

## 3.1 BELGIUM

### 1. REGULATORY FRAMEWORK

#### 1.1. National regulatory authority

The seventh report referred to the letter to the industry circulated by the Minister in March 2001 stating that he would not use his powers as formal head of the IBPT/BIPT (*Institut belge des services postaux et des télécommunications/Belgisch Instituut voor Postdiensten en Telecommunicatie*) to amend formal positions submitted by the IBPT/BIPT in conformity with the legislation. The letter was sent to allay fears that the Minister may have conflicting responsibilities since, at the moment, the Minister is in charge of telecommunications, responsible for the State's majority shareholding in the incumbent operator and also in charge of the privatisation of that operator. A statutory bill aimed at setting up an independent NRA with more resources was also announced.<sup>1</sup> This legislation on the 'reform of the NRA' was approved by the National Council of Ministers on 5 July 2002 and discussions in Parliament started at the beginning of October. The legislation is expected to be approved by the end of 2002. The bill restructures the NRA's tasks, and in addition to ensuring the independence of the IBPT/BIPT, which will in future deal purely with regulatory tasks, it sets up a ministerial department which will be in charge of the legislative tasks. Although new entrants operators are pleased that the structural separation between regulatory and ownership functions will be enshrined in legislation, the draft legislation fails to include a number of issues urgently requested by them, such as extending IBPT/BIPT's powers to include control of retail tariffs, the right of appeal against decisions of the Interconnections Tribunal (*Interconnectiekamer*) and the contractual rights for which the Interconnections Tribunal is not competent. However, due to the statutory nature of the bill it has been decided not to take account of these issues in this legislation. They will be considered in the draft legislation for the transposition of the new European regulatory framework.

The new Ministry will have a staff of about twenty persons, who will be responsible for the drafting of postal and telecommunications legislation, international representation and related administrative tasks. Some of them might be transferred from the IBPT/BIPT. According to the Minister's private office, there will be a sufficient number of staff left at IBPT/BIPT. Out of a total of two hundred people working at IBPT/BIPT, only twenty currently deal with telecommunications at an academic level, making the NRA clearly understaffed according to new entrants. In order to fulfil all the tasks demanded of it, the IBPT/BIPT has a system for consulting market players on all topics, which is warmly welcomed by the market. However, new entrants point out that IBPT/BIPT has attributed delays in performing its regulatory tasks to lack of staff on several occasions.

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<sup>1</sup> *Wetsontwerp met betrekking tot het statuut van de regulator van de Belgische post- en telecommunicatie-sector / Projet de Loi relatif au statut du régulateur des secteurs des postes et des télécommunications belges* (DOC 50 1937/001) – see [www.dekamer.be/documents/1937/1.pdf](http://www.dekamer.be/documents/1937/1.pdf)

IBPT/BIPT has exercised its powers under national law to issue warnings to companies, threatening them with an administrative fine if they did not comply. Eventually, there was compliance so no administrative fine had to be imposed. New entrants regret that IBPT/BIPT does not have the power to impose periodic penalty payments, but under Belgian law only courts can impose the non-administrative fines, such as orders for interim relief and injunctions.

The new legislation transposing the new regulatory framework, which is currently being drafted, will provide for a review of the appeals system. A magistrate will be included in the decision-making 'panel' in an appeals procedure because, according to Belgian constitutional law, an administrative institution like the IBPT/BIPT would not be competent to decide on cases dealing with civil rights (e.g. cases which have contractual effects). This constitutional law requirement has made the life of the Interconnections Tribunal difficult and the Royal Decree laying down the current appeals procedure is itself the subject of appeal by the incumbent operator before the Council of State. A decision is not expected soon. Appeals against IBPT/BIPT decisions are limited to judicial review only.

