

Mobistar comments – Cable wholesale price consultation

Executive summary

Mobistar welcomes the consultation on the draft decision of the regulators regarding the revision of the wholesale tariffs for access to the cable networks.

This draft decision is indeed a mandatory additional element to establish a functioning regulatory framework for wholesale access to the cable networks. That such framework is more than ever needed continues to be exemplified by numerous market evolutions, for instance the continued price increases for fixed services, the ending by Base of its “Snow” service, the take-over of Base by Telenet, the huge price paid by Numéricable to acquire a limited cable network (WoluTV).

The December 2013 price decision was incomplete and it didn't offer alternative operators an economically sustainable means to make use of the cable regulation. As only alternative operator, Mobistar activated the implementation of the regulation based on the improvements announced in the initial decision.

The draft new decision is clearly a step in the right direction to ensure that, as put forward by the EC, profitable market entry becomes possible. In particular, the following proposed enhancements are the minimum necessary :

- the correction of the retail price for the value of the products and services included in the retail offers and not offered in wholesale before application of the retail minus %;
- the proper allocation of promotions and discounts;
- the fine-tuning of the measures to prevent disproportional wholesale price changes following (minor) retail tariff changes.

Notwithstanding these clear improvements, the current draft decision hardly meets alternative operators' requirements for a profitable operation of the service if no further improvements are applied. The decision should be further enhanced as certain wholesale tariffs stay too high to allow the development of competitive offers. This can be addressed by inter alia :

- considering all additional services offered by the cable operators and by valuing the additional services at the right level;
- by integrating the really incurred content costs as well as the structural cost disadvantages for new entrants with respect to content charges,

Given the importance of the investments (in systems and content) and development costs, it is key for Mobistar that the final decision is robust, predictable and stable. To this end, further improvements are put forward :

- by reviewing the formula for the determination of the price for own profiles,
- by setting the transition period for the minus % as a minimum at 3 years,
- by additional measures to avoid artificial wholesale price changes,
- to increase the robustness of the decision against legal challenges,
- to complete the decision with elements not yet properly addressed (change management, set-up fees, data prices, ...).

In conclusion, while on the long term a wholesale price based on costs stays recommended, the current draft decision is clearly a step in the right direction. Insofar the suggested enhancements are maintained and further improved whenever possible, it will establish a minimal basis for offering commercial services via the cable networks, even if – as indicated by analysts and competitors – it will stay a major challenge to be successful.

COMMENTS MOBISTAR

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Introduction

Mobistar welcomes the consultation on the draft decision for the wholesale charges for access to the regulated cable networks.

As the December 2013 decision regarding these conditions already made clear, a number of further clarifications were needed. The current draft decision integrates an important number of these clarifications. Once implemented, these will contribute to the establishment of a reasonable regulatory framework that allows that candidates for access to the regulated cable networks can do so with a minimum set of guarantees and at economic conditions that may enable competitive market entry to the benefit of the consumers.

In general terms, Mobistar welcomes the fact that the draft decision :

- corrects the retail minus formula with respect to the value of the services that are offered by the cable operators to their retail customers;
- addresses properly the difference between the value and cost for decoders and modems;
- integrates a correction factor for the retail minus calculation in order to take promotions and discounts into account;
- establishes a number of principles that will give the beneficiaries of the regulation more certainty and predictability about the evolution of the wholesale charges;
- establishes a pricing method for internet profiles that are not offered by the cable operator.

Notwithstanding these general improvements, there are a number of comments and points that remain open for improvement or review, such as :

- the general approach to handle advantages associated with services or products out of the bundle;
- the value obtained for a number of specific services and products;
- the formula for the wholesale tariff for internet profiles not offered by the cable operator;
- the transparency and robustness of the overall methodology;
- the overall governance framework of the decision moving forward.

