

# Market consultations regarding : Draft Decisions of the CSA, Medienrat, VRM on the analysis of the TV-broadcasting market

## Orange Belgium's Position

### Executive summary

Orange Belgium agrees that the draft market analysis decisions submitted for consultation address the key issues of the Belgium electronic communications services markets. The fixed broadband and TV-distribution markets suffer from an extreme lack of competition as well at the retail as at the wholesale level. On top of the business and consumer harm - exemplified by recurring retail tariff increases of already high tariffs- induced by this situation for the fixed electronic communications services, this situation also threatens - due to the quickly growing importance of the bundling of fixed and mobile services<sup>1</sup> - the viability of mobile-centric service providers. John Porter (Telenet CEO) put it forward clearly in an interview at the TMT conference in Barcelona in November 2015 in the context of the Base merger transaction :

But ultimately, yes, I think it will go there because I think the real battle in this industry will be between the 4P platforms. It will be between cable and the incumbent. Everybody else is screwed, I can tell you that.

It's because once people get 4P they don't go anywhere. The churn rate of 4P is lower than the death rate. In Flanders anyway.

An effective and efficient wholesale access to fixed electronic communication services is absolutely and urgently needed. The established fixed network operators refuse to provide viable commercial wholesale offers that would allow to compete with the regional duopolistic operators. Attempts to enter the fixed market based on the regulated as well as the commercial copper-based wholesale offers from Proximus never succeeded, be it on the consumer or the business market. Orange Belgium's current business model based on the cable network regulation is financially not sustainable.

Orange Belgium agrees with the main findings and conclusions put forward, such as the lack of competition on the retail markets, the product and geographic market definitions for the retail and the wholesale markets, the identification of the operators with significant market power.

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<sup>1</sup> Mid 2017 already more than 500.000 households subscribed to a mobile + fixed offer :

- WIGO, the 4P-offer of Telenet launched in June 2016, had 224.000 customers in Flanders only;
- Tuttimus, the Proximus 4P-offer launched October 2016, had over 255.000 customers;
- Orange Belgium's "TV+Internet+Mobile" offer, launched May 2016, had 64.000 customers.
- VOO launched its 4P offer ('One') only in September 2017.

The impact in terms of mobile subscriptions linked in these packs (and in practice no longer accessible without offering fixed bundled offers) is obviously even much higher.

Orange Belgium regrets that the draft decisions don't offer predictability towards the future. The draft decisions don't provide clarity on the much needed improvements, in particular on the short term, regarding key problems such as the wholesale charges for access to the cable networks and a number of clearly discriminatory requirements in the operational systems and processes. These issues must be corrected ASAP to avoid that the identified market failures allow the regional duopolies to further increase their market power.

## **Wholesale access to cable networks**

After its failure to stimulate the market via its "Starpac" offer (combining satellite TV, fixed broadband and mobile services), Orange Belgium was (and is until today) the only alternative operator who, counting on substantial improvements of the financial and operational conditions over time, took the business risk to activate and use the wholesale regulation for access to the cable networks.

Its experience shows clearly that the current regulatory framework fails to provide the wholesale inputs that are required for real competition :

- as publicly indicated, the financial conditions applicable today don't allow to offer competitive convergent – let alone stand-alone fixed – services in an economically justifiable and sustainable way. Unless substantially improved, this situation puts the entire regulation at risk.
- the operational obstructions encountered (start of implementation<sup>2</sup>, lack of IT-systems, BSOD, customer eligibility, installation process ...) could not satisfactorily be addressed based on the previous market analysis decisions and a proper non-discriminatory competitive environment was not provided.

Given the above mentioned experience and while a number of elements of the draft proposal go in the right direction, Orange Belgium asks that significantly stronger remedies are imposed:

- we welcome that the wholesale supply of stand-alone broadband services is decoupled from the wholesale TV offer. This is needed to break the bundling vicious circle and to give customers affordable and suitable choice. However, absent fair wholesale charges for this service (see further), this measure will not have any impact;
- we agree with the proposal to apply "fair charges", i.e. cost-oriented charges and a reasonable margin [REDACTED] for the monthly fees and cost-oriented charges for the other services, and ask the regulators to move forward quickly in this direction;
- we consider that a number of proposed operational improvements, such as "single installer", are highly needed while we clearly urge the regulators to adopt a much more directive approach in ensuring a true non-discriminatory environment and to unwind discriminatory obligations and constraints imposed in the past (eg BSOD. interconnect capacity, own channels...). Similarly, truly non-discriminatory SLA's, QOS measures and access to IT-support systems must be provided immediately, while we count on firm

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<sup>2</sup> We remind that, for 3 out of the 4 regulated cable network operators, court action by Orange Belgium was required to force them to start the implementation of the access obligations.

regulatory action when alternative operator's reasonable requests are bluntly denied or rejected or when the cable operators apply obstructive behaviour.

Regarding the proposed wholesale tariffs during the waiting period for the fair tariffs, the options put forward are insufficient. As the two main proposed options remain based on the too high wholesale charges applicable today, none of these will bring the necessary improvements. In practice, Orange Belgium expects a nation-wide price level below 13€ for a broadband-only wholesale offer and below 17 € for a TV and broadband bundle (based on the mid-2015 draft wholesale prices decision which it considers to give tariffs that are the closest to a fair tariff<sup>3</sup>).

## **Moving forward**

Orange Belgium asks to move forward with the process turning the draft decision into a final one ASAP. Substantially improved financial conditions for cable wholesale access are urgent and critical to ensure that Orange Belgium can continue to offer its convergent bundle on the residential market and to preserve a 3-player mobile market. An effective wholesale fibre access is also urgently required to ensure competition in the B2B market.

The quick adoption of a market analysis decision, integrating the essential further improvements put forward, is needed to this end.



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## Introduction

Orange Belgium welcomes the consultation on the market analysis for broadband (BIPT) and TV-distribution services (BIPT, CSA, VRM, Medienrat). Updated market analysis decisions regarding the markets considered are urgently needed. The decisions will not only be key for the future evolution of the specific markets under consideration, they will also be critical for the evolution of the competition on others markets such as, but not limited to, the mobile electronic communications services market.

Since the previous market analysis decision of 2011, the competitive landscape has very substantially changed. Some of the main events in this period, in Orange's opinion, are :

- Mobistar's (satellite TV and DSL) and Base's (commercial wholesale Proximus) failed attempts to launch a multiple play TV and broadband offer;
- further market consolidation via several mergers and market exits (Base, Coditel SFR, some mobile centric MVNO);
- the launch by Orange of its TV and internet offer based on the wholesale access to the cable networks;
- the launch by Telenet (Wigo) and Proximus (Tuttimus) of successful convergent 4-play offers (fixed internet, television, fixed telephony and mobile); followed recently by VOO;
- continued regular retail price increases of the fixed electronic communication services by the regional duopolistic operators;
- the continued dominance of Proximus in the B2B market;
- the announcement by Proximus of a FTTH deployment plan.

Most of the above events are indicative for the lack of competition on the fixed and convergent (integrated fix and mobile services) markets. The technical and financial regulatory obligations imposed on Proximus and the cable operators following the 2011 market analysis appear to be insufficient to enable financially sustainable competition. As a consequence of this, the regional duopolies are able to gradually increase retail tariffs and profit margins, while eliminating competitors. In practice, this is achieved by a very strong push for bundled offers. Given the huge discounts when subscribing to these offers (sometimes adding a service to the bundle even leads to a lower retail tariff), end-users get proposals that cannot reasonably be compared with stand-alone fixed and/or mobile service offers.

Considering the lack of viable voluntary fixed wholesale offers (as well from Proximus as from cable operators), alternative operators don't dispose of the wholesale inputs required to compete in the converging market as there is no effective wholesale input for the fixed components of the bundle. When regulated wholesale offers are imposed, the underlying decisions are appealed (at any possible instance) and the execution of the decisions is systematically delayed, if not simply denied.

Orange Belgium has taken, as only alternative operator, the initiative to activate the wholesale cable regulation. Over the last years, it has built up experience on the operational and financial conditions that stifle or promote competition. It is convinced that a substantial improvement of the current regulation of the cable networks is needed to ensure that a minimum degree of competition on the broadband and tv-distribution market is enabled. If this is not achieved the

current duopolies in fixed services will grow further and the possibilities for Orange Belgium to continue to effectively compete on the mobile market will be at risk.

The consultation put forward addresses the key concerns induced by the market evolution. Orange Belgium overall supports and welcomes the views put forward, and urges the regulators to move forward diligently with the market analysis process. The improvements to the current regulatory framework are urgently needed to avoid further market concentration and the associated negative consequences.

Apart from this introduction and the executive summary, we have organized our answer in 3 parts.

In **part I** we provide feedback on the draft decision in the sequence of the document. Also our answers to the main questions raised in the consultation document are integrated in this part.

In **part II** detailed comments on a number of important topics. This part includes :

- additional elements, based on technical and business characteristics, to demonstrate the non-substitutability between the broadband wholesale central access market services under ITU SG-15 standardisation and those under Cablelabs standards for broadband and between IP-TV and cable-TV for broadcast;
- detailed comments on the temporary charges for cable wholesale access while waiting for fair charges and an alternative proposal for these charges;
- a proposal for the “broadband” stand-alone wholesale charges;
- our view on the market evolution absent regulated access to the cable networks.

In **part III** we’ve grouped a number of annexes which provide further justifications and background information regarding the positions put forward. These are :

- Annex 1 – [REDACTED]  
[REDACTED]  
[REDACTED]
- Annex 2 – [REDACTED]  
[REDACTED]  
[REDACTED]
- Annex 3 – Regulated wholesale access to Telenet and merger decision – provides extracts from recent competition authority decisions in which Telenet was a party that addressed the need for regulated wholesale access to the cable networks;
- Annex 4 – Chinese walls & fair commercial practices [REDACTED]  
[REDACTED]  
[REDACTED]
- Annex 5 – “Mobile-only is dead, long live convergence” - is an article by Karine Fourneron & Marc Lebourges on the impact of convergence on mobile centric operators;
- Annex 6 – The need for efficient access to fixed infrastructures for the development of 5G networks – provides extracts of articles and reports indicating that the need for and importance of fixed infrastructure access in the context of the development of 5G mobile networks;

- Annex 7 – [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- Annex 8 – Schematic presentation of the various technologies and detailed listing of migration consequences.
- Annex 9 - [REDACTED]  
[REDACTED]

## Orange Belgium comments - Part I - Comments by Chapter

Preliminary note : these comments are put forward in the sequence of the document submitted for consultation. For Orange Belgium's position on a number of key topics and specific questions raised, we refer in particular to our comments :

- On 103 CSA/ §97 VRM / §95 Medienrat / § 126.2 & §327 BIPT -, on the importance, the pricing of **bundled services**, and the use of bundling to disguise predatory pricing and to create barriers to entry;
- On 105.2 CSA /§99.2 VRM / §126.2 BIPT, where we ask that this market analysis decision takes into account the remedies put forward in a number of recent **merger transactions** (Telenet-Base and Telenet-Coditel).
- On §366 CSA / §361 VRM / §350 Medienrat / § 585 : Content rights as barrier to entry, addressing the level of the **content rights** which act as barrier to entry ;
- On §469 CSA / §465 VRM / §452 Medienrat / §706 BIPT Commercial wholesale offers § 705, Chapter 11, regarding **commercial wholesale offers that do not exist** while even the implementation of regulated wholesale offers is impeded by all SMP-operators;
- On Chapter 18.2.6 CSA /17.2.6 VRM / 15.2.6 Medienrat / 37.2.6 BIPT. Operational aspects , regarding the **operational improvements**, which are urgently needed to increase quality and operational efficiency (single installer, QOS, SLA, eligibility, repair, lack of IT-systems, ...).
- On § 852 CSA, 801 VRM, §694 Medienrat, addressing the need to **strengthen the non-discrimination obligation** building on the experience acquired so far;
- Section 18.3.5 CSA / 17.3.5 VRM / 15.3.5 Medienrat / 37.3.5 BIPT regarding the need to introduce and/or strengthen the Chinese walls and to prevent unfair commercial practices;
- On Section 18.5 CSA / 17.5 VRM / 15.5 Medienrat / 37.5 BIPT, regarding the **price control measures**. Orange Belgium concurs with the view regarding "**fair tariffs**", but considers that the options put forward while waiting for such fair tariffs are insufficient. An alternative approach for the determination of these tariffs is proposed.

## **Chapter 5 CSA-VRM-Medienrat / 8 BIPT. Retail market broadcast**

General comment : Orange Belgium agrees with the analysis put forward in the draft analysis and fully supports the conclusions arrived at with respect to the retail broadcast market.

**§ 103 CSA/ §97 VRM / §95 Medienrat / § 126.2 & §327 BIPT : Regarding the importance of bundled services :**

Orange Belgium fully agrees with the fact that bundled offers are extremely important. While until a few years ago, bundling led to a strong decrease of the competition on the fixed market, more recently there is a clear shift to the mobile market as well. This is mostly driven by the 4P-bundled offers, that face a very high success. Compared with these offers, Orange Belgium's 3P (fixed internet, TV and mobile) service success is very relative : although in customer numbers this is the best performing alternative operator bundle with TV and internet ever, its sales are only a fraction of the total market take up of convergent services. Mid 2017, already more than 500.000 households subscribed to a recently launched mobile + fixed bundle offer :

- WIGO, the 4P-offer of Telenet launched in June 2016, had 224.000 customers in Flanders only;
- Tuttimus, the Proximus 4P-offer launched October 2016, had over 255.000 customers;
- Orange Belgium's "TV+Internet+Mobile" offer, launched May 2016, had 64.000 customers.

Note that VOO launched its 4P offer ('One') only in September 2017.

The impact on the mobile market in terms of mobile subscriptions linked to the above-mentioned bundles (and implying in practice that these SIM-cards are no longer accessible without offering fixed bundled offers to these customers) is obviously even much higher as typically more than 1 SIM-card is integrated in such 4P-bundle.

Unless strong action by the regulators, a very dangerous market evolution will continue. The combination of a very concentrated market for fixed services, with a strong increase of fixed mobile bundling, will push mobile only operators out of the market.

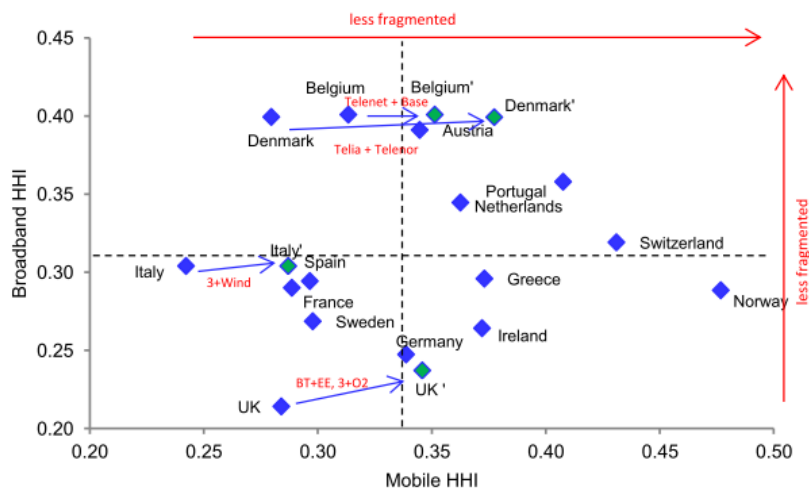
The following quote, from John Porters' speech at the TMT conference in Barcelona in November 2015, is very illustrative.

But ultimately, yes, I think it will go there because I think the real battle in this industry will be between the 4P platforms. It will be between cable and the incumbent. Everybody else is screwed, I can tell you that.

It's because once people get 4P they don't go anywhere. The churn rate of 4P is lower than the death rate. In Flanders anyway.

As a side-note regarding convergence, the unusual situation of the Belgian market appeared through the assessment by Deutsche Bank at the time of the Base acquisition by Telenet.

Figure 106: European market HHI (broadband and mobile)

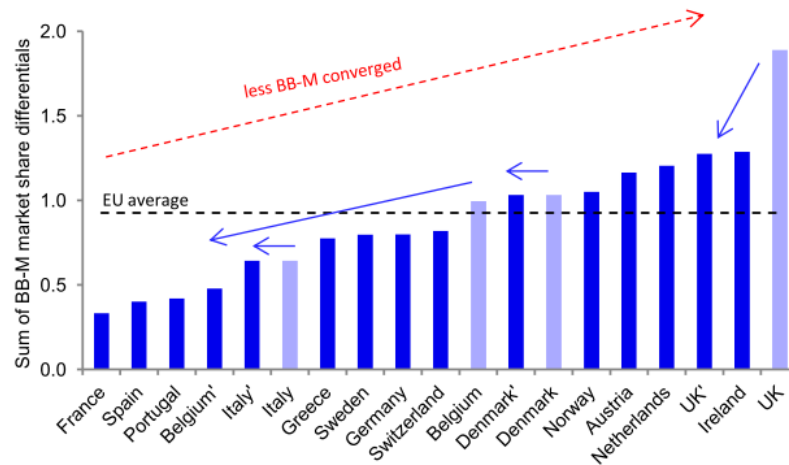


Source: Deutsche Bank, IHS, The mobileworld

The figure above shows that the mobile HHI for Belgium was below average and even after the Base-Telenet transaction it would not have increased dramatically immediately. However, the broadband HHI, which can be considered as proxy for broadband+television - given the high weight of 2P and 3P bundled offers on the market (already at that time) - was already the highest among most EU markets.

While the Base-Telenet transaction did not impact the broadband market concentration as such, it impacted the degree of market convergence. Based on a “convergence degree”, measured based on the variances of operators in fixed and mobile market share, the following chart shows that after the Base-Telenet transaction, the Belgian/Flemish market became much more convergent.

Figure 105: EU markets ranked by FM convergence



Source: Deutsche Bank, IHS, The mobileworld

In markets with true competition on fixed and mobile services (i.e. a low market concentration for both services with sufficient players), a high degree of convergence still implies a very high degree of competition. So for instance the high degrees of convergence for France and Spain are not an issue, as – cf the preceding graph - the market concentration for both the fixed and mobile markets is low. However, for Belgium, characterised by a high concentration of fixed services, the convergence trend puts the competitiveness of both the fixed and the mobile market at risk.

**Drivers for the high take up of bundled services.** The high take up of bundles can to a very large degree be explained by the retail pricing strategies of the leading operators. Stand-alone services are not pushed in the marketing nor priced in a competitive way. The strategy by which customers are pulled into a bundle of services (that they may to some degree not need) is clearly illustrated by John Porter's (Telenet's CEO) statements about the fixed telephony service at the JP Morgan's TMT conference in Barcelona in November 2015:

**Question: I am just looking back at your core business of the triple play in cable, can you say maybe a few words about the telephony business and how that is progressing at the moment, will the customers move towards skinnier bundles and might no longer be willing to pay for the telephony complement of the triple play?**

Well extraordinary by my standard, because I am not actually using the fixed phone in my house, except to order pizza sometimes. We are still growing fixed-line phones and that is really a core part of our bundle strategy. That is the beauty of the bundle, where you can basically say that the people subscribe the 50 or 60 euros and that they are paying for the bundles to the services they are valuing the most. I mean hypothetically we could say the fix-line phone is for free but the bundles are still for 70 euros, so we put a sort of indicative price of 10 euros a month for the fixed line but it's really once again it's your perception of where the value comes out of the bundle and you apply whatever you feel the best. We are trying to become a sort of post bundle. So what we are trying to do is to drive the customers relationship with Telenet around data and service. We want to be a superior service

The pricing strategy clearly is **dependent only on what customers are more or less willing to pay, and aims at maximizing ARPU**, but it is not related to any competitive pressure, nor related to costs. On top of this, prices for stand-alone services are not attractive at all. The – especially for Telenet – bundle discounts offered don't relate to any associated cost savings but to an extreme push for expanding the customer relationship and increasing the barriers to switching.

This is best illustrated by the following table, showing the bundle discounts for each of Telenet's 3P offers. The table below shows that – for the retail tariffs as of mid 2017 – there are no bundle discounts at all for 2-Play offers. The retail price for these is the sum of the stand-alone services (TV, internet).

For the 3P bundles, there are bundle discounts of around 35 %. Moreover, the “3-P” bundles are priced lower than their “2-P” counterparts.

**Bundle discounts on 2017 Telenet offers – Double Play versus Triple Play**

<b>Double Play</b>				<b>Triple Play</b>	
<b>Internet-TV</b>				<b>Fixed telephony-internet-tv</b>	
<b>Telenet 4P offers</b>	<b>Basic Internet + Digital TV</b>	<b>Internet Fiber 100 + Digital TV</b>	<b>Internet Fiber 200 + Digital TV</b>	<b>Whop</b>	<b>Whoppa</b>
Activation fees	€50.00	€50.00	€50.00	€50.00	€50.00
Installation fees	Free	Free	Free	Free	Free
<b>Bundle price</b>	<b>€53.70</b>	<b>€76.90</b>	<b>€98.90</b>	<b>€68.82</b>	<b>€79.48</b>
Download Speed	50 MBPS	100 MBPS	200 MBPS	100 MBPS	200 MBPS
Upload Speed	5 MBPS	10 MBPS	20 MBPS	10 MBPS	20 MBPS
Download Volume	150GB	200GB	Unlimited	200 GB	Unlimited
Free Modem	YES	YES	YES	YES	NO
Fixed Telephony	-	-	-	2000 minutes	2000 minutes
Digicoder	Included	Included	Included	Included	Included
<b>Standalone price</b>	<b>€53.70</b>	<b>€76.90</b>	<b>€98.90</b>	<b>€99.00</b>	<b>€121.00</b>
Internet	€27.80	€51.00	€73.00	€51.00	€73.00
Teledistribution	€25.90	€25.90	€25.90	€25.90	€25.90
Digicoder	Included	Included	Included	Included	Included
Freephone Europe	-	-	-	€22.10	€22.10
Installation and activation	€135.00	€135.00	€135.00	€135.00	€135.00
<b>Bundle Discount</b>	<b>0%</b>	<b>0%</b>	<b>0%</b>	<b>30%</b>	<b>34%</b>
<b>Fixed costs discount</b>	<b>63%</b>	<b>63%</b>	<b>63%</b>	<b>63%</b>	<b>63%</b>

As a consequence, a rational client who wants to subscribe to internet and digital TV only on the Telenet network will (or should) **always choose either the Whop or Whoppa offer**, even if the user does not use the fixed phone service at all. The objectives associated with this price strategy can be :

- to induce clients to subscribe and use more services, even if these are not required or were not used by the customer before;
- to increase the barriers for change for customers (even when only marginally making use of the bundled telephony service);



- to attract customers for their telephony service even if these customers are satisfied about the price and quality offered by their current other operator. The below zero incremental charge to the end-user when taking up the service implies it is “an offer you can’t refuse”. It can also be seen as a form of predatory pricing (see below).
- to weaken competitors relying on revenues from voice telephony services (or other partial substitute services, such as mobile telephony) in such a way that these competitors are unable to attack Telenet in its core TV and internet market.

Orange BE did not do this assessment for the Telenet bundling offers that integrate also mobile offers (WIGO). A “quick” check learns in any case that, again, the incremental charge over and above the 3P-bundle seems very limited when considering the incremental mobile services obtained through the bundle. In the same way as the bundling at an incremental charge strongly below cost for fixed telephony services drove stand-alone fixed voice service providers out of the market, it is clear that the new 4P bundles will put a very high pressure on the stand-alone mobile operators.

### **Bundling used to disguise predatory pricing / barrier to entry**

The above practices are a perfect illustration of how Telenet uses bundles to disguise predatory pricing. The below extract<sup>4</sup> still assumes a pricing “below cost” for the additional service. In the 2P to 3P bundling case with Telenet, there is even a price reduction.

Bundling can be used to disguise predatory pricing. For example, rather than explicitly pricing product *B* below cost, the monopoly could use a bundle to implicitly price product *B* below cost. In this situation, the firm could potentially drive out competition from the product *B* market by bundling *A* and *B* together so that the incremental price consumers of *B* are paying for *B* is less than the competitive price for *B* as a stand-alone product.

Apart from a disguise for predatory pricing, bundling also can be used to create barriers to entry. Also this effect can be noted on the Belgian market :

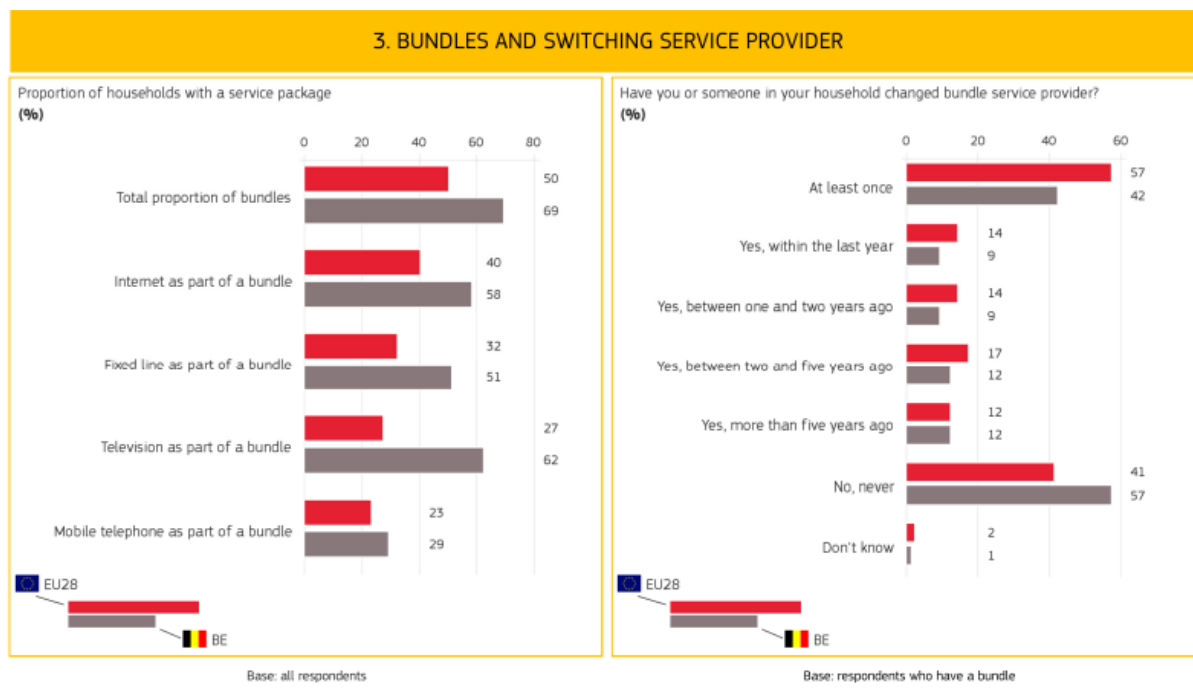
Bundling may also lead to unique competitive concerns particularly when the market for product *B* is not perfectly competitive. For example, bundling may be used to create an artificial barrier to entry. An incumbent firm can use the bundled product as a commitment to effectively counter new entry. If this commitment is successful, there will be less entry in the market for product *B* and less competition in this market.