## **1.2. Management of numbers**

Numbers (in blocks) are assigned to operators by IBPT/BIPT [on the basis of a Royal Decree and an accompanying explanatory notice]. There have not been any complaints about management or the assignment of numbers, but there are some problems between operators about the way the numbers are subsequently used.

## **1.3. Frequency management**

No problems have arisen regarding frequency management, a task for which IBPT/BIPT is responsible.

# **2. INTERCONNECTION AND ACCESS REGIMES**

## **2.1. BRIO**

The reference interconnection offer (called "BRIO") is quite extensive. Detailed discussions about problems arising from BRIO or its lack of content are a thing of the past BRIO is well adapted to market needs. Discussions continue on some issues, such as transit services, which new entrants believe should be included in the offer.

### *2.1.1. Interconnection charges*

In order to recuperate costs, a cable operator's interconnection charges have increased by more than 400%, and retail tariffs to their network have also increased. IBPT/BIPT has approved this increase as being reasonable to cover costs and subsequently decided that the incumbent operator must respond to a reasonable request from the cable operator. Following this decision, market players, including the operator itself, have attempted to develop alternatives, e.g. through CPS. IBPT/BIPT has clearly indicated that it will monitor the market very closely to prevent such practices. IBPT/BIPT emphasises that reasonableness was assessed on the basis of the current situation, but in future the assessment may lead to a different outcome. IBPT/BIPT issued a communication on this in October 2002, stating that if the cable operator did not apply the new termination tariffs to certain traffic, for which it uses the incumbent operator's network (CPS/CSC calls to

non-geographical numbers and CPS/CSC calls to the operator's geographical numbers), it must conclude that the increased termination tariffs are no longer necessary and the request for interconnection may no longer be reasonable. A case regarding the increase in termination tariffs is still pending before the commercial court in Mechelen.

### *2.1.2. Fixed-to-mobile call termination*

For two years, the largest mobile operator has been designated as an operator with significant market power (SMP) on the national interconnections market. The principle of cost orientation applies to the largest mobile operator accordingly. IBPT/BIPT did not force the operator concerned to move towards cost orientation immediately, but proposed a gradual decrease in the termination tariffs, arguing that a one-off decrease towards a cost-oriented tariff could have detrimental effects. This argument is not supported by some new (fixed) entrants. On 17 December 2001, IBPT/BIPT called for a decrease of 52% (allowing for inflation) by 2004 in comparison with 2001 (steps in July 2002, July 2003 and July 2004). The largest mobile operator decreased its terminating tariffs by 7 % in August 2002. In practice, this means that although the principle of cost orientation applies, real cost orientation does not apply. In its final opinion, IBPT/BIPT specifies a tariff range within which the termination tariffs of the largest mobile operator would be cost-oriented. Cost orientation of tariffs is not determined solely by reference to the largest mobile operator's cost model, but also by considering the situation with regard to other mobile operators and in other EU countries.

The other two mobile operators failed to reduce terminating tariffs shortly after the obligation was imposed on the largest mobile operator, creating imbalances in the amounts due from this market player to the other two mobile operators and a cash outflow from the largest mobile operator to its competitors. The second mobile operator did reduce its mobile termination charges on 1 October 2002.

### *2.1.3. SMP designation*

Besides having SMP on the national market for interconnection, the largest mobile operator also has SMP on the mobile market and, accordingly, the non-discrimination principle applies. In February 2002, Mobistar was designated as having SMP on the mobile market as well. IBPT/BIPT decided that, in the light of the main criterion (market share), Mobistar was close to the 25% threshold, which meant its position has to be assessed with reference to the other relevant criteria provided for in the legislation. On the basis of the non-discrimination principle, IBPT/BIPT has asked the second mobile operator to align the not-on-net tariffs with the on-net tariffs. However, this operator challenged its SMP designation before the Council of State, claiming that the criteria used by IBPT/BIPT to determine its SMP status were different from those used to designate the largest mobile operator as having SMP on the same market.