It is clear that a number of the shortcomings are inherent to a retail minus wholesale pricing approach. In the current market reality, in which retail services are bundled (usually in a pure bundling approach) and where there are frequent retail offer changes (inclusion of new features, addition of new options, changes in internet profiles, indexation/change of tariffs, ...) it is difficult to ensure a predictable and stable regulatory wholesale pricing regime. Mobistar therefore continues to consider that over time a cost-based approach stays recommended in order to increase the predictability and robustness of the wholesale pricing regulation.

In this contribution, Mobistar will provide its feedback on those elements it considers welcome or mandatory in order to come to a regulatory framework allowing effective market entry, as well as its comment on the areas for enhancement. This implies that, even for sections where Mobistar in essence agrees with the draft decision, suggestions are made to adapt (from a technical, legal or clarity point of view) certain elements.

Taking into account that, since the initial market analysis and since the initial wholesale pricing decision, a lot of time has passed and major market evolutions have materialised (such as the strong price increases of the cable operators, the ending by Base of its SNOW offer and the subsequent Telenet acquisition of Base), Mobistar considers it very important that a final decision is taken as soon as possible.

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On the technical level Mobistar is already running friendly user trials and a very important hurdle towards a commercial launch would be removed by having visibility and certainty on the availability of wholesale pricing conditions allowing a competitive market entry.

We repeat the need to set wholesale prices at a level that increases competition and that allows an efficient operator to enter the market in a profitable way. While the new draft wholesale tariffs are an improvement versus those included in the December 2013 decision, the revised conditions are still high and can still be improved further.

Even Telenet (and Proximus) still considers that “[Mobistar] still need[s] to buy content, run platform, add set top boxes etc. Will not be easy to be so competitive”¹. Further external reactions are in attachment. It is crucial that, when finalizing the decision for submission to the EC, further decreases of the wholesale charges are implemented so that the existence of a minimum economic space for the alternative operator to start its business is guaranteed. The fact that Numéricable bought WoluTV at an estimated price of 1800 € per customer is a clear indication that the current cable regulation is not seen as a major business risk for the cable operator investments and associated profitability.

Note 1: the references to paragraph numbers in this document are based upon the draft decision of the BIPT, Dutch version. Taking into account that the draft decisions of the VRM, Medienrat and CSA are very similar, the same comments apply to these documents. The documents in this document are organized in the sequence of the draft decision document. A number of comments regarding elements which are not addressed in the draft decision are at the end of the document.

Note 2: in our comments we’ve tried to be as specific as reasonably possible. To facilitate the work of the regulators we’ve also taken the liberty to suggest specific reviewed wordings for certain elements of the decision. A large part of the comments aims at increasing the stability, predictability and robustness of the decision, as it is clearly in the interest of all stakeholders that the decision is as strong as possible against legal challenges.

¹Bank of America/Merryll Lynch - Global Telecom and Media conference take aways – 08/06/2015. We underline

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Regarding Chapter 1, the introduction.

Mobistar suggests to further clarify how the current decision must be read in conjunction with the “initial” decision (i.e. the decision of mid December 2013).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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Regarding chapter 2, context and objectives

Clearly Mobistar supports the overall objectives put forward.

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Regarding chapter 5, retroacta

For the sake of completeness Mobistar suggests to mention, for instance at the end of section 5.3, that appeal procedures against the December 2013 decision have been introduced by the cable operators and by Mobistar.

While of a completely different nature, the fact that so far no single alternative operator has made use of the regulated cable offer to launch a commercial service might be an element worth mentioning in this section as well.

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Regarding chapter 7, the value of the services that are not part of the wholesale offers

Bundling as key market practice

Mobistar shares the analysis regarding the issues generated by the commercial practices of the cable operators by which these offer bundles of retail services in which very significant discounts are proposed versus the sum of the stand-alone values of these services, and/or where pure bundling practices (ie where certain services are available to end-users only in a bundle together with other services) are applied (§ 39).

