

CONTRIBUTION OF THE **PLATFORM TELECOM OPERATORS & SERVICE PROVIDERS**  
ON THE **ERG** CONSULTATION ON **BEST PRACTICES FOR LLU AND BITSTREAM**

**25 JANUARY 2008**

The *Platform Telecom Operators & Service Providers* (hereafter "the Platform") is a Belgian interest group which currently has 13 members<sup>1</sup>, 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.

## 1. Introduction

The Platform welcomes the ERG public consultation on best practices regarding regulation of local loop unbundling and bitstream markets. An efficient regulation of those markets is essential for competition in the benefit of the consumers and of the Information society.

Despite the fact that regulation of the local loop is in place since 2001 and that many DSL alternative operators have already invested huge amounts in LLU, some countries like Belgium still face very low LLU penetration and as a consequence very frail DSL competition. This has been again recently highlighted by the European Commission within its comments on the first analysis of former markets 11 and 12 by the Belgian NRA.

The competitive situation of those alternative operators strongly risks to be even more weakened by the NGN/NGA roll out by the SMP operator or incumbent, which may cancel any return on their past and current investments.

We therefore consider in order to be efficient and in benefit of competition, any regulation of LLU and bitstream markets has to take into account:

- The current and past investments of the alternative operators;
- The DSL market maturity and competition level;
- The risks of NGN/NGA on investments and on the accuracy of regulation.

We support in general the best practices as described in the draft report. We indeed agree with the facts that improvements of quality of service, of the richness of the wholesale offers as well as the set up of realistic economic space in pricing are crucial to enhance competition. We comment further in details some of these best practices.

However, we consider that this report should remind as a preamble to the detailed best practices to be imposed by each national NRA depending on the national specificities. In addition, it is the duty of NRAs to ensure that the decisions they adopt are effectively and promptly implemented. In many topics, it indeed

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

appears that despite the good decision they adopt, the SMP operator manages to not respect it or to adopt delaying tactics. In such circumstances, we consider that NRA should adopt as best practice to make use rapidly of all the tools at their disposal and in particular the power of imposing fines to put at end such behaviors.

We would also welcome that the ERG report mentions that all the process considered as best practices must be cost oriented and regularly checked by the NRA (migration process, portability, passive connectivity solutions...).

## 2. Comments on quality of services

Quality of services of the wholesale offers is a key factor to enhance competition. We therefore support the ERG best practices taking into account the following comments.

- SLA Timing

We support the best practice 2a under which delivery time is possible “*within 7 working days*”.

However we consider as a general principle that in order to be fully and fairly competitive with the SMP operator, the SLA should not be “*at most equal to the average delivery time of each of the SMP downstream product*” but should allow alternative operators to offer their end users the same timers as the SMP operator, meaning that the wholesale timers should be inferior to the retail timers of the SMP operator.

In section 1.1.1 page 6, we wonder whether the item “definition” does not relate to LLU and bitstream and not only to LLU as currently mentioned.

A specific compensation should be imposed in case the incumbent does not respect the date communicated to the competitor (and ultimately to the end-user) as this:

- disorganizes the activities of the competitor,
- creates extra costs as in many cases the competitor foresees its own technician to finalize the installation upon delivery by the incumbent and the technician came for nothing, and
- is detrimental to the reputation of the competitor as the end-user will not be able to trust it any longer, and may need to stay at home (taking on his holidays) a second time to wait for the installation.

Repair timers must be in line with best practices in Europe: in the Annex of the ERG public consultation, Figure 6 on page 8, most of the countries, even with huge penetration rates of ULL above 10% of the PSTN lines, offer a repair time of 1 working day. This is in line with the end-users expectations. For premium SLAs, the repair timer should be 4 hours instead of 8 hours as the latest is much too long for a business. To the minimum, the incumbent must offer repair timers that are shorter than the repair timers offer by the incumbent to its retail clients. In Belgium, for instance, Belgacom offers a premium SLA to its retail clients of 4 hours, whereas premium repair timers at wholesale are generally 8 hours. This makes it impossible to compete on a level playing field with the incumbent. Compensation for late repair is also necessary.

