

Input on CSA/VRM/Medienrat consultation on broadband access and broadcasting services

I. BROADBAND

1 & 3 Introduction and regulatory context

The members of the PLATFORM have read with interest the common public consultation of the CSA/VRM/Medienrat on the broadband and broadcasting markets. We understand from this document that the 3 media regulators wish to receive input on questions relating to the broadband and broadcasting markets in Belgium in light of the forthcoming BIPT analysis of markets 4 & 5.

Concerning the broadband markets, we consider that both markets need to be regulated, Belgacom being SMP on both markets at national level. We refer in that sense to the BIPT decision dated 10 January 2008 which was adopted after *inter alia* comments from the members of the PLATFORM, the 3 media regulators, the Competition Council and the European Commission.

According to this decision, Belgacom is SMP on both local loop unbundling and bitstream markets on a national scope. We consider that after less than one year of implementation, the market conditions have not evolved to justify other conclusions. We would therefore favour enforcement and stability of the wholesale broadband regulation. In that sense, the Commission has highlighted in its 13th implementation report that: “*Belgium risks falling behind Europe's best performers as growth is slowing down. In addition, retail prices in particular for high speed broadband continue to be high. The market share of new entrants has only increased by 1 percentage point, mainly through cable connections.*”

We note that the BIPT has re-launched a new market analysis on markets 4 and 5 and has designated recently a consultant. In parallel, the BIPT has also prepared an additional decision on the specific issues raised by Belgacom's VDSL network. Its draft decision that insists on the risk for competition of the VDSL scenario should be adopted in the coming weeks. With this decision, the BIPT will impose additional obligations to Belgacom in terms of sub loop unbundling and access to street cabinets or Remote Optical PLATFORM, as well as on backhaul solution, pricing and LEX closure.

It seems that since September 2007, the cooperation agreement between the media regulators and the BIPT on those broadband decisions has been working efficiently, which we fully welcome. It seems indeed of high importance that this process enriches the BIPT decisions without delaying its adoption process to ensure its decisions remain relevant.

We therefore understand that the exercise launched by the media regulators wishes at helping them to anticipate the future new BIPT consultation on markets 4 and 5 and not as such to launch their own markets analysis. In any case, we invite them to work very closely with the BIPT in order to ensure consistency, robustness and stability of the broadband regulation.

Concerning broadcasting services, as showed by other European countries like for instance France, convergent offers and triple play offers (telephony, Internet, TV) are key factors of growth and innovation.

As such, the BIPT decision dated 10 January 2008 on markets 11 and 12 does not allow or forbid the DSL operators to launch TV over DSL and even highlight that the market will evolve towards such offers (p 77): “ Les FAI ont quant à eux commencé par fournir des services d'accès à Internet et développent à présent des services de voix, ils devraient prochainement offrir des services de télévision sur DSL.”

However, one can regret that today DSL competitors cannot deliver TV services via DSL because they are not granted relevant parameters at wholesale level by Belgacom, in particular regarding bitstream. Such issue has already been highlighted to the BIPT which decided in its BROBA ADSL2+ decision dated 4 June 2008 (p. 14) that:

“l’Institut tient à attirer l’attention du secteur sur le fait que les opérateurs alternatifs doivent demander l’autorisation nécessaire aux régulateurs des medias pour utiliser BROBA à des fins de radiodiffusion”.

“Tot slot wil het Instituut de sector erop wijzen dat de alternatieve operatoren aan de mediaregulators de nodige toestemming moeten vragen om BROBA voor omroepdoeleinden te gebruiken”.

We therefore consider that the new market analysis process launched by the BIPT with the cooperation of the media regulators represents the best opportunity for the regulators to push Belgacom to include the relevant parameters in the Belgacom wholesale offers and in particular the bitstream offer, allowing the DSL competitors to enter the TV market via DSL technology. This would enhance competition in terms of TV offers and bundles to the benefit of consumers. We are at the CSA/VRM/Medianrat disposal to discuss further this crucial issue.

5. Broadband architecture

The picture included in the consultation document should be reviewed in light of the new VDSL and IP network of Belgacom in order to adopt a forward looking approach and to assess all the consequences such changes imply in terms of regulation.