While the issues on bundling were already identified in the market analysis back in 2011, these practices have steadily increased in scope (in terms of the number of services put together, with for instance an increasing interest in adding mobile services aspects) and scale (in terms of the number of subscribers on these bundles). Mobistar considers this is an additional element pointing to the strong necessity to address the consequences of the bundling practices. The approach to discount the value of the services bundled in retail offers while not being offered in wholesale is one of the answers to address this trend.

Mobistar considers that some of these pure bundling practices might be considered as anticompetitive and possibly abusive. However, insofar that the current market analysis does not allow to intervene directly in the composition of the services in a retail bundle, Mobistar understands and agrees that the regulators apply the least intrusive and proportional measure to address this issue.

The importance of the additional services for the end-user is clearly recognised, for instance by Proximus' statement on whether Mobistar, given the wholesale tariffs put forward by the new draft decision, could be a threat to its fixed business: *"Belgacom believes their wider customer experience is superior, combining Wifi, replay TV, access to content on the move to counter the threat."*². It is clear that these additional services are highly valued by the end-users.

Overall bundling remains a key trend, allowing operators to monetize existing customer relationships via up-selling and lower subscriber acquisition costs (while increasing the subscriber acquisition costs of alternative operators) and improved loyalty. In the 2014 Solon's study³, it can be observed that customers of multiple products and bundles are significantly more loyal, that is, less likely to churn. The churn rate of customers with over 3 services is on average nearly 3 times lower than the churn rate of customers with a single service.

In general Mobistar supports the CRC approach

Apart from the comments on a number of specific elements raised below, Mobistar agrees with the approach to correct the retail tariff with the value of the services not offered in wholesale. This is the only way to ensure that alternative operators don't have to pay (depending on the value of the "minus %") the full margin of a service that is not being delivered. Moreover, Mobistar agrees with the principles laid down for the determination of the values to correct the applicable basis for the retail minus approach. Taking into account the limited experience during which the retail-minus decision was applicable, it is clear that the safeguards put forward by the regulators are mandatory.

²Bank of America/Merryll Lynch - Global Telecom and Media conference take aways – 08/06/2015 - we underline.

³Solon Survey of European Cable Communication 2014

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It is key that beneficiaries of the regulation can benefit from predictable, fair and reasonable tariffs that are directly related to the value of the wholesale services effectively provided and that are not driven by the value attributed by the cable operators to services in an artificial way.

Regarding chapter 7.1: Methodological approach – Issue description

The method for the additional services was included in the previous decision (§ 37 to 38)
Mobistar considers it may add value to the decision to underline that the proposed approach of deducting the value of extra services included in retail offerings (and decoders/modems – see comments on Chapter 8) was already introduced in the previous CRC decisions.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Regarding chapter 7.1: Methodological approach – Analysis

The value of the services not offered in wholesale should be considered
Mobistar supports the CRC's position that the value of the extra services not included in the wholesale offers should be deducted from the retail prices before the minus is applied (§39-44).

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mobistar considers that the approach adopted by the CRC is based on the requirement of comparability between the services included in the retail price basis and the services provided at wholesale level to new entrants. Therefore, the retail tariff used for the basis of the minus calculation should be cleaned **not** of the costs of the extra service (c.q. modem/decoder), but of the value of the extra service.

The requirement of comparability between services at retail and wholesale level is considered in the case law as a basic rule of any price squeeze test. As the retail minus methodology constitutes in substance a price squeeze test¹⁰, it is therefore necessary to recall that the courts have made clear that for the application of the margin squeeze test, the comparison between the retail price and the wholesale price must be made with respect to comparable services at retail and wholesale level. This follows from the principle of equal opportunity.¹¹ The underlying idea of the margin squeeze methodology is to allow competitors to compete profitably on a retail market when they need to

[REDACTED]

¹⁰ IRG, Principles of Implementation, IRG (05) 39, p.5.