### **Difference regarding bundling Belgium – EU**

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<sup>4</sup> See “Potential anti-competitive effects of bundling – Core Research – p 8-9-10

The degree of bundling puts the Belgian situation clearly in a position which is very different from the average EU situation. According to the Special Eurobarometer 438 on E-communications and the Digital Single Market of October 2015, consumers more often use a (variable) bundle of services than the EU average, while substantially more than EU average have never changed provider of the bundle.



The most striking element on the bundling is however not mentioned by the above chart, but taken over in the BIAC report (page 50 – see extract next page), where it shows that over 46% of Belgian households had at least a 3-Play (fixed broadband, television, fixed voice) bundle versus not even 17% of this at EU-level. The data of this report go back to July 2015.

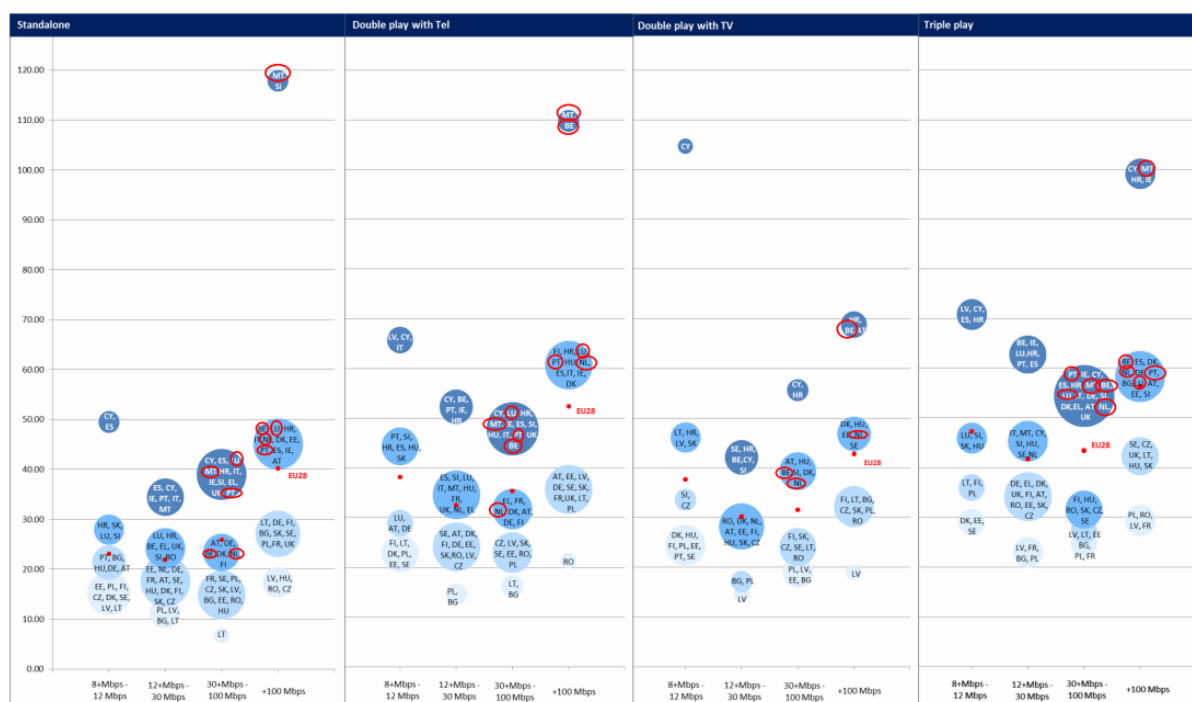
Taking the evolution of the market since 2015 into account, with the launch of bundled offers (of different nature) by Orange, Telenet (Wigo) and Proximus (Tuttimus), the proportion of bundled users has further substantially increased, in particular for bundles integrating mobile services.

Regarding the risk this evolution induces for mobile operators, we refer to the article of Karine Fourneron and Marc Lebourges regarding “Mobile-Only is Dead, Long Live Convergence !” in the Digiworld Economic Journal N° 106, 2<sup>nd</sup> Q. 2017, p. 43. The article is added as annex 5.

## Take-up of offers on the Belgian market<sup>82</sup>

Take-up of broadband services	Belgium	EU28
<b>Per speed range</b>		
Below 2 Mbps	0.7%	1.5%
At least 2 but below 10 Mbps	11.0%	23.0%
At least 10 but below 30 Mbps	10.8%	45.5%
At least 30 but below 100 Mbps	51.3%	19.2%
At least 100 Mbps	26.3%	10.8%
<b>Fixed broadband in a bundle</b>		
% of households having broadband access that have subscribed to a broadband offer bundled with at least one other service	73.2%	54.4%
% of households having broadband access with Mobile telephony	1.3%	8.4%
% of households having broadband access with Fixed telephony (with or without mobile telephony)	6.4%	19.5%
% of households having broadband access with Television (with or without mobile telephony)	19.3%	9.8%
% of households having broadband access with Fixed telephony and Television (with or without mobile telephony)	46.3%	16.7%

The fact that bundling is merely used as to disguise predatory pricing and that the strong presence of cable does not lead to lower retail prices can also be seen from following graph from the BIAAC study clustering countries based on prices for the least expensive offer available for Standalone, Double Play and Triple Play where we have highlighted the top-5 countries with the highest cable coverage in addition of Belgium (MT, CH, BE, NL, LU, PT).



Those countries with high cable operator presence are typically among the most expensive countries per service categorie for all speeds above 30 Mbps.characterized to be among the most expensive, as wel for single play, double play with TV, as triple play bundles..

## § 105.2 CSA / §99.2 VRM / §126.2 BIPT Regarding Telenet-SFR (and Telenet-Base) :

Footnote 106 CSA / 91 VRM / 109 BIPT refers to the Telenet – Coditel agreement.

The above footnote refers to the Telenet – Coditel agreement. Since the previous market analysis decision of 2011, Telenet has acquired a mobile network operator (Base) and another cable network operator (Coditel) on the Belgian market.

The fact that Telenet was obliged to provide a regulated wholesale access to its network was considered as important element in both cases to finally allow – subject to additional conditions – these transactions. The applicable wholesale access obligations were also used by Telenet itself to push back anticompetitive concerns that these transactions triggered.

Taking into consideration :

- 1) that these merger decisions are very recent;
- 2) that the continued application of the (strengthened) wholesale access obligations was clearly assumed by both Competition Authorities in the assessment of the transactions;
- 3) that the wholesale access obligations were in no way questioned by Telenet in the context of these transactions;
- 4) that Telenet used itself the adherence to the regulation – or even the potential strengthening of it – as a justification to get the mergers approved and/or to avoid additional remedies;

it is clear that **any – even minor – reduction of the regulatory wholesale obligations imposed on Telenet would imply a moving away from the assumptions that allowed these transactions to occur.**

To avoid any ambiguity with respect to the combination of these obligations and the remedies put forward in this decision, Orange Belgium suggests to **more explicitly integrate these elements in the decision**. It is in any case essential that the remedies imposed ensure that the competitive effects, assumed by the European Commission and the ABC/BMA in their approvals, can materialize. This is not the case with the remedies as applicable today.

We refer to annex 3 – Regulated access to Telenet and merger decisions - for more information regarding these transactions and the consideration given to the application of the wholesale access obligations to allow effective competition.

§ 106 CSA / § 100 VRM / §98 Medienrat / §127 BIPT : Meanwhile Broadband Belgium has stopped its activities.

§113 CSA / §108 VRM / §324 BIPT While the draft decision mentions 5 cable-operators, it must be noted that after consolidation only three operators remain active (Telenet, Brutélé and Nethys) and that among these two (Brutélé & Nethys) are operating under the same brand VOO.

§118 CSA / §113 VRM / §111 Medienrat / §339 BIPT We suggest to amend the footnote regarding Orange Belgium's activities on the SFR network, eg : Orange Belgium has started the implementation of its service on the SFR network and is running tests. Its commercial launch on the SFR footprint is on this date not yet announced.

§126CSA / §121 VRM/ §119 Medienrat / §347 BIPT The DVB-T standard does not include any technical solution for the uplink path necessary for interactive services. Orange Belgium agrees that DVB-T spectrum is very fragmented between different entities and does not enable the wide usage of this access technology for TV broadcasting in Belgium if no spectrum re-organization is made.

### **Section 5.3 CSA-VRM-Medienrat /- Section 8.2 BIPT Definition of the product market :**

While not impacting the analysis, it could be relevant to mention after § 366 BIPT / §145 CSA / §140 VRM / §138 Medienrat but before this section on the definition of product market the difference between the basic linear TV offers and the premium offers, eg where exclusive content is available via linear digital TV (foot, sports, movies, ...), taken into account that this element is taken up in the later market definition consideration (§401BIPT / §179 CSA / §175 VRM /§173 Medienrat and following).

Orange Belgium has no comments with respect to the detailed, substantiated analysis of this product market. It concurs with the substitutability findings put forward, based on its own experience (historically with satellite TV and currently with digital & analog TV over the cable networks) and the other related market events.

#### **Substitutability non-linear TV and linear TV**

Orange Belgium agrees with the conclusion that linear TV and non-linear TV are not substitutable.

#### **Substitutability digital TV & analogue TV**

Orange Belgium agrees with the conclusions of the regulators that analog and digital TV are substitutable in one way.

#### **Substitutability cable digital TV & IPTV**

Orange Belgium agrees with the conclusions of the regulators that IPTV and cable digital TV are substitutable.

**Footnote 173 CSA / 160 Medienrat / 259 BIPT:** a typo occurred in the title of the referred article where DVD should be replaced by DVB

#### **OTT TV & cable digital TV**

Orange Belgium agrees with the conclusions of the regulators that OTT TV and cable digital TV are not substitutable.

#### 5.4 CSA-VRM-Medienrat / 8.4 BIPT Conclusion regarding the definition of the retail broadcast markets

Orange Belgium agrees with the definition of the market and concurs with the fact that the definition of the geographic market is not required for this decision.

#### 5.6 CSA-VRM-Medienrat / 8.5 BIPT: Analysis of the competition.

Orange Belgium agrees in general with the key conclusions put forward.

Some elements could be “fine-tuned” when looked at in a broader perspective (for instance certain retail tariffs)

Footnote 188 CSA / 176 Medienrat / 275 BIPT: a reference is missing in the footnote.

**Financial margins (see also §349 CSA / §343 VRM / §333 Medienrat / §568 BIPT of the draft decision)**

**Financial margins (see also § 568 of the draft decision)**

Although this aspect is considered at least partially in the section on the broadcast market, it is clear that the financial ratios and results of the key operators offering broadband services are extremely high. While it may be hard to compare “like for like” activities, the ratios for the main fixed players were clearly higher than those for comparable markets.

The extract below is from the report “International Case Studies” by Analysys Mason as report for OFCOM, of 10 July 2015. The first chart gives the EBITDA margins of a number of fixed incumbent operators. This shows a very high ranking for Proximus (page 19 of the report).

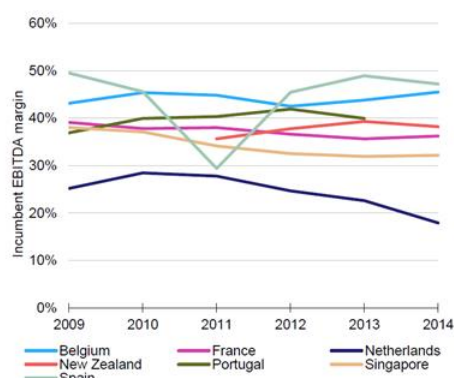


Figure 3.24: Incumbent EBITDA margins  
[Source: Operators' annual reports, 2015]

The following chart (page 62 of the report) adds the EBITDA margins of KPN and Telenet for the Belgian activities. As shown, since many years Telenet now outperforms Proximus on EBITDA-margin, and it even exceeds regularly the 50% level.

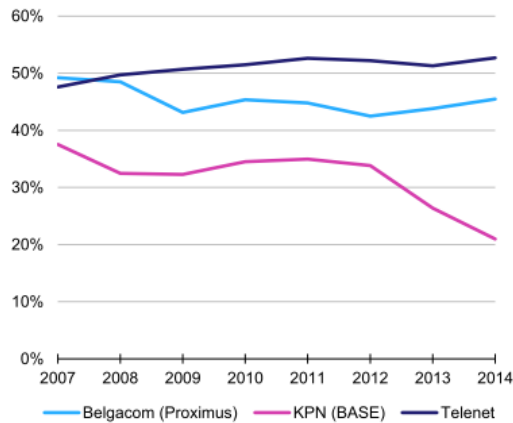


Figure 5.10: EBITDA margin by operator  
[Source: Operator annual reports]

All margins are at a Group level (i.e. include mobile activities), but are specific to Belgium

Margins for Belgacom are for the consumer business unit (i.e. exclude business customers)

To complete the above data for that period, the Orange Belgium EBITDA-margins are :

Orange BE	2007	2008	2009	2010	2011	2012	2013	2014
Reported EBITDA Margin	41.41%	41.75%	39.99%	36.76%	35.81%	34.46%	25.07%	23.50%

The graphs show clearly that the mobile centric operators (KPN-Base, Orange) suffered strongly from the increasing competition in the mobile market, competition stimulated by Telenet's aggressive mobile offers. From 2014 onwards, this strategy pushed Base towards the sale off its activity to Telenet.

The simple, obvious fact that the EBITDA margins of the 2 main fixed operators on the market are – for both – among the very high end of the range, is a clear indication about the lack of competition on the market and the possibility for the players to apply retail tariffs substantially higher than those that would prevail in a competitive environment.

**A lack of data regarding VOO, but performance indicators are very positive as well...**

Regarding VOO there are not a lot of financial results that are public. Anyway, the below charts, presented by Nethys Group's CEO, Stephane Moreau, show that the EBITDA margin of VOO (36%) is very positive and clearly above the EBITDA margin of Orange <sup>5</sup>

<sup>5</sup> See Presentation Nethys – Publifin, Commission d'Enquête du Parlement wallon , 10 mars 2017 -

## Un groupe qui se mesure bien à ses pairs... (2/2)

### Entités avec actionnariat privé

ESTIMATIONS

Millions de EUR, 2015

	Entité	Revenu	EBITDA (marge)	Pairs	Revenu	EBITDA (marge)
Energie	Resa	272	123 (45%)	Electrabel, Belgique	7,055 <sup>4</sup>	510 (8%) <sup>5</sup>
	Elicio	33	18 (54%)			
TelCo & Media	VOO	310	112 (36%)	Mobistar	1,235	321 (26%)
	Win	28	4 (14%)			
	BeTV	45	3 (7%)	RTL-TVI	~200	~46 (23%)
	EDA <sup>6</sup>	59	0.4 (0.7%)	Rosel <sup>6</sup>	535	45 (9%)
	Tax Shelter	12	0.3 (2.57%)			
	Intégrale	158	70 <sup>3</sup> (44%)			
Assur. & Crédit	TCL					
	Credis					
	Al. Bokiau					
Total Groupe Nethys		759 <sup>2</sup>	262 <sup>2,4</sup> (35%)			

SOURCE: Rapports annuels, Morningstar

nethys

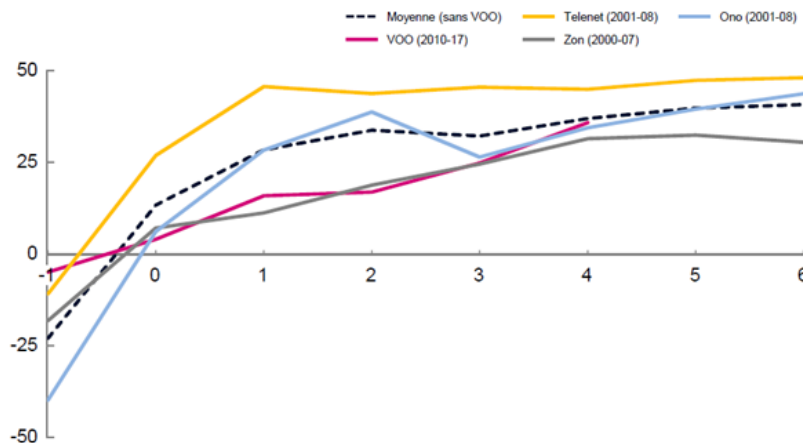
1 L'Avenir comprend LAA. 2 Hors Intégrale, comprend Liège Airport et Meusinvest -0.5 mio de EUR. EBITDA comprend 4.6 mios d'autres activités (nethys 118.3 mios - VOO 111.7 mios). Tax Shelter: 3 Bénéfice courant. 4 Avec participations Utilises. EBITDA: 1.9 mios de EUR. Extrapolation basée sur un total de 180 millions et 470 mios d'investissement. Hypothèses prises: amortissement + investissement et allocation belge similaire au chiffre d'affaire, c'est-à-dire 50%. 5 Comprend participations Utilises. EBITDA: 1.9 million de EUR

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Furthermore the EBITDA margin of VOO substantially increased since 2010 and places VOO now at the EU benchmark.

## La dynamique de redéploiement des marges de VOO sur le triple play reste similaire à celle d'autres câblo-opérateurs

Marge EBITDA (EBITDA/CA), Pourcentage



nethys

SOURCE: LRP VOO 2012-17; Rapports annuels. Année 0 définie telle que l'EBITDA devient positif (2001 pour Zon, 2002 pour Telenet, 2002 pour Ono et 2011 pour VOO)

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Overall, the performance of VOO is claimed to be fully in-line with the performance of other cable operators, and its churn level is indicative of the lack of competition in the market.



**VOO a désormais une performance comparable au benchmark des « best practices » de câblo-opérateurs européens**

	Indicateurs clés	Câble Europe, 2013 <sup>1</sup>	Télécoms Europe, 2013	VOO 2015
Indicateurs financiers	Croissance revenu 2010-15	5,5%	-3%	11%
	Marge EBITDA	43%	32%	36%
	Dividend yield	0%	4%	0%
Indicateurs opérationnels	RGU fixe par foyer	1,8	1,4	1,8
	Coûts opérationnels par RGU	125 EUR	N/A	165 EUR
	CAPEX par client	153 EUR	N/A	171 EUR
	Portion 3-play	42%	25%	35%
	Foyers avec au moins un produit triple play	58%	42%	45%
	Taux annuel de perte clients	10%	15%	11%

nethys

<sup>1</sup> Moyenne de Cablecom, Ziggo, Telenet, Ono, Zon, Virgin, NC Numericable

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## The push towards duopolistic markets

One of the risks associated with the current market trends (of the elements on convergence), is that ultimately the goal put forward by Telenet's main shareholder – Liberty Global – gets materialized. As put forward in the article<sup>6</sup> “Verizon and Charter: the Trump era heralds a wave of European style cable-mobile consolidation” : *“the view from Liberty Global CEO Mike Fries is sobering. In an interview at Davos this year, he foresaw a Europe with just two mobile operators per market, both with extensive wireline assets, and one of which would belong to the cableco (for example, Liberty Global).”*

Clearly, the view is to get to a duopolistic market, in both fixed and mobile services.

Orange Belgium concurs with the finding that the infrastructures of these players have to a very high degree been developed while they disposed of exclusive rights. While some of these operators claim to be making “very high network investments”, in reality the amounts are not extremely high when considering the related revenues and profits. Orange Belgium considers that a more detailed analysis of the investments would show that a large part (at least for some operators) is not related to network investments as such but rather to content rights (eg football) and to customer premises equipment. We suggest also to consider the level of the network investments in light of the annual retail tariffs increases (which are claimed to be required due to these investments) and of the overall profitability of the operators.

<sup>6</sup> [http://www.analysysmason.com/Verizon-Charter-USA-Jan2017?utm\\_term=Verizon%20and%20Charter%3A%20the%20Trump%20era%20heralds%20a%20wave%20of%20European-style%20cable%5Cu2013mobile%20consolidation&utm\\_campaign=This%20week%3A%20NB-IoT%20will%20and%20spectrum%20choices%20%7C%20Cable%5Cu2013mobile%20consolidation%20%7C%20B2B%20user%20experience%20digitalisation&utm\\_content=email&utm\\_source=Act-On+Software&utm\\_medium=email](http://www.analysysmason.com/Verizon-Charter-USA-Jan2017?utm_term=Verizon%20and%20Charter%3A%20the%20Trump%20era%20heralds%20a%20wave%20of%20European-style%20cable%5Cu2013mobile%20consolidation&utm_campaign=This%20week%3A%20NB-IoT%20will%20and%20spectrum%20choices%20%7C%20Cable%5Cu2013mobile%20consolidation%20%7C%20B2B%20user%20experience%20digitalisation&utm_content=email&utm_source=Act-On+Software&utm_medium=email)

Finally Orange Belgium considers that amounts paid to acquire cable-networks are clear indicators about the (very) high expected profits that can be extracted from these markets, even when those acquiring the assets are aware of the regulated nature of the underlying networks : , the amount paid by SFR to acquire Wolu-TV and subsequently the amount paid by Telenet to acquire SFR represent very high amounts as well when expressed “per home passed” or “per active subscriber”.

#### **§ 360 CSA / §355 VRM / §344 Medienrat / § 579 BIPT: Commercial wholesale offers :**

Orange confirms that, despite requests to get access to commercial wholesale conditions, such conditions have never been offered by any vertically integrated competitor. It considers that, absent firm regulatory obligations, such offers will not be made in the future.

We refer to part II – a view of the market evolution absent regulated access to cable networks for more details on this case.

#### **§366 CSA / §361 VRM / §350 Medienrat / § 585 : Content rights as barrier to entry**

Orange Belgium confirms the findings. While technically not within the scope of this market analysis, it requests and suggests that initiatives are taken in order to address the competition distorting nature of the current situation.

The declarations of the ex-BASE CEO, Jos Donvil, in “L’echo of 16 April 2016”, indicate this competitive disadvantage for a new entrant very clearly :

#### **Le CEO qui sacrifie son poste pour sa société (L’Echo - 16 April 2016)**

Quel a été exactement votre rôle dans la mise en vente de Base par KPN?

Un matin de novembre 2014, j’ai pris ma voiture pour aller voir Eelco Blok, le CEO du groupe KPN, au siège de l’opérateur aux Pays-Bas. Le marché belge de la téléphonie mobile venait de se transformer radicalement. Jusqu’alors, la raison pour laquelle un consommateur changeait d’opérateur tenait au prix des plans tarifaires. Et Base était leader (il l’est toujours, d’ailleurs) en matière de prix. Base avait établi sa position en s’appuyant sur trois éléments: les meilleurs prix, une expérience client de qualité, et un réseau de qualité également. Mais en 2014, l’élément clé est soudain devenu le “package triple” ou “quadruple play” et, accessoirement, la subsidiation à l’achat d’un smartphone: ce sont devenus les deux raisons pour lesquelles les clients changeaient d’opérateur. Or Base ne pouvait pas offrir de pack puisqu’il ne disposait pas de réseau fixe, et la subsidiation coûte très cher à l’opérateur. Nous étions aussi le plus petit des opérateurs: nous nous sommes soudain trouvés pénalisés par cette évolution. Je reste convaincu que le mobile est l’avenir et qu’il va devenir une vraie alternative au fixe grâce à la 4 et la 5G, mais ce sera pour aux alentours de 2019... Entre-temps, il faut passer le cap d’une série d’années où l’on ne pourra gagner des clients que via la convergence mobile-fixe tout en devant continuer à investir énormément dans le réseau. Voilà la situation à l’automne 2014. J’ai donc dit à Eelco Blok que le moment était venu de vendre Base.

Avec une réglementation meilleure et plus rapide, Base aurait-il pu devenir un acteur “quadruple play”?

Avec le recul, ma plus grande déception est l’échec de Snow, notre offre de télévision numérique. On avait fait tout ce qu’il fallait. Et Snow a été apprécié par les consommateurs comme alternative au marché, mais au plan financier ce n’était pas tenable à cause du coût du contenu. On a été mal conseillés sur le budget nécessaire à Snow: le contenu s’est révélé deux fois plus cher que prévu. On avait lancé une offre à 39 euros: on aurait dû augmenter ce prix pour tenir, mais en ce cas on perdait notre rôle de challenger.

Orange Belgium also refers to the VRM Mediacontratierapport 2016, section 4.1.4.1 in this context, in which the regulator addresses the issues raised by the vertical integration of distributors and channels, as well as section 4.2.1 in which must-carry and must-offer obligations are addressed. To consider the introduction of “must-offer” obligations, at least for these channels that are commercially indispensable for a distributor, at FRAND (fair, reasonable and non-discriminatory) conditions should be put on the agenda to avoid that powerful vertically integrated operators (telecommunications services providers, broadcasters) distort competition.

We also refer in this respect to the current discussions around the European Electronic Communication Code which integrate in the context of the “must-carry obligations” – draft Article 106 of the EECC, a proposed paragraph 2 on the need for prices applied by broadcaster to be appropriate and set without discrimination between distributors and possibly coupled with a “must offer” obligation.

§374 CSA / §369 VRM / §358 Medienrat / §593 BIPT: A further evidence of the absence of buying power is that, even after a petition against a Telenet retail price increase attracted 75.000 signatures, Telenet didn't react by changing its tariffs and that Proximus made a “very marginal” improved collective offer to attract these customers to its network. One year later, Telenet increased its retail tariffs, again... (see : <http://newsmonkey.be/article/61726> ). This element is equally referred to in §430 CSA / §427 VRM / §414 Medienrat / §668 BIPT.

**Volgend jaar zal Telenet opnieuw een prijsverhoging doorvoeren, grotendeels omdat het dataverbruik sterk blijft stijgen. Dat heeft topman John Porter aangekondigd in het Canvas-programma De Afspraak.**

Eind vorig jaar besliste Telenet ook al eens om de prijzen aanzienlijk te verhogen, en daar kwam toen erg veel protest op. Enkele ontevreden klanten verenigden zich en richtten de Facebook-pagina 'Ik laat me niet pluimen' op. In geen tijd had de pagina vijftigduizend fans, en ook de petitie tegen de prijsverhoging kreeg 75.000 handtekeningen.

## **Chapter 6 CSA-VRM-Medienrat / 10 BIPT. Possibility of a market for bundled offers**

Orange agrees with the elements put forward in this chapter.

