



EUROPEAN COMMISSION

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C(2012) 606

SG-Greffe (2012) D/1866

Institut Belge des Poste et
Télécommunications (IBPT)

35 Boulevard du Roi Albert II
B-1030 Brussels
Belgium

For the attention of:
Mr Luc Hindryckx
Président du Conseil

Fax: +32 2 226 88 41

Dear Mr Hindryckx,

Subject: Commission decision concerning Case BE/2011/1279: Call termination on individual public telephone networks provided at a fixed location in Belgium

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

I. PROCEDURE

On 30 December 2011, the Commission registered a notification from the Belgian national regulatory authority, the *Institut Belge des Services Postaux et des Télécommunications* (IBPT), concerning the markets for call termination on individual public telephone networks provided at a fixed location² in Belgium.

The national consultation³ ran from 7 September 2011 to 5 October 2011. The deadline for the EU consultation is 30 January 2012.

A request for information was sent to IBPT on 11 January 2012 and the reply was received

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, OJ L 108, 24.4.2002, p. 33, as amended by Directive 2009/140/EC (Better Regulation Directive), OJ L 337, 18.12.2009, p. 37, and Regulation (EC) No 544/2009, OJ L 167, 29.6.2009, p. 12 (Framework Directive).

² Corresponding to market 3 of Commission Recommendation of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with 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 344, 28.12.2007, p. 65-69 (the Recommendation).

³ In accordance with Article 6 of Framework Directive.

on 16 January and 18 January 2012.

Pursuant to Article 7(3) of the Framework Directive, national regulatory authorities (NRAs), BEREC and the Commission may make comments on notified draft measures to the NRA concerned.

II. DESCRIPTION OF THE DRAFT MEASURES

II.1. Background

The first review of this market was carried out in 2006⁴, and was complemented in 2007 by a market analysis concerning further operators⁵. In both notifications together, IBPT designated 20 undertakings as individually having significant market power (SMP) on their relevant markets and imposed on them obligations of access, transparency, non-discrimination as well as price control. Belgacom was made subject to an additional accounting separation obligation. IBPT furthermore notified details regarding the Key Performance Indicators (KPIs)⁶ and Belgacom's cost accounting separation obligation⁷.

II.2. The notified draft measure

II.2.1. Market definition

IBPT defines the relevant market as comprising call termination services provided at fixed locations to geographic numbers, emergency numbers and 078 numbers⁸. Conveyance to non-geographic numbers used for value added services is outside the scope of the relevant market.

IBPT defines a separate market for each fixed network operator providing call termination services over its network. The market definition covers termination on each public telephone network of the 16 operators offering fixed termination in Belgium, irrespective of the origin of the call and the technology used (PSTN and VoB).

IBPT defines the relevant product market as termination independent from the level of network at which the operators are interconnected, i.e. termination includes conveyance from the local point of interconnection to the user's premise, but may also consist in regional and national termination⁹.

Finally, IBPT defines the relevant markets corresponding to the geographic coverage of each operator's network.

⁴ Case BE/2006/0440; in its letter of 4 August 2006, SG-Greffe (2006) D/204471, the Commission did not comment on the proposed measures.

⁵ Case BE/2007/0588; in its letter of 27 February 2007, SG-Greffe (2007) D/200952, the Commission did not comment on the proposed measures.

⁶ Case BE/2008/0750; in its letter of 15 February 2008, SG-Greffe (2008) D/200659, the Commission did not comment on the proposed measures.

⁷ Case BE/2010/1033; the proposed measures concerned the cost accounting separation obligation of Belgacom, Belgacom Mobile, and Mobistar; in its letter of 8 February 2010 SG-Greffe (2010) D/1387 the Commission did not comment on the proposed measures.

⁸ In its answer to the request for information IBPT explained that 078 numbers are national numbers and were historically introduced for the purpose of international calls. Their main feature is that the location of the receiver is not identifiable. The interconnection relationships are identical to those for termination of calls to geographic numbers.

⁹ Where operators have only one level-network, they are considered to provide local termination.

II.2.2. Finding of significant market power

IBPT proposes to designate 16 undertakings as individually having SMP on their relevant markets¹⁰.