### *2.1.4. FRIACO*

The demand for flat rate internet access call origination ("FRIACO") from internet service providers is new. One of the reasons for this demand can be found in the history of costing models for internet dial-up access. A collecting model has been available since October 2001, but the courts have not yet ruled which model should apply or which tariffs should be charged to new entrant operators for the different models. New entrants want a collecting model, provided that it is economically viable for all operators in the value chain. In these circumstances, there appears to be limited interest in the subject at the

moment. This explains the call for FRIACO as an alternative. Discussions on FRIACO are right at the beginning at the moment. Regarding internet dial-up in general, IBPT/BIPT's three phase consultation has not yet been concluded.

## **2.2. Interconnecting leased lines/partial circuits**

There has been a long debate on the definition of interconnecting leased lines (or "half links" as they are called in Belgium). IBPT/BIPT has asked the incumbent operator to withdraw the limitations on the use of the "half links" which were applicable on the basis of BRIO 2002. The incumbent operator restricted the use of half links by operators in the sense that they could only use half links in order to compete on the retail leased lines market and not for other usages. The incumbent operator has now suggested an addendum to the BRIO 2002, which was accepted by IBPT/BIPT at the end of July 2002.

For the moment, the tariff is 'retail minus' and so has not been approved on a cost oriented basis, and the service level agreement for leased lines is also applicable to 'half links'. The study examining the costs of leased lines also includes 'half links' (see below).

Operators are not allowed to take a backhaul line when they order a 'half link'; however, it appears that most operators do request bundling of the two.

The total number of 'half links' has increased significantly compared to last year's numbers, although the total number is still limited as it does not exceed 4 digits.

## **2.3. Unbundling**

As of 1 October 2002, the number of fully unbundled lines has been about 1553, and the number of shared lines 1039. These lines are for professional users (mainly GhDSL). 72 sites were available for collocation in June 2002, accessing more than 2.9 million lines. Even though the number of fully unbundled and shared lines is progressing, there is still not a strong uptake and LLU does not appear to be a huge success, probably due to the poor economic situation of the market players.

IBPT/BIPT has put much effort into providing a stable framework for unbundling, an effort which has been acknowledged by the market. The reference offer (BRUO) was finally approved in 2002, after two years of negotiations, interventions and decisions. At the moment, work is still taking place on certain problems, mostly operational, which still occur (e.g. migration from ADSL to ULL), as well as on an improved service level agreement. Shared access is of less interest for alternative operators at the moment, as this service is more interesting for the residential market, and most operators are first focusing on the business market. Subloops have been on offer since 2002. Co-mingling has been very successful and is now the rule regarding collocation.

## **2.4. Bitstream access**

Regarding ADSL, the incumbent operator started rolling out ADSL a couple of years ago and now has a large number of customers (about 400 000 at the end of August 2002). Other operators offering ADSL mainly resell the incumbent operator's product (mainly the basic "GO" product. Much work has been done in the past year on the bit stream access offer (BROBA), although some issues still need to be resolved. However, new entrants claim the incumbent's price setting makes it very difficult to enter the market and effectively compete. The problems regarding an alleged price squeeze, especially due to

the low retail tariffs of the incumbent operator for ADSL, have been acknowledged by IBPT/BIPT. However, an official complaint has not been lodged because IBPT/BIPT's powers to tackle retail tariffs are limited and in any case IBPT/BIPT has ruled that these retail tariffs were part of a commercial and not a regulated offer.

Besides the low retail tariffs, another reason for the extensive take-up of ADSL is because the tariffs for intensive internet use via dial-up are high in comparison and also because of the competition from cable operators.

Negotiations on the inclusion of SDSL in the reference offer (BROBA 2) will be finalised in 2002 (ongoing discussions involve tariffs and SLAs), but the incumbent's SDSL retail product is already on the market, even though it is said they are not the only operator with an SDSL product.