6. Implementation of the current regulation

What are your impressions concerning the implementation and effectiveness of the current regulation on the broadband market?

Decisions concerning the wholesale markets and more particular regulating the conditions (qualitative and quantitative) of the use of the Belgacom network by the alternative operators are too often not imposed effectively. This has recently been highlighted by the European Commission in its comments on the broadband markets and fixed telephony markets.

When looking at the market share evolution, it is quite obvious that the overall regulation of telecom markets as well as the regulation of the wholesale broadband markets has not been effective as it has not allowed to increase the level of competition. Hence, we invite the regulators to take much stronger measures to warrant an **effective** and **sustainable** competitive playing field. We recommend therefore the regulators to analyse the competitive market using Porter's five forces model¹ as well as the sixth force defined by Brandenburger and Nalebuff².

As an example, more than 2 years after that the BIPT obliged Belgacom to offer ADSL2+ in bitstream, the DSL competitors have only been granted a bitstream offer as from August 2008 with

¹ Porter, Michael E. “How competitive forces shape strategy” Harvard Business review, March-April 1979: 137- 145.

² Grant, Robert M. Contemporary strategy analysis. Fifth Edition. Blackwell Publishing, 2005.

definitive tariffs adopted in October 2008. Meanwhile Belgacom has used the ADSL2+ technology to offer services to its retail clients within its TV package and since July 2008 as pure Internet offers. The same story is repeating itself with VDSL 2. While Belgacom already covers 63% of the Belgian territory with VDSL 2 and has commercialised TV package using VDSL2 technology as from April 2008, the alternative operators have not been granted a reference offer yet in order to be able to use this same technology and offer to the end users a service at competitive conditions.

The BIPT has started to improve its broadband regulation but should be more proactive and should ensure that its decisions are applied immediately and correctly.

Furthermore, the operational implementation of the decision and associated operational processes are such that they impede the alternative operator's ability to effectively compete. As mentioned by Porter, suppliers can exert bargaining power by reducing the quality of purchased goods and services³.

7. Policy approach to triple play

Is there a relevant triple-play market (provision of internet access, television and fixed telephone services as a bundle) in Belgium?

We are unaware of any regulator in Europe that has defined a specific triple or multi play market. Although many bundled offers are provided on the consumer market in Belgium, the alternative operators are not effectively able to offer TV services over the Belgacom network. While recognising that Belgacom is best equipped in terms of financial means, market position and technical capabilities to offer full triple/quadruple play offerings.

However, we think that market forces are irrevocably pushing towards triple/quadruple play offers. Thus even without a clear retail triple play market, we consider that to avoid discrimination and improve competition and choice at retail level to the benefits of the consumer, Belgacom should provide the necessary reference offers in order for alternative operators to launch TV offers via LLU and bitstream.

If it does, should it be regulated?

At this date, the wholesale regulation is on that topic nowhere since the wholesale technical parameters do not allow the DSL competitors to launch TV services and compete in particular with Belgacom. We therefore invite the media regulators together with the BIPT to improve the wholesale conditions in order to allow the DSL competitors to launch TV offer via DSL technology.

We also note that Belgacom's retail offers are discriminatory since it uses for itself resources to launch TV offer while at the same time it refuses the same or equivalent resources to the DSL competitors that have no other choice than to access its network if they want to enter the Internet market.

As we already mentioned, there are significant market forces that pushes eventually towards triple (and even quad play) however, as already mentioned in the foregoing, alternative operators are excluded from the fixed TV market. Hence, urgent measures should be taken to remedy this situation.

³ Porter, Michael E. "Competitive Advantage. Creating and Sustaining Superior Performance" The Free Press, 1985.

Customer value analysis clearly shows strong and direct correlation between the number of services a customer takes from one same provider and the associated customer life time. Hence, the more services a customer takes from one provider the more its life time value increases, hence the higher the Customer Equity (Ultimately the higher the undertaking value). Not only because of the value of the additional product or service but also for an important part because of its life time increase (reduction of churn i.e. the customer stays longer). In other words, every time a customer having product “A” buys an extra products “B” the total NPV is not equal to $X + Y$ but $X+Y+ Z$

With

X = the NPV of a customer having product A in stand alone

Y = the NPV of a customer having product B in stand alone

Z = incremental positive NPV resulting form increase of life time (churn rate reduced) + incremental positive NPV resulting from lower transaction cost (e.g; acquisition cost, marketing cost etc.)