The main criteria considered by IBPT when reaching this conclusion on SMP designation include: the market shares (each provider has a 100% market share on its respective network), barriers to entry, and insufficiently strong countervailing buyer power.

II.2.3. Regulatory Remedies

IBPT proposes to impose the following obligations on all operators:

- Obligation to provide access to, and use of, certain network elements and associated infrastructure;
- Obligation of transparency¹¹;
- Obligation of non-discrimination¹²;
- Price control based on cost orientation.

Regarding Belgacom, IBPT proposes to impose in addition:

- A transparency obligation requiring Belgacom to inform on future network evolutions 5 years in advance and a migration rule obliging Belgacom to send a formal closure notice one year in advance¹³.
- Obligation of cost accounting.

IBPT explains that the BU-LRIC costing methodology as specified in the Termination Rates Recommendation¹⁴ is the appropriate costing methodology to set prices for the services in question. IBPT is currently consulting on such a model at national level, however, given the complex consultation requirements in Belgium it will only be in a position to set prices on the basis of the new system in the course of 2013¹⁵.

Until then IBPT proposes, regarding Belgacom, to maintain the termination tariffs at the current level charged by Belgacom¹⁶ and to set the price ceilings for the alternative network

¹⁰ Those are 3Stars Net, Alpha Networks, Belgacom, Brutélé, BT Worldwide, COLT Technology Services, Elephant Talk Communications Schweiz, Mobistar Entreprise Services, Mobistar, Numericable, Orange Business Belgium, Schedom, Telenet, Verizon Business, Voxbone and Weepee.

¹¹ Only the incumbent operator Belgacom is obliged to publish a reference offer.

¹² The non-discrimination obligation is proposed to apply both internally and externally regarding quality, and only externally regarding pricing.

¹³ In its answer to the request for information IBPT indicated that it will clarify the duration of its measures in this way in its final measure.

¹⁴ Commission Recommendation of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU, OJ L 124/67 of 20 May 2009 (Termination Rates Recommendation).

¹⁵ In its answer to the request for information IBPT indicated that it will, in the future, impose fixed termination rates based on a pure LRIC cost accounting methodology. IBPT indicated that a consultation on a draft model was recently launched, and will end on 5 March 2012. IBPT also mentioned that it will have to cooperate with other Belgian NRAs relating to some aspects of the model. Initially, IBPT did not, however, indicate a timetable for the imposition of a pure LRIC cost accounting system, but complemented its answer to the RFI and committed to implement the model during 2013.

¹⁶ In its answer to the request for information IBPT clarified that the current tariffs of Belgacom have been set by IBPT following its decision of 11 August 2006 (notified in cases BE/2006/439-441) on the basis of Belgacom's top-down fully distributed costs (FDC) model based on current costs (including an allocation of common costs for the termination service).

operators (ANOs) at an identical, symmetrical level. Thereby, IBPT removes the 15% mark-up which ANOs were allowed to charge for termination services until now¹⁷. IBPT proposes to impose on all operators the following price ceilings:

<i>Type of call</i>	<i>Call start-up costs (in €cent)¹⁸</i>		<i>Price per minute (in €cent)</i>	
	<i>Peak hour</i>	<i>Off-peak hour</i>	<i>Peak hour</i>	<i>Off-peak hour</i>
Local call termination	0.314	0.164	0.514	0.270
Call termination within the access zone	0.443	0.232	0.727	0.381
Call termination outside the access zone	0.568	0.298	0.932	0.489

IBPT indicates that those are in the middle range if compared to the termination rates across EU-countries¹⁹.

III. COMMENTS

On the basis of the present notification and the additional information provided by the Belgian Telecommunications Authority, the Commission has the following comments²⁰:

Need to include in the final measure the timetable regarding the imposition of BU-LRIC based termination rates

IBPT proposes to maintain the current level of Belgacom's termination rates until a BU-LRIC costing model is developed. Current prices are based on an FDC model, which includes common costs in the termination charge. In its notified measures, IBPT indicates that it will, in the future, impose a BU-LRIC model and set prices on this basis without however, initially, providing a timetable.