§402 CSA / §397-398 VRM / §386-387 Medienrat / §637-638 BIPT: Orange Belgium considers that effective access to fixed infrastructures will become increasingly important, also in the context of the developments towards 5G. As more and more cell sites will be required, a very dense backhaul network will be required. Proximus indicates clearly in its FTTH deployment plan that a large part of the investment is also required for backhaul capacity for 5G. For this deployment, Proximus can build further on its historical network. Cost-efficient fixed fiber wholesale access is required for the deployment of 5G networks.

Some further elements on the importance of access to the wholesale components of a fixed bundle for the deployment of 5G mobile networks are in annex 6

**§404, 407 CSA / §401, 404 VRM / §389 Medienrat / §640, 643 BIPT: Evolution 2-play offers :**

The fact that Telenet's retail tariffs for a 2-play (TV + internet) are higher than the corresponding 3-play (TV + internet + fixed telephony) tariffs definitely contributes to the decrease of Telenet's market share for 2-play offers.

**§406 CSA / §403 VRM / §391 Medienrat / §642 BIPT: Orange 2-play offer :**

For the avoidance of doubt, until now Orange does not offer a 2-play offer. Its internet + TV service is only available when combined with a mobile subscription.

§394 Medienrat: typo : – reference should be made to Nethys

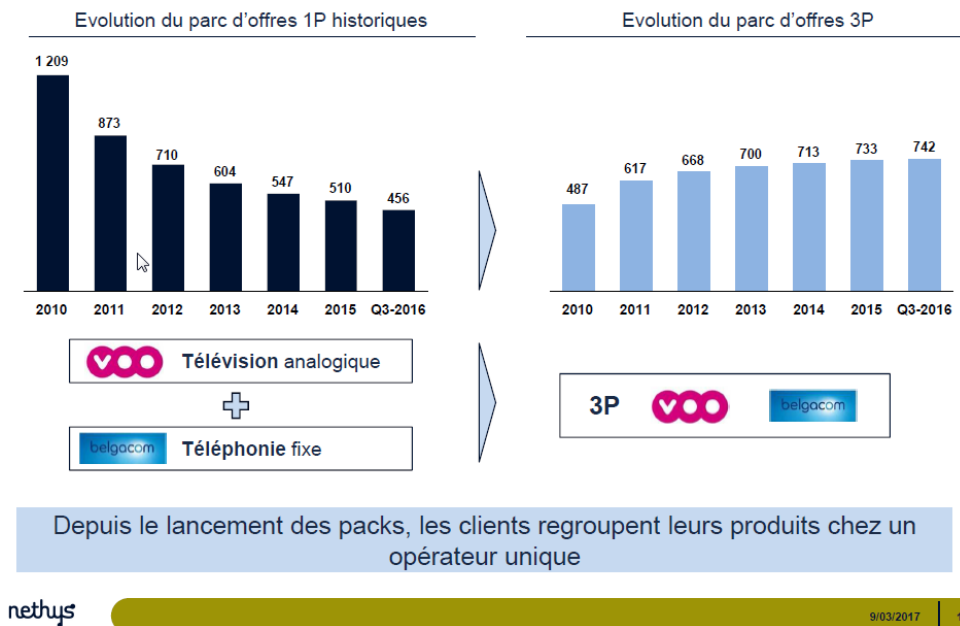
**§410 CSA/ §407 VRM / §646 BIPT: 3-play market shares :**

In particular the market share evolution – or rather non-evolution – of the market shares for 3-play offers (the most important ones over the period under consideration) for Telenet and Proximus on the Telenet footprint is indicative for the lack of true competition between these 2 operators.

With respect to the evolution of 3-play VOO offers, also VOO is successful with its 3-play offers as illustrated in chart presented by the CEO of Nethys group in March 2017.

# 1. Redéfinition des limites du marché

## D'offres 1P historiques à des offres 3P concurrentielles



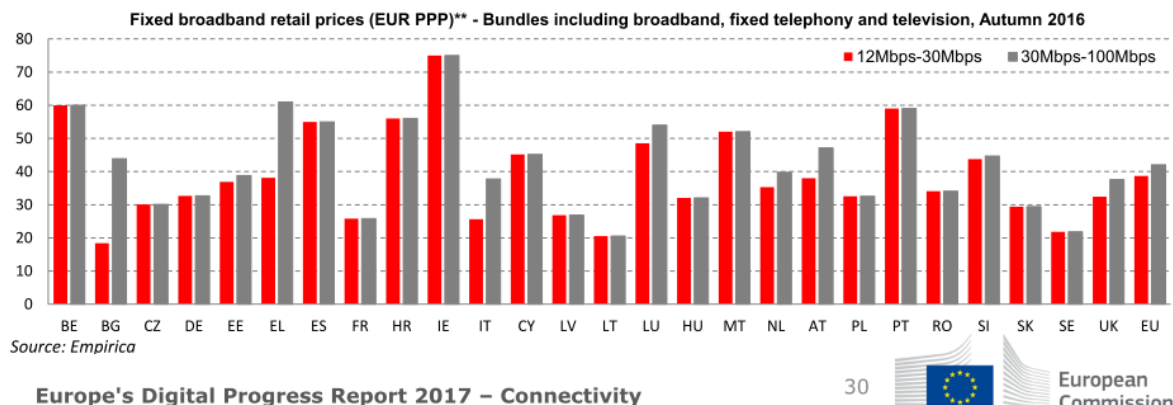
**§418 CSA / §415 VRM / §402 Medienrat / §654 BIPT: Orange prices were stable in 2017.**

Orange notes that these tariffs were indeed stable, but that these stable imply that in essence losses are incurred for any fixed broadband and TV customers. Furthermore, regular promotions are applied, and since September – in order to keep the commercial momentum – customers of the fixed bundle obtain automatically a doubling of their mobile data bundle.

**§423 CSA / §418 VRM / §407 Medienrat / §659 BIPT: Conclusion 3-Play tariffs evolution**

We refer to our earlier comments, with reference to the BIAC study, with respect to the price levels of 3-Play offers and the comparison with some other markets, and as indicated in the last part of the conclusion.

As additional reference for the high level of the bundled tariffs, see the benchmark below. It is unlikely a coincidence that the few markets with tariff levels higher than (Ireland) or at the Belgian level (Portugal) are also markets where a relatively important cable operators are present.



### **§467 CSA / §463 VRM / §450 Medienrat / §704 BIPT: Conclusion regarding a separate market for bundled products**

Orange Belgium agrees with conclusion that there is no need to conclude whether a separate market for bundled services exists. Clearly, there is a strong trend towards customers taking up bundled services, but to a large degree this may also be due to the fact that the stand-alone offers of the SMP operators are not competitively priced at all. For instance, the Telenet Fiber 200 stand-alone internet offer is at 73 € per month, whereas the retail “Whoppa” bundle, including Fiber 200, digital TV and fixed telephony, is at 79.5 € per month. As the currently applicable regulation on the cable networks does not allow to offer stand-alone broadband offers, no comparable stand-alone retail offers can be offered by alternative operators.

In case the regulation would allow to offer stand-alone broadband services, in combination with fairly priced wholesale access, clearly more attractive stand-alone broadband offers would become possible.

## **Chapter 7 CSA-VRM-Medienrat / 11 BIPT. Potential impact of commercial wholesale offers**

No willingness to provide commercial wholesale access.

§469 CSA / §465 VRM / §452 Medienrat / §706 BIPT. It is clear that none of the major vertically integrated operators is willing to supply wholesale offers that allow a user of such wholesale offer to be competitive.

Orange Belgium considers that the situation is actually significantly worse than put forward. Over the last years, Proximus has attacked each important regulatory decision regarding fixed services. Similarly, all cable operators have attacked each step of the tv-distribution market analysis, up to the level of the Supreme Court, and some appeals are even still ongoing today.

The concrete implementation of the cable wholesale access was complicated and the regulated operators used all possible means to discourage and delay the access. This incentive

to obstruct and deny the access obligations was for instance also identified by the Belgian Competition Authority in the Telenet/SFR merger case in 2017 and led the ABC to impose remedies to ensure that regulated access to SFR's network would be guaranteed.<sup>7</sup>

The cable operators demonstrated a combination of behaviours that can be qualified as a constructive refusal to supply, and this experience allows to conclude that in no way a commercial wholesale offer (a fortiori absent regulation) would ever be supplied. Examples of such behaviours are :

- long delays for and nature of the content (too detailed or too high level) of the reference offers;
- denial of the access obligation;
- systematic refusal to handle alternative operator requests in good faith :

#### **Obstruction via reference offers**

Following the market analysis decisions of mid-2011, the cable operators used delaying manoeuvres to comply with their transparency obligations with respect to the drafting of the reference offers. The submission of reference offers was delayed to 2 years instead of the 6 months regulatory period foreseen in the market analysis decision. For instance, for Telenet, the CRC Decision on the reference offer for Telenet on the bilingual region of Brussels – NL version, § 11:

*Vanaf de inwerkingtreding van de CRC-beslissing aangaande televisieomroep op 1 augustus 2011 had Telenet zes maanden om een voorstel van referentieaanbod aan het BIPT voor te leggen. Telenet heeft een ontwerp van referentieaanbod ingediend op 1 februari 2012. Dit voorstel was zeer onvolledig, maar in het kader van een constructieve samenwerking heeft het BIPT geaccepteerd dat Telenet na deze deadline nog bijkomende elementen kon toevoegen. Niettemin heeft het BIPT op dat moment een officieel schrijven met grieven gericht aan Telenet opgesteld wegens de afwezigheid van een aantal elementen die noodzakelijkerwijze in een referentieaanbod moeten opgenomen worden<sup>1</sup>. Daarbij werd Telenet eveneens verzocht om duidelijkheid te scheppen in de reeds verschaftte elementen.*

Similar considerations apply for instance for Brutélé, see e.g. the CRC Decision on the reference offer for Brutélé on the French speaking region, § 11. Clearly the first proposals of the reference offers were considered as very incomplete. Telenet subsequently drafted a far too long and partially irrelevant reference offer which imposed a heavy workload on the regulators: see § 255, point 1 of the CRC Decision on the reference offer of Telenet on bilingual region of Brussels, where the regulators complain about lengthy documents that are redundant and unclear:

*“Telenet gebruikt in zijn referentieaanbod meer dan 70 verschillende bijlagen waarbij gelijkaardige informatie verspreid wordt over vele documenten. Dit komt de overzichtelijkheid en leesbaarheid van het referentieaanbod in zijn geheel zeker niet ten goede.”*

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<sup>7</sup> See § 231-248, p. 43-44 “De auditeur meent dat Telenet na de concentratie de prikkel heeft en over de mogelijkheid beschikt dergelijke toegang niet te verlenen”;



Brutélé and Nethys on the other hand provided only very high level documents which needed to be completed during the negotiation phase under a document entitled “Binder Project”. To this date, the reference offers are not yet fully compliant and have not yet been validated formally by the regulators<sup>8-9</sup>.

Furthermore, Telenet included in its reference offer an obligation for a technical requirement (BSOD) for the resale of the internet obligation, while the regulatory decision of the reference offers 2013 explicitly forbade this approach.<sup>10</sup>

#### **Denial of the access obligation :**

Some cable operators simply denied the regulated access obligation which resulted in the refusal to start the implementation negotiation with Orange Belgium (Brutélé/Nethys in 2014, SFR in 2016), despite the formal request and the payment of the set-up fee (600 000€) by Orange Belgium.

With respect to Brutélé and Nethys, these two cable-operators only accepted to discuss and organize the technical access in March 2014 after receiving a formal notice for breach of the regulators (with the threat of a substantial fine of 10 Mio €) and after parallel legal proceedings initiated by Orange before the judge to force such access.

A similar strategy was used by SFR for which the refusal led to a delay of more than 12 months to provide access (obviously in breach with the regulatory 6 months implementation period). The non-compliance was noted by the regulator and Orange Belgium introduced legal proceedings to obtain access via interim measures.

Once the implementation projects were started, the cable operators all refused to establish wholesale contracts putting down the elements of the relationship not explicitly defined by the reference offer decisions. Up to today, such contracts have not been agreed upon.

#### **Systematic refusal to handle alternative operator requests in good faith:**

Once the regulated operators accepted (finally) to negotiate and provide access, such access is subject to a very restrictive and unilateral interpretation by the cable operators. The technical implementation described in the reference offers was unilaterally drafted by the cable

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<sup>8</sup> See communication of 29 October 2013 of the BIPT linked to the publication of the reference offers:

<http://www.bipt.be/fr/operateurs/telecom/marches/radiodiffusion/offres-de-reference-cablo-operateurs/communication-concernant-les-offres-de-references-du-cable> ;

<sup>9</sup> See also the consultation on the reference offers in the bilingual region of Brussels : §5. *Le 29 octobre 2013, la CRC a publié l'offre de référence adaptée accompagnée d'une communication émettant la réserve suivante : « L'IBPT souligne que ces offres de référence ne sont pas encore tout à fait alignées sur les décisions de la CRC du 3 septembre 2013. » Ces divergences par rapport à la décision de la CRC du 3 septembre 2013 ont empêché une approbation de l'offre de référence dans cette version.*

<sup>10</sup> See § 229 - of the CRC Decision on RO Telenet on bilingual region of Brussels : “229. Gezien de beperkingen van de keuzemogelijkheden van de begunstigden omwille van de problemen betreffende interoperabele eindapparatuur en de aanzienlijke kosten die de BSoD tunneling oplossing met zich meebrengt, acht het BIPT deze oplossing niet proportioneel. Om deze redenen, verworpt het BIPT het BSoD voorstel van Telenet.”



operators is complex and the alternative operators need to “fight” constantly to obtain the access services that the regulatory decision obliges to provide.

Specific examples of this behavior relate to the supply of “own broadband profiles”, the nature of the test requirements put forward (extremely divergent between the various cable network operators – from “minimal” to “excessive”); the provision of an “own channel”, the delays taken to assess any request for change (systematically the maximum period of 4 months, even for very basic requests); the use of the “valid request” concept by Telenet.

These examples are addressed further in the context of the remedies proposed. We also refer to part II, about the market evolution absent cable regulation on the scenarios that would happen in this case.

## **Chapter 8 CSA-VRM-Medienrat / 12 BIPT. Conclusions regarding the retail markets**

§476 CSA / §472 VRM / §458 Medienrat / §713 BIPT: Orange Belgium agrees with the findings. The low churn is especially a barrier to entry given that the associated markets are also characterised by a **very high market penetration** with low future growth prospects. In such market, the addressable market for a new entrant consists in essence of the customers churning away from the already established operators. This addressable market is obviously small when the churn percentages of these operators are low.

§485 CSA / §481 VRM / §468 Medienrat / §722 BIPT: Orange Belgium notes that the various evolutions reflect not only the different degree of competition on the markets, but also the pricing strategy of the fixed operators. Up to mid-2015, the (already high) prices for the bundled services were not increased, but as the prices for the individual services increased substantially (figure 51 CSA / 72 VRM / 39 Medienrat / 113 BIPT FR could also include the price for TV-services, which shows also a strongly increasing trend), the bundle discount level increased and bundles became, as a consequence, more and more attractive. By end 2015, when the bundle penetration was already very high, it became also profitable to increase the price of the bundle.

§494 CSA / §490 VRM / §477 Medienrat / §731 BIPT: Orange Belgium fully supports this conclusion, and refers to the article in annex : “Mobile-Only is Dead, Long Live Convergence !” to further illustrate and clarify the consequences of convergence on mobile centric operators. It actually considers that the disappearance of the wholesale offers would be substantially worse than “a handicap”. It would imply the impossibility to continue to compete in an effective way, not only in the convergent market, but also on the mobile stand-alone market. In this context we also refer to the Citi Research report (referred to in footnote 258 CSA, 246 VRM, 242 Medienrat, 352 BIPT of the draft decisions, indicating that “... Telenet and Proximus ... and instead offering quad play promotions and discounts on mobile”.

§472- 501 CSA / §468-497 VRM / §455-484 Medienrat / §709-738 BIPT: Orange Belgium concurs with the findings of the regulators. Further to the findings and elements already put

forward, it notes that the market share of alternative operators in Belgium is extremely low, due to the historical failure to ensure efficient wholesale access to Proximus' fixed network.

## **Part III CSA-VRM-Medienrat / VI BIPT – Wholesale broadcasting market**

### **Chapter 9 CSA-VRM-Medienrat / 29 BIPT. Demand for wholesale access for broadcasting services.**

Regarding the possibility for the DOCSIS broadband to provide TV broadcasting similar to DVB-C, Orange Belgium agrees with the regulator's conclusion that this is not possible. Nevertheless for Orange Belgium this isn't due to the volume of traffic that such broadband services would generate but it is related to the network capacity issue that would appear (in term of peak bandwidth).

Replacing DVB-C by unicast (broadband traffic) for Linear TV offers would not be sustainable in terms of network capacity. The problem is less the monthly volume than the total throughput needed during peak hours. For example, considering that a HD TV channel requests between 6 & 10Mbps of bandwidth, 500 customers on a given node watching unicast (broadband) Linear TV node would need an aggregated bandwidth of 3 to 5 Gbps. While today, function of the number of RF channel active, a node allows those 500 customers to share between 400Mbps and 1.2Gbps (DOCSIS is a shared medium with 50Mbps per RF channel). This example demonstrate the impact that such OTT offer would have at local node level but such offers would also have impact on backbone and Interco's capacity.

### **Chapter 10 CSA-VRM-Medienrat / 30 BIPT. Product definition.**

§516 CSA / §512 VRM / §498 Medienrat / § 2040 BIPT Orange Belgium agrees with the market definition from the draft market analysis which identifies as reference product the access to the platform of the digital television and the resale of analogue TV concurring with justifications raised in the draft market analysis: it corresponds to the commercial reality (cable operators provide systematically analogue TV to their digital TV client and from a technical viewpoint both analogue and digital signals are provided simultaneously on the cable network).

§522 CSA / §512 VRM / §504 Medienrat / §2046 BIPT We also refer to part II : additional elements, based on technical and business characteristics, to demonstrate the non-substitutability between the broadband wholesale central access market services under ITU SG-15 standardisation and those under Cablelabs standards for broadband and between IP-TV and cable-TV for broadcast.

§530 CSA / §526 VRM / §512 Medienrat / §2054 BIPT Further Orange Belgium also fully shares the view that alternative TV platform (in particular IP TV) are not part of the reference product relying i.a. on the main obstacle to switch (the existence of a cable or DSL connection at the premises of the client). See VOO anti-switch folders of 2017 which insists on the disadvantage of losing existing cable TV connections.



In addition as to the “potential competition” by new entrants, we concur with the finding that it is unlikely that new infrastructures are deployed with adequate coverage to compete with existing cable operators’ network. Further we believe that the absence of any competition between the cable operators themselves will contribute to the reinforcement of market power of existing cable operators. It is noteworthy that no cable operators has asked access under the current regulation to another cable operator. This contrasts with the commercial agreements that cable operators manage to find on elements likely to improve their current retail commercial offers on their coverage zone (we refer to access that is provided to homespots between VOO and Telenet, to the agreement found with respect to content and in particular to premium bouquet of Be TV available on Telenet’s network or agreement found on mobile service (VOO providing mobile services through a commercial agreement concluded with Telenet. )

Regarding the possibility to replace cable TV by OTT (§570, 617,664 CSA / §566, 613, 660 VRM / §552 Medienrat/ §2094,2141,2188 BIPT) we refer to our comments above, Orange Belgium agrees with the conclusion that, within the timeframe of the present market analysis, OTT linear TV offers won’t replace and won’t be comparable to current TV linear offer.

Nevertheless this isn’t due to the volume of traffic that such OTT offer would generate but it is related to the network capacity issue that would appear (in term of peak bandwidth) if such OTT offers would be replacing the current TV linear offers. For example, considering that a HD TV channel requests between 6 & 10Mbps of bandwidth, 500 customers on a given node watching OTT unicast Linear TV node would need an aggregated bandwidth of 3 to 5 Gbps. While today, function of the number of RF channel active, a node allows those 500 customers to share between 400Mbps and 1.2Gbps (DOCSIS is a shared medium with 50Mbps per RF channel). This example demonstrate the impact that such OTT offer would have at local node level but such offers would also have impact on backbone and Interco’s capacity. More generally replacing current linear TV offer by unicast OTT offer would have a major impact on the “equivalent bandwidth per user” used to dimensioned the network capacity.

§580, 587,627, 634, 674, 681, 721, 728 CSA / §2104,2111,2151, 2158,2198, 2205 BIPT We also refer to part II : -additional elements, based on technical and business characteristics, to demonstrate the non-substitutability between the broadband wholesale central access market services under ITU SG-15 standardisation and those under Cablelabs standards for broadband and between IP-TV and cable-TV for broadcast;

§593,640,687,734 CSA / 2117,2164, 2211 BIPT. We refer to our view on the market evolution absent regulated access to the cable networks. in Part II

§2157 BIPT: typo (French version) VOO should be replaced by Telenet

## **Chapter 17 CSA / 16 VRM / 14 Medienrat / 36 BIPT. Potential problems associated with the dominance of the cable-operators.**

Orange Belgium confirms the elements put forward by the regulator. Based on this experience, Orange Belgium puts forward a number of improvements in the “remedies” section, so that in the future such behaviors can more easily be addressed.

## **Chapter 18 CSA / 17 VRM / 15 Medienrat / 37 BIPT. Remedies in the broadcast market.**

Access analog & Digital TV.

§752 CSA: the obligation to offer analog TV should be imposed in the area where such offer still exists in retail (ex AIESH footprint).

In the same line §753 CSA should specify “sur ce territoire” at the end.

### **Section 18.2.4 CSA / 17.2.4 VRM / 15.2.4 Medienrat / 37.2.4 BIPT : Negotiation in good faith**

§788 CSA / §737 VRM / §630 Medienrat / 2265 BIPT : Orange Belgium suggests to clarify that the 15 days are calendar days.

Orange Belgium notes that the maximum period of 4 months for the cable-operators to conclude an agreement in this particular case seems reasonable, but in practice we see that the cable operators give a first feedback regarding a reasonable request from Orange Belgium in the context of other access obligations after 4 months).<sup>11</sup> To that end, it would be useful to clarify that if a request contains insufficient information for its proper assessment, the regulated operator must identify and specify the missing information within 15 days following the request from the alternative operator.

Orange Belgium considers that in case an alternative operator requests an access in order to replicate the offer of the SMP-operator, shorter timelines should apply than those put forward.

§790 CSA / §739 VRM / §632-633 Medienrat / §2267 BIPT Orange repeats that as a consequence of the refusal to agree on the access contracts such notification never could take place so far.

§791 CSA / §740 VRM / §634 Medienrat / 2268 BIPT Orange Belgium reminds that in the context of regulated access operators have refused to negotiate contracts even when only aiming at completing the reference offers. [REDACTED]

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<sup>11</sup> We refer to Orange Belgium's comment of 21 October 2015 with respect to Reference offers of cable operators [REDACTED]

In general, experience learns that this obligation is hard to enforce. Orange deplores in this context for instance that the blunt and undeniable refusal by Nethys, Brutélé and Coditel to start the discussion of the implementation of the cable regulation has not led to any formal sanction by any of the regulators. Orange Belgium was forced to launch legal proceedings against these three operators to force them to start and pursue in good faith the negotiation process. With Coditel an incomplete access was provided 12 months after the request.

It is a concern that an obligation of “good faith” will not deliver real results, unless it is accompanied with additional measures that are enforced and for which quick sanctions are imposed.

§794 CSA, 743 VRM, 636 Medienrat et 2271 BIPT FR : [REDACTED]  
[REDACTED] Unless sanction methods are integrated, it is unlikely that the cable operators will adapt their behavior.

§797 CSA, 746 VRM, 639 Medienrat, 2274 BIPT : Orange repeats that as a consequence of the refusal to agree on the access contracts the notification of the contracts to the regulators never could take place so far. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

#### **Section 18.2.5 CSA / 17.2.5 VRM / 15.2.5 Medienrat / 37.2.4 BIPT Not withdraw access already provided**

§801 CSA / §750 VRM / §643 Medienrat / 2278 BIPT. Orange Belgium considers that a 1 year notification period for digital TV and 6 month for analog TV is too short. Depending on the nature of the change, it is clear that the analysis, definition of possible solutions, negotiation on these solutions and their implementation of the changes required (eg also including timely notification of the customers that might be impacted) in case of a withdrawal of an access service already provided, may take substantially beyond 1 year. A too short period for such withdrawal implies that the alternative operator’s running operational plans will have to be adjusted, based on a probably unilaterally decided upon service change of the SMP operator. A strict minimum period of 2 years for digital TV and 1.5 year for analog TV must be foreseen, and there must be a possibility to impose longer periods when the investments made by the alternative operators are at risk (eg if the change has an impact on running content agreements which is always the case for an analog switch-off – but it may apply for other content distribution agreements as well- , or when the change implies the need for changes to already supplied customer premises equipment or to other IT- or network equipment investments.

[REDACTED]  
[REDACTED]  
[REDACTED]





Installer” principle will indeed allow to cover limitations of the “Single Visit” principle implemented today.

[REDACTED]

Orange Belgium requests in any case that more transparency and guarantees are provided with respect to the non-discriminatory approach for these interventions for its own customers versus the customers of the retail arm of the cable operator.

For the sake of clarity, Orange Belgium suggests that it is made explicit that:

- any filter that might be present on the cable network to prevent access to the network can also be removed (or installed, depending on the context and service to be provided) by the alternative operator technician. So the alternative operator’s technician should be allowed to access to the TAP.
- the exact same procedure should be followed for alternative operator and cable operator customer installation and repair.
- alternative operators technicians should be allowed to take measures at TAP level (especially in case of repair to identify whether the issue comes from the network or from the drop cable).
- during repair, the alternative operator technician should be allowed to change connectors up to the TAP (i.e. including drop cable) if a failure is detected.
- any contractual clause between cable operators and third parties which would result in a discriminatory process to the disadvantage of the alternative operators must be considered to constitute a breach of the access and non-discrimination obligations imposed under the regulated access.

In addition the cable operator must provide assistance to ensure that the process can be improved or adapted in a smooth manner. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

§820 CSA / §769 VRM / §662 Medienrat / §2297 BIPT .. Orange Belgium notes that the concept of “customer relationship” is not clearly defined and may be subject to discussion.

[REDACTED]

**18.2.7 CSA / 17.2.7 VRM / 15.2.7 Medienrat / 37.2.7 BIPT Provide access to operational support systems and software systems that are required.**

Such access is clearly key for alternative operators in order to be able to compete effectively. With respect to the current cable wholesale access, it is clearly not the case. Orange Belgium is clearly discriminated versus the cable operator’s retail arm with respect to several services,

and lacks efficient (automated) interfaces for a number of key operations. The following elements should clearly be addressed :

- Eligibility :

[REDACTED]

[REDACTED]

[REDACTED]

- Ordering VOO – Lack of IT systems<sup>17</sup>

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Apart from access to these systems, it is also essential that the evolution of these systems corresponds with the needs of the alternative operators, and that changes to these systems should be the result of a process in which all stakeholders, including the regulators, contribute. Furthermore, costs of system changes that have to be made by the alternative operators but that are induced mainly due to changes required by the SMP operator should be reimbursed or compensated. While this is addressed in to some degree further in the draft decision, the period for implementation (3 to 6 months) may not always be sufficient when taking the limited number of release plannings into account.

