COLT			✓	✓	✓
BT Belgium				✓	✓
Cable&Wireless				✓	✓
MCI				✓	✓
Mobistar				✓	✓
Versatel				✓	✓
Scarlet				✓	✓

2.4 The market shares of the undertakings mentioned above

14 Basis of their calculation: number of lines.

15 Market shares of undertakings (first half year 2005):

Name	Market share (%)	Market 1	Market 2a	Market 2b	Market 2c
Belgacom		~ 90%	~ 97%	~99%	~ 67%
Telenet (Solutions)		~10%	~ 2%	<1%	<0.5%
Coditel		<0.1%	<0.5%		
COLT			<0.5%	<1%	~8%
BT Belgium				<1%	~1%
Cable&Wireless				<1%	<1%
MCI				<1%	~15%
Mobistar				<1%	~4%
Versatel				<1%	~4%
Scarlet				<1%	~1%

2.5 The opinion of the national competition authority

16 The NCA did not disagree with BIPT's conclusion.

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 market share should be expressed by turnover, not by number of lines;
 - 17.2 some tariff comparisons were inappropriate;
 - 17.3 the incumbent abused its vertical integration to offer a non-replicable subscription formula;
 - 17.4 the differential between retail subscription tariffs and unbundling tariffs is too small.

3 REGULATORY OBLIGATION

- 18 The following wholesale obligations are being imposed:

	in Market	1	2a	2b	2c
Wholesale obligation					
Carrier selection and preselection (except for VoB)		✓	✓	✓	✓
Wholesale line rental		✓	✓	✓	
Non-discrimination		✓	✓	✓	✓
Transparency including a reference offer		✓	✓	✓	✓
Accounting separation		✓	✓	✓	✓
Price control and cost accounting obligation		✓	✓	✓	✓

- 19 The following retail obligation is being imposed:

	in Market	1	2a	2b	2c
Retail obligation					
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**) or Universal Service Directive (**USD**) are also indicated.

Obligation	BECA	European Directives
Carrier selection and preselection	art. 63	art. 19 USD
Wholesale line rental	art. 61, §1, al. 2, 4°	art. 12(1)(d) 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 (wholesale)	art. 62	art. 13 AD
Price control and cost accounting (retail)	art. 64	art. 17(2) USD

3.2 Proportionality and justification of the obligations

- 21 Proportionality and justification:.

Obligation	Proportionality and justification
Carrier selection and preselection	Obligations already in place under the old framework and still judged necessary given the lack of competition.

Obligation	Proportionality and justification
Wholesale line rental	Incumbent's network not replicable; alternative solutions for single invoice not always profitable (unbundling) or equivalent (bitstream access); incumbent can use subscription to leverage power into other markets.
Non-discrimination	Necessary for CS/CPS and WLR; ex post regulation insufficient.
Transparency including reference offer	Allows verification of the compliance with other obligations; facilitates negotiations.
Accounting separation	Essential to verify compliance with cost orientation and other obligations
Price control and cost accounting (wholesale)	Existing obligation.
Price control and cost accounting (retail)	art. 64 art. 17(2) USD

3.3 Obligations not found in the Access Directive

- 22 Retail obligations are imposed pursuant to article 64 of the BECA (transposition of article 17(2) of the Universal Service Directive).
- 23 At the same time, the cost orientation obligation that was imposed pursuant to article 106 of the Telecommunications Act of 21 March 1991 (**TA91**) has been lifted.

4 COMPLIANCE WITH INTERNATIONAL OBLIGATIONS

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

- 24 Not applicable.

4.2 Names of the undertakings concerned

- 25 Not applicable.

4.3 International commitments that need to be respected

- 26 Not applicable.