¹¹ Judgment of the General Court of 10 April 2008, case T-271/03, Deutsche Telekom/Commission, ECR, 2008, points 199-200. See also § 109 DT decision: "In order to establish the existence of a margin squeeze it is essential that the wholesale and retail access services be comparable. The established operator and its competitors as a rule provide retail services of all kinds. It has therefore to be considered whether the established operator's retail and wholesale services are comparable, in the sense that their technical features are the same or at least similar and that they allow the same or at least similar services to be provided."

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purchase their input from a vertically integrated undertaking, which is competing on the downstream market as well.¹² The input has to effectively serve the production of the retail service, hence comparability of the wholesale and retail services is essential.¹³

The comparison between two prices for two particular services at different levels in the value chain would be distorted if one would take into account part of the price of an extra retail service (or for that matter modem/decoder) which is distinct from the retail service that corresponds to the wholesale service in question.

Mobistar agrees with the approach to determine of the value of the extra services (\$45 - 50)

Mobistar fully agrees with the need to address the possibilities for the cable operators to generate artificial and disproportional changes in the wholesale tariffs via changes of retail tariffs for services that may or may not be offered in wholesale.

With respect to the illustration for the need for this approach, we note that the draft decision (in § 47.2) acknowledges the artificial pricing change by Telenet for access to its hotspots, referring to a price change from 5€ to 1€ per month since May 4 2015. While this may or may not be the result of a typographical error, Mobistar could only identify a retail price change from 15 € to 1 € with respect to Wi-Fi services. The dated screenshots below illustrate this (the figures can be found on the line with the blue arrow):

- Screenshot taken February 16, 2015. Retail tariff at 15 €.

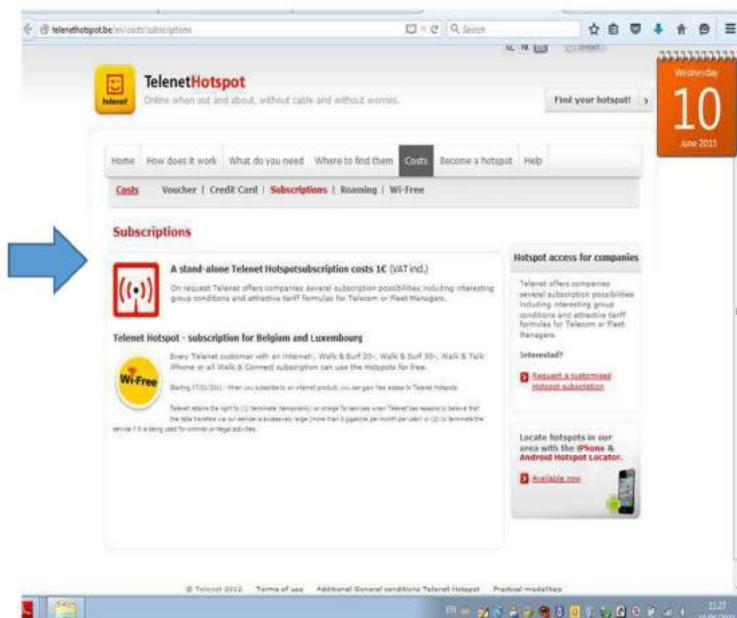
The screenshot shows the TelenetHotspot website interface. At the top, there is a navigation bar with links like 'Home', 'Hoe werkt het', 'Wat heb je nodig', 'Waar vind je ze', 'Wat kost het', 'Word zelf hotspot', and 'Help'. Below this, there is a section titled 'Abonnementformules'. A blue arrow points to the text 'Een stand-alone Telenet Hotspotabonnement bedraagt € 15 (BTW incl.)'. Other visible elements include a 'Wat kost het' menu, a 'Hotspotaccess bedrijven' section, and a 'Wi-Free' logo.