In the context of any network related service, alternative operators should be able to rely on the same processes than those of the vertically integrated operator's retail arm, as this is the best means to avoid a discriminatory treatment. The access to test the quality of the line is one of several support services that have to be provided (eg provision of the network quality parameters to be supplied in the context of net neutrality at a given location, ...).

[REDACTED]

[REDACTED]

**18.2.8 CSA / 17.2.8 VRM / 15.2.8 Medienrat / 37.2.8 BIPT Provide a given level of QOS.**

Orange Belgium considers that the level of QoS should be strengthened taking obvious discrimination between the quality provide in wholesale vs. retail. We refer also refer to our comments hereafter regarding non-discrimination.

**18.2.9 CSA / 17.2.9 VRM / 15.2.9 Medienrat/ 37.2.9 BIPT Freedom to define own bouquet.**

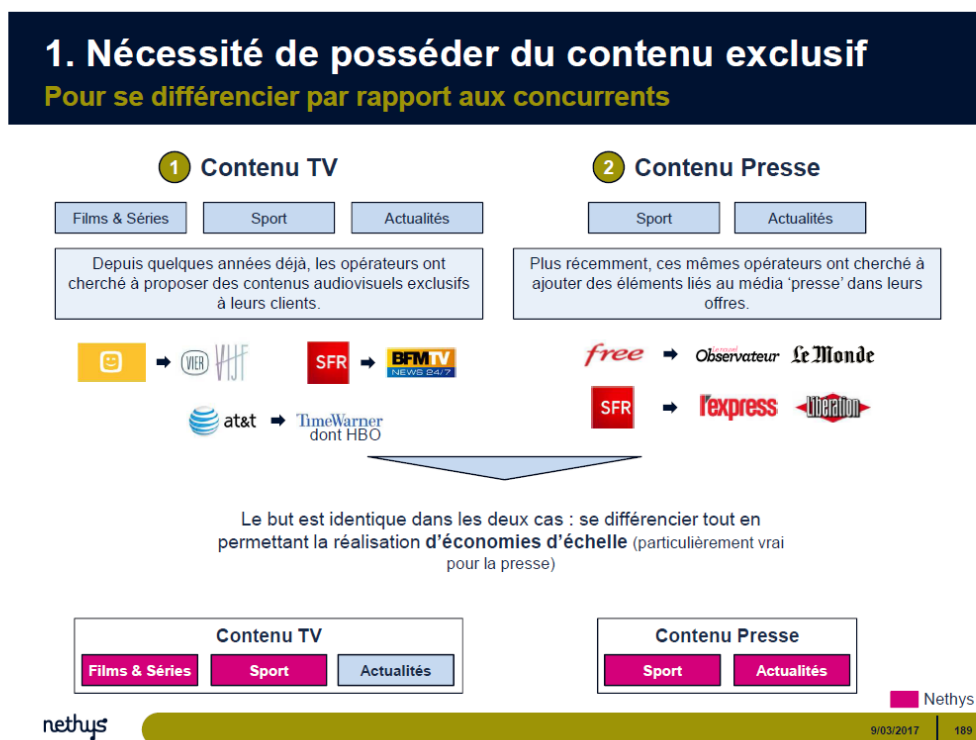
With respect to the differentiation opportunities of alternative operators, Orange insists on the importance of content. Differentiation through content is also part of the cable operators' strategy.

See Telenet's CEO John Porter declarations, De Tijd 26 December 2015<sup>21</sup> which insist on the fact that content differentiation can help Telenet to keep its clients even if Mobistar comes on the market with an interesting offer, “

U hebt met 'Chaussée d'Amour' al één eigen reeks besteld. Volgen er nog in de nabije toekomst?  
Porter: 'We hebben altijd gezegd dat we meer willen doen. Maar we zijn nog wat aan het zoeken. In het verleden deden we 10 procent van een film en een stukje van die reeks. Nu gaan we onze middelen concentreren op series met culturele relevantie die lang kunnen voortleven op televisie. Wie weet kunnen we straks ook dingen doen met internationale uitstraling. Gaan we een cash return hebben van 'Chaussée d'Amour'? Waarschijnlijk niet. Maar als mensen erover praten, het op verschillende toestellen bekijken, als het leeft, dan is onze job gedaan. Wat is het einddoel? Stel dat Mobistar straks een aantrekkelijk aanbod heeft voor digitale televisie. Wij willen dat mensen dan denken: 'Wacht even, als ik Telenet verlaat, heb ik geen toegang meer tot de beste sport, de beste series, 'Chaussée d'Amour', noem maar op.'"

<sup>21</sup> 'Vlamingen zijn het perfecte testpubliek', De Tijd, 26 december 2015

See also Nethys Group's CEO, Stéphane Moreau, insisting on the need to dispose of exclusive content to differentiate on the market (17 March 2017)<sup>22</sup>



Orange Belgium welcomes the principle that alternative operators should be able to distribute own channels. Nevertheless Orange Belgium does not understand that the market analysis proposes to limit the available own channels to “minimal 2” channels only. This position is contradictory with the principle of non-discrimination and the principle of equivalence of output put forward by the regulators as remedies in the same market analysis. Orange Belgium refers to the important number of exclusive channels (incl. the barker channel) that cable operators allocate to themselves (around 20 own channels for Telenet (incl. Play More and Play Sports channels, not including the additional – de facto exclusive - 8 VOO-sport channels on Telenet). For VOO there are less own channels (in practice these are the 8 VOO sports channels) but clearly more than 2.

We note that the statement “minimum 2” own channels -BIPT § 2322- seems in contradiction with BIPT §2328, which seems to imply this is rather “maximum 2” own channels.

<sup>22</sup> See Presentation Nethys – Publifin, Commission d'Enquête du Parlement wallon , 10 mars 2017

BASISAANBOD		RADIOZENDERS		LIFESTYLE		SPORTS	
TELEVISIEZENDERS							
001 vtm	HD	043 Cartoon Network		340 OutTV		346 Extreme Sports	
002 6tv	HD	044 Xtra		347 Boomerang		347 Nick Toons	
003 VIER	HD	045 Doodle TV		348 Food Network		348 Playboy TV	
004 Canvas	HD	046 Radio 1		349 Travel Channel		349 Blue Hustler	
005 Q2	HD	047 Eén		350 E! Entertainment	HD	350 Penthouse	HD
006 V.I.P.	HD	048 BBC One	HD	351 Disney XD		351 X-Passion	
007 Vijf	HD	049 NPO1		352 Boomerang		352 Blue Hustler	
008 ATV (Antwerper)		050 NPO2	HD	353 Nick Toons		353 Penthouse 1	HD
009 AUS (Eski)	HD	051 NPO3	HD	354 Baby TV		353 Penthouse 2	HD
010 AUS (Gard)	HD	052 BBC One		355 Baby TV			
011 AUS (Oudeaard)	HD	053 BBC One		356 Baby TV			
012 AUS (West-V)	HD	054 BBC One		357 Baby TV			
013 TV Oost (Dordrecht)		055 BBC One		358 Baby TV			
014 TV Oost (Groningen)		056 BBC One		359 Baby TV			
015 Buzz (Brusselrand)		057 BBC One		360 Baby TV			
016 BOB (Miami-Brabant)		058 BBC One		361 Baby TV			
017 RTV (Gard)		059 BBC One		362 Baby TV			
018 RTV (Leuven)		060 BBC One		363 Baby TV			
019 RTV (Turnhout)		061 BBC One		364 Baby TV			
020 BLUZZ (Brussel)		062 BBC One		365 Baby TV			
021 nrt (Gard)		063 BBC One		366 Baby TV			
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133 nrt (Gard)		175 BBC One		478 Baby TV			
134 nrt (Gard)		176 BBC One		479 Baby TV			
135 nrt (Gard)		177 BBC One		480 Baby TV			
136 nrt (Gard)		178 BBC One		481 Baby TV			
137 nrt (Gard)		179 BBC One		482 Baby TV			
138 nrt (Gard)		180 BBC One		483 Baby TV			
139 nrt (Gard)		181 BBC One		484 Baby TV			
140 nrt (Gard)		182 BBC One		485 Baby TV			
141 nrt (Gard)		183 BBC One		486 Baby TV			
142 nrt (Gard)		184 BBC One		487 Baby TV			
143 nrt (Gard)		185 BBC One		488 Baby TV			
144 nrt (Gard)		186 BBC One		489 Baby TV			
145 nrt (Gard)		187 BBC One		490 Baby TV			
146 nrt (Gard)		188 BBC One		491 Baby TV			
147 nrt (Gard)		189 BBC One		492 Baby TV			
148 nrt (Gard)		190 BBC One		493 Baby TV			
149 nrt (Gard)		191 BBC One		494 Baby TV			
150 nrt (Gard)		192 BBC One		495 Baby TV			
151 nrt (Gard)		193 BBC One		496 Baby TV			
152 nrt (Gard)		194 BBC One		497 Baby TV			
153 nrt (Gard)		195 BBC One		498 Baby TV			
154 nrt (Gard)		196 BBC One		499 Baby TV			
155 nrt (Gard)		197 BBC One		500 Baby TV			
156 nrt (Gard)		198 BBC One		501 Baby TV			
157 nrt (Gard)		199 BBC One		502 Baby TV			
158 nrt (Gard)		200 BBC One		503 Baby TV			
159 nrt (Gard)		201 BBC One		504 Baby TV			
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162 nrt (Gard)		204 BBC One		507 Baby TV			
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164 nrt (Gard)		206 BBC One		509 Baby TV			
165 nrt (Gard)		207 BBC One		510 Baby TV			
166 nrt (Gard)		208 BBC One		511 Baby TV			
167 nrt (Gard)		209 BBC One		512 Baby TV			
168 nrt (Gard)		210 BBC One		513 Baby TV			
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170 nrt (Gard)		212 BBC One		515 Baby TV			
171 nrt (Gard)		213 BBC One		516 Baby TV			
172 nrt (Gard)		214 BBC One		517 Baby TV			
173 nrt (Gard)		215 BBC One		518 Baby TV			
174 nrt (Gard)		216 BBC One		519 Baby TV			
175 nrt (Gard)		217 BBC One		520 Baby TV			
176 nrt (Gard)		218 BBC One		521 Baby TV			
177 nrt (Gard)		219 BBC One		522 Baby TV			
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179 nrt (Gard)		221 BBC One		524 Baby TV			
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181 nrt (Gard)		223 BBC One		526 Baby TV			
182 nrt (Gard)		224 BBC One		527 Baby TV			
183 nrt (Gard)		225 BBC One		528 Baby TV			
184 nrt (Gard)		226 BBC One		529 Baby TV			
185 nrt (Gard)		227 BBC One		530 Baby TV			
186 nrt (Gard)		228 BBC One		531 Baby TV			
187 nrt (Gard)		229 BBC One		532 Baby TV			
188 nrt (Gard)		230 BBC One		533 Baby TV			
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197 nrt (Gard)		239 BBC One		542 Baby TV			
198 nrt (Gard)		240 BBC One		543 Baby TV			
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205 n							



We clearly regret that the content rights, which at the moment create a significant barrier to entry and are a source of the discrimination between the SMP-operator and alternative operators, are not part of the regulated wholesale offer. Orange Belgium asks, as indicated elsewhere, to ensure that these rights don't hinder competition on the market. At least for the analog channels, and considering that these rights are a clear bottleneck, "must offer" conditions, which are based on FRAND (fair, reasonable and non-discriminatory) principles, should be imposed. Other approaches, such as the concept of a basic open content offer, regrouping all the main channels at the same conditions for all distributors (cf the successful model in Luxemburg), can also be considered.

### **18.3 CSA / 17.3 VRM / 15.3 Medienrat / 37.3 BIPT Non-discrimination.**

Orange Belgium notes today that various areas exist where the non-discrimination principle is not respected. Examples are given in other comments of this document. It is clear that the cable operators systematically don't provide the same level of service, information, systems and processes to the alternative operator as what is provided to the own retail arm. [REDACTED]

§868 CSA / §817 VRM / §710 Medienrat / 2345 BIPT: Orange Belgium is therefore concerned that, unless more formal ex ante measures are defined, the situation will not materially change. One of the best remedies to avoid discriminatory treatment is Equivalence of Input. This is not withheld, although the systems that are (to be) provided are still very new, and in some cases even the first development of automated interfaces still needs to start. This situation would clearly allow for an Eol approach.

This concern is even increased by the fact that §871 CSA / §820 VRM / §713 Medienrat / §2348 BIPT clearly flags the differentiated treatment.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

#### **Section 18.3.4 CSA / 17.3.4 VRM / 15.3.4 Medienrat / 37.3.4 BIPT. Evolution of the network and the reference offers**

Orange Belgium considers the remedies proposed in this section required and proportional.

#### **Section 18.3.5 CSA / 17.3.5 VRM / 15.3.5 Medienrat / 37.3.5 BIPT. Chinese walls**

Orange Belgium considers that until now no meaningful separation between the wholesale and retail arms of the cable operators was implemented

Over the period during which Orange Belgium commercialized its services, the SMP operators started to provide extra advantages to ex-customers in a systematic way and/or tried to convince customers not to change operator by insinuating that these customers would regret the change and/or by making them very attractive retention offers.

[REDACTED]

From an alternative operator point of view these actions substantially increase the barrier to entry, contributing to a situation in which market entry becomes unsustainable. The specific Belgian laws that forbid to apply a contract cancellation penalty after a 6 month period (rule not withheld at EU level during the review of the telecommunication rules), have led to a generalized market practice in which no B2C fixed term contracts are applied by any operator. For a new entrant operator, to impose such minimum (6-month) duration contract would reduce the interest for (and confidence in) the new offer, an unacceptable additional constraint

for a new player. So in practice the new operator must offer "open" contracts, without cancellation fees, while the full costs of acquisition for the customer have to be borne (sales commissions, installation appointment calls and installation, activation charges, supply of modem and tv-decoder, typically a higher number of customer service support calls during the first months of the customer life-time, ...). When such customers cancel their service within a short period, clearly the financial result is very negative.

While in this context Orange Belgium welcomes the easy switch initiative as it helps to a certain degree to facilitate the change process for customers to join an alternative operator, it also makes the process for customers to move (back) to the initial or another operator very easy as well.

Taking into account that the cable network operator disposes at least of the technical contact details of the alternative operator customer, and in a large number of cases also of the customers' retail service history, to contact and make attractive propositions to these customers is (very) easy.

Considering the advantages that a network operator can derive from the ownership of this network (such as the full control and knowledge over the service and the identification of the clients of wholesale customers) this operator has the incentives and means to get back clients lost easily which can be facilitated by the illegal use of information derived from a regulated activity. European examples of explicit bans imposed by competition and regulatory authorities are provided in annex - Chinese Walls & fair commercial practices. Based on this we suggest to complete the Chinese walls obligation:

- with a generic obligation to limit the use of information strictly and only for the purpose for which it was provided;
- by an explicit ban to use the information derived from the network to identify the customer gained by a competitor

#### **Section 18.3.6 CSA / 17.3.6 VRM / 15.3.6 Medienrat / 37.3.6 BIPT. Customer premises equipment**

[REDACTED]

#### **Section 18.4 CSA / 17.4 VRM / 15.4 Medienrat / 37.4 BIPT. Transparency obligations**

With respect to the key performance indicators Orange Belgium agrees that these allow to assess the respect of the non-discriminatory treatment of wholesale services provided to alternative operators and the services provided internally to the retail arms of the cable operators. [REDACTED]

[REDACTED]

§935 CSA / §884 VRM / §777 Medienrat / §2412 BIPT : As a minor note, at the moment there are no regulated “block migrations” in the cable wholesale regulation.

Overall, Orange Belgium considers that the transparency obligations proposed are required and proportionate. In general terms these obligations should contribute to the development of effective competition while not imposing a disproportional burden on the incumbent operator. A key element will be the degree of compliance by the cable operators with the requirements put forward. To ensure that the requirements are adhered too, Orange Belgium considers that more controls and spot-checks will be required than those executed so far.

Orange Belgium flags that the change of the regulation implies that also the reference offers of the cable operators must be adapted to reflect the fact that broadband must be made available on a stand-alone basis.

with respect to reference offers and considering the fact that these reference offers have never been validated by the regulators, Orange Belgium strongly insists for the need for fully compliant reference offers to be validated and published in the shortest delay.

## **Section 18.5 CSA / 17.5 VRM / 15.5 Medienrat / 37.5 BIPT. Obligations regarding price control and cost allocation.**

### **Introduction**

Orange Belgium considers that the obligations regarding price control for wholesale access to the cable networks (central access and digital TV platform) are among the most important elements of the consultation.

Over the last years, Orange Belgium has proven that the technical regulated wholesale access to the cable networks allows new entrants to develop a retail service that competes with the SMP operators in terms of quality and customer satisfaction. The experience shows as well that at the currently applicable financial wholesale conditions imply that for the users of the regulated cable wholesale offer to enter the market is **simply and absolutely not sustainable over time**. We refer to several elements already communicated earlier in this context, such as :

- The public declarations by M. Trabbia (referred to elsewhere in this document) making clear publicly that the current offer is economically not sustainable.

These elements are also identified by investors “Given their intention to create sustainable competition, we think that their action should aim at stopping Orange Belgium losses for each additional client they recruit. Hence our bottom-up calculation for the appropriate objective from a regulatory point of view.”<sup>25</sup>.

Even Proximus<sup>26</sup> indicates that, in order to keep 3 operators, an improvement of the current conditions is needed... :

**Proximus CEO (Q1 17 call, 5<sup>th</sup> May)** – “On the retail, to be honest, when you listen carefully to Orange and mainly the comments they give to analysts, it's that they have already anticipated the cost-plus regulation in the offer. And I think today, they don't make any gross margin on their offer at €49 or €39 with high mobile. And I think if the regulation would go to cost-plus, I don't expect Orange to decrease their price significantly. They would probably use it to get probably more body and more features in their offer. But I don't think they would lower the price and I think also longer term for the market, if we want to keep three operators, which is somewhat also the intention of the regulator, I think it's good if Orange can have some margin on their products.”

[REDACTED]

#### **Fair monthly charges, cost-oriented charges for supplementary services**

Orange Belgium considers that the long term remedy put forward, i.e. to apply fair tariffs for the monthly access fees and cost-oriented tariffs for the additional services, is the most adequate way forward. The move-away from the retail-minus method is welcomed at this method has clearly proven not to work in a market characterized by bundles of regulated and non-regulated services.

[REDACTED]

[REDACTED]

<sup>25</sup>Source: HSBC – Belgian Telcos – 14/06/2017

<sup>26</sup>JP Morgan Cazenove – Europe Equity Research – 17 May 2017 – page 10.

[REDACTED]

**Charges during the period waiting for “fair” or cost-oriented charges**

Orange Belgium provides a detailed view on its position regarding the wholesale charges that should apply during this period as part of detailed comments in part II of this document. [REDACTED]

[REDACTED]

**Monthly fees**

With respect to the options put forward for the recurring monthly access charges, Orange Belgium :

- welcomes the move away from the overly complex and failing retail minus approach;

- insists on the need to ensure that an alternative operator is able to offer stand-alone fixed services in a profitable way;

**Supplementary services**

**Charges for new services**

The changes put forward with respect to the applicable remedies imply that for a number of new regulated services recurring charges have to be determined (eg for broadband only services, for own channels, for access to fixed telephony). [REDACTED]

[REDACTED]

§967 CSA / § 917 VRM / §810 Medienrat / §2444 BIPT : Orange Belgium welcomes that the regulators move away from the retail minus method, which has proven not to be adequate. A

[REDACTED]

price control based on “fair tariffs” is justifiable, but fully depending on what will be considered a reasonable margin. [REDACTED]

[REDACTED]

[REDACTED]

§969 CSA / § 919 VRM / §812 Medienrat / §2446 BIPT :

Orange Belgium welcomes that the charges for supplementary services will be cost-oriented.

While waiting for the development of the cost-model, [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]



§972 CSA / §922 VRM / §815 Medienrat / §2449 BIPT. Wholesale charges based on tariffs that apply at the moment.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

§973 CSA / §923 VRM / § 816 Medienrat / §2450 BIPT. Wholesale charges based on national benchmark

[REDACTED]

[REDACTED]

[REDACTED]

§974 CSA / §924 VRM / § 817 Medienrat / §2451 BIPT. Commercial agreement  
While Orange Belgium does not disagree with this option, it considers that this result is very unlikely to be achieved with one single cable network operator, let alone with all of them.

[REDACTED]

[REDACTED]

[REDACTED]

**§993 CSA / §944 VRM / §838 Medienrat / §2465 BIPT : Use of current tariffs**

[REDACTED]

[REDACTED]

[REDACTED]

**Section 18.5.3 CSA / 17.5.3 VRM / 15.5.3 Medienrat / 37.5.3 BIPT. No price squeeze**

Orange Belgium wants to stress that there are substantial risks that a price squeeze, when performed with EEO (equally efficient operator) cost elements, leads to erroneous conclusions, in particular when the retail services are bundled products. Typically, price squeeze methodologies have been applied in a reasonable way to assess stand-alone services. However, in a commercial context where bundled services are typically among the flagship products offered, a price squeeze test is typically affected by the same problems and difficulties as a retail minus wholesale pricing methodology. The regulators have rightly identified many issues associated with the retail minus method (see in particular § 988 CSA / §938 VRM / §831 Medienrat / §1170 BIPT). As a margin squeeze test typically requires to address the same questions, such test risks to be complex and time consuming. [REDACTED]

[REDACTED]

While the development of such margin squeeze test “as such” is outside the scope of this market analysis decision, Orange Belgium considers that it can be appropriate to include

<sup>33</sup> Press article Le Soir June 17 2017, page 17 : « Selon son CEO, Orange perd de l'argent pour chaque abonné internet-télé.

[REDACTED]

certain elements or principles that can be considered in such test, for instance the fact that for a number of drivers of the assessment not the real market values but the values that would apply in a competitive market will be retained (a typical example for this is the life-time of a customer, determined by the churn percentage).

[REDACTED]

#### **Section 18.5.4 CSA / 17.5.4 VRM / 15.5.4 Medienrat / 37.5.4 BIPT. Cost allocation system**

§1005 CSA / §956 VRM / §849 Medienrat / §2477 BIPT Orange Belgium agrees with the remedy, and refers to the fact that – through certain regulatory decisions and via court cases – it has appeared that the cable operators have repeatedly refused to contribute to share financial information allowing the regulators to proceed with their decisions (eg Coditel in the context of the 2016 wholesale price decisions). The introduction of a cost allocation system – to be combined with a recurrent control – will contribute to avoid such situations in the future.

(typo: (2477 BIPT NL : at the end : should be .... zijn opgenomen in Annex G.

## **Orange Belgium comments – Part II – Detailed comments on key aspects**

Orange Belgium's comments on the main elements of the consultation are part of the first part of this contribution.

In this part of its reaction to the consultation Orange Belgium elaborates a number of the key elements that are part of the draft market analysis decision further. This second part of our answers contains more specifics regarding :

- additional elements, based on technical and business characteristics, to demonstrate the **non-substitutability** between the broadband wholesale central access market services under ITU SG-15 standardisation and those under Cablelabs standards for broadband and between IP-TV and cable-TV for broadcast;
- the **temporary fair charges** for cable wholesale access while waiting for fair charges, including an alternative approach to determine these charges;
- a proposal for the cable **broadband stand-alone wholesale charges**; including comments regarding the wholesale prices for “same” and “own” broadband profiles;
- our view on the **market evolution absent regulated access to the cable networks**.

## **Wholesale central access markets and IP-TV - cable TV non-substitutability.**

Orange Belgium, building on its many years of experience to offer fixed telecommunications services on the Belgian market, is clearly of the opinion that there is indeed no substitutability between the wholesale markets for central access based on copper/fiber technologies and central access based on cable technologies for broadband and between IP-TV and cable-TV for broadcast (throughout this section we will refer to copper/fiber technology each time we want to refer to the central access wholesale broadband services under ITU SG15 standardization for broadband and IP-TV for broadcast on one side and to cable technology when we want to refer to central access wholesale broadband services under Cablelabs standardization for broadband and cable TV for broadcast on the other side).

This non-substitutability, driven by the technical and operational constraints that imply very high costs of switching, is further demonstrated by a set of historical business choices. Looking forward, Orange Belgium is not aware of any technological or other developments that would lead to a change of these conclusions in the foreseeable future.

This part of our comments will address the following elements :

- the very important technical and operational consequences to mass migrate customers from copper/fiber technology to cable technology or vice versa;
- the high costs associated with such mass migration;  
[REDACTED]  
[REDACTED]
- the fact that Base sold of its customer base to Scarlet – and not to Telenet or VOO or Orange<sup>36</sup>– when it ended its “SNOW” service;  
[REDACTED]  
[REDACTED]  
[REDACTED]
- the fact that none of the potential wholesale access providers made any attempt to make a competitive commercial wholesale offer, but rather attempted to increase their tariffs;
- the fact that absent a “universal” TV-decoder, in combination with the bundling trends, the non-substitutability will remain over time.

### **Technical & operational barriers to switching**

In this section, the migration issues between VDSL2 to and from cable, and the migrations issues between fibre to and from cable are addressed at a high level. A detailed listing of all elements, and schematic overviews of the networks, are added at the end of this document in annex 8.

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<sup>36</sup> In 2014 Orange was running friendly user trial tests on the cable networks.

Taking the very high degree of bundling of broadband and TV services into account (the large majority of households have these services with the same provider), from an operator as well as end-user point of view the consequences of a migration of both services together must be considered.

### **Migration between VDSL2 and cable technologies**

To migrate a customer from one technology to another has a number of direct consequences for the access seeker and his end-users.

#### **Technical impacts for the access seeker :**

- the need to change the topology of the existing network;
- the need to redevelop eligibility, activation, provisioning, installation systems and processes (including staff training etc).
- to change from a technology using DSLAM equipment to using DOCSIS CMTS; implies also the need to change any troubleshooting processes and approaches;
- the development of a new modem and associated certification and tests on the various networks, as the access technology is completely different;
- the development of a new TV-decoder and associated tests on the various networks (see also elements on the universal TV-decoder further in this note);
- the development of a different conditional access model for TV services;
- the development of a fixed telephony service based on the different protocols
- very different approach for the implementation of fast zapping for TV-services;
- different approach for customer identification for the different networks
- completely different approach for remote customer and device management.