Hence, some operators have a strong incentive to move to triple (Quad play) services because it does not only increase customer equity but it also **increases the barriers to entry for their competitors** (e.g. TV market not accessible for alternative DSL operators, increase of customer acquisition cost etc.)

Furthermore, it is easy to understand that the above facilitates cross subsidization between Telecom and Media. First, when Belgacom entered the digital TV market, they could justify their business case because of the incremental cash flows due to the increase of customer life time value of their existing customer base which, as we already said, is mainly due to historical monopoly situations. Additionally, their large exiting Telecom customer base allowed them to significantly reduce transaction cost for the new services. Second, by doing so, Belgacom is raising the entry barriers for the DSL alternative operators.

To illustrate our view, with add some screen shots from Belgacom’s web site:

Pack Internet avec Internet Budget + TV + Mobile envoyer à un ami

Ce pack combine l'abonnement internet de votre choix avec un abonnement TV digitale "Classic +" et le forfait Smile de votre choix. La location du décodeur TV est comprise dans le Pack et vous bénéficiez d'une ristourne importante. Vous pouvez prendre jusqu'à 5 Smile par pack et profiter d'une ristourne permanente de -15% sur chaque forfait Smile. Prix du pack Internet Budget + TV + Mobile à partir de €38,50 selon le forfait Smile sélectionné. Le prix indiqué est la base à laquelle vient s'ajouter votre forfait Smile.

Abonnement gratuit
2 mois gratuits pour chaque nouvelle activation ADSL, Classic+ et modem gratuit !
Offre valable à partir du 01/10/2008 jusqu'au 19/11/2008

[plus d'infos](#) commander



<p>Pack Internet avec Internet Light + TV + Mobile PROMO</p>  <p>Abonnement gratuit plus d'infos commander</p>	<p>Pack Internet avec Internet Go + TV + Mobile PROMO</p>  <p>Abonnement gratuit plus d'infos commander</p>	<p>Pack Internet avec Internet Go (sans ligne fixe) + TV + Mobile PROMO</p>  <p>Abonnement gratuit plus d'infos commander</p>	<p>Pack Internet avec Internet Light + TV + Mobile sans ligne fixe PROMO</p>  <p>Abonnement gratuit plus d'infos commander</p>
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Figure 1 : Belgacom bundle Internet, TV and mobile

Packs I-Talk + Internet + TV + Mobile

Internet + Téléphonie: surfez et téléphonez via votre ligne fixe I-Talk Internet.

Pack Internet Light + Téléphonie + TV + Mobile envoyer à un ami

Internet + téléphonie: surfez et téléphonez via votre ligne fixe I-Talk;

Prix du pack I-Talk + Internet Internet Light + TV + Mobile à partir de €58,50 selon le forfait Smile sélectionné. Le prix indiqué est la base à laquelle vient s'ajouter votre forfait Smile.

€ 58,50 /mois
2 mois gratuits pour chaque nouvelle activation ADSL, I-Talk, Classic+ et location du décodeur
Offre valable à partir du 01/10/2008 jusqu'au 19/11/2008

[plus d'infos](#)



<p>Pack Internet Light + Téléphonie + TV + Mobile PROMO</p>  <p>€ 65,50 /mois plus d'infos</p>	<p>Pack Internet Go + Téléphonie + TV + Mobile PROMO</p>  <p>€ 68,50 /mois plus d'infos</p>	<p>Pack Internet Go + Téléphonie + TV + Mobile PROMO</p>  <p>€ 75,50 /mois plus d'infos</p>
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Figure 2: Belgacom Bundle I-talk, Internet, TV and Mobile

Packs Internet + TV

Internet et télévision: à partir de 30€/mois.

Pack Internet avec Internet Budget + TV envoyer à un ami

Ce pack combine l'abonnement internet de votre choix avec l'abonnement TV digitale "Classic +". La location du décodeur TV est comprise dans le Pack et vous bénéficiez d'une ristourne importante.