Fault clearance requests a strict timer as this constitutes the first experience of the new clients with the service delivered by the competitor. It is extremely important that fault clearance happens within 24 hours and subject to a serious compensation from the incumbent in case of longer timer.

- Compensation mechanism

We fully agree with the ERG's analysis on the necessity of compensations in order to stimulate SMP operator to deliver the orders in SLA. Defining SLA without defining compensations or penalties in case of non-respect of the SLA does not make sense and can cause real harm to the alternative operators as well as to the end users.

Therefore, we support the best practice 3 according to which compensation is due for ALL cases where the SMP operator does not comply with the SLA taking into account the following comments. All orders have indeed to be done within the SLA without exception and any violation of such SLA should give right to compensation. It cannot be acceptable that some order, even 1%, would not be delivered in due time and would not give right to any sanction.

In order to be effective, we believe that the compensations must respect following conditions:

- Be high enough to provide the necessary incentive for SLA respect;
- Provide the necessary incentive to deliver the order as soon as possible;
- Provide enough clarity on when a compensation is due or not;
- Not be linked to the forecasts if any;
- Provide the necessary transparency on how the compensation is calculated to avoid any interpretation.

**Taking into account past litigations and in order to clarify the wholesale offer, we also consider that the ERG report should precise that:**

- **The SMP operators have an obligation of result (obligation de résultat);**
- **The compensations set up within wholesale offer are without prejudice of any action (damage claim as example) launched by alternative operators, that suffered late or absent delivery or repair orders, brought before relevant Courts.**

○ Forecasts

We agree with the best practice 3b on forecast according to which alternative operators may be asked to provide such information by quarter, on a monthly basis and with a deviation between 30% in mature markets and 40% in starting up market.

We indeed consider that any longer period imposed for the forecast, as for example between 6 and 12 months, would not be realistic and may even provide a competitive advantage to the incumbent that may be informed well in advance of the launch of a new service or new promotional action by its competitor.

Further, some incumbents require a level of granularity per geographical area and per type of service (example: Wholesale Bitstream Access **WBA** service stand-alone or not, Whole Unbundling Access **WLA** Full or Shared: this obliges the competitor to provide a split of its intake for 4 types of services spread over several geographical areas, with the consequence that even if the overall forecast is accurate, the split per service and region can never be accurate as end-users behavior cannot be predicted with such level of details).

Finally as mentioned above, we consider that those forecasts and their respect by the alternative operators cannot be a condition for the compensation mechanisms. Any disrespect of SLA must give right to compensation even if forecasts could not been accurate mainly through under performance or over performance of a promotional campaign and end-users decisions. Furthermore, if a maximum variation of 30 to 40 % of the forecast should be linked to the compensation mechanism, than it should be based on the overall forecast and NOT on the split per service and region. Indeed, such link between split and compensation mechanism has shown how incumbent operators abuse the system and eventually are completely freed from the risk of penalties.

### 3. Comments on the richness of the wholesale offers

○ Migration process from bitstream to LLU

We fully support the need for migration process between the different wholesale offers in particular between bitstream and LLU.

In a context of climbing the ladder of investments from bitstream to LLU, it is of high importance that the SMP operator provides easy, cost oriented and quick process to move a line, or several, from bitstream to LLU. We therefore welcome the insertion of such process in the wholesale offer linked with maximum timing and SLA. Compensations should also be foreseen in case of late or faulty migrations.

However, we consider that the 3 hours cut off period appears to be very long and not justified. Such period should in our view be of maximum 30 minutes depending on the type of migration (mass migration/single line..).

○ Information of the end users in case of migration

We consider that the ERG report has not addressed an important issue relating to migration, which is the way to inform the end users.

In case of migration, the SMP operator often tries to impose to the alternative operators the way to inform the end users, despite the fact that:

- Those end users are in most cases not anymore clients of the SMP operator;
- In most cases migrations might be transparent for the end users (eg. optimization of the network by changing from bitstream to LLU) and should – if correctly executed by the SMP operator- only have a service interruption for a very limited time.