#### **Consequences for the end-user :**

- the full change-out of modem and TV-decoder equipment (including loss of any existing recordings) for all end-users;
- very often, the need to reconsider the in-house cabling (internal coax cabling cannot be used for IPTV and vice versa). High likelihood to face customer resistance if additional works (drilling) are required.
- The loss of the analog TV function when changing from cable to IP-TV, and the need for additional TV-decoders if multiple TV's are used.
- a different availability of QOS for internet - available speeds depending on location (VDSL2) versus almost uniform speeds (cable);
- high dependencies between services on VDSL with use of TV services impacting the quality of service of internet services, while no such impact exists on cable.
- high likelihood to face a change of the channels available as part of the service (eg less HD channels on VDSL2).

#### **Operational requirements**

Apart from technological and system changes, a migration leads to high operational costs, considering the need to change the installation, to deactivate and reactivate the customer, processes during which several issues may pop-up :

- In some cases a change may simply not be possible because there is no coverage by the other technology at the customer premises; a full eligibility overview is required before being able to access the possibility for a change;

- The switching operator has in any case to make a physical visit with the customer in order to change-out (and explain) the equipment and ensure proper internal cabling. The complexity of the change implies that a “do-it-yourself” approach – anyway rare on the Belgian market – must be excluded.
- For such visit, obviously the customers must be informed, contacted, appointments must be fixed, appointments may have to be rescheduled, ....
- a new copper pair or a new drop cable may be required in case a customer has not yet a connection for the other technology to his home. This may imply the need for a major outdoor “local loop” intervention.
- the need to address indoor cabling issues (as the “coax”-arrival point in the house is typically close to the TV, whereas the “copper”-arrival point is closer to the fixed phone) may lead to a refusal for a change by the customer;
- The switching operator must ensure to have logistics processes to deal with the recuperated equipment and find solution for this material.

### **Conclusion**

In reality, there is no reasonable “migration” path from VDSL2 access technology to the cable access technology or vice versa. The number of technical & operational differences to consider is far too large, and to many systems, devices, network elements and processes have to be redeveloped, while customers will after all not get a similar service. A change between these technologies is in practice not realistic unless the wholesale conditions would become de facto prohibitive (which is a possibility in case the donor wholesale access provider does no longer have an obligation to provide the wholesale access under regulated conditions).

### **Migration between FTTH and cable technologies**

Also in case of a migration between fiber and cable technologies the issue to migrate a customer from one technology to another are very important.

While there are some small differences at the level of the technical consequences (we refer to the tables at the end of this annex), all main obstacles for a change remain similar to the consequences of a change between VDSL2 and cable.

Anyway, when considering the Belgian market, for many years to come, it is clear that there will be an eligibility issue for a migration from cable to FTTH (given most likely even 3 years from now less than 10 % of houses will have FTTH access). And even after 15 years from now, based on the currently declared plans of Proximus, 50% of houses will remain without FTTH access.

In conclusion, there is no migration path from FTTH access technology to cable access technology or vice versa. There are too many technical & operational differences to consider that a change of wholesale access provider could be considered by an access seeker.



## Overall

### conclusion

The customer migration from VDSL to/from cable or from cable to/from FTTH imposes a lot of efforts on the customers but definitely also on the service provider, for whom to execute a change of the wholesale access technology used is clearly not an option from operational, technical and commercial point of view...

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[REDACTED]

[REDACTED]

### Conclusion

It is clear that, once a choice for a wholesale provider for a given technology is made, de facto there are no reasonable means to change from supplier for these services in case this implies a change of technology (unless a given access would end to be provided).

This impossibility is already clear from the consequences at end-user side, without taking further costs associated with such change into account.

### **Wholesale access (regulated) on cable technology does not have impact on wholesale offers (commercial) on copper**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**BASE's fixed broadband customers were not migrated to cable**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

### **End of Base's retail SNOW offer without migration.**

When Base decided to end its retail SNOW offer in 2014, shortly before it was sold to Telenet, it did not contact Orange BE (at that time running friendly user trials on the cable networks) to make an offer for this customer base, most likely because being aware of the de facto impossibility to migrate customers easily between the technologies.

If such migration would have been easy, Orange BE would have been clearly the most logical candidate to sell the customer base (approximately 30.000 customers) to. Indeed, such transaction would have :

- faced the least competition concerns;
- allowed Orange BE to quickly gain scale for the broadband and TV market;
- allowed to sell the full customer base (north and south) to 1 single "cable" operator

In the end, we understand that an agreement between Proximus/Scarlet led to the situation in which the SNOW customers received a commercial proposal from Scarlet<sup>39</sup>, i.e. based on the same underlying technology. Also this case shows that no migration between "copper" and "cable" was considered.

### **No competitive constraints via wholesale offers**

If the markets were substitutable, one would expect that the presence of offers on one wholesale market could impact the offer on the other technology wholesale market, and/or that price changes on one of the markets could impact the conditions for the other wholesale market.

This is clearly theory, as the reality has shown a very clear absence of any relationship or competitive pressure regarding the conditions for the two wholesale markets:

### **Lack of incentives for Proximus on copper/fiber network side :**

- [REDACTED]
- [REDACTED]
- [REDACTED]
- Proximus, again when facing the introduction of the cable wholesale market, asked the Court of Appeal to annul the decisions that imposed it to offer broadband and multicast services, and once it won the related Court case it withdrew its previously regulated multicast offer. In doing so, it made the –already uneconomical – migration of customers between the two networks for a wholesale user de facto also technically impossible;
  - Proximus, in light of the wholesale pricing decisions for access to the cable networks, at no point in time adapted its wholesale offers (eg when the wholesale prices decreased between the 2013 and 2016 decision). Furthermore, at no point it made any commercial offer to Orange Belgium to attract it as wholesale user, even while being

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<sup>39</sup> - ("De 35000 klanten van Snow krijgen vandaag bericht dat Base stopt met Snow en dat ze kosteloos worden overgeplaatst naar Belgacom-dochter Scarlet").

perfectly aware of the fact that the current cable wholesale conditions don't allow a reasonable business case<sup>40</sup>.

### **Lack of incentives on the side of the cable operators**

- Before all, at no moment in time any of the cable operators offered Orange BE a commercial wholesale access to their network.
- Next, all cable operators appealed all market analysis related decisions, up to the highest (Supreme) courts. Some of the appeal cases – against a decision of 2011 – are still going on.
- All cable operators have appealed the wholesale pricing decisions of 2013 and 2016 and ask for higher prices than those put forward by these decisions.
- Brutélé and Nethys refused simply to implement the necessary system for wholesale access, even after the set-up fees due were paid. It took a court case to make them change. Still today, the systems are de facto underdeveloped and underperforming.
- Coditel refused to implement the regulation. It is only after court proceedings were initiated that the development of the wholesale access was started.
- Brutélé and Nethys attempted, via a “side procedure”, to obtain a very substantial increase of the applicable wholesale charges, based on the application of the so-called art 177 procedure (which would not allow Orange BE to benefit from a transition period during which less expensive tariffs apply).
- In the daily operational context, at various occasions Brutélé/Nethys have pushed for an interpretation of the wholesale price decisions in order to maximize the costs of the alternative operator [REDACTED].

All the above are clear indications that there is no competitive pressure for wholesale offers from one or the other network. All are fighting any regulatory wholesale access obligations, and absent such wholesale access obligations there would not be any wholesale access provided to alternative operators on reasonable terms.

### **Orange BE did not mass-migrate its own xDSL customer base to cable technology.**

Orange BE, historically, build up a customer base on the residential fixed broadband market. At one point in time this customer base was around 50.000 customers. Furthermore, based on the combined satelliteTV - DSL offer it acquired also around 25.000 customers with a satellite-TV and internet bundle.

Because the costs of attracting additional customers on the DSL-service and because of the fixed costs associated with this, Orange stopped the commercial offering of these services to new customers a few years ago, but it continued the service for its existing customers.

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

### No foreseeable technical evolutions that would lead to substitutability

One of the important elements that hinder the migration of customers from one technology to the other one is the need to change the customer premises equipment (modem and TV-decoder). When faced with the very low level of competition and migration on the broadband and TV market, the regulators launched a study with respect to CPE that would be “universal” usable on both copper/fiber and cable technologies.

This report by Prof Dr Ir E Dejonghe (“De Universele Set-top Box :technische en economisch haalbaarheid voor de volgende drie à vijf jaar”)<sup>41</sup> of Dec 2013 shows that the possibilities to come to a situation in which the same modem/TV-decoder can be used for access to copper/fiber and cable is in fact impossible. This report, from an independent consultant, puts also a number of other obstacles regarding the migration between the two technologies forward. Some extracts of the report are below.

- Blz 122 : De **netwerkapparatuur kan onmogelijk gemeenschappelijk** worden gemaakt omdat een kabelmodem en een xDSL twee totaal verschillende toestellen zijn die op verschillende netwerken functioneren met verschillende communicatieprotocollen. De grootste belemmering is dus de communicatie tussen de ontvangers en hun signaalbron
- Blz 11 : De **interface en de modem wordt in regel ter beschikking gesteld door de operator en in gebruik gesteld door een installateur**, zodat ze, bij de eerste installatie, buiten het aandachtsveld van de gebruiker vallen. Als gevolg van de totaal verschillende technische werking van beide netwerken is het onmogelijk dat deze apparatuur gemeenschappelijk kan worden gemaakt voor ontvangst via xDSL en via kabel. Het ontdebelen en/of vervangen van deze apparatuur bij een omschakeling blijft dus een noodzaak, en daarin zal ook in de loop van de volgende periode van drie à vijf jaar geen verandering komen

<sup>41</sup> See <http://www.bipt.be/nl/operators/telecom/markten/breedband/multicast/de-universele-set-top-box-technische-en-economisch-haalbaarheid-voor-de-volgende-drie-a-vijf-jaar>

- Blz 5 : Daaruit blijkt dat de netwerkkapparatuur in geval van kabelontvangst en DSL-ontvangst een totaal verschillende rol spelen om gelijkaardige diensten over totaal verschillende netwerken mogelijk te maken. Aangezien de netwerkkapparatuur dus niet gemeenschappelijk kan worden gemaakt, zal de interne bekabeling dan ook altijd specifiek blijven.
- Blz 5 : Maar een dergelijke gemeenschappelijke STB zal steeds duurder zijn dan de duurste 'generieke STB', omdat er meer hardware componenten moeten worden voorzien en omdat de ontwerpbeurt voor deze laatste steeds over hogere stukken zal kunnen worden verdeeld. De beperkte vraag, wereldwijd, naar een STB die zowel voor IPTV als voor digitale kabelontvangst kan worden ingezet, blijft het grootste probleem.
- Blz 9 : Indien voor de 'decoder voor gemeenschappelijk gebruik voor DSL-operatoren en kabeloperatoren' specifieke bijkomende vereisten moeten worden gesteld die niet kaderen in een ruimere behoefte, is de 'relevante marktgrootte' in feite veel kleiner dan voor elk type afzonderlijk, wat voor een zeer hoge specifieke ontwikkelingskosten kan leiden. Ook kunnen in dat geval de vereiste stukken niet vrij hoog zijn, omdat de productie niet met andere markten kan worden gedeeld.
- Blz 92 De realiteit dwingt ons te plegen dat naar een 'gemeenschappelijke decoder' geen vraag meer is en dat voor een 'gemeenschappelijke ontvanger' geen aanbod wordt ontwikkeld. Een 'gemeenschappelijke STB' ontwikkelen is technisch mogelijk en de recent ontwikkelde 'design kits' laten dat toe. Maar het zal voor de komende jaren technologisch een buitenbeentje blijven waaraan alle deelnemende operatoren intensief zullen moeten meewerken, zonder dat zij er zich mee kunnen differentiëren. Daarenboven is de ontwikkelingsinspanning in kosten en tijdsduur even belangrijk als een nieuw type hybride Set-top Box, maar dan wel voor een zeer beperkte markt. Er weinig kans dat die kosten voor ontwerp en productievoorbereiding door andere projecten mee zullen worden gedragen, wat het tot een zeer duur project zou maken, te meer daar de STB zelf steeds suboptimaal zal zijn op gebied van componentkosten en achterlopend op gebied van gebruiksmogelijkheden vergeleken met iedere operator afzonderlijk. Kortom, het zou een innovatie zijn waar niemand in de sector naar streeft, en die voor de betrokken actoren zelfs indruist tegen hun strategie.
- Blz 104 : De objectieve vaststelling dat een triple play migratie weg van de kabeldistributie veel complexer is dan een migratie naar de kabeldistributie toe, was een van de motieven om te pleiten voor een openstelling van de kabeldistributie voor doorverkoop van de aansluiting. Op die wijze kan het 'coax netwerk' binnen de woning ook door andere operatoren worden gebruikt. Wanneer wij de mogelijke migratievoordelen van een gedeeld gebruik van het coax netwerk afwegen tegen de voordelen van een 'universele STB', dan primeert het eerste duidelijk.



## **Temporary fair charges for cable network related wholesale services**

(section 28.5 and 37.5 BIPT / 17.5 VRM / 18.5 CSA / 15.5 Medienrat).

### **Introduction**

Orange Belgium considers that reasonable wholesale charges for access to the cable networks are the single most important element in order to increase competition on the fixed services market. If the future wholesale charges are inadequate, it will simply imply that the objectives of the market analysis will not be met. Over time, this would lead to a further strengthening of the regional duopolies and to the marginalization of alternative operators, including mobile centric operators.

The draft decision puts forward to impose “fair” tariffs for the monthly recurring cable wholesale charges. “Fair” charges are defined as charges higher than the costs but still related to the costs, and including a reasonable margin (§1988).

The verification whether fair tariffs are applied will be based on a cost-model (type bottom-up LRIC) reflecting the costs of an efficient operator (§1989). While waiting for the availability of such model, the BIPT considers various alternatives for setting fair charges for the monthly fees for access to the cable :

- 1) to use the wholesale tariffs resulting from the decision of Feb 19; 2016, based on the retail tariffs that apply at the moment of the national consultation. For stand-alone broadband services such charges are not defined yet (§1991);
- 2) to correct the tariffs that apply today based on a national benchmark, possibly completed with reference elements from abroad (§1992);
- 3) to use the tariffs that would result from a commercial agreement between a cable operator and one or more meaningful alternative operators. Such tariffs would not be subject to further change after the development of a cost model. They would have to be transparent and non-discriminatory towards other interested parties, and should not lead to a price squeeze (§1993).

The charges for the additional and supplementary services will have to be cost-oriented (§1998).

The consultation asks for feedback from the interested parties on the options proposed.

### **Orange Belgium position summary**

Before all, Orange Belgium reminds it is, until today, the only alternative operator to make use of the regulated cable access. Apart from a number of technical barriers to enter the market, Orange Belgium considers that the key reason for the lack of interest of other operators to make use of the regulated cable wholesale offers is that it is not possible to establish a financially sustainable business model when relying on the current regulated tariffs. [REDACTED]

[REDACTED] It is therefore essential that the current conditions are improved so that effective competition is stimulated.

With respect to the options put forward for the **temporary recurring monthly access** charges, Orange Belgium :

- welcomes the move away from the overly complex and failing retail minus approach;

- insists on the need to ensure that an alternative operator is able to offer stand-alone fixed services in a profitable way;
- insists that the cable wholesale charges should be reduced to a level that can be considered as a reasonable approximation of the fair charges.

The changes put forward with respect to the applicable remedies imply that for a number of **new regulated services** recurring charges have to be determined (eg for broadband only services, for own channels, for access to fixed telephony). Proposals for these elements are put forward.

With respect to the wholesale charges for the **other services** (one off fees, additional or supplementary services), Orange Belgium welcomes that these charges will become cost-oriented over time. Given the importance of these charges a number of suggestions and comments are made to avoid uncertainty in the transition period until these cost-oriented charges are defined.

The timing of the various steps for the application of the “intermediary” and “final” charges has to be clear (for instance there is an option to have an additional decision taken that is put forward in option 1 but not in option 2) and, insofar possible, the market analysis decision should anticipate on eventual further price changes that may occur between now and the effective date of the market analysis decision.

### **Temporary fair charges for the monthly access fees**

**The mandatory need to move away from retail minus.**

The regulators propose to move away from the current retail minus approach. This is welcomed by Orange Belgium, as the last years’ experience has shown that the system is overly complex and not able to deal properly with the evolution of the services offered on the market. Illustrations of the complexity and failing nature of the method are illustrated by :

- the fact that vary diverging wholesale tariffs can be obtained for identical wholesale inputs<sup>42</sup>;
- the errors made by the cable operators to apply the retail minus formula as such<sup>43</sup>;
- the inconsistency between and wide variety for the results for certain services (cf the prices put forward by Telenet for access to the SFR footprint<sup>44</sup>)
- the impossibility to decline a wholesale charge for new – flagship – services (Telenet WIGO, the recently launched 4P offer by VOO);
- the difficulties to extract the value of the additional services from the retail value (determination of stand-alone value, weighting of value in function of take-up, ...);
- the frequency of the changes of the wholesale service charges over time and the commercially sensitive nature of the related communications;
- the fact that the retail minus methodology left too much room for manipulation by artificial changes to certain retail offers<sup>45</sup>.

As Orange Belgium's customer base is becoming more substantial, the uncertainty with respect to the evolution of the wholesale charges that is inherent to the application of a retail-minus method is not acceptable from a business point of view.

#### **The need for a correct starting point for fair charges.**

The draft market analysis proposes to use the wholesale charges resulting from the applicable retail minus decisions applied to the retail tariffs at the moment of the public consultation and to either :

- use these tariffs as “reasonable tariffs” as such that continue to apply unchanged until there is a “possible” decision to review these charges (option 1); or
- use these as input for a national benchmark and correct the charges based on this, eventually taking into account further comparison elements from abroad (option 2).

Orange Belgium **rejects these approaches**. Both of these options suffer from the same mistake : they **use wholesale charges that have proven NOT to work as input for a benchmark for the fair tariffs for the future**. Doing so will simply continue the situation in which the tariffs will not allow sustainable market entry. Orange Belgium's current market activity with respect to fixed-mobile bundles is unsustainable over time as money is lost on each fixed services customer. We refer to the related press article where M Trabbia clarifies that money is lost on every fixed TV and internet customer, and that the current wholesale conditions endanger the sustainability of the offer<sup>46</sup>.



<sup>45</sup> We refer to §53 of the BIPT cable wholesale price decision of Feb 2016, indicating wholesale price manipulation by VOO (via a change for the VOO-Foot service) and by Telenet (via a change of the access price to the Telenet hotspots).

<sup>46</sup> Press article Le Soir June 17 2017, page 17.

# « Il faut nous offrir une perspective d'avenir »

**TÉLÉCOM** Selon son CEO, Orange perd de l'argent pour chaque abonné internet-télé

► Le CEO d'Orange demande une diminution des prix de gros du câble de 5 à 10 euros.

► Les prix actuels ne permettraient pas d'assurer la pérennité de son offre fixe.

Le cadre actuel ne vous permet pas de proposer cette offre de façon durable ?

Non. Aujourd'hui, on perd de l'argent sur chaque nouvel abonné. On a déjà dépensé 50 millions d'euros pour pouvoir déployer notre offre sur le câble et on dépassera les 100 millions d'ici à la fin de l'année. On a accepté cette situation. On a lancé cette offre en



The inadequate nature of the current wholesale charges is demonstrated by the lack of demand by alternative operators (except Orange Belgium). The current charges are also inadequate because of the method used.

The current wholesale charges are defined by the wholesale price decisions of December 2013 and February 2016. As these decisions were based on a market analysis decision putting forward a retail-minus wholesale pricing methodology, Orange Belgium considers that the charges resulting from this method cannot provide a reasonable approximation for a fair tariff, i.e. a tariff containing a reasonable margin on top of the cost. The main reasons for this are :

- in a market that is not effectively competitive, retail tariffs are substantially higher than retail tariffs reflecting costs;
- the returns on sale of the cable operators are clearly above the level of a reasonable margin, and those excessive margins are not considered as avoidable cost in a retail minus methodology;
- there are no wholesale charges for some of the most attractive retail services;
- the current wholesale charges still include an undue correction for the set-up fees
- the retail tariffs currently used as entry point for the determination of the wholesale charges include a number of services that are not offered in wholesale and for which the wholesale price was not corrected;
- the correction for the content costs does not reflect the real costs for the cable operators, while these costs are higher for an alternative operator;
- the costs that are considered as “avoided” relate only to the wholesale services that are provided;
- the costs that are considered as avoided don't include all the costs for the services (processes and functions) that have to be provided by an alternative operator;
- the fact that some wholesale charges were themselves already the result of a benchmarking approach<sup>47</sup>

<sup>47</sup> In particular the minus percentage for the wholesale charges for Brutélé was considered as being too high and adjusted downwards based on a benchmark with the other cable operators (§ 180 of the BIPT wholesale price decision of Feb 2016).

Each of these elements contributes to a wholesale charge level that is too high when taking into account that the future tariffs should represent “fair tariffs”. All together they lead to the situation that the resulting wholesale charges would not allow a new player to enter the market in an economically sustainable way.

Furthermore, given that these elements will lead to charges that are higher than fair charges, this risk to contribute to a continued lack of cooperation (as experienced in the past<sup>48</sup>) by the cable operators to work diligently towards the development of a cost-model to determine true “fair tariffs”.

Further explanation of some of the elements above :

### **Lack of competition implies retail tariffs not reflecting costs**

In a market that is not effectively competitive, retail tariffs are (substantially) higher than retail tariffs reflecting costs with a reasonable margin.

As the draft market analysis points out, there is a lack of competition on the retail markets. These markets are characterised by high retail tariffs which furthermore steadily increase. In this situation, it is highly unlikely that the retail tariffs bear a reasonable relation to the underlying costs, as would be the case in a more competitive market. As a consequence, the wholesale charges that are derived from the currently applicable retail tariffs are based on artificially inflated retail tariffs, and hence too high, even after the corrections that are applied. The very high profit margins of some operators further demonstrate that the current retail tariffs bear no relation with the costs.

### **Retail minus tariffs include high return on sales**

The returns on sale of the cable operators are clearly above the level of a reasonable margin, while these returns are not excluded from the wholesale charge.

In the wholesale price decision of December 2013 the regulators applied a correction factor (of 5%) to make a correction for the high return on sales margin of the cable operators. The values (at that time) are given by the following table.

Opérateurs	2006	2007	2008	2009	2010	2011	2012	Moyenne
Brutélé	13,26%	15,85%	17,24%	13,88%	4,69%	3,24%	3,95%	10,30%%
Coditel	32,48%	29,37%	28,47%	34,80%	32,56%	40,09%	44,35%	34,59%
Telenet S.A.	5,72%	9,95%	11,17%	8,92%	16,45%	12,77%	16,63%	11,66%
Telenet Group Holding <sup>49</sup>	17,67%	22,03%	23,43%	24,93%	26,52%	23,70%	26,18%	23,49%

*Figure 5: Rendement sur chiffre d'affaires des câblo-opérateurs*

[REDACTED]

[REDACTED]


Considering that the tariffs aimed at by the new market analysis decision are supposed to reflect costs adjusted with a reasonable margin, the inclusion of the abovementioned return on sales margins implies that, independently on any other element, a far too high and unreasonable margin stays included in the wholesale charges. Orange Belgium considers therefor that the current retail minus wholesale charges should be cleaned to eliminate these excessive margins, before these charges can be used as starting point for future wholesale charges.

#### ***No retail minus wholesale charges for the most attractive services 4P bundles***

If the current wholesale charges are used as starting point, it implies that the most attractively priced retail offers are not taken into account, in particular 4-P bundles that include mobile services.

The fact that the retail minus methodology does not allow to define wholesale charges for bundles including a mobile component leads to a situation in which the wholesale charges that are defined today are based on retail tariffs for bundles that don't integrate mobile services. These are however the most attractive and competitive offers today. Telenet's WIGO offer attracted over 224.000 customers in one year (figures of end June 2017)<sup>50</sup>. Telenet's advertising for this service, claiming that WIGO is "More profitable for 75% of our customers"<sup>51</sup> is indicative of the fact that the service is cheaper than other combinations of tariffs and services that Telenet offers, in particular and including the "Whop", "Whoppa", "Internet Fiber 100 + digital TV" or "Internet Fiber 200 + digital TV" retail offers which are used at the moment as starting point for the wholesale charge determination.

<sup>50</sup> This is largely over 3 times the number of convergent customers that Orange Belgium acquired over a 14 month period on the combined footprint of Telenet, Brutélé and Nethys.

<sup>51</sup> According to Telenet based on a sample of over 70.000 of their WIGO customers, end Feb 2017 (after the most recent price increase of the other offers).



**75% van onze WIGO-klienten betaalt minder.**

Al heel wat van onze klanten kozen voor WIGO. Niet verwonderlijk want 75% onder hen betaalt, na de overstap, minder dan voordien.

[Kies nu de WIGO die bij jullie past >](#)

Resultaten gebaseerd op een onderzoek van 73.196 WIGO-klienten die reeds klant waren bij Telenet. De maandelijkse abonnementsgelden voor de in WIGO inbegrepen diensten (internettoegang, vast bellen naar nationale nummers, nationaal mobiel bellen, sms'en, mobiele data in het binnenland met hetzelfde aantal simkaarten, kabeltv en de huur van één Digicorder) werden vergeleken met de abonnementsprijs van de gekozen WIGO-formule. 75% van deze klienten komt met de overstap naar WIGO voordeliger uit. Resultaten gemeten op 28 februari 2017.

On top of this, the pricing strategy of the SMP-operators to push customers to the largest possible bundles led to a further increase of the wholesale charges (based on 2P and 3P bundles), while the most important retail tariff (4P bundle) was not increased.

Telenet's selective retail price increases announced Jan 10, 2017 contained the following elements :

**Tuesday, January 10, 2017 — Telenet is changing its prices for a number of services on 19 February 2017. Among other things, the prices of Whop and Whoppa will rise by 1.99%. Other products, such as WIGO and the entertainment packages Play, Play More, and Play Sports, will remain unchanged.**

Following this change, the main wholesale charges for Orange Belgium increased by over 2% (i.e. even more than the related retail tariffs) :

- "Whop" increased from 23,93 € to 24,45€ (+2,2%) per month;
- "Whoppa" increased from 31,66 € to 32,32€ (+2,1%) per month.

Orange Belgium considers that none of elements that Telenet put forward to "justify" the retail price increases apply for the (unchanged) fixed wholesale services bought by Orange Belgium<sup>52</sup>. It considers that the latest Telenet retail price increases are not reflecting increases of the underlying associated costs (i.e. the basis for the fair charges), and that as a consequence the current wholesale charges should be corrected before being used as basis for the future.