€ 30.00 /mois

[plus d'infos](#) commander



<p>Pack Internet avec Internet Light + TV</p>  <p>€ 40.00 /mois</p> <p>plus d'infos commander</p>	<p>Pack Internet avec Internet Go + TV</p>  <p>€ 50.00 /mois</p> <p>plus d'infos commander</p>	<p>Pack Internet avec Internet Go (sans ligne fixe) + TV</p>  <p>€ 50.00 /mois</p> <p>plus d'infos commander</p>	<p>Pack Internet avec Internet Light + TV sans ligne fixe</p>  <p>€ 40.00 /mois</p> <p>plus d'infos commander</p>
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Figure 3: Belgacom bundle Internet and TV

Pack Internet avec Internet Budget + TV + Mobile envoyer à un ami

Ce pack combine l'abonnement internet de votre choix avec un abonnement TV digitale "Classic +" et le forfait Smile de votre choix. La location du décodeur TV est comprise dans le Pack et vous bénéficiez d'une ristourne importante. Vous pouvez prendre jusqu'à 5 Smile par pack et profiter d'une ristourne permanente de -15% sur chaque forfait Smile. Prix du pack Internet Internet Budget + TV + Mobile à partir de €38,50 selon le forfait Smile sélectionné. Le prix indiqué est la base à laquelle vient s'ajouter votre forfait Smile.

Abonnement gratuit

2 mois gratuits pour chaque nouvelle activation ADSL, Classic+ et modem gratuit !

Offre valable à partir du 01/10/2008 jusqu'au 19/11/2008

[plus d'infos](#) commander



<p>Pack Internet avec Internet Light + TV + Mobile</p>  <p>Abonnement gratuit</p> <p>plus d'infos commander</p>	<p>Pack Internet avec Internet Go + TV + Mobile</p>  <p>Abonnement gratuit</p> <p>plus d'infos commander</p>	<p>Pack Internet avec Internet Go (sans ligne fixe) + TV + Mobile</p>  <p>Abonnement gratuit</p> <p>plus d'infos commander</p>	<p>Pack Internet avec Internet Light + TV + Mobile sans ligne fixe</p>  <p>Abonnement gratuit</p> <p>plus d'infos commander</p>
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Figure 4: Belgacom bundle Internet, TV and mobile

In conclusion, we may say that the Telecom and the media markets are deploying forces that impact the respective competitive landscapes. I.e. telecom impacts media and media impacts telecom. That's the reason why we consider essential to be allowed to launch TV services also via bitstream.

All this being said, in order to avoid consumer harm and to warrant a sustainable competitive playing field, all involved regulators should urgently take the needed measures to forbid Belgacom to offer bundles of telecom products with TV products as long as alternative DSL operators are not in a position to offer a competitive TV value proposition on the retail market.

8. Importance of cable PLATFORM in the broadband market

Should the cable PLATFORM be taken into consideration when defining and analysing markets 4 and/or 5 from a broadband point of view? Please motivate your answer.

At this stage, the BIPT has excluded the cable operators from former markets 11 and 12. We do not consider that after one year of implementation market evolution would justify any change in this analysis.

In that sense, we also note that the European Commission has highlighted in its comments dated 18 July 2008 on the French regulator draft decisions regarding markets 4 and 5 that cable has to be excluded from the markets.

Is the unbundling of the cable networks technically possible and economically viable? Please motivate your answer.

At this stage, we question the fact that the unbundling of cable networks would lead to increased competition because:

- Offering services on two different infrastructures for an alternative operator would increase its operating costs.
- The cable networks are not unified, so to have a national coverage there would be multiple offers. Hence those would further increase cost and operational burden.
- High speed wholesale infrastructure allowing broadband and TV services to be offered to end users **is needed now**, not in one or two years.

Furthermore, it is important to focus on effective wholesale offerings from Belgacom and that any decision may not **result in less remedies imposed on Belgacom for the DSL and future NGN networks.**

How significant are the switching costs between the DSL network and the coaxial cable, for an alternative operator?