Regarding the issue of internet access through ADSL to schools, which was mentioned in the 7<sup>th</sup> report, there have been few developments. Due to contractual circumstances between the incumbent operator and the Government, this service of general interest, which is to be subsidised by the Belgian Government, was going to be limited to the incumbent as an infrastructure provider and any of its ADSL wholesale competitors. New entrants wanted to have equal access to such an opportunity. To provide for this, a Royal Decree is needed. It was announced in February 2002, but is still awaited pending a financial decision based on the future Government budget.

## **2.5. Situation of the (broadband) local access market**

There are a large number of broadband customers, mostly using cable or ADSL. Most of the ADSL infrastructure belongs to Belgacom, but several ISPs provide ADSL as a wholesale product to their own customers. Broadband local access is also available through cable networks, which are not regulated. On 1 October 2002, there was a total of 440 314 copper wire DSL lines and over 300 000 cable modem access lines.

There are no developments in the wireless local loop (WLL), since there has been no rollout whatsoever, so this cannot be considered as an alternative.

According to ISPA data as of March 2002, around 32% of the residential lines have an internet connection and 35% of the customers of ISPs have a broadband connection (over 450 000 residential connections). Over 36% of all businesses have a connection and more than 64% of these connections are broadband (about 127 000 connections).

## **2.6. Leased lines**

There is a study on the costing model for leased lines, but IBPT/BIPT has not seen it yet. The study also includes 'half links' and backhaul lines. Another market survey has also been launched regarding the leased lines market and possible operators with significant market power. These two studies have not yet been concluded, so for the moment it is not clear whether the leased line tariffs and the 'half link' tariffs are cost-oriented. IBPT/BIPT has studied the incumbent operator tariffs applied over the last few years, which differ according to geographical area, and concluded that they were justified given that there are certain geographical differences. The incumbent operator uses the same costing model as for interconnection (see below)

There have been no formal complaints reported regarding the delivery of leased lines.

## **2.7. Numbering**

The number of ported numbers is growing steadily and was approaching 400 000 by mid-2002. A new development is that customers are also transferring their number to the incumbent operator, while customers moved away from the incumbent during the first few years. There have been no complaints to IBPT/BIPT in this respect, and there is a very strict SLA which includes penalties.

Mobile number portability was introduced on 1 October 2002, including a mandatory signal to ensure that end-users are informed when they call off-net. To enable all operators (fixed and mobile) to be included in one database, the fixed operators will transfer to a new central reference database by the end of 2002. Costs are still being discussed.

Regarding carrier pre-selection (CPS), IBPT/BIPT has dealt with a series of complaints concerning the interpretation of the CPS legislation. It also monitored the sector to try to check whether the conditions governing operators are fully respected. Three operators were infringing their obligations. The BRIO also contains a service level agreement on CPS.

There has been exponential growth in the use of CPS, reaching the 500 000 mark in March 2002.

## **2.8. Cost accounting/separation of accounts**

For the first time, the interconnection costing model for 2003 (to verify the 2002 interconnection tariffs) will be using elements of a bottom-up model based on long-term incremental costs (LRIC) developed by IBPT/BIPT. In accordance with EC recommendations, IBPT/BIPT aims to set interconnection tariffs on the basis of an approach combining the top-down and bottom-up models. As the bottom-up model will not have been finalised when the 2003 tariffs are set, those tariffs will not yet reflect the combined approach.

The top-down costing model currently used, which was developed by the incumbent operator, is based on the historical costs of operational expenses and current costs for capital expenditures. Forward-looking assessments of the current costs are being carried out, and the costs are fully allocated to the products according to the FDC standard. The WACC for the interconnection products is determined by IBPT/BIPT. Belgacom will not make its model available to IBPT/BIPT, which has therefore developed its own top-down, fully distributed costing model aimed at modelling the traffic-related charges for interconnection. However, the relevant EC Directive refers to verification of the model used by the incumbent operator, and this is not happening in Belgium. Regarding the verification of compliance with the cost-accounting system laid down in Article 7(5) of the Interconnection Directive, the European Court of Justice ruled on 19 September 2002 (Case C-221/01) that Belgium has failed to adopt the necessary laws, regulations and administrative provisions to comply with the Article.