Note that today it's premature to assess the market impact of the just launched VOO 4-play bundle (One). However, it is already clear from the start that this service implies pricing principles similar to Telenet's WIGO offer.

<sup>52</sup> Based on investor relations reports, Orange Belgium understands that most of the additional investments that Telenet puts forward to justify the price increases are required to improve the former Base mobile network. That these mobile investments are recuperated via increases of fixed bundle only retail tariffs, and not via the bundles that include mobile, is indicative for the lack of competition on fixed retail services.

### **Elimination of the set-up fee surcharges**

[REDACTED]

### **Other corrections required to move to “fair tariffs”**

Apart from the aforementioned elements, the current retail minus approach should also be adjusted for a number of others aspects in order to bring the outcome closer to wholesale tariffs that reflect underlying costs and a reasonable margin :

- 1) the retail tariffs currently used as entry point for the determination of the wholesale charges include a number of services that are not offered in wholesale.

[REDACTED]

- 2) the content related costs are underestimated versus the reality;

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

With respect to the contribution to the Flemish audiovisual works it is clear that this contribution should be integrated in the same way as the contribution for the French speaking community.

- 3) the avoided costs that were considered as “avoided” relate only to the wholesale services that are effectively provided, hence there was no correction for several more general cost aspects.

[REDACTED]

- 4) the costs that are considered as “avoided” don’t include all the costs for the services that have to be provided by an alternative operator;

[REDACTED]

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213. RTBF tenslotte geen  
aan dat het haar contract met Coditel niet meer heeft kunnen hernieuwen sinds 2009, hetgeen volgens  
haar neerkomt op een discriminatie vanwege SFR. Het zal dit contract stop zetten eind 2017, desnoods  
op unilaterale wijze. RTBF zal niet accepteren dat Telenet haar versterkte positie op de markt gebruikt  
om de distributievergoeding naar beneden te herzien, temeer daar RTBF terzelfdertijd op de Vlaamse  
markt, vergeleken met andere gelijkaardige zenders, reeds wordt gediscrimineerd door Telenet 15.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

### **Conclusion on the use of the current charges for the monthly fee (option 1 or 2)**

Clearly, the current wholesale tariffs cannot be considered as basis for fair charges. Nor option 1 nor option 2 would lead to charges that allow sustainable market entry or that are related to underlying costs.

[REDACTED]

## Wholesale pricing – Determination for the intermediate wholesale broadband only and for “same” and “own” profiles

The draft market analysis decision imposes the obligation on the cable operators to provide a broadband only wholesale service. The existing cable wholesale price decisions only determine wholesale charges for stand-alone TV services and for TV services combined with a broadband service.

This document looks at the options for the determination of the wholesale prices for the stand-alone broadband service, and equally addresses possibilities to ensure consistency between the tariffs for stand-alone 1P and bundled wholesale services.

What it clearly shows is that the determination of the broadband wholesale charge during the transition period should **definitely not be based on the retail price of the stand-alone service**, as clearly this would give inconsistent results (mainly because of the the inconsistent retail tariffs applied by the cable network operators).

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[REDACTED]

[REDACTED]

## Wholesale price consistency for same profiles & own profiles

The current retail-minus wholesale price decisions describe how a number of specific cases should be handled. Experience shows that some of the methodological elements induce high complexity and also inconsistency between various prices.

When determining the temporary “fair and reasonable” charges as put forward in the current draft market analysis decision, Orange Belgium considers that these anomalies should be excluded from the method applied.

[REDACTED]

[REDACTED]

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### Conclusions in the context of the current market analysis

As mentioned in our contributions to draft price decisions, Orange considers that it must be avoided that a new entrant pays more for a same service than the lowest possible price (as resulting from a retail minus method) without objective justification. This is clearly the most pro-competitive approach, while it does not create a risk on the wholesale operator to not being able to recuperate the costs (as the basis is still an applicable retail tariff on which substantial profits are being made).

In case, in one way or another, the future “fair price” would be mostly determined based on the current wholesale prices (via a benchmark or other method), we consider that to avoid uncertainty due to the artificial retail pricing of a number of retail offers the wholesale price determined from the retail offer providing **the lowest wholesale price** should be used. Such approach is the most pro-competitive approach and is the best proxy for a cost-plus alike pricing. When implying lower tariffs, the wholesale prices used should be based on the current retail offers while taking the necessary measures to ensure coherence between the different retail offers (1P, 2P, 3P, current offers vs legacy offers).

### Wholesale price for own channels

The obligation for the cable operators to provide the alternative operators with own channels is repeated under the draft market analysis but no clarity is given as the applicable technical and financial conditions. As to the financial part, we invite the regulators to integrate this as well in the draft market analysis.

Past experience with the cable operators will not help to address this element as none of them has been collaborative on these issue [REDACTED]

[REDACTED]

[REDACTED]

As to the recurring fee, it should no longer be due if the cable operator decides to distribute the channel also as part of its own offer. Furthermore, these fees should be reduced proportionally with the number of alternative operators who distribute the channel. Orange considers in any case that the monthly fee for such channel should typically not exceed a few hundreds of euros.

### **Market evolution absent regulated access to the cable networks**

Although based on all market indicators Orange BE is convinced that the regulated access to the cable networks is absolutely required to ensure that a certain degree of competition on the Belgian market is maintained, this annex assesses the consequences on the market in case the wholesale access to the cable networks would no longer be regulated (as what we understand to be requested by many stakeholders).

In summary, in this case :

- Orange BE will ultimately have to end its retail offer based on wholesale access to the cable network, as :
  - o there will be no commercially effective cable wholesale offer
  - o wholesale access on the copper or fiber networks will not be an alternative for this;
- The situation created will be at odds with the intentions and goals of recent merger transaction approvals;
- There will not be any new market entrance, for many years;
- Further bundling of mobile and fixed services will push mobile centric players out of the market;
- And finally a cosy – fixed-mobile integrated – duopoly will be installed on the Belgian market.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



## Conclusion

Taking into account that the current operational conditions to offer the service must be substantially improved with elements that have been systematically refused on a “good faith” cooperation obligation so far, absent regulation the operational conditions for wholesale access will not improve, leading to high operational costs for each alternative operator.

Taking further into account that the current level of the wholesale charges already imply that Orange BE loses money on every fixed customer and that therefore a lowering of these charges is absolutely required to maintain the current offer on the market, in combination with the demonstrated behavior by the cable operators to pursue substantial increases of these charges, it is obvious that the end-result of “no regulated access to the cable networks” will lead to even higher wholesale charges.

Taking the inefficient operational conditions and the current financial non-viability of the service into account, no regulation of the cable networks implies the de facto end of the current Orange BE retail offers building on this access.

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[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

### **Contradiction with merger assessments and remedies**

Ending the cable regulation would create an anomaly situation with respect to Telenet's commitments and remedies in the merger cases it was involved in. In both these cases,

- the purchase of BASE by "Telenet" (Case M. 7637 Liberty Global / Base Belgium) and
- the purchase of SFR by Telenet (Case MEDE-C/C-17/0011 - - Telenet – Coditel),

the existence of the regulated wholesale access obligation was a key element towards the approval of the transactions.

Stopping the regulated access obligations will fundamentally alter the assumptions underpinning the approval of these mergers, as an essential input needed for Orange (and other potential candidates) to compete in the convergent market will disappear. A number of relevant extract of these decisions are in annex.

Apart from the apparent contradiction between withdrawing the cable technology regulation and the merger decisions, it would also be striking that in the context of a merger remedies are imposed to maintain "by force" more than 3 major players on the market (i.e. the mandatory sale of an important customer base to Medialaan in the context of the Telenet-Base transaction), where in fixed markets there would be deregulation even when a strong duopoly exists.

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

## Orange Belgium comments - Part III - Annexes

This part regroups the annexes referred to in the parts I and parts II of our answer. These provide more background and/or additional elements to the elements already provided.

- Annex 1 – [REDACTED]  
[REDACTED]  
[REDACTED]
- Annex 2 – [REDACTED]  
[REDACTED]  
[REDACTED]
- Annex 3 – Regulated wholesale access to Telenet and merger decisions – provides extracts from recent competition authority decisions in which Telenet was a party that addressed the need for regulated wholesale access to the cable networks;
- Annex 4 – Chinese walls & fair commercial practices [REDACTED]  
[REDACTED]  
[REDACTED]
- Annex 5 – “Mobile-only is dead, long live convergence” - is an article by Karine Fourneron & Marc Lebourges on the impact of convergence on mobile centric operators;
- Annex 6 – The need for efficient access to fixed infrastructures for the development of 5G networks – provides extracts of articles and reports indicating that the need for and importance of fixed infrastructure access in the context of the development of 5G mobile networks;
- Annex 7 – [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- Annex 8 - Schematic description of the various technologies and detailed listing of migration consequences
- Annex 9 - [REDACTED]  
[REDACTED]

**Annex 1.** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Annex 2.** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

### **Annex 3. Regulated wholesale access to Telenet and merger decisions**

Since the previous market analysis decision of 2011, Telenet has acquired a mobile network operator (Base) and another cable network operator (Coditel) on the Belgian market. The fact that Telenet was obliged to provide a regulated wholesale access to its network was considered as important element in both cases to finally allow – subject to additional conditions – these transactions. The applicable wholesale access obligations were also used by Telenet itself to push back anticompetitive concerns that these transactions triggered.

Taking into consideration :

- 5) that these merger decisions are very recent;
- 6) that the continued application of the (strengthened) wholesale access obligations was clearly assumed by both Competition Authorities in the assessment of the transactions;
- 7) that the wholesale access obligations were in no way questioned by Telenet in the context of these transactions;

that Telenet used itself the adherence to the regulation – or even the potential strengthening of it – as a justification to get the mergers approved and/or to avoid additional remedies; it is clear that any – even minor – reduction of the regulatory wholesale obligations imposed on Telenet would imply a moving away from the assumptions that allowed these transactions to occur.

While Orange Belgium considers that the Competition Authorities may not have integrated the full set of consequences of these transactions on the various markets in their decisions, it nevertheless refers to these decisions as it is clear that absent long term access regulation these transactions would not have been approved under the same or similar conditions.

#### **Case M. 7637 Liberty Global / Base Belgium**

This case was in essence the acquisition of a pure play mobile operator by Telenet. While the transaction not directly impacted the market power of Telenet on the fixed telecommunications' services markets, it raised a number of concerns on the convergent market. These concerns were considered as being addressed via the wholesale access regulation applicable on Telenet.

The extracts below illustrate that the regulation was an important element in the context of the approval (with remedies) of the transaction, both by the European Commission, but also by the Notifying Party itself. Based on these elements, it is at least questionable if the European Commission would have approved the transaction absent wholesale access regulation to Telenet's network.

#### **“Wholesale market is subject to the regulation by the CRC”**

In the definition of the markets and the assessment for the purposes of the transaction, the regulation as imposed by the CRC was clearly taken into account (and an element that at no point was questioned, neither by the European Commission, nor by the Notifying Parties) :

(158) The Commission therefore considers that the 2011 broadcast decisions have led to the opening of the fixed networks and enabled wholesale access for the creation of downstream retail TV services. In light of recitals (152) to (157), for the purposes of this Decision, the Commission considers that there is a separate wholesale market for access to TV services in Belgium, subject to the regulation by the CRC.

**“The regulation allows to prevent input foreclosure.”**

Although at the moment of the assessment by the European Commission there were no commercial services launched on the cable networks yet, the EC addressed the **regulatory obligations imposed on Telenet and considered it to be an important element** to ensure that Telenet would not be able to engage in input foreclosure for access to its network:

(330) **Given that the Belgian regulators have imposed wholesale access obligations on the cable network operators, including regulation of prices, the Commission considers that there is very little scope for Telenet to engage in input foreclosure of access to its cable network as regards TV services (with or without fixed internet services).** On the basis of the information obtained by the Commission during its investigation, the proposed transaction would not have any effect on Telenet’s obligation to grant access to its cable network. This finding applies regardless of the exact geographic scope of the wholesale markets for access to TV and internet services (that is, national, regional, or limited to the cable network of the operator), given that the regulation is national.

**EC conclusion on access foreclosure**

Overall, the Commission concludes that Telenet does not have the ability to foreclose access to the cable network only because of the regulatory regime in place. As the transaction addressed by the EC does not have an impact on the cable wholesale regulation - which it assumes to continue to apply - the EC concludes that the transaction has no impact on the wholesale access to Telenet’s network.

**5.2.2.3. Conclusion**

(334) **The Commission considers that in view of the regulatory regime in place in Belgium Telenet does not have the ability to foreclose access to its cable network for the purpose of providing TV services or fixed internet services in combination with TV services and that situation would not change with the proposed transaction.** With respect to stand-alone internet services, Telenet does have the ability and the incentive to foreclose access to its cable network. However, that situation already exists pre-transaction and would not be affected by the proposed transaction. **As such, the Commission concludes that the proposed transaction would not lead to a significant impediment of effective competition as a result of input foreclosure of wholesale access to Telenet’s cable network.**

**Use of the regulation by the Notifying Party**

In the context of the assessment of conglomerate effects due to this transaction, Telenet uses the applicable wholesale access obligations to push back the concerns on its eventual dominant position on the retail fixed services market :

(358) The Notifying Party also contests that it has a dominant position on any of the retail fixed services markets and argues that, **in any event, any significant market power concerns are removed by the wholesale cable access regime imposed by the Belgian regulators.**

**The regulation is an important element in the EC’s analysis looking forward**

Finally, in its forward looking assessment, the EC fully integrates the applicable regulatory obligations and (even) the hypothetical further improvement of the economic conditions for the use of the regulated access.



(393) Second, the Commission must take into account as part of its analysis the counter-strategies that rivals may deploy. The merged entity's main competitors, Proximus and Mobistar, could offer bundles themselves and, just as the merged entity may try to cross-sell fixed services to its mobile customers, they could try to cross-sell fixed services to their mobile customers. Proximus, which owns both a mobile and a fixed network, already offers bundles today. Mobistar does not own a fixed network but it could offer fixed services based on wholesale access to Telenet's cable network. As explained in recital (329), Telenet is under a regulatory obligation to provide access to its cable network in order for alternative operators to offer TV services and, in combination with TV services, fixed internet services. Mobistar has announced that it intends to use that wholesale cable access to offer TV and fixed internet services at the retail level and has made significant investments to prepare for launching its fixed services. In the course of 2015, it conducted user tests on the cable networks of Telenet and VOO in Brussels and on the network of VOO in Charleroi and Liège, based on regulated cable access. Although respondents to the market investigation considered that, in its current form, the wholesale access obligation on Telenet is ineffective<sup>293</sup>, the Belgian sector regulators are in the process of revising wholesale rates downwards. This is likely to make wholesale access to Telenet's cable network more economical. It is therefore likely that Mobistar will be able to offer fixed-mobile bundles based on wholesale access. This is also reflected in [...]294.

### Case MEDE-C/C-17/0011 - - Telenet – Coditel

In this merger case the Belgian competition authority assessed the take-over by Telenet of Coditel, i.e. the take-over of a cable-operator active in a mutually exclusive geographical area. As in this transaction two regulated cable networks were involved, the consequences and presence of wholesale cable access obligations were an explicit part of the assessment. Given the competitive conditions of the market, it imposed additional remedies building further upon the obligations imposed by the CRC on Telenet in order to increase the likelihood that the regulatory obligations would have the effects aimed at. The obstruction by Coditel against the introduction of the cable regulation also appears in this decision.

Also in this case the Notifying Party used the presence of the cable wholesale access regulation as element to downplay the consequences of the transaction, and at no moment the need for or relevance of the wholesale access obligation was questioned by these parties. The extracts below illustrate the above elements.

#### Conclusions Auditor : access to Coditel is essential

245. *Het is essentieel dat Orange toegang krijgt tot het kabelnetwerk van Coditel, en dit tegen redelijke commerciële voorwaarden. Verder is het cruciaal dat Orange haar diensten kan lanceren in het dekkingsgebied van Coditel op hetzelfde moment dat Telenet er nieuwe diensten lanceert.*

247. *Door het uitblijven van de toegang van Orange tot het kabelnetwerk van Coditel zou de aangemelde transactie tot gevolg hebben dat een daadwerkelijke mededinging wordt verhinderd op de kleinhandelsmarkt voor de levering van tv-diensten in het dekkingsgebied van Coditel, de Belgische kleinhandelsmarkt voor de levering van vaste internetdiensten, de Belgische kleinhandelsmarkt voor de levering van mobiele telecommunicatiediensten en de Belgische kleinhandelsmarkt voor de levering van multiple play-diensten.*

#### Conclusion auditor : Obstruction to supply information by Coditel

246. *In dit verband merkt het BIPT op dat de overname door Telenet, die zelf aangeduid is als een SMP-operator in haar dekkingsgebied, dient beschouwd te worden als een uitbreiding van de voetafdruk van het netwerk van Telenet, waarop de regulering die aan Telenet werd opgelegd, van toepassing wordt, inclusief enige prijsreglementering. Indien dit niet het geval zou zijn, zou er geen sprake zijn van enige effectieve toegang gezien de prijzen die momenteel van toepassing zijn op*

*Coditel van 2013 dateren en een alternatieve operator er niet toe in staat stellen om een competitief aanbod te lanceren. Wegens het gebrek aan implementatie en onvolledige informatie van Coditel was het BIPT destijds niet in staat om een aangepast prijzenbesluit ook voor Coditel in 2016 aan tenemen.<sup>167</sup>*

**The authority considers that the access obligations will continue to apply (cf EC)**

In this very recent decision, the assumption is clearly taken that – in line with the decision of the European Commission in the Liberty/Base case – the access regulation will continue to apply.

23. *De verplichting om toegang te verlenen tot het kabelnetwerk van Coditel wordt opgelegd door juridisch afdwingbare beslissingen van de CRC191. Deze beslissingen leggen de voorwaarden en termijnen voor de tenuitvoerlegging van toegangsverzoeken op dwingende wijze vast.*

24. *De Europese Commissie heeft in haar beslissing in Liberty Global/Base192 uitdrukkelijk bevestigd dat deze regelgevende beslissingen volstaan om Telenet elke mogelijkheid te ontnemen om de toegang tot haar kabelnetwerk aan alternatieve operatoren te ontzeggen:*

29. *Het bestaan van gereguleerde toegangsverplichtingen en de sancties en gevolgen van de niet naleving ervan sluiten de mogelijkheid en prikkel om aan bronafscherming te doen op de wholesalemarkt voor kabeltoegang, uit.*

33. *In navolging van de duidelijke beschikkingspraktijk van de Europese Commissie inzake gereguleerde elektronische communicatiemarkten moet het risico op bronafscherming dan ook worden uitgesloten in het licht van de bestaande kabelregulering199.*

**Absent remedies Telenet would limit competition on Coditel's network**

37. Het College stelt met name vast dat het BIPT tijdens de zitting gesteld heeft dat de prijsvorming voor de *wholesale* tarieven een beslissende invloed kan hebben op de mate waarin de inmiddels technisch voor Orange gerealiseerde toegang tot het Coditel kabelnetwerk Orange toelaat zich als een daadwerkelijke concurrente te ontwikkelen in het dekkingsgebied van Coditel. Het wijst er op dat, ondanks de door Telenet vermelde beslissingen van de Europese Commissie<sup>242</sup> het BIPT tijdens de zitting betreffende de berekeningswijze van de *wholesale* tarieven de vraag naar verbintenissen ter zake onderschreef en zo de dreiging van een mededingingsbeperking bevestigde, en zo, anders dan Telenet aanvoerde<sup>243</sup>, ontkende dat thans bestaande regelgevende beslissingen een voldoende antwoord geven op deze dreiging. Het College leidt daar uit af dat ook volgens het BIPT, Telenet wel degelijk in de verleiding zou kunnen komen om de ontwikkeling van concurrenten op het Coditel netwerk te bemoeilijken, en het deelt die analyse. (p.122)

**Even limiting the wholesale access would already distort the competition on several markets on the footprint of Telenet and Coditel**

39. Het College is van oordeel dat een beperken van de redelijke toegang van Orange tot de groothandelsmarkt voor toegang tot tv-diensten van kabelnetwerken in het dekkingsgebied van de bij de concentratie betrokken operatoren de mededinging zo indirect doch merkbaar dreigt te belemmeren op de Belgische kleinhandelsmarkt voor de levering van vaste internetdiensten, de Belgische kleinhandelsmarkt voor de levering van mobiele telecommunicatiediensten en de kleinhandelsmarkt voor de levering van *multiple play*-diensten. (p.122)

And it concludes with respect to the consequences of the transaction, even when taking the already existing wholesale access obligations into account, that ...

42. Gelet op het voorafgaande, oordeelt het College dat de concentratie tot gevolg dreigt te hebben dat een daadwerkelijke mededinging op de Belgische markt of een wezenlijk deel daarvan op significante wijze zou worden belemmerd zoals bedoeld in artikel IV.9 §4 WER. Een beperken van de

daadwerkelijke toegang van Orange tot de groothandelsmarkt voor toegang tot tv-diensten van kabelnetwerken in het dekkinggebied van Coditel dreigt de mededinging immers indirect doch merkbaar te belemmeren op de Belgische kleinhandelsmarkt voor de levering van vaste internetdiensten, de Belgische kleinhandelsmarkt voor de levering van mobiele telecommunicatiediensten en de kleinhandelsmarkt voor de levering van multiple play-diensten. (p.123)

**The transaction is approved subject to remedies which correspond to the effective implementation of the regulated access.**

The commitments put forward by Telenet and the remedies imposed by the Competition Authority are in fact that Telenet/Coditel will implement the (strengthened) regulated wholesale access conditions on the Coditel footprint.

As a consequence, **any turnaround or limitation or restriction of these regulated wholesale access obligations on Telenet/Coditel would consist in a partial removal of the conditions imposed on Telenet/Coditel while these obligations are a key condition to allow the transaction.**

2. Dat deze concentratie toelaatbaar is onder de voorwaarde dat de aanmeldende partijen de verbintenissen nakomen die zij op 24 mei 2017 hebben aangeboden, met uitzondering van Sectie G, en die in bijlage zijn opgenomen bij deze beslissing (de Verbintenissen). De bijlage maakt integraal deel uit van de beslissing. (p125)

These commitments are :

**Sectie B. Verbintenis tot voltooiing van het Coditel Project**

2. Telenet verbindt zich ertoe dat de Partijen het Coditel Project zo snel mogelijk en uiterlijk 4 maanden na de Datum van Closing zullen voltooien.
3. Deze verbintenis is voltooid wanneer de Toezichthoudende Trustee de afwerking van het Coditel Project heeft vastgesteld met als gevolg dat de Gereguleerde Toegangsdiensten van Coditel volledig beschikbaar zijn in het Kabeldekkinggebied van Coditel.

**Sectie C. Verbintenis tot voltooiing van het Telenet Project**

4. Telenet verbindt zich ertoe het Telenet Project uiterlijk 9 maanden na de Datum van Closing te zullen voltooien.
5. Deze verbintenis is voltooid wanneer de Toezichthoudende Trustee de afwerking van het Telenet Project heeft vastgesteld met als gevolg dat Orange de mogelijkheid heeft om klanten in het Kabeldekkinggebied van Coditel te provisioneren via de Telenet Wholesale API Interface zoals omschreven in Bijlage C.

**Sectie D. Toepassing van de Telenet Wholesale Tarieven**

6. Telenet verbindt zich ertoe dat vanaf de Datum van Closing, de tarieven die worden aangerekend aan Orange voor de levering door Coditel van Gereguleerde Toegangsdiensten in het Kabeldekkinggebied van Coditel de Telenet Wholesale Tarieven zullen zijn.

**The Notifying Parties used the cable wholesale access obligations as element to defend the transaction.**

Telenet referred to the existing wholesale access obligations – which it does not question - and even put forward that the wholesale access market ... would be improved by the transaction.

193. *Wat specifiek de groothandelsmarkt voor toegang tot tv-diensten betreft, geeft de aanmeldende partij aan dat de transactie gunstig zal zijn voor de operatoren die toegang zouden willen krijgen tot het netwerk van SFR omdat Telenet over de middelen en de expertise beschikt om snel en efficiënt toegang te verlenen tot dit netwerk (zoals ze recent gedaan heeft voor Orange Belgium). De huidige discussie tussen Orange Belgium en SFR over de implementatie van het verzoek van Orange Belgium om toegang te krijgen tot het netwerk van SFR toont dat SFR niet over dezelfde middelen en expertise beschikt.*

... and it even justifies the transaction as it would imply lower wholesale tariff conditions for Coditel ...

194. *Deze toegang zou kunnen gebeuren aan voorwaarden die voordeliger zijn, nu de gereguleerde wholesale-tarieven die aan Telenet werden opgelegd lager zijn, dan de gereguleerde wholesaletarieven van SFR. De CRC nam vier beslissingen op 19 februari 2016, waarin de groothandelstarieven voor de diensten voor toegang tot de kabel in de respectieve taalgebieden werden aangepast voor alle kabeloperatoren, behalve voor SFR waarvoor hogere groothandelstarieven blijven gelden (voor een onbepaalde periode). Er moet worden aangenomen dat de lagere groothandelshandelstarieven van Telenet op termijn ook voor SFR, als onderdeel van de Telenet-groep, zullen gaan gelden.*

## Annex 4. Chinese walls & fair commercial practices

### Introduction

Over the limited period during which Orange Belgium actively commercialized its services, it collected evidence that:

- cable operators discriminate in the ordering process,
- cable operators provide extra advantages to ex-customers in a systematic way,
- cable operators try to convince customers not to change operator by insinuating that these customers would regret the change and/or by offering them strong attractive retention offers.

