

**CONTRIBUTION OF THE PLATFORM TELECOM OPERATORS & SERVICE PROVIDERS
ON THE ERG CONSULTATION ON GEOGRAPHIC ASPECTS OF MARKET ANALYSIS**

11TH AUGUST 2008

The *Platform Telecom Operators & Service Providers* (hereafter "the Platform") is a Belgian interest group which currently has 13 members¹, all of whom are active in some way on the Belgian market.

The association aims to serve the common interests of its members in telecoms and multimedia services sector and:

- to define positions and opinions as well as carry out activities involving topics of interest to the sector, and to do so in ongoing consultation with members;
- to carry out lobbying work with a view to establishing a legal, fiscal and socioeconomic environment in which the market can develop optimally and competition can flourish;
- to represent and defend members at regional, community, federal, European and international level as a single group;
- to serve as the meeting place for colleagues in the sector;
- to be the sector's point of contact for governments, user groups and business partners.

The ERG has published a draft common position on the geographic aspect of market analysis. It raises the following remarks from the Platform.

With regard to the definition of geographic market(s), we generally consider that "one size will not fit all" and that it will highly depend on national circumstances and in particular on the current competition conditions of the LLU and bitstream markets.

We took note of the recent British and Austrian cases on broadband where the regulator has either defined geographic markets or imposed different obligations within a national market. We would not recommend this approach for the Belgian market.

More particularly, through its decision on markets 11-12 of January 2008, the BIPT concluded that both LLU and bitstream markets remain national, despite the presence of strong cable operators in a certain part of the country, since there is no demand or supply substitutability with the incumbent's network. Moreover, the competition conditions are homogenous at national level. Finally DSL competition has been delayed during many years through pricing and operational hinders. For these reasons LLU is only at its start today.

The Platform therefore fully supports the BIPT analysis concluding in a national market for both unbundling and bitstream.

As acknowledged by the ERG in its document, the concept of geographic submarket is very complex to analyse. We therefore ask the ERG to ensure that defining criteria for geographic analysis will not lead to regulatory decisions imposing:

- Artificial discontinuity within the territory;
- Artificial and unstable market definition;
- Unjustified deregulation;
- Less competition at the detriment of consumers.

It's also worth reminding that NRA must ensure that their action is simple, transparent, consistent and predictable. We consider that analysis concluding to any geographical sub market must be very strictly

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ASTRID	Colt Telecom	Mobistar	Verizon Business
BASE nv. / sa.	Euphony Benelux	Scarlet	
Brutele SC	Eurofiber	Syntigo	
BT	KPN Belgium – Tele 2	Telenet	

documented with great evidences. Such analysis must be done with due carefulness since it could impact very drastically and negatively the DSL competition, in the detriment of consumers' choice.

In that sense, § 6 of the ERG document is highly important since it emphasized the consequences of defining geographic sub markets in terms of regulation. We fear, like the ERG in its document, that defining sub geographic markets can lead to risk for competition because of lack of transparency and lack of stability of such definition. Moreover, facing a vertically integrated and national incumbent, the alternative DSL operators, and the regulator, would have higher difficulties to check correct cost orientation prices, avoid squeeze or cross subsidization practices, and cost accounting and accounting separation would be more complex to elaborate.

We also consider that with market segmentation there is a risk for competition on the remaining regulated market which could be negatively impacted. We therefore ask the ERG to be particularly cautious when starting such analysis and keep in mind all the direct and collateral effects of such analysis.

We comment further below some sections of the ERG draft common position.

1. Is there a need for detailed geographic analysis?

As highlighted by the ERG document, we consider that homogeneous competition conditions and similar national pricing should lead to the conclusion that *"no detailed geographic analysis (or data collection) is required"*.

Taking into account the consequences of any geographic segmentation and the risk of arbitrary or unsatisfactory border on competition, any NRA wishing to define geographic markets must deeply justify its analysis and give relevant and strong evidence of such competition conditions.