Obviously, in the absence of concrete elements, it is impossible to assess the switching costs. However, from a conceptual point of view we may consider following elements:

- Delays in infrastructure availability would allow Belgacom to further consolidate their position on the triple (Quad) play offerings which, for the reasons explained here above, would significantly increase the acquisition cost of alternative DSL operators.
- Cost of operating services on DSL and cable infrastructure. Operational cost and commercial cost. Product and services will not be totally equivalent.
- Existing BRUO/BROBA investment will have to be impaired.

9. Next generation access and next generation networks

How do you view the development of the market for broadband services during the next years? What do you expect from future regulation?

In terms of NGN, Belgacom is investing in an “all IP” network. In terms of NGA, Belgacom has opted for a VDSL scenario, i.e. it deploys fiber until the street cabinets. The NGA constitutes a

clear opportunity for launching new and innovative services but it can also lead to the end of DSL competition in case strong and efficient regulatory measures are not adopted.

As showed and acknowledged by several studies, the VDSL scenario includes *per se* higher risks on competition than FttH, which justifies stronger and anticipative ex ante regulatory measures.

We also consider that public Authorities should better examine what is the real added value of a VDSL roll out compared to current ADSL/ADSL2+ offers. In other words, we strongly wonder whether the reason behind an incumbent willingness to implement VDSL and impose it to its DSL competitors is not merely to kill the DSL competition. In such case, public Authorities should impose that current technologies and offers must remain available to DSL competitors even if the incumbent solely uses its new VDSL network.

It is essential that the evolution towards NGN does not undermine the Belgian broadband competition. As underlined by the EU in the 13th implementation report, the broadband competition is already weak. Such evolution puts at risk the alternative operators' investments in terms notably of unbundling.

The PLATFORM considers essential that the following conditions are implemented to safeguard competition or at least limit detrimental effect of the VDSL roll out on competition:

- Improve and ensure transparency and updated information on Belgacom network evolution;
- Efficient and non discriminatory access to Belgacom network, and in particular bitstream VDSL access with cost oriented prices and sufficient flexibility to compete with Belgacom (QoS, TV, business requirements...);
- Sub loop unbundling and backhaul solutions required: access to dark fibre and Ethernet backhaul in particular;
- No LEX closure before reasonable delay, at least 8 years prior notice;
- No sudden migration to IP network, no possible migration before clear definition and correct implementation of an alternative solution;
- No higher termination rates in migration to IP
- All migrations costs at Belgacom's expenses.

One can indeed reasonably assume that Belgacom will adopt the same anti competitive delaying tactics as for current technologies it used at retail level - as for example ADSL2+ where we had to wait more than 2 years before any bitstream offer or VDSL1, where Belgacom has been using this technology for at least 5 years without any corresponding wholesale offer - without any corresponding wholesale offer.

It is worth noting that already in 2004 when it was launched by Belgacom, some members of the PLATFORM asked the incumbent to be granted a VDSL wholesale offer and raised this issue to the BIPT. However, Belgacom did not answer positively on this request, arguing it was respecting the regulatory framework that did not impose any obligation on VDSL. The PLATFORM deplors that, after 4 years, the situation is remaining the same and no wholesale VDSL offers have been implemented yet.

We expect thus that regulation will warrant the continuity of service provisioning by the alternative operators at competitive, non-discriminatory and cost oriented conditions, taking into account that the business models for SLU are economically not viable. We refer in that sense to the Analysys Mason study made on request of the BIPT in July 2008. It will be important to foresee a continuation of wholesale access to the incumbent infrastructure, even if LEXes will be closed down. Operators should have the guarantee that ULL investments can still be valorized, and that

there is a transition period respected for the migrations. The alternative operators need a complete full-fledged VDSL bitstream offer at cost oriented prices that enables them to continue servicing their customers at a competitive price.

Finally, we consider that there would not be any reason justifying that the new bitstream offer would only allow VDSL. We consider necessary that the new bitstream offer on IP network will allow not only VDSL but also current technologies (ADSL, ADSL2+...). Current technologies will still be required to answer end users needs on Internet access or business connections that would not need the capacities of VDSL (and thus at a lower cost than VDSL).

You will find further inputs on this topic within the PLATFORM comments on the European Commission draft recommendation on NGA as well as on the PLATFORM comments to the BIPT consultation on VDSL bitstream offer.