The Commission emphasizes that under the Termination Rates Recommendation FTRs should be implemented at cost-efficient, symmetric levels by 31 December 2012. The Commission notes that IBPT has committed to take all possible actions to

¹⁷ IBPT's decisions of 11 August 2006 and 7 March 2007 allowed the alternative operators to charge call termination fees up to 15% in excess of the equivalent rates of Belgacom. The operators 3Stars Net, BT, Colt, Mobistar, Numericable, Telenet, Verizon, KPN Belgium, Tele2, and Voxbone applied the mark-up while some other operator charged symmetric rates.

¹⁸ In its answer to the request for information IBPT confirmed that the call set-up charge is charged as part of the termination service. IBPT indicated that the set-up costs cover, on the one hand, the cost of keeping the line free between the moment the number of the called party is initiated and the moment that the called party answers and, on the other hand, the cost of specific switching equipment necessary for the set up of a telephone conversation. These are only charged in case of successful calls.

¹⁹ To compare the level of the current termination tariffs to other countries, IBPT relies on the data of the 15th Implementation Report of the European Commission, which reports 2009 interconnection charges for terminating calls on incumbents fixed network. The comparison shows that Belgacom's rates are slightly above the EU average. For example, regarding the tariff for termination of local calls at peak time, this report showed as of 1 October 2009 an EU average of 0.52 Eurocents, while tariffs in Belgium were at 0.62 Eurocents. In its answer to the request for information IBPT indicated that it will, in its final measure, rely on a more recent comparison such as the BEREC snapshot. The BEREC FTR Benchmark snapshot as of January 2011 BoR (11)57 includes in its comparison call set-up charges and established a weighted average between peak and non-peak time. Regarding local termination, it indicates an FTR average per minute for Belgacom of 0.4717 Eurocents/minute which places Belgacom's tariffs in the middle.

²⁰ In accordance with Article 7(3) of the Framework Directive.

implement the pure LRIC for fixed termination services as soon as possible and at the latest during the year 2013. The Commission welcomes that IBPT further committed to clarify this implementation date in its final measure.

If the BU-LRIC model currently developed by IBPT will not be finalized on time, the IBPT must make sure that any alternative methodology used to set the termination rates by 2013 should be in line with the Termination Rates Recommendation, i.e. that the outcome of the use of an alternative methodology should not exceed the average of the termination rates set by NRAs implementing the recommended cost methodology.²¹ Market players should not, in any case, face a lack of certainty concerning the levels of FTRs to be applied from 2013 onwards.

Pursuant to Article 7(7) of the Framework Directive, IBPT shall take the utmost account of comments of other NRAs, BEREC and the Commission and may adopt the resulting draft measures and, where it does so, shall communicate them to the Commission.

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

Pursuant to Point 15 of Recommendation 2008/850/EC²² 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 Commission²³ within three working days following receipt whether you consider that, in accordance with EU and national rules on business confidentiality, this document contains confidential information which you wish to have deleted prior to such publication²⁴. You should give reasons for any such request.

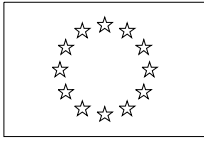
Yours sincerely,
For the Commission,
Robert Madelin
Director-General

²¹ See Recital 20 and Recommend 12 of the Termination Rates Recommendation.

²² 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.

²³ Your request should be sent either by email: INFISO-COMP-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

²⁴ The Commission may inform the public of the result of its assessment before the end of this three-day period.



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For the attention of:
Mr Luc Hindryckx
Président du Conseil

Fax: +32 2 226 88 41

Dear Mr Hindryckx,

Subject: Corrigendum of the Commission decision C(2012) 606 of 30/01/2012 related to case BE/2012/1279: Call termination on individual public telephone networks provided at a fixed location in Belgium

Comments pursuant to Article 7(3) of Directive 2002/21/EC²⁵

Please note that:

- The case number BE/2011/1279 shall read BE/2012/1279.
- In footnote 8 "international calls" shall read "long distance calls within Belgium"

Yours sincerely,
For the Commission,
Robert Madelin
Director-General

²⁵ 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, OJ L 108, 24.4.2002, p. 33, as amended by Directive 2009/140/EC (Better Regulation Directive), OJ L 337, 18.12.2009, p. 37, and Regulation (EC) No 544/2009, OJ L 167, 29.6.2009, p. 12 (Framework Directive).