In that sense, we support the BIPT analysis adopted in its decision dated 10 January 2008 where after a deep analysis it concluded to the national definition of the LLU and bitstream markets. We also believe that such conclusion will remain relevant for the next analysis to be done as the market and competition conditions have not evolved much since January 2008.

2. Choosing an appropriate geographic unit

We consider that the delimitation of such unit is highly difficult as any wrong unit could lead to wrong conclusions and inefficient or even anti competitive (de)regulation.

In that sense, the ERG document indicates that two main options are available: a unit based on political or administrative boundaries and a unit based on the network structure of the incumbent.

We consider that the ERG should highlight in its explanations that both types of unit have intrinsic limits:

- Concerning the network of the incumbent, the ERG expressly indicates the need to take into account the NGA and the possible closure of Local exchange, which we support. However, the ERG document concludes that in such case, NRA could take into account the street cabinet that *"might become the smallest area which can be addressed by an LLU operator"*. We do not share this vision. As already demonstrated by several studies, SLU for alternative operators is not a realistic option in most European countries. We refer in particular to the Analysys studies made on the Netherlands² and Belgium³ cases. During the ECTA workshop on NGA of 10 July, it was also indicated that the WIK studies on the economics of NGA, to be published soon, concludes that NGA replicability by alternative operators is limited to "very dense urban areas". Therefore, taking as unit a street cabinet does not appear to be a reasonable option.
- Concerning the political or administrative boundary, a proposed option to be used in particular for leased lines markets by the ERG, we note that it could lead to some practical difficulties. For example, several questions raise on how to deal with leased lines which cover several units (for

2 <http://www.opta.nl/download/Analysys+Final+Report.pdf>

3 <http://www.bipt.be/ShowDoc.aspx?objectID=2850&lang=fr> (page 7-21)

example starting in one city and ending in another) as well as on how to deal with business offers addressing several sites within the overall country and this within different geographic units

3. Assessing the homogeneity of competitive conditions

We agree with the ERG document according to which the NRA must look at the homogeneity of competition conditions. But we do not understand exactly why the ERG indicates that *“the goal is not to perform a fully fledged market analysis, but to form a hypothesis about significant differences in competitive conditions”*. On the contrary, we consider and ask the NRA to conduct a deep, complete and documented analysis and not to decide on mere “hypothesis”. (This will also help to provide strong argument in case of potential attacks against the NRA’s decision.)

We consider that the ERG is right to define criteria for such analysis like barriers to entry, number of suppliers, market shares and pricing. We have however the following remarks:

- In the § relating to number of suppliers, the ERG indicates that *“it may be appropriate to assess the number of operators able to provide services from each MDF”*. We know that this has been done in the UK. However, it will depend on national circumstances and it seems to be quite risky in many countries where MDF will disappear in a short/medium term basis because of NGA roll out. For example, in Belgium the incumbent has informed the sector that it will close at least 65 MDF between 2013 and 2018. Therefore, we consider that numbers of operators within a MDF cannot constitute stable criteria of competition in the area served by such MDF.
- Concerning the § on price and prices difference, the explanations on cases where *“from a customer perspective, significant differences exist between competitive and non competitive areas despite a national uniform price of the incumbent operator”* is not really clear. Some clarifications on ERG’s intentions would thus be welcome on that topic.

Finally it is also not clear whether those criteria have to be applied cumulatively or not. Under § 4.2, it is indicated that a single criterion would not be sufficient but the next sentence indicates that *“the criteria should be applied (cumulatively) such that [...]”*. We wonder why the “cumulatively” is in brackets and ask for clarification within the final version; The Platform believes that such criteria should be cumulative. A similar remark applies to the last § of page 16: according to the last sentence, it could be understood that a different behavior of one single operator, like a cable operator, could lead to different geographic market. This should be adapted since NRA have to develop strong analysis and examine all the relevant criteria and not only take into account *“one cable operator [that] behaves very differently from the other”*.