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

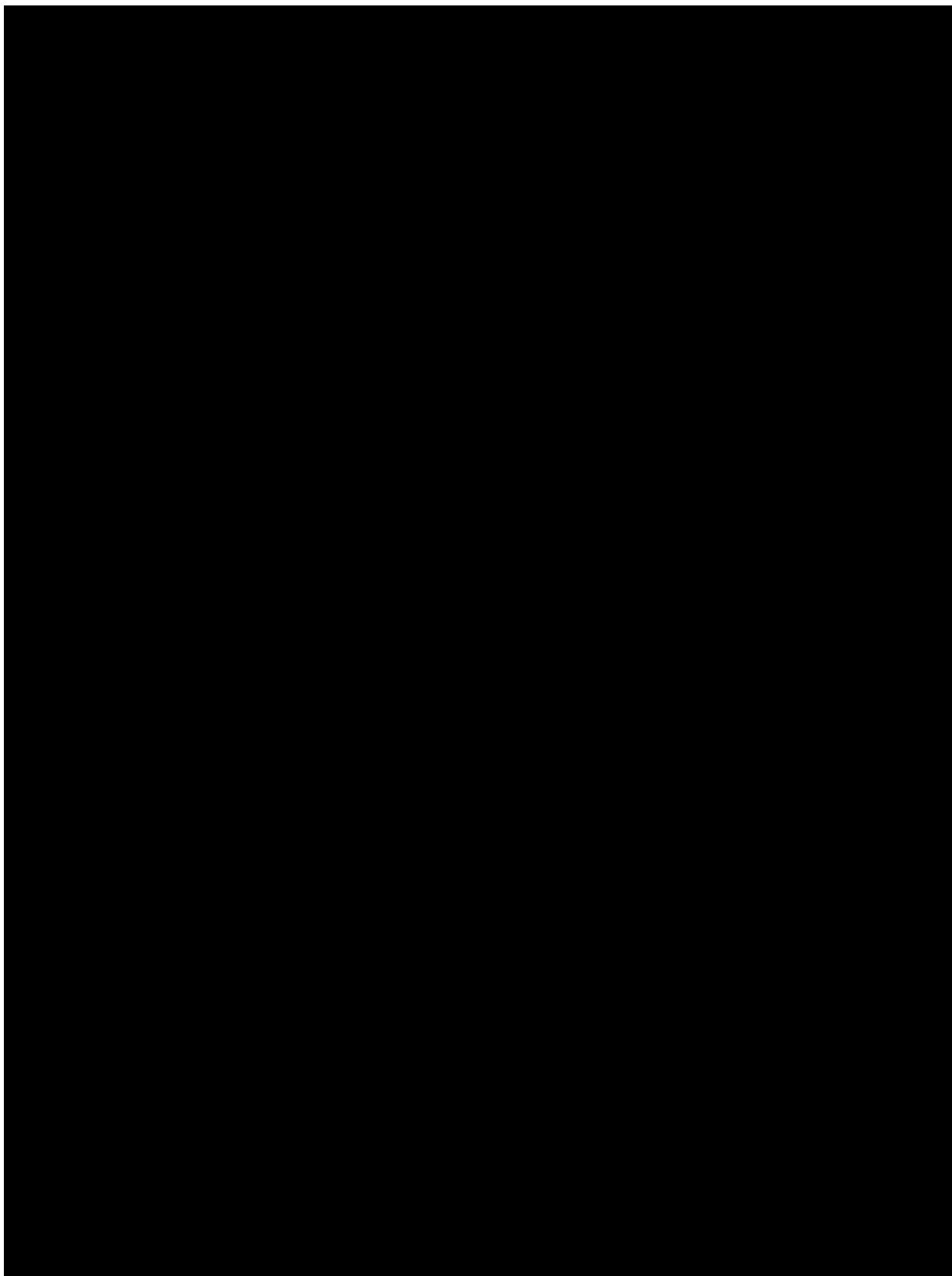
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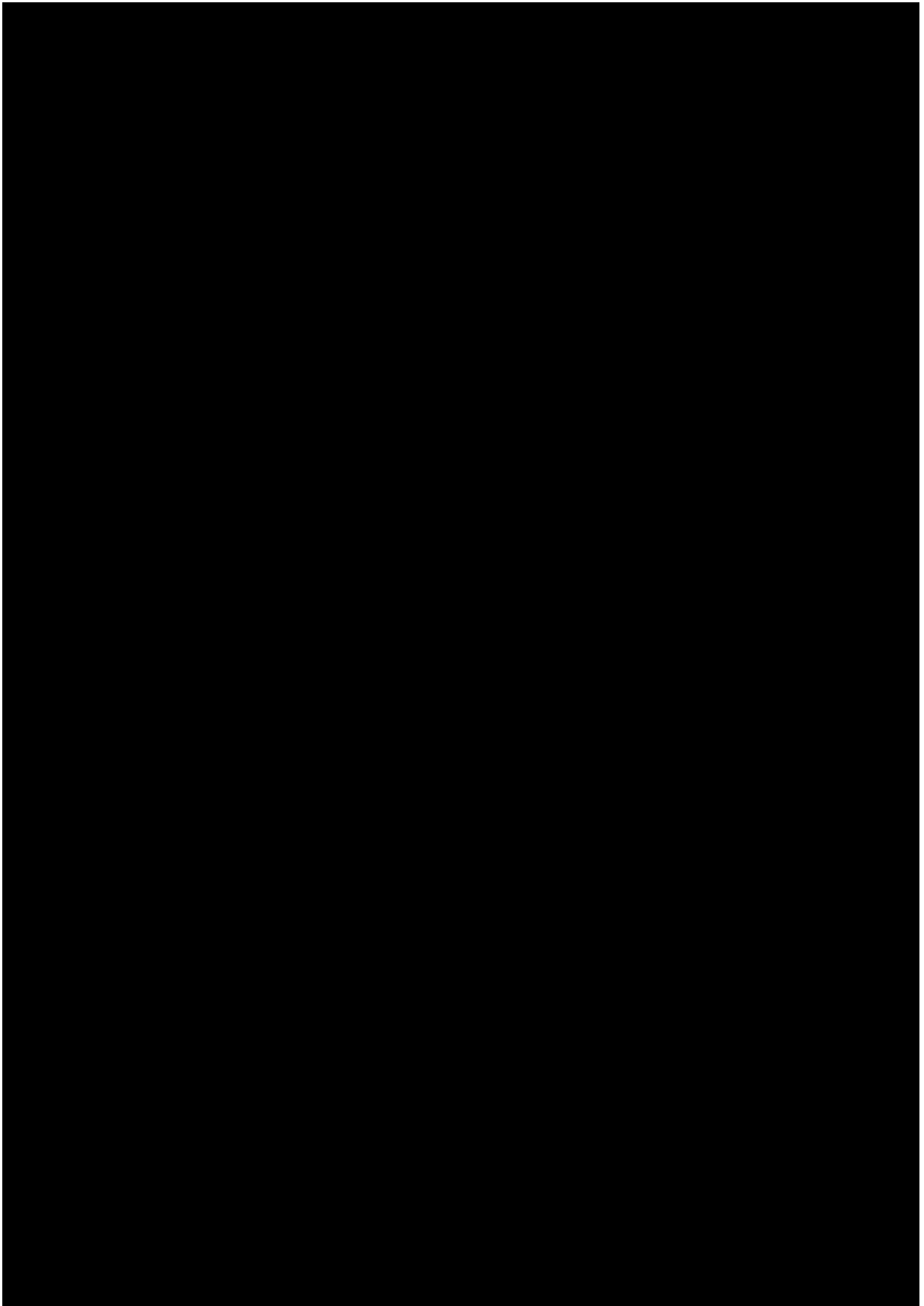
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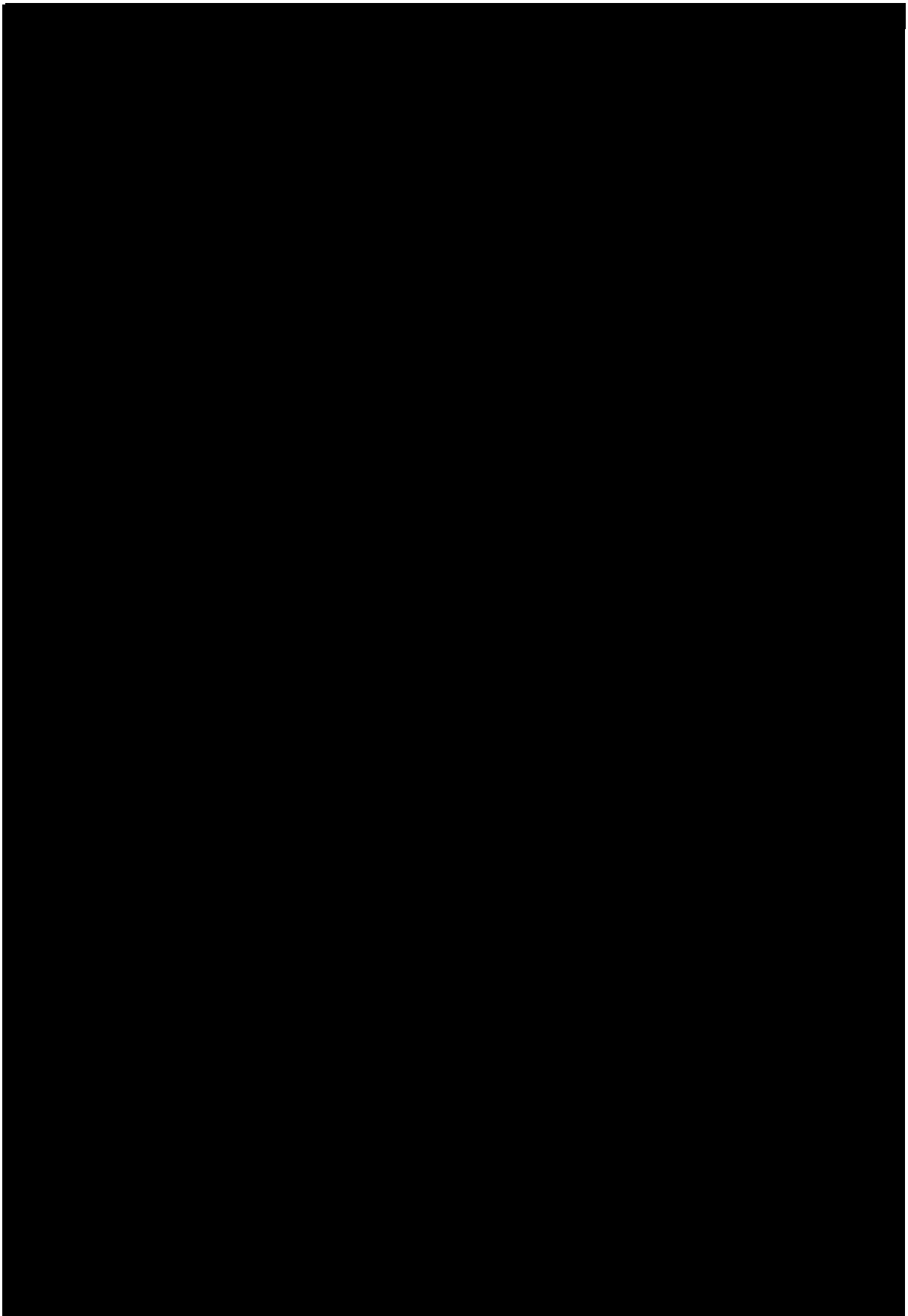
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## **European decisions with respect to infringements of Chinese walls, illegal win-back actions & Belgian Easy switch regime**

Experience from other European countries shows that infringements of Chinese walls and illegal win-back commercial practices have been either condemned or regulated and closely monitored by regulatory and competition authorities since early 2000's. We have classified the European examples under 3 categories (misuse of information, win-back and retention offers and anti-switch/churn measures).

Further the risk linked to win-back & retention offers made to clients who just left have been also pointed out in Belgium recently under the Easy switch initiative. We expose those as well.

### **Misuse of information**

With respect to the **misuse of information**, several explicit examples from regulatory and competition authorities can be pointed out which resulted in the generic obligation to limit the use of information acquired in the wholesale relation only for the purpose for which it was provided (1) and to forbid the use of the information derived from the network to identify the customer gained by a competitor (2).

- the generic obligation to limit the use of information acquired in the **wholesale relation only for the purpose for which it was provided** was imposed in Spain and in Portugal by the regulator.

The limits on the use of such info were imposed by the Spanish regulator since 2001 and formulated as follows in the last circular of 2009, Article 7, 1, g<sup>75</sup>

*“Information obtained by the access provider during the preselection process may only be used for the purpose for which it was provided. Specifically, this information may not be used by departments other than those directly involved in preselection processing, nor may it be shared with other departments or any other entity outside the access provider in such a way that the information may be used for the benefit of the access provider’s commercial services or those of its subsidiaries or associate”*

The Portuguese regulator also stipulates in its Determination on the imposition of a withdrawal period following the preselection activation”<sup>76</sup>

*“2. PTC, being an entity with significant market power in the market of fixed telephone networks and/or fixed telephone service, shall comply with the confidentiality of information made available in the scope of the pre-selection and shall not convey this information to subsidiaries or associated companies nor to its own services, namely the commercial services. Thus, such data shall not be accessible by any means, namely through a database.”*

- **The use of the information derived from the network to identify the customer gained by a competitor** was forbidden or condemned by regulators or competition authorities.

The Irish regulator, following complaints, adopted on 17 August 2000, an injunction prohibiting employees of Eircom (the SMP operator) who were involved in win-back campaigns from having access to information concerning the identity of the pre-selected operator.<sup>77</sup>

*“Notification of the gaining operator should be ring-fenced and confined to staff handling inter operator fault reports and, in exceptional circumstances, customer account enquiries. Staff involved in eircom’s win back campaign must not have access to the identity of the gaining operator.”*

In France, the competition authority, found that France Telecom has abused of its dominant position by gaining advantages derived from its previous monopoly, among which the use of data possessed as network operator to target the

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<sup>75</sup> See Spanish regulator Circulars : Circular 2/2002 of July 18, 2002 which revised the Commission's Circular 1/2001 of 21 June regarding the implementation of operator preselection for access providers obliged to provide one in the public land-line telecommunications network market. The English version of Circular 2/2009 of 18 June 2009 consolidating all former Circulars within a single regulatory text is available at <https://www.cnmec.es/sites/default/files/1504892.pdf>

<sup>76</sup> See Portuguese regulator decision, “Determination of ANACOM on the imposition of a withdrawal period following the preselection activation”-  
<http://www.anacom.pt/render.jsp?contentId=418252#.VuwmmeT2a71>

<sup>77</sup> See [http://www.comreg.ie/\\_fileupload/publications/odtr0058.pdf](http://www.comreg.ie/_fileupload/publications/odtr0058.pdf)



customer of alternative operators with specific commercial offers See the decision of the French Competition Authority Decision n° 09-D-24 of 28 July 2009, « *relative à des pratiques mises en oeuvre par France Télécom sur différents marchés de services de communications électroniques fixes dans les DOM* » which found that.

*« 210. Concernant l'utilisation de données qu'elle détient en sa qualité de propriétaire et de gestionnaire de la quasi-totalité des boucles locales, France Télécom s'est réservé un avantage artificiel dans la concurrence dont les opérateurs alternatifs ne pouvaient aucunement bénéficier. Elle a ainsi pu cibler ses actions commerciales auprès des abonnés ayant fait le choix de la présélection d'un opérateur concurrent. En novembre 2002, le régulateur sectoriel avait mis en demeure France Télécom face à de telles pratiques en soulignant que « si l'interdiction de la communication de ces informations relatives à l'interconnexion est une obligation générale applicable à l'ensemble des opérateurs, elle s'impose tout particulièrement à France Télécom, dans la mesure où celle-ci est puissante sur le marché du service téléphonique fixe, et où elle est la seule entreprise sur ce marché à détenir les informations relatives à la présélection des clients de l'ensemble des autres opérateurs. »<sup>78</sup>*

In Italy, in the context of an investigation on potential abuses of dominance related to aggressive commercial offers targeting customers who were switching to competition, Telecom Italia proposed commitments which were validated by the Italian Competition Authority on 11 December 2008. One of the commitments concerned the use of clients information derived from the quality of network operator and consisted in the appointment of a third party to ensure that the list of users derived from databases as network operator “ *do not contain any data extracted from the databases of Telecom Italia's Network or Wholesale divisions (such as information on competing operators' customers ... This is intended to eliminate any worry as to the possible illicit exploitation of that information resource.* ”<sup>79</sup>

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<sup>78</sup> See French competition case, Decision n° 09-D-24 of 28 July 2009, [www.autoritedelaconcurrence.fr/pdf/avis/09d24.pdf](http://www.autoritedelaconcurrence.fr/pdf/avis/09d24.pdf) , see also § 211 “Conclusion

211. *Il ressort des constatations qui précèdent que France Télécom a utilisé sa position dominante résultant notamment de son ancien monopole historique, pour s'octroyer, de manière déloyale, des avantages dans la concurrence dans les DOM, avantages dont des opérateurs alternatifs, aussi ou plus efficaces qu'elle, n'ont jamais pu bénéficier. Ces pratiques ont eu pour effet de limiter le développement des opérateurs alternatifs dans les DOM, qui n'ont pu atteindre la taille critique suffisante pour faire peser une contrainte concurrentielle sensible sur l'opérateur historique. Dès lors, ces pratiques constituent des abus de position dominante au sens des articles L. 420-2 du code de commerce et 82 du Traité CE ».*

<sup>79</sup> See Commitment decision - Italian Competition Authority of 11 December 2008 on Telecom Italia available at <http://www.agcm.it/en/newsroom/press-releases/1355-exploitation-of-privileged-commercial-information.html>, (see commitment 2 ) See also, <http://www.agcm.it/en/newsroom/press-releases/1396-telecom-investigation-launched-into-possible-abuse-of-dominant-position.html>.

In France, in the gas and electricity sector, the Competition authority went as far as imposing the incumbent to provide to competitors access to the “sensitive” database based on which it could target clients to all competitors)<sup>80</sup>

## Win-back

With respect to the **win-back and retention offer**, a general ban on win-back actions has been imposed by several regulators. Selective aggressive commercial offers directed to clients who had just left have been stopped or condemned.

- The prohibitions of win-back actions have taken the form of an explicit **ban to contact** the customer who is leaving during a period of **4 to 6 months** once the client left<sup>81</sup>

See Article 1 of the Portuguese regulator determination , “Article1. To bind the enterprises belonging to the PT Group, that provide FTS in direct access, within the Pre-Selection Specification, to the compliance with a 6-month withdrawal period, following the preselection activation, during which they are prevented from undertaking any action, namely through individual contact, designed to win back clients”<sup>82</sup>

See also Article 7. 1, H of the Spanish regulator’s Circular,

*“ The access provider may not take steps to recover the subscriber in the time span of four months beginning from the date when the preselection application is activated, nor may it defame the services provided by the preselected operator at any time.”*

In Italy, Telecom Italia committed not to activate services for customers who have switched to a competing operator within the previous four months.<sup>83</sup>

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<sup>80</sup> See French case, Decision of the French Competition Authority 9 September 2014 (GDF Suez matter), [www.autoritedelaconcurrence.fr/pdf/avis/14mc02.pdf](http://www.autoritedelaconcurrence.fr/pdf/avis/14mc02.pdf) the FCA ordered GDF-Suez to disclose to competitors parts of its database containing information relating to consumers with regulated gas tariffs (“customers’ file”)- « Article 1er - Il est enjoint à GDF Suez, à titre conservatoire et dans l’attente d’une décision au fond, d’accorder, à ses frais, aux entreprises disposant d’une autorisation ministérielle de fourniture de gaz naturel qui en feraient la demande, un accès à certaines des données figurant dans les fichiers des clients ayant un contrat de fourniture au tarif réglementé de vente de gaz, dans des conditions objectives, transparentes et non discriminatoires, notamment via des web services accessibles 24h/24h et 7 jours/7. »

<sup>81</sup> See Article 7, 1 h of Spanish regulator Circular 2/2009, 18 June 2009 consolidating all former Circulars within a single regulatory text is available at <https://www.cnmc.es/sites/default/files/1504892.pdf>

<sup>82</sup> See Determination of ANACOM on the imposition of a withdrawal period following the preselection activation”- “Article1. available at <http://www.anacom.pt/render.jsp?contentId=418252#.VuwmmeT2a71>

<sup>83</sup> See Commitment decision of the Italian Competition Authority of 11 December 2008 (Telecom Italia), point 1 (“1) Commitments relating to “winback” and “retention” activities,

See also the Irish regulator measures proposed after several complaints of win-back in Carrier-Pre-Selection services, among the options to amend win-back practices under the CPS code of Practice. One of the option proposed was a “four month” no contact period in respect of new losses for a specific period starting from the date the customer was lost.<sup>84</sup>

We also refer to the Belgian Royal Decree on Easy Switch in the context of which all operators agreed on the fact that contacts with clients and the operators losing the clients should be limited as much as possible.<sup>85</sup>

- **Selective aggressive commercial offers** have been stopped or condemned.

In Italy, Telecom Italia committed **not to discriminate with respect to commercial offers provided** between clients (who have churned to competitors or not) and to guarantee that for any offer improved conditions will be automatically applied to all customers choosing this offer.<sup>86</sup>

Also with respect to sales commissions, Telecom Italy committed **not to discriminate in the remuneration provided to its sales forces** who would sell services to customers who have left in favour of competition.<sup>87</sup> which would commercial efforts

In France, **selective commercial actions targeting only customers who had been won by competitors** have been firmly condemned by the French competition authority firmly condemned the commercial policy applied by France Telecom in overseas territories which had launched a commercial offer aimed solely at winning-back customers who left.<sup>88</sup>

*“132. Dans un commentaire d’une double écoute d’un conseiller commercial en date du 12 octobre 2004, il est indiqué « Ne proposer l’offre Le Plan uniquement en Winback ». Dans un document interne faisant la synthèse de ces doubles écoutes figure une rubrique « Informations aux vendeurs » qui indique : « Différence de facturation entre les forfaits d’heures et le Plan : Tous les forfaits sont décomptés à la seconde près et sans crédit temps. L’offre LE PLAN est*

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<http://www.agcm.it/en/newsroom/press-releases/1396-telecom-investigation-launched-into-possible-abuse-of-dominant-position.html>.

<sup>84</sup> See ComReg Consultation Paper N° 03/76

<sup>85</sup> See Belgian Royal Decree of 6 September 2017 on the migration of fixed line services and bundles in the electronic communications sector, Moniteur belge/Belgisch Staatsblad, 22 June 2016 (Verslag aan de Koning, p. 64325, point n- as further exposed in section Easy Switch).

<sup>86</sup> See Commitment decision of the Italian Competition Authority of 11 December 2008 (Telecom Italia), (“1) Commitments relating to “winback” and “retention” activities

<sup>87</sup> See commitment decision of the Italian Competition Authority of 11 December 2008 (Telecom Italia), quoted above

<sup>88</sup> See Decision n° 09-D-24 of 28 July 2009 “Pratiques mises en oeuvre par France Télécom sur différents marchés de services de communications électroniques fixes dans les DOM”, §§132-133

une autre grille tarifaire avec des tarifs préférentiels vers toutes destinations, mais avec un coût de mise en relation (ou crédit temps) évidemment vu le gain procuré, cette offre est réservée pour le winback ». Dans un « document destiné exclusivement à usage interne », intitulé « Flash Concurrence de l'Agence Martinique de décembre 2004 », destiné aux commerciaux de l'agence Martinique, on peut lire : « Reconquérir les clients partis en proposant le Plan ou les Illimités : ■ Votre client consomme beaucoup vers les mobiles, l'international [...] ». Le directeur de l'Outremer de France Télécom a confirmé ces constatations en déclarant aux enquêteurs : « l'offre Le Plan ne peut selon moi être appliquée qu'au Winback ».

133. Par ailleurs, il ressort des éléments du dossier, que l'offre Le Plan a effectivement été utilisée comme une arme spécifique pour obtenir des clients ayant présélectionné Outremer Télécom la résiliation de leur présélection. Ainsi, un listing de suivi de « Winback », montre que l'offre Le Plan a souvent été souscrite lorsque la résiliation de la présélection a été obtenue par le commercial France Télécom.”



#### Anti-switch/churn measures

With respect to the anti-switch/churn measures, discouraging messaging and denigrating communication on competitors' services have also been firmly condemned.

- In Spain, the ban to denigrate the service of competitors was coupled with the no contact ban imposed.<sup>89</sup>
- In France, the negative information that was provided about the alternative operators was also part of the behavior punished by the competition authority.<sup>90</sup>

« Par ailleurs, les prescriptions des responsables commerciaux de France Télécom insistaient pour que les agents véhiculent des informations sur la mauvaise qualité du réseau d'Outremer Télécom, notamment du fait qu'Outremer Télécom ne maîtrisait pas de bout en bout le réseau téléphonique. Ainsi, des fiches « winback » suggéraient aux commerciaux des « éléments pour faire douter » dont « L'opérateur sous-traite le transport il n'est donc pas maître des choix techniques et donc de la qualité ». Dans un autre document à destination des commerciaux, on peut lire : « -FT est le seul opérateur à acheminer et assurer le suivi de vos communications de bout en bout - FT possède l'autonomie et la maîtrise totale de son réseau ». Un autre contre-

<sup>89</sup> See Article 7. 1, H of the Spanish regulator's Circular 2/2009 of 18 June 2009 consolidating all former Circulars within a single regulatory text is available at <https://www.cnmc.es/sites/default/files/1504892.pdf>

<sup>90</sup> See Decision n° 09-D-24 of 28 July 2009 “Pratiques mises en oeuvre par France Télécom sur différents marchés de services de communications électroniques fixes dans les DOM”, § 136

argumentaire expose que l'attractivité des tarifs de Outremer Télécom « se fait au détriment de la qualité ». D'autres documents internes invitent les agents commerciaux de France Télécom à véhiculer un discours négatif sur les services des opérateurs concurrents. Un « Document Interne » de l'Agence Guadeloupe présente un guide de « La démarche Winback » : « Lui [le client] montrer qu'avec France Télécom : en plus du prix, il bénéficie de nombreux atouts, alors qu'avec un concurrent, il n'a que le prix ». Un document intitulé « contre-argu et le site concurrence attitude » précise la technique et le comportement pour que le commercial augmente ses chances lors d'un entretien « winback » : « Mettre le doute sur les engagements ou promesses des concurrents. On le sait, le pourcentage de réduction promis n'est jamais celui réalisé. Un autre incontournable : lors de la proposition ne jamais dire ça vous intéresse ? mais je vous mets en place le tarif... (phrase à dire sur un ton affirmatif et non interrogatif). Pas de scrupule pour agir de la sorte. Le client est assez grand pour refuser ».

- In Belgium, the Easy switch Royal Decree also bans a communication to the leaving customer that would result in discouraging churn.<sup>91</sup>

## Belgian Easy Switch regime

Finally **within the Belgian legal framework**, the obstacles to churn for fixed services have been substantially addressed via the **Easy Switch initiative**.

All operators agree on the fact that win-back actions are an obstacle to churn, see the Verslag aan de Koning/ Rapport au Roi on the conclusions reached by the workgroup

*“Alle operatoren gaan akkoord met het verbieden van “win-back”acties tijdens het Easy Switch proces maar er is geen consensus over het beletten van elk contact met de donoroperator voor de migratiedatum en het verbieden van operationele contacten”<sup>92</sup>*

<sup>91</sup> See Royal Decree of 6 September 2017 on the migration of fixed line services and bundles in the electronic communications sector, published on the 22 June 2016 in the Moniteur Belge/Belgische Staatsblad, Verslag aan de Koning, p. 64325, point k”, as further exposed in section Easy Switch.