With regard to whether the incumbent's voice telephony tariffs are cost-oriented, a letter of compliance with the 1998 tariffs with separate accounts was published on the IBPT/BIPT website in August 2002. Before the end of this year, the data for 1999 will be verified. The data for 2000 will not be verified before April 2003, as the new IBPT/BIPT guidelines regarding the headings for the separate accounts have led to delays in the verification procedure. Starting with the year 2000, IBPT/BIPT has asked the incumbent

to present its data and describe its model in more detail, explaining the requirements for and the format of the model for the separate accounts. The incumbent operator is said to use the same costing model for voice telephony as that described earlier regarding interconnection and leased lines. At the moment, two infringement procedures regarding cost accounting are still in progress.

The audit procedure, starting with the data for the year 2000 (for voice telephony, but also for interconnection and leased lines), will involve an auditor appointed by the incumbent and approved by IBPT/BIPT auditing the model and then reporting to IBPT/BIPT, which will analyse the report together with its own consultant.

For ULL, neither the incumbent operator nor IBPT/BIPT has developed a specific cost accounting model. The cost standard used for LLU is 'retail minus' and historic costs are used as a base.

### **3. AUTHORISATIONS**

Licences are granted within 42 days by the Minister on the advice of IBPT/BIPT. Licences are transferred in a similar way. Adaptation of a licence is done within 28 days upon recommendation of the IBPT/BIPT.

Due to the fall in prices across the spectrum, which were reportedly quite high, the licence charges will go up in order to guarantee the funding of IBPT/BIPT.

As regards Wireless local loop (WLL), the legislation is in place, but there is no real interest. Of the five licences awarded, two operators are no longer in business. Four base stations are operational at the moment.

On rights of way issues, there have been some developments in Belgium, specifically in Flanders, where the bottleneck is even greater than it was at the time of the 6<sup>th</sup> and 7<sup>th</sup> implementation reports. The Flemish Region has now indeed adopted a decree introducing a rights of way permit, with applicable fees, for use of the public domain. The conflict between the federal and the regional legislation has not been resolved, however. While federal law still outlaws fees for rights of way, the Flemish Region invoice an annual fee per meter of cable in the ground. The legislation also applies to masts, base stations and antennas, and is therefore not limited to fixed operators. The Office of the Minister for Telecommunications has brought an action before the Council of State for annulment of the Decree. Through this action, operators and the federal government hope to prevent the initiative from being taken over by the other two regions, Brussels and the Walloon region, and the municipalities. As a result of the liberalisation of the energy sector, the municipalities will lose their income from electricity taxes. In order to compensate for this loss, they now plan to introduce a new tax on the use of the public domain as of 1 January 2003. Given that almost 90% of roads in the Flemish Region are owned by the municipalities, operators are afraid this may have an enormous impact on their financial situation.

## **4. UNIVERSAL SERVICE / CONSUMERS**

### **4.1. Tariffs**

IBPT/BIPT does not have extensive powers to control retail tariffs under the current legislation (a price cap is in place) and is therefore not always able to deal with price squeeze issues. This problem is expected to be overcome once the new regulatory framework has been transposed, as it will address it. Until then, it will not be possible for NRA to tackle some of the price squeeze issues satisfactorily. An example of these tariffs are the so-called 'excellence' tariffs for the incumbent's business users, which are very low compared to the interconnection tariffs charged to new entrants. IBPT/BIPT is aware of these tariffs, but has not received any formal complaints in view of its limited powers of retail tariff control. New entrants claim these 'excellence' tariffs are lower than the interconnection tariffs charged to them and they would prefer IBPT/BIPT to have the power to apply a price squeeze control mechanism.