For example in Belgium, in case of migration the reference offer imposes on the alternative operators:

- To send a letter of information or letter of agreement to their end users;
- The content of such letter with compulsory clauses relating to:
  - i. The total absence of liability of the SMP operator in case of problem;
  - ii. The relationship between the SMP operator and the end users.

Such statements are not acceptable in a competitive point of view. It is the duty of the alternative operator to inform clearly their customers and not of the SMP operator to impose such clauses. We consider that those clauses imposed by the SMP operator have one objective that is to frighten the customer and thus blocking the migration. In that sense, we consider that such requirement can constitute a hinder to LLU deployments as most of times, migration are from bitstream to LLU.

Therefore, to avoid such abusive practice, we ask the ERG to also mention in its report that NRA have to ensure in case of migration that SMP operators do not impose to their competitors unjustified form and content of any information to the end users.

In case the ERG considers justified some statements in the reference offer relating to end users information, the NRA should ensure:

- That those statements do not lead to anti competitive practice and are proportionate to the objective pursued;
- In order not to be discriminatory that similar obligations are imposed on the SMP operator. The SMP operator should be imposed to also request such documents in case its own services would have an impact on former alternative operator subscription;
- That the SMP operator does not impose any too long obligation to stock that information. For example, in Belgium, the reference offer imposes the alternative operators to keep the letter sent to their customers during one year. This is clearly disproportionate as such documents are necessary in case of complaints by end user, which should happen before a period of 3 months;
- That there is clear definition of which circumstances allow the SMP operator to ask for such letters (clear proof of complaints from the end users given to the alternative operators).

#### o Collocation of equipments

We fully support the best practice 8 according to which NRA must ensure that innovative services can be launched by competitors without undue delay and that reference offer must allow them to collocate any equipment indispensable to offer a given service, existing or new, with no technological restrictions other than in cable spectral management or interference.

However taking into account the launch by some SMP operators of VDSL network, which implies collocation at street cabinet instead of LEX, we consider that the ERG report should expressly mentions that in any case, even if collocation is not possible because of lack of place in the street cabinet, NRA has to ensure that the SMP operator rapidly offers an alternative solution and on a cost oriented basis.

It is indeed not for the alternative operators to pay the consequences of the arbitrary choice of the SMP operator to roll out VDSL network and install too small street cabinets to collocate competitors. Without alternative solution, it is all the DSL competition that is at risks disappearing. Among remedies, VDSL has to be offered in the bitstream offer.

- Stand alone bitstream access

We do not understand the reference to the “universal service provision” in page 24. According to universal service directive, the universal service operator must be designated after transparent, non discriminatory and competitive procedure. The ERG report in this section 2.5 seems to consider that in any case the SMP operator provides universal service. This should be clarified.

- Other comment

Page 17, we consider that the second sentence should be modified to add “business” to “households”.

## 4. Comments on the pricing issues

We consider crucial that NRA ensure sufficient economic space between wholesale offers and retail offers of the SMP operator. It is indeed still current that the SMP operator provides retail offers that are not replicable by its competitors.

Such behavior should lead to a quick and efficient reaction from NRA. NRA should ensure that the SMP operator launches new or modified retail offers only after due checking that its competitors would be able to replicate them with the wholesale conditions. In case it those retail offers are not replicable, then the SMP operator should be imposed to offer new wholesale conditions before launching its retail offers.

With regard to the economic space between LLU and bitstream pricing, the Platform believes that this should not be a goal per se. In rural areas, competitors will always need to complement their ULL network with WBA. Such WBA must remain affordable in order to allow end-users in rural areas to benefit from competitive services.

Pricing of backhaul and of passive connectivity solutions may depend of elements mentioned in the ERG consultation. In addition, the level of competition and the number of lines that a competitor may reasonably expect to unbundled within a year must also be taken into account to assess the economical viability of such option.