What will be the technical differences between the implementation of a broadcast service on xDSL (ADSL 2+) and on a “NGN/NGA”?

The NGA solution of Belgacom is an xDSL technology: Belgacom rolls out fiber until the streets cabinets and keep the copper network between the street cabinets and the end users premises.

This differs from other countries where operators have chosen to deploy fiber directly until the building or houses (FFTb/FTTh).

10. Different geographical markets in Belgium?

What is/are, in your opinion, the relevant geographical market(s) (in Belgium)?

Until now, wholesale broadband access markets have been defined nationally by the authorities (Competition Council and BIPT) that have examined the broadband market in Belgium⁴.

These precedents are also in line with economic reality.

First, it can be observed that the alternative operators that have launched their broadband services on the basis of ULL and bitstream access products have always aimed at having a national coverage. The ADSL2+ case is a good illustration: the alternative operators have been requesting ADSL2+ at bitstream level in order to be able to launch national offers. The only operators which have limited their offerings to regional areas are the cable network operators which have relied on their own network for the provision of broadband services. The members of the PLATFORM have also emphasized several times that one of the problems with wholesale cable access consisted

⁴In its analysis of the market for unbundled access to the local loop, the BIPT considered that “*Les conditions de concurrence sur ce marché sont homogènes sur l'ensemble du territoire de la Belgique. Belgacom est en effet le seul fournisseur de ce type de services sur le territoire. De surcroît, la couverture de son réseau téléphonique public est nationale et les obligations réglementaires pesant sur l'opérateur historique en matière d'accès dégroupé sont nationales. De ce fait, Belgacom n'est pas en mesure de différencier la tarification de ces services. L'ensemble de ces éléments conduit l'IBPT à la conclusion que le marché de l'accès dégroupé à la boucle locale est un marché national*” (BIPT Decision on markets 11 and 12, pp. 100-101). [In its analysis of the market for wholesale bitstream access, the BIPT similarly considered that “*L'offre en gros à un débit binaire de type BROBA II de l'opérateur historique repose sur un réseau de dimension nationale. De plus, les obligations réglementaires pesant sur l'opérateur historique en matière d'accès à un débit binaire sont imposées sur une base nationale. De ce fait, Belgacom n'est pas en mesure de différencier la tarification de ces services à l'intérieur du territoire. Il y a lieu d'ajouter que la politique de commercialisation des produits de l'accès à un débit binaire de Belgacom n'a pas de déclinaisons régionales. D'autre part, il n'existe pas au premier semestre 2007 d'offres en gros haut débit concurrents à celles de Belgacom. Même si celles-ci étaient amenées à se développer pendant la période de l'analyse, ces offres reposeraient essentiellement (comme c'est le cas dans les autres pays européens) sur le dégroupage de la boucle locale. La structure des coûts de ces offres serait donc dépendante de la tarification de l'accès dégroupé à la boucle locale, elle-même fixée sur la base d'une réglementation nationale. De plus, ces opérateurs alternatifs auraient également pour principal concurrent les offres de Belgacom (de type BROBA II). La stratégie de tarification de ces produits serait donc déterminée par l'offre nationale de l'opérateur historique. Les conditions de concurrence sur le marché de l'accès à un débit binaire apparaissent donc homogènes sur l'ensemble du territoire. L'ensemble de ces éléments conduit l'IBPT à la conclusion que le marché de l'accès à un débit binaire est un marché national*” (BIPT Decision on markets 11 and 12, p. 171)

precisely in its fragmented territorial coverage that does not allow to compete at national level with the incumbent and would limit economies of scale.

Second, Belgacom has, so far, consistently applied a national pricing strategy for its broadband products which has resulted in homogeneous pricing conditions across the country. The existence of regional cable competitors has therefore never conducted Belgacom to apply differentiated tariff conditions at retail level. At wholesale level as well, Belgacom has always applied uniform, national, prices. BIPT also confirmed that wholesale offers must have a national coverage and has forbidden Belgacom to withdraw the BROBA offer in Flanders as from 2009 as initially proposed by the incumbent in the BROBA 2008 debates.

We do not consider that current market evolutions justify different conclusions.

To what extent does the market analysis need to take geographical differences into account?

