



Brussels, 29.10.2015  
C(2015) 7683

Institut belge des services postaux et  
des télécommunications (IBPT)  
Ellipse Building - Bâtiment C  
35 Boulevard du Roi Albert II  
1030 Bruxelles

For the attention of  
Mr. Jack Hamande  
Président du Conseil

Fax: +32 2 226 88 41

Dear Mr Hamande,

**Subject: Commission Decision concerning Case BE/2015/1783: Wholesale  
central access provided at a fixed location for mass-market products  
in Belgium**

**Article 7(3) of Directive 2002/21/EC: No comments**

## 1. PROCEDURE

On 2 October 2015, the Commission registered a short form notification from the Belgian national regulatory authority, *Institut belge des services postaux et des télécommunications* (IBPT)<sup>1</sup>, concerning the market for wholesale central access provided at a fixed location for mass-market products<sup>2</sup> in Belgium.

The national consultation<sup>3</sup> ran from 24 March to 30 April 2015.

---

<sup>1</sup> 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 by Directive 2009/140/EC, OJ L 337, 18.12.2009, p. 37, and Regulation (EC) No 544/2009, OJ L 167, 29.6.2009, p. 12.

<sup>2</sup> 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 Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (Recommendation on Relevant Markets), OJ L 295, 11.10.2014, p. 79.

<sup>3</sup> In accordance with Article 6 of the Framework Directive.

On 13 October 2015, a request for information<sup>4</sup> was sent to IBPT and a response was received on 16 October 2015.

## **2. DESCRIPTION OF THE DRAFT MEASURE**

### **2.1. Background**

The market for wholesale central access provided at a fixed location for mass-market products in Belgium was previously notified to and assessed by the Commission under cases BE/2011/1228<sup>5</sup>.

The regulator at the time, CRC, included Bitstream access provided through ADSL, SDSL and VDSL in the relevant market, irrespective of whether the SMP operator provided its end customers with voice services. CRC excluded resale products, leased lines services as well as cable based access from the relevant market. The geographic market was defined as national. The regulator designated Belgacom (now Proximus) with SMP and imposed the following obligations: (i) access to broadband services, (ii) non-discrimination, (iii) transparency (including the publication of a reference offer), (iv) price control and cost accounting and (v) accounting separation.

The Commission invited CRC to monitor the market, namely with regard to the evolution of the dismantling of local exchanges by Belgacom and the implementation of VDSL2, in order to ensure competition in the transition to NGA networks and to avoid new bottlenecks. Moreover, the Commission drew CRC's attention to the potentially varying levels of competitive pressure exercised at retail level by cable operators in different areas of the Belgian market, which, together with the physical access remedies also imposed, could potentially warrant reducing the intensity of downstream regulation in certain areas.

In case BE/2013/1514<sup>6</sup> the regulator amended the reference offers for LLU, for Bitstream services for xDSL technologies over ATM or Ethernet networks, and for Bitstream services for VDSL2 over Ethernet networks. The measure implemented IBPT's 2011 decision with regard to the imposed access, transparency and non-discrimination obligations, without imposing any new obligations. The proposal aimed at improving the internal consistency, transparency and readability of reference offers. In particular, the draft measure provides details concerning Service Level Agreements (SLAs), compensations, pricing and billing, and the improvement of planning and operational processes. The Commission did not comment.

### **2.2. The draft measure notified by way of a short form**

The current proposal aims at implementing minor modifications to Proximus' reference offer, as proposed by the SMP operator itself.

---

<sup>4</sup> In accordance with Article 5(2) of the Framework Directive.

<sup>5</sup> C(2011) 4535

<sup>6</sup> C(2013) 8182

The first modification is proposed in order to comply with the obligations previously imposed by IBPT in case BE/2013/1514. This deals with the addition of a new SLA and of a compensation fee for splicing interventions (which involve a permanent or semi-permanent connection between two cables), further described here below.

The measure sets the conditions under which Proximus will be allowed to "stop the clock" in the event that an authorisation from the local government is required (which would delay Proximus' splicing intervention), whether this occurs during the 'provisioning' phase or the 'repair' phase.

The measure also sets Service Level Objectives (SLOs) defining the maximum number of days authorised for dealing with '*splicing interventions during repair*' tickets (all splicing works relating to an existing drop wire on which traffic has been measured). The proposal sets a compensation fee (set at a level corresponding to 150% of the daily rental fee paid to Proximus by the alternative operator) that the SMP operator will be required to pay when it does not meet its obligations.

Also in the context of splicing interventions, Proximus introduces the concept of '*Small Network Adaptation (SNA) detected during repair*' (the placement of a new drop wire during the 14 days following the conclusion of the 'provisioning' phase, provided no traffic is measured on the installed copper pair). A distinction is made between this type of SNA and the already defined '*SNA detected during provisioning*', which take place only during the provisioning or ordering phase. IBPT concludes that the same fee should be set for both types of interventions; these fees will be charged to alternative operators only when Proximus is not responsible for the issue causing the SNA.

Then, IBPT's proposal also includes two additional modifications of the reference offer, which result from a voluntary request by Proximus:

- A '*Useless End-User Visit*' fee, which was previously only imposed for the 'provisioning' phase, is now introduced also during the 'repair' phase. These fees are charged by Proximus to alternative operators when a Proximus technician is not able to perform an intervention, for example because the end customer is absent or refuses to let in the technician. The level of the fee is the same for both phases; these will be reviewed in a future measure to be notified to the Commission in the course of 2016.
- The *XML Done Timer SLA* (which indicates the time elapsed between the actual execution of the order by the technician and the receipt of the so-called '*XML report Done*', with which the correct execution of the order is confirmed) is modified to exclude orders involving *Certified Technicians* (i.e. technicians not directly employed by Proximus). It is proposed to remove these orders from the scope of the SLA because the time required by *Certified Technicians* to execute their tasks (which can take up to six days after the execution of the line test) is out of the control of Proximus. Therefore, the XML Done Timer SLA will only be relevant for orders dealt with by Proximus technicians.

Proximus is required to submit a proposal to IBPT to implement the decision within 1 month after its publication.

### 3. NO COMMENTS

The Commission has examined the notification and has no comments.<sup>7</sup>

Pursuant to Article 7(7) of the Framework Directive, IBPT may adopt the draft measure and, where it does so, shall communicate it 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/EC<sup>8</sup> 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 Commission<sup>9</sup> 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 publication.<sup>10</sup> You should give reasons for any such request.

Yours sincerely,

For the Commission,  
Roberto Viola  
Director-General

---

<sup>7</sup> In accordance with Article 7(3) of the Framework Directive.

<sup>8</sup> 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.

<sup>9</sup> Your request should be sent either by email: CNECT-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

<sup>10</sup> The Commission may inform the public of the result of its assessment before the end of this three-day period.