Tariff rebalancing has not been completed in Belgium.

### **4.2. Universal Service Fund**

In January 2002, the incumbent operator and universal service provider requested activation of the universal service fund. IBPT/BIPT has started an official consultation procedure and launched a study on the costing methodology, while working closely with the incumbent to ensure relevant input based on its internal costing models. Results regarding all components of the universal service are currently being studied before anything can be decided. In their assessment, which has therefore not yet been finalised, IBPT/BIPT will take account of the long period of delivery of the service, substitutability, as well as the benefits that the incumbent operator has enjoyed under its obligation as a universal service provider. These benefits will have to be deducted from the universal service costs.

Under Belgian law, a Royal Decree and a decision by the Council of Ministers are needed to activate the fund.

### **4.3. Universal directories, itemised billing, quality of service**

Finally, there is agreement among operators regarding the provision of their customers' numbers and publication of the relevant data in a universal directory, except where customers have indicated that they do not wish to be included in the directory (cost €2.6 per month). The system works. The price asked for each number (and accompanying data) is €0.15. The paper version is still not yet available.

No problems have been reported regarding itemised billing and quality of service. Bills itemised call by call are provided free of charge on request.

## **5. DATA PROTECTION**

### **5.1. Traffic data retention**

For interconnection payment purposes, traffic data may be retained until the end of the period during which the bill can be challenged. This period is not specifically laid down in



civil law, but a bill may be contested within a reasonable period as determined by the courts.

The computer crime bill refers to a minimum retention period of 12 months in order to allow for criminal investigations. The final period will be laid down in greater detail in secondary legislation, which has not yet been finalised.

### **5.2. Tapping or data interception**

A Royal Decree is in the process of being finalised. It does not stipulate a minimum retention period, but does provide for compensation to be paid to telecom operators and ISPs.

### **5.3. Unsolicited calls and e-mails**

The prescribed opt-in approach for unsolicited faxes has been implemented in Belgium. For unsolicited calls, no rules have been laid down in Belgium, though the data protection guidelines do provide for appropriate measures to be taken to prohibit free, unsolicited calls for the purposes of direct marketing. The choice is free between an opt-in or an opt-out system. Unsolicited e-mails will be covered by the new regulatory framework, but at the moment Belgium has no measures in place to regulate them.

## **6. MOBILE ISSUES**

### **6.1. Barriers to rollout of 2G, 3G**

In March 2002, a Royal Decree announced that, because of “force majeure”, as described in the Royal Decree of 18 January 2001, all three mobile operators were granted a one-year delay. Rollout is now due to take place as from 15 September 2003. Reasons for postponement include problems with the availability of terminal equipment as well as the necessary building permits. For environmental and health reasons, regional and local governments do raise objections to requests from mobile operators trying to meet their rollout obligations. The 2G operators, who also hold the 3G licences, are co-operating with the aim of site sharing through the setting up of a common site database and consulting each other before new sites are constructed.

As described under the heading ‘Rights of Way’, the Flemish Government has legislation in place on the basis of which antennas, masts and base stations will be taxed if they are located in a public place. Other regions and municipalities in other parts of Belgium have introduced tax rules for operators with antennas and masts.

## **7. PREPARATION FOR TRANSPOSITION OF THE NEW FRAMEWORK**

Regarding the transposition of the new regulatory framework, there is already draft legislation and the market players are being consulted. There could be a slight delay because of the forthcoming national elections and the fact that, as the new framework is neutral as far as technology is concerned and therefore also applies to broadcasting networks, negotiations must be held with the regions, who are responsible for audiovisual issues.

As regards co-operation with the competition authority under the new regulatory framework, e.g. for market assessments, IBPT/BIPT has written to the Competition Council with a proposal for a collaboration protocol. By October 2002, it had not yet received a reply.