Further, in the same Verslag aan de Koning/Rapport au Roi, under point n, operators were also to exclude the contacts between clients who are leaving and the donor operator, (we underline):

*“n. Alle operatoren ramen de implementatietermijn op minstens twaalf maanden vanaf het ogenblik dat alle vereisten op een stabiele manier worden vastgelegd. Dit besluit houdt in zekere mate rekening met dit standpunt, in het bijzonder door:*

- de one-stop-shopping procedure te beperken tot de eenvoudige migraties;*
- timers maximaal weg te laten uit het besluit;*
- win-back maximaal te vermijden door vóór de activering van de diensten bij de recipiëntoperator geen interacties met de donoroperator te voorzien (behalve in gevallen waar dat technisch gezien onvermijdelijk is);*
- iedere donoroperator vrij te laten om zijn klanten en zijn diensten te identificeren op de wijze door hem bepaald.”*

Finally, with respect to communication with customers that are leaving, the donor operator must use a neutral and generic language. He cannot make comments which will result in discouraging the switch.

*“Art. 18. De operatoren verstrekken via hun website aan het publiek transparante, geschikte, gemakkelijk toegankelijke en verstaanbare informatie betreffende :*  
*1° de procedures die zijn ingesteld in toepassing van dit besluit;*  
*2° de rechten die dit besluit toekent aan de abonnees die verzoeken om een migratie en de voorwaarden waaronder deze uitgeoefend kunnen worden;*  
*3° de mogelijke opzegkosten, die een operator bij vroegtijdige opzeg van het contract kan vorderen, met inbegrip van het vorderen van de restwaarde van het eindapparaat bepaald in artikel 108, § 1, e), derde streepje van de Wet of artikel 6, § 1, e), tweede streepje van de Wet Consumentenbescherming Omroep. De in dit onderdeel bedoelde informatie wordt op een neutrale wijze geformuleerd en mag worden gegeven op een generieke wijze;*  
*4° de acties die een klant die zijn contract opzegt mogelijk nog dient te stellen ten aanzien van een donoroperator, waaronder, in voorkomend geval, de teruggave van de toestellen ter beschikking gesteld door de donoroperator. De in dit onderdeel bedoelde informatie wordt op een neutrale wijze geformuleerd en mag worden gegeven op een generieke wijze. De hierboven vermelde informatie bevat geen opmerkingen van de operator die tot doel of als effect hebben of kunnen hebben dat de abonnee afgeschrikt wordt om met de migratie door te gaan.*

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<sup>92</sup> See Royal Decree of 6 September 2017 on the migration of fixed line services and bundles in the electronic communications sector, published on the 22 June 2016 in the Moniteur Belge/Belgische Staatsblad, Verslag aan de Koning, p. 64325, point K “.

*Alle operatoren gaan akkoord met het verbieden van “win-back”acties tijdens het Easy Switch proces maar er is geen consensus over het beletten van elke contact met de donoroperator voor de migratiedatum en het verbieden van operationele contacten”;*

In addition, further contractual clauses or conditions that tend to discourage churn are also condemned as illegal by the Belgian law on market practices, as recalled by the Belgian Telecom Law of 13 June 2005, in Article 111/3 § 2.

*“§ 2. Zijn, onverminderd de toepassing van hoofdstuk III, Afdeling 6 van de wet van 6 april 2010 betreffende marktpraktijken en consumentenbescherming, van rechtswege nietig, de bedingen en voorwaarden of de combinaties van bedingen en voorwaarden in verband met de contractbeëindiging in de overeenkomsten gesloten tussen een operator en een abonnee, die ertoe strekken de verandering van operator of het gebruik van de faciliteit bedoeld in artikel 11, § 7, onmogelijk te maken of te ontmoedigen.”*

### **C. Proposals for corrective measures to facilitate a pro-competitive market development (section C)**

Considering the illegal win-back practices and infringements of Chinese walls [REDACTED], the European case law and the lack of dissuading effect of current Belgian law on anti-switch and illegal win-back, Orange suggests several corrective measures to be integrated in the market analysis under the non-discrimination obligation (by completing the “Chinese Wall obligation”) and the “access obligations” for

- With respect to **misuse of information** from regulated activities provided to the retail activities of the dominant operator, Orange suggests to complete the general obligation to put in place Chinese walls in the draft market analysis
  - by a generic obligation to limit the use of information strictly and only for the purpose for which it was provided
  - by an explicit ban to use the information derived from the network to identify the customer gained by a competitor
- With respect to the **win-back and retention offer**, Orange invites the regulators to complete the access obligation “Not withdrawing access when it has been granted”, with an additional subsection entitled “*Unfair commercial practice*” [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- With respect to the **anti-switch/churn measures**, Orange invites the regulators to complete the access obligation as suggested for the win-back and the retention offers “*Not withdrawing access when it has been granted*”, with an additional subsection entitled “*Unfair commercial practice*” [REDACTED]

[REDACTED]

For the constraints and obligations mentioned above, Orange Belgium considers that these are needed to contribute to a pro-competitive environment, while not harming end-users' rights. Indeed, customers disappointed by the new provider (eg because of missing TV-channels or other nuisance with the new provider), can obviously still contact and leave for another provider if they wish to do so.



## **Annex 5. Mobile-Only is Dead, Long Live Convergence**

Karine Fourneron & Marc Lebourges – Digiworld Economic Journal, No 106, 2<sup>nd</sup> Q.2017. p.43

This annex will be provided as a separate file.

## **Annex 6. The need for efficient access to fixed infrastructures for the development of 5G networks.**

In the context of this market analysis, Orange Belgium wishes to express a major concern with respect to the deployment and operation of the future 5G networks. Taking into account the historical fixed incumbent nature of its mobile network competitors, Orange Belgium is clearly in an unfavourable position with respect to the deployment and operation of the fibre backhaul network required for supporting the strongly densified network of radio cells required to provide high quality and high speed 5G services.

In fact, the arrival of 5G creates a huge challenge for any mobile only operator, as confirmed by various independent sources :

- Analysys Mason considers that “mobile first” and “mobile only” are not viable long term options<sup>93</sup> : “... the survival of mobile-only operators into the 5G era is in question.”
- 3UK claims that “Rolling out a 5G network under today's mobile market conditions would bankrupt many operators”, and that “fundamental changes to the economics of deploying and operating mobile networks need to be made if the industry is going to deliver on the promise of 5G”<sup>94</sup>, and
- The Boston Consulting Group report<sup>95</sup> on “Building the Gigabit Society” puts forward that, at EU level, the cost to densify the network in urban areas would amount to €53 billion, while the cost to build the last-mile fiber network to the cells would amount to €94 billion.

The above elements clearly illustrate the need for efficient and competitive access to fixed backhaul solutions to ensure that mobile-centric players can build a sustainable business in the 5G-era.

### **Extracts of the Analysys Mason report referred to :**

Mobile-first and mobile-only are not viable long-term options, even in the USA

Analysys Mason's view is that the USA is waking up to the same realities that hit Europe a few years ago: a mobile-first strategy no longer makes any 'industrial' sense, and the survival of mobile-only operators into the 5G era is in question.

#### **Superdense fixed infrastructure is needed for 5G**

5G causes mobile networks to densify and, as a result, much more fibre coverage will be needed. Verizon has already spent USD1.8 billion on the metro fibre provider XO

<sup>93</sup> <sup>93</sup> [http://www.analysismason.com/Verizon-Charter-USA-Jan2017?utm\\_term=Verizon%20and%20Charter%3A%20the%20Trump%20era%20heralds%20a%20wave%20of%20European-style%20cable%5Cu2013mobile%20consolidation&utm\\_campaign=This%20week%3A%20NB-IoT%20will%20and%20spectrum%20choices%20%7C%20Cable%5Cu2013mobile%20consolidation%20%7C%20B2B%20user%20experience%20digitalisation&utm\\_content=email&utm\\_source=Act-On+Software&utm\\_medium=email](http://www.analysismason.com/Verizon-Charter-USA-Jan2017?utm_term=Verizon%20and%20Charter%3A%20the%20Trump%20era%20heralds%20a%20wave%20of%20European-style%20cable%5Cu2013mobile%20consolidation&utm_campaign=This%20week%3A%20NB-IoT%20will%20and%20spectrum%20choices%20%7C%20Cable%5Cu2013mobile%20consolidation%20%7C%20B2B%20user%20experience%20digitalisation&utm_content=email&utm_source=Act-On+Software&utm_medium=email)

<sup>94</sup> <https://www.totaltele.com/497350/Rolling-out-5G-today-would-bankrupt-a-lot-of-operators-3UK>

<sup>95</sup> [https://etno.eu/datas/ETNO%20Documents/Gigabit\\_society\\_final\\_ETNO-BCG\\_2016.pdf](https://etno.eu/datas/ETNO%20Documents/Gigabit_society_final_ETNO-BCG_2016.pdf)

Communications. Without regulatory redress, it will be difficult for mobile-only players to survive long into a period where cell densification is occurring.

Extract of the Boston Consulting Group report referred to :

### **b) 5G RAN—€200 billion**

#### **Densifying the network in urban areas—€53 billion**

Bandwidth requirements in mobile are bound to increase dramatically in the future. The network will have to become denser through construction of new base stations and installation of many small cells, especially in cities. This trend is reinforced by the fact that 5G networks will use additional bands with higher frequencies, again supporting the trend toward denser networks. BCG estimates the density in urban areas will increase sevenfold, adding about 880,000 small cells.

#### **Building last-mile fiber to cells—€94 billion**

To deliver the speeds that 5G access networks promise, all cells have to be connected to the fiber backbone. Because a very dense fiber network will already be built for fixed broadband (see the previous paragraph), BCG estimates that only 20 meters of additional fiber need to be deployed per new urban cell. In addition, all cells in rural areas require an improved connection to the backbone. BCG estimates that, on average, 3 kilometers of fiber must be deployed.

#### **Completing 4G rollout—€53 billion**

Using EU data, BCG estimates that by late 2014, 21% of the population, predominantly in rural areas, was not covered by 4G mobile networks. This part of the EU is the most expensive to cover, driving the comparably high costs.

**The internet article : Rolling out 5G today would bankrupt a lot of operators – 3UK**

By [Nick Wood](#), Total Telecom

Wednesday 21 June 17

Economics of site deployment must change to enable densification on scale required by 5G.

Rolling out a 5G network under today's mobile market conditions would bankrupt many operators, warns 3UK. Speaking at Total Telecom's third annual Connected Britain event in London last week, Phil Sheppard, director of network strategy at 3UK, said fundamental changes to the economics of deploying and operating mobile networks need to be made if the industry is going to deliver on the promise of 5G...

Rolling out a 5G network under today's mobile market conditions would bankrupt many operators, warns 3UK.

Speaking at *Total Telecom's* third annual [Connected Britain](#) event in London last week, Phil Sheppard, director of network strategy at [3UK](#), said fundamental changes to the economics of deploying and operating mobile networks need to be made if the industry is going to deliver on the promise of 5G.

One of the biggest issues stems from the huge [cell densification](#) effort required to meet capacity and coverage demand, particularly indoors.

"[It] is completely crazy at the moment to think you could actually do that," Sheppard said.

Cell sites are expensive to build and operate, requiring operators to pay site acquisition, rent, power, and transmission costs.

"Generally speaking, mobile operators are incentivised not to increase site numbers, because every single site increases operational cost and it has to be paid for, which has to come from revenue generated by the customer base," Sheppard said.

Today, even with updated regulations, like the Electronic Communications Code (ECC), which aims to make it cheaper and simpler for telcos to deploy new infrastructure, "there is a limit to how far operators can go [to densify their networks] and still be profitable," Sheppard said.

When the time comes to roll out 5G networks, some observers expect the industry to deploy hundreds of thousands of small cells, running on millimetre wave (mmWave) frequencies, to provide very high capacity in targeted locations.

"It would bankrupt a lot of operators if we did that at the moment, because the operational costs...to do this type of densification would be completely out of the question," Sheppard said.

The cost of rolling out infrastructure needs to come down, Sheppard said, suggesting that for indoor locations, venue owners in some cases have an incentive to bear some of the cost of hosting cell sites, given that good coverage would attract visitors.

It is also vital that operators tap into new revenue streams, like IoT, or data-based services – such as providing anonymous, aggregated customer information to third parties, like advertisers – in order to help cover the cost of densification.

"I don't want to give a negative picture of 5G, I think it's a very exciting technology, but it needs a little bit of work and development; some of it by government, some of it by industry," Sheppard said.

**Annex 7.** [REDACTED]  
[REDACTED]

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## Annex 8 – Schematic description of the various technologies and detailed listing of migration consequences.

### High level view networks

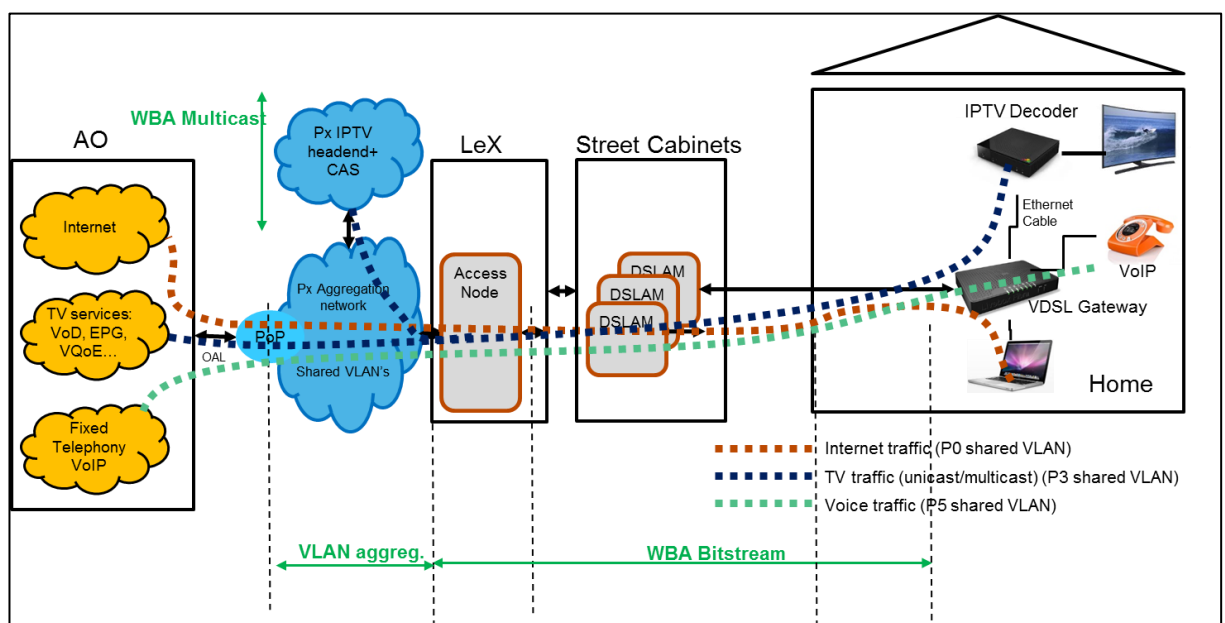
#### VDSL2 technology

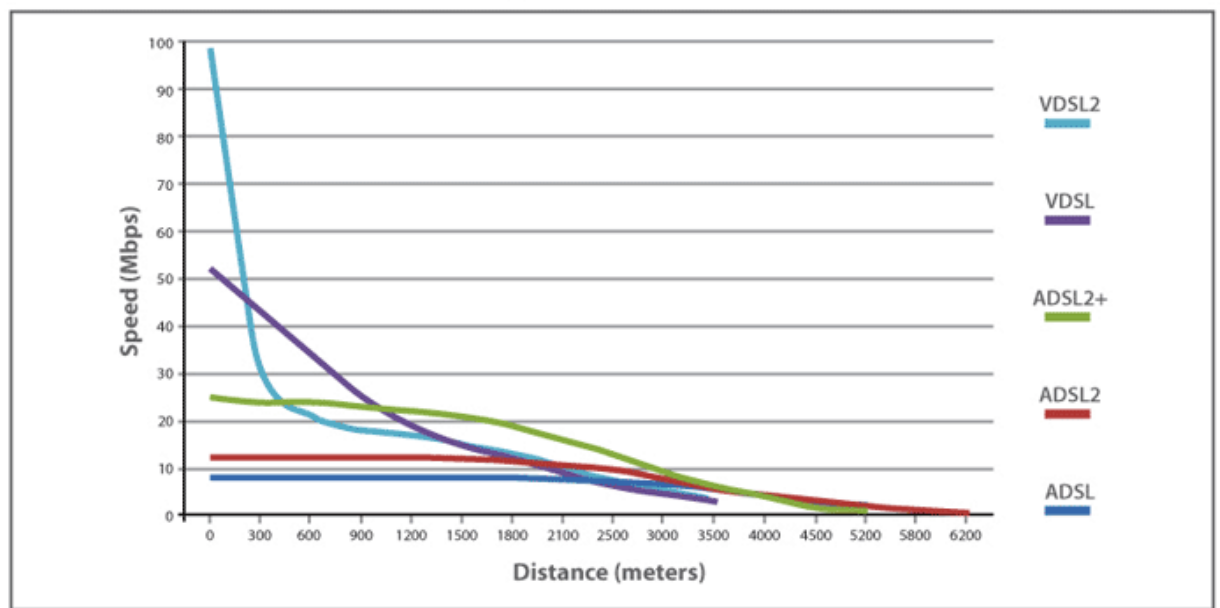
The following scheme (Figure 1) describes an overview of VDSL2 access technology. A specific VDSL Gateway offers IP broadband connectivity at customer side. The Gateway is connected via a PSTN copper pair to his DSLAM located in a ROP (remote optical platform ~22000 in Belgium). VDSL2 standard is used to offer up to 100 Mbps downlink throughput. Depending on distance to DSLAM, other DSL modulation is used. All the traffic coming from the different DSLAM's is aggregated in different VLAN's and then transported to 5 different POP's where Orange Belgium is present.

The different types of services (TV, internet & fixed telephony) are separated in different VLAN's with different Class of Service (priorities P0/P3/P5).

In the current Proximus offers, the TV service is offered via the reuse of the Proximus own TV IP Multicast where the alternative operator must implement the same CAS as Proximus to get access to Multicast streams. This has a deep impact on the TV decoder.

The VDSL2 gateway must pass a set of interoperability tests (IOT) as defined by the incumbent operator.





Source: Ofcom

Figure 2: DSL bandwidth is depending on distance to DSLAM

### Cable technology

All the cable operators in Belgium are using similar network architectures.

For Digital TV, they are all using DVB-C which is highly standardized. They are capturing the TV channels from broadcasters, encrypt and prepare these for broadcasting on the HFC network. Standard DVB Conditional Access System is also used to encrypt with different security solutions each channel that will be shared between operators. For Broadband access, they have all implemented DOCSIS 3.0. There are interconnections with Orange Belgium for IP traffic, CAS keys (DVB simulcrypt) and IT messages for activation, provisioning, support & (basic) monitoring.

An own Cable modem and TV decoder has been implemented by Orange for its customers and these devices are fully operational on the different cable access networks.

Even if cable technologies are highly standardized, each cable operator implements its own flavor regarding DVB SI/PSI signaling and DOCSIS routing solutions (BSoD vs. VRF). These differences must be integrated by Orange in its product development.

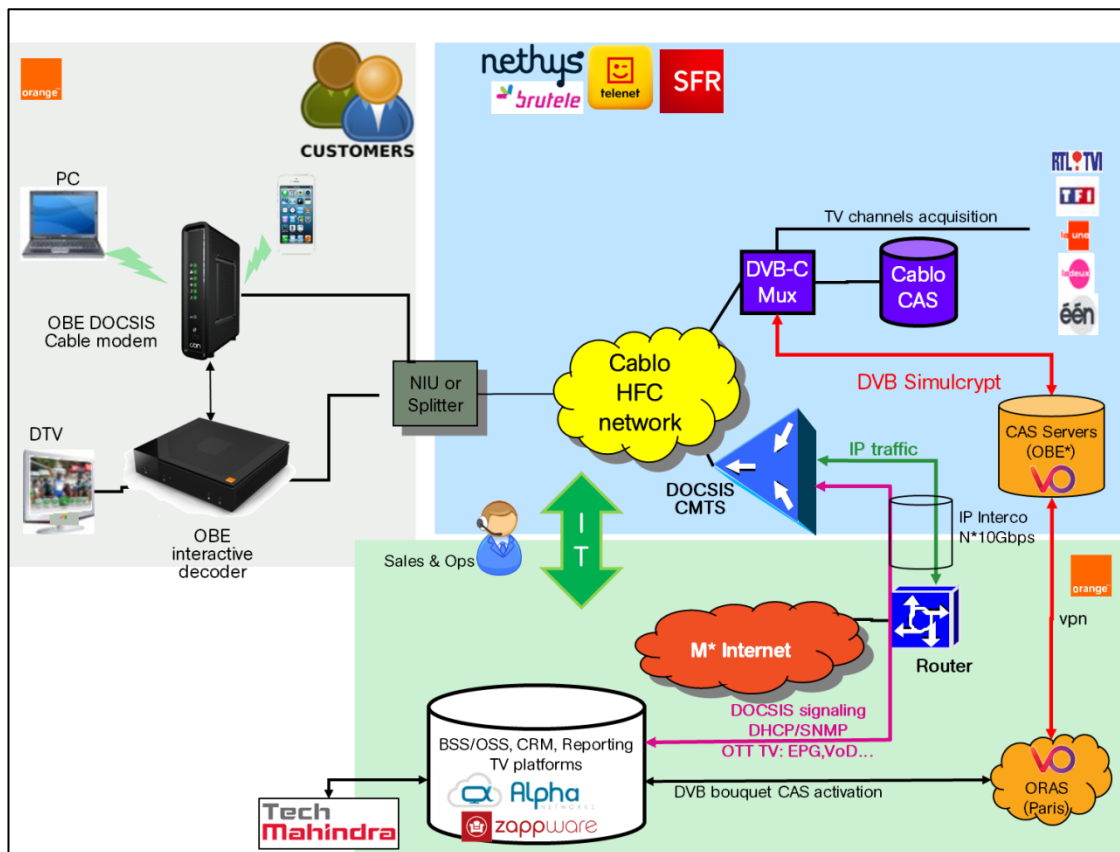


Figure 3: Regulated cable access

## FTTH Technology

Fiber To The Home is an access technology based on optical fiber access. In Europe, most of the deployments for residential markets are using GPON standards (ITU-T G.984.1), available since 2004. Proximus is using this technology for its FttH deployment.

The following scheme explains briefly the GPON approach as implemented by Proximus according to our understanding.

A Passive Optical Network, build with optical fibers and 1:N optical splitters transports the signal from the OLT (equivalent of DSLAM in VDSL) towards the customer premise where the ONT (Optical Network Termination) converts the light signal into standard Ethernet.

G.PON is the natural evolution of xDSL technology (also named Fiber to the curb) and brings capacity up to 2.5 Gbps (evolution towards 10Gbps XG-PON and 40 Gbps NG-PON2 are already in early stage deployment). The only difference is the replacement of DSLAM-pairs-Gateway by OLT-Passive Optical Network-ONT.

All the different services offered to end users are then transported by IP. Similar as on VDSL2, there are different class of services (P0/P2/P3 priorities) . Offering digital TV access will also require the usage of Proximus Multicast stream as on VDSL2.

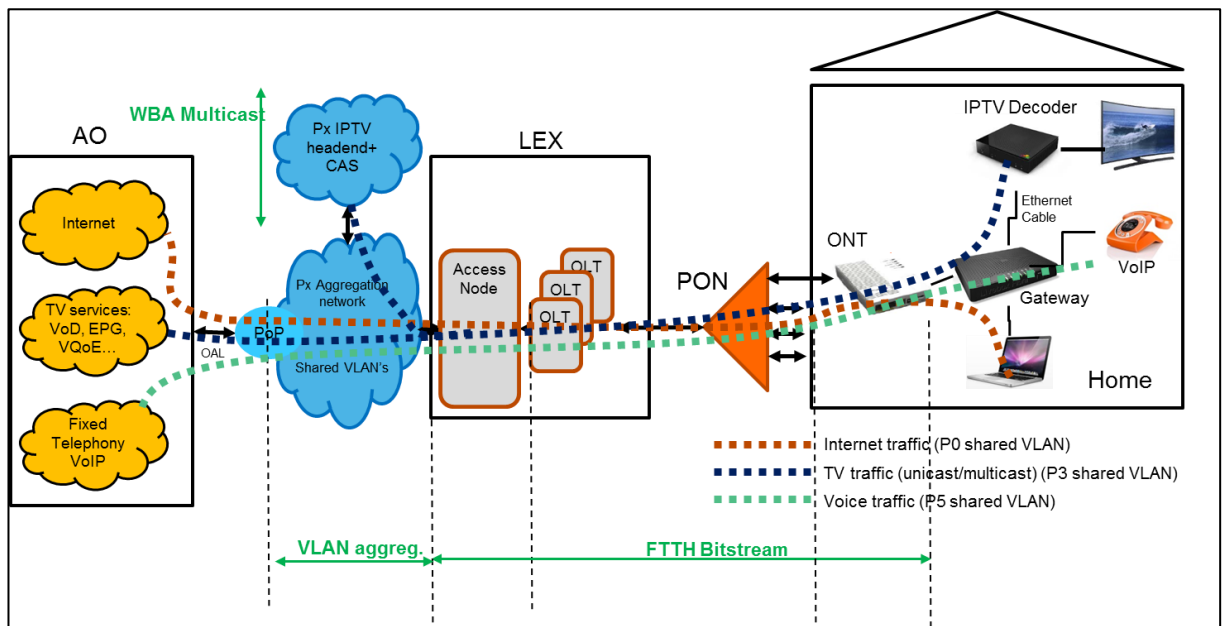


Figure 4 : Fiber To The Home with G-PON

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Bar Index	Relative Length (approximate)
1	100%
2	95%
3	85%
4	75%
5	70%
6	65%
7	60%
8	55%
9	50%
10	45%

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Age Group	Percentage
18-24	22%
25-34	18%
35-44	15%
45-54	12%
55-64	10%
65-74	8%
75-84	5%
85+	3%

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[REDACTED]

Response	Percentage
Current administration	85%
Previous administration	15%

[REDACTED]

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A large, stylized, black and white graphic of the letter 'E'. The 'E' is composed of thick, solid black strokes. It has a vertical stem on the left and three horizontal bars of varying lengths extending to the right. The top and bottom bars are longer than the middle bar. The overall shape is rectangular, with the right side being slightly irregular due to the varying lengths of the horizontal bars. The background is white.






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**Annex 9.**

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