Based on the competition law and as concluded by the BIPT in its decision of 10 January 2008, the markets for wholesale broadband access, LLU and bitstream, in Belgium are national in scope. We note that some regulators within Europe have started to define sub regional markets for broadband with deregulation of bitstream in some part of the country.

However, and unfortunately in terms of competition welfare, such examples cannot apply in Belgium since the market conditions are very different. In Belgium the LLU has started to take off only as from July 2007 because the tariffs were, before the new tariff imposed by the BIPT, too excessive to encourage investments. Therefore the LLU penetration rate is very low compared to countries where regulators have started to deregulate like for example the UK. Even if the BIPT would define regional markets, there would be no ground for deregulation because of such low LLU penetration rate.

Public Authorities must also keep in mind that introducing additional complexity in the broadband regulation at a time where DSL competitors have no choice than to follow Belgacom in its move towards VDSL would even further weaken their position.

In your opinion, what are the elements that justify the differences?

Not relevant; see above answer

Do you think that the regulation must investigate this aspect? Please develop.

See above

11. Indirect Price Constraint

Do you think that the indirect pricing constraint on the xDSL providers, offering wholesale broadband access, exercised by the cable operators, could be strong enough to limit the incumbent's market power?

We note that Belgacom does not seem to suffer any price constraint from the cable operators since its market share does not seem to decrease. We also note, as criticised by the European Commission, that retail broadband tariffs remain very high in Belgium, showing a clear lack of competition. Additionally, we also notice that Belgacom has performed several price increases over the last years. Clearly, Belgacom does not compete on price.

As far as DSL competitors are concerned, it is clear that Belgacom has a very strong market position since it manages to refuse access, delay implementation or adopts obstructive behaviors to weaken even more DSL competitors.

In addition, we refer to the BIPT aforementioned decision on markets 11 and 12 that concludes that the cable operators' indirect pricing constraint is not sufficient to limit the incumbent market power.

Is this effect significant enough to reduce the market power of the DSL operator to a non-SMP level?

In our opinion this is clearly not the case.

12. Differentiation of remedies

If the relevant market corresponds to the national territory, do you think that the remedies have to be differentiated, taking into account the different regions and levels of infrastructure competition? Can you substantiate your opinion?

There is one national incumbent that manages to keep very high market share at retail level and mainly one cable operator in each Region; this cannot be considered as being sufficient in terms of competition and justify on the contrary efficient wholesale regulation. Imposing different remedies to Belgacom in different part of the country would further weaken the DSL competition to the detriment of competition and consumers' choice. Hence, this would harm consumers.

II. BROADCASTING

14. Place of broadcasting services

Does the BIPT's decision on markets 4 and 5 allow alternative operators to require the use of broadcast services through the WBA and LLU?

The situation is quite complex and requires clarification. As such, the BIPT does not allow nor forbid TV in markets 11 and 12. However, as indicated above, for bitstream in particular, action from the media regulators is required.

As indicated above, we request the regulators to impose on Belgacom to widen its offer and include all the technical parameters required to allow, at least, the DSL competitors to offer retail fixed TV services. We are at the CSA/VRA/Medienrat disposal to describe further what those parameters are.

Economically and technically, what are the principal differences between markets 4 and 5 for the wholesale broadcasting services regulation?

From a technical point of view, market 4 gives more flexibility in terms of product offerings. From an economical point of view, the CAPEX investments are higher which requires more upfront investments to connect potential new customers that need to churn from Belgacom. Such a risk could only be taken in the most populated area. However, the uncertainties around NGN are such that the risk to further invest in market 4 has become too high.

Taking into account a forward looking perspective with NGN it is unlikely that market 4 and SLU will be economically viable for alternative operators. (See study made by Analysis at the request of the BIPT for the complementary remedies decision in the frame of Belgacom's NGN Plans). As we already mentioned in the foregoing Belgacom can afford to invest huge amounts in VDSL and NGN roll out because their business case highly benefits from the incremental cash flows of their important "historical" customer base. (e.g. lower transaction cost, increase of life time etc.), as well as the decreased costs due to the increase operational efficiencies (one technology to maintain, less technical buildings, etc) . Unfortunately, alternative operators do not benefit from historical customer bases hence their investment business cases have to consider a higher risk and do not benefit of incremental cash flows, nor from increase operational efficiencies compared to the incumbent. Therefore, it is difficult to have business cases with positive NPVs. Additionally, as the deployment of equipment for SLU would be spread and incomplete, the commercial and marketing efficiency will be reduced compared to Belgacom (e.g. if you cover 10% of the population of a community, a TV spot will reach 90% audience that can not been served).

We also invite the Regional Regulators to consult Belgacom's presentation on the impact of the NGN development on the current wholesale offers (http://www.belgacom.be/nationalwholesale/fr/jsp/dynamic/product.jsp?dcrName=nws_network_evolution). From this presentation it is clear that the move to NGN will greatly impact all the current wholesale offers, and more in particular the ULL and Bitstream offers.

As conclusion, regulators should take all measures to assure sustainable bitstream offers supporting all telecom and media needs of the market.

15. Sub-market 4 and 5 or new ex-market 18 ?

Could broadcast transmission services be a relevant sub-market of markets 4 and 5 or should a specific relevant market 18 be defined?

We note that the European Commission has defined markets 4 and 5 to be analysed by NRA but has withdrawn the ex market 18. We also note that the BIPT concluded in its decision dated 10 January 2008 that market 18 is not a substitute to ex market 12 and thus cannot be included in this market.

We also refer to the above answers and to individual comments of the PLATFORM members

16. Three criteria test

Which objections/ barriers could prevent an operator from supplying broadcasting services over broadband-coax cable and DSL?

Structural:

- Government as shareholder of Belgacom
- Historical customer base of Belgacom
- Absence for new entrants of historical customer bases that provides incremental cash flows for investment business case.
- High investments required
- Difficulty to access content and countervailing buying power towards the rights holders and content producers (e.g. Disney, Sony, News Corporations, NBC universal, Time Warner etc.)

Legal/regulatory:

- No broadcast capabilities available for alternative operators
- Community Media regulation
- Copy rights
- Bundles allowed Telecom with media (TV with telecom products)

According to you, does the market tend towards effective competition without ex-ante regulatory intervention?

Answers to this question will be provided individually by the PLATFORM members.

Is the competition law sufficient by itself to address the market failure?

Answers to this question will be provided individually by the PLATFORM members.

17. Product Market

If a market 18 is defined as a relevant market, are the DSL, coax cable, DVB-C, DVB-S, DVB-T and DVB-H technologies substitutable and do they belong to the same market?

For the reasons explained here after (18) the DVB-H technology can not be a substitute for IPTV, satellite TV and coax cable TV.

18. Fixed versus mobile or PLATFORM convergence?

Will customers' consumption patterns evolve significantly (fixed towards mobile) and influence the strategy of operators?

Incontestably PLATFORM convergences and consumption pattern evolution do influence the strategy of operators. However, we note that the BIPT recent analysis on fixed retail markets has concluded that there is at stage no room for convergent retail market and that fixed telephony remains a separate market than mobile one.

What is your opinion on the convergence of services offered by operators (package fixed and mobile broadband services)?

As we already mentioned, the more services a customer takes from one unique provider the higher its lifetime value. Hence the customer equity for the undertaking increases.

The PLATFORM believes that the market will evolve towards quadruple play services.

Do you think that a DVB-H offer could be a real and attractive alternative to IPTV or cable digital television?

We do not think that DVB-H (and/or possibly DVB-T) is able to offer real and attractive alternative to IPTV, satellite TV or iDTV.

First, there is actually no commercial DVB-H offer on the market when IPTV, satellite TV and IDTV are already well introduced.

Second, DVB-H is a technology to be used exclusively for broadcast services and would need a complementary technology (e.g. UMTS) to be able to offer interactive services such as VOD, content on demand, voting etc.

19. Development and competition of the broadcast transmission services: strong or not ?

Have you already received some demands from alternative operators to launch a broadcast transmission service on your network?

Question not relevant for the DSL alternative operators

Do you foresee any demands from alternative operators to launch a broadcast transmission service on your network in the near future?

This depends on the regulators willingness to improve competition by granting the DSL operators the necessary authorisation and technical parameters to launch IPTV.