¹² § 102 DT decision: "A margin squeeze exists if the charges to be paid to DT for wholesale access, taking monthly charges and one off charges together, are so expensive that competitors are forced to charge their end-users prices higher than the prices DT charges its own end-users for similar services. If wholesale charges are higher than retail charges, DT's competitors, even if they are at least as efficient as DT, can never make a profit, because on top of the wholesale charges they pay to DT they also have other costs such as marketing, billing, debt collection, etc."

¹³ § 109 DT decision.

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Screenshot taken June 10, 2015. Retail tariff at 1 €.



Note that additional comments regarding the value for Wi-Fi services are included further in this document.

While Mobistar agrees with the general approach chosen for the determination of the correction to apply to the retail tariffs in the context of bundled offers, Mobistar considers that the approach in which, absent any relevant retail value benchmarks, the production costs per customer are taken as approximate value for a given service, opens the door for price manipulation and risks to lead to a significant underestimation of the value of certain services offered to retail customers but not offered in wholesale. Two examples (with respect to the Telenet offer) to illustrate this:

- Telenet offers exclusively the “Piet Piraat” app, basically targeted at parents of young children¹⁴. Although the development cost of such app is clearly limited (depending also on the content rights associated with the application), the value of such application might be important for the target audience. It is clear that benchmarking nor production costs can provide an approximate retail value for such service. In case the take up of such service would become more material (or in case access to the service would clearly be a barrier for switching), additional means such as market surveys or conjoint analysis could be applied to address this type of (hopefully exceptional) situations. To avoid unreasonable workload it is also clear that this approach should not be followed automatically for any service but rather for those services with a meaningful take up.
- The “Triiiiing” application offers the possibility to make calls from a mobile phone to any number when connected to a Wi-Fi-environment at the same retail tariffs of the underlying Telenet fixed phone subscription. The production cost of such app is again limited, and given the specific nature of the service, there is no relevant benchmark possible (it is intrinsically bundled). Telenet

¹⁴ The application had “10.000’s” of downloads in the Google Play Store on July 2, 2015.

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reported 325,700 registered devices at March 31, 2015, indicating that for a meaningful proportion of customers this additional service has a value which would clearly be exceeding the production costs of such application.

The above examples are, in stand-alone, possibly not sufficiently material to justify an in-depth investigation and valuation. However, towards the future, nothing prevents the dominant operator to bundle a wider and wider collection of non-replicable applications (due to scale factors or exclusive content rights) in its service offer. The implicit value of these services may exceed by far the production costs. [REDACTED]

[REDACTED]

Finally, the methodological and fundamental flaw of applying an approach based up on the production costs of the service becomes clear when applying it to the extreme: for a retail bundle where none of the services would be available in wholesale, the alternative operator would end up paying say 70% (assuming a minus % of 30 %) in order to get ... nothing. By choosing the costs related to a service rather than its value, it is exactly this mistake that is introduced in the determination of the wholesale charge. Given that real cases will mix services that are offered and that are not offered in wholesale, an approach by which the production costs are used to correct the retail tariff before the application of the minus would integrate this error. The error would however get hidden in the overall more complex picture, and its effect would become less obvious.

Approach for the bundle-discount for services offered in retail not offered in wholesale

While Mobistar notes that the issue regarding the approach to be applied for the “bundle-discount” is partially addressed in §96, we nevertheless raise it as general comment applicable for the entire set of additional services for which the value must be corrected. In short, Mobistar considers that the approach to apply for the determination of the value of a service in the bundle depends on the basis upon which the retail value was obtained :

- In case the benchmark value is based on the retail price of the service as applied by the cable operator for the service in a stand-alone mode, the bundle discount proportion must be applied¹⁵.
- For bundled services (or devices) that are not offered in stand-alone mode by the cable operator, the application of the bundle discounts depends on the approach via which the initial indication for the retail-value of the service :
 - o If the initial value is defined by a benchmark of the value of the service or device when taken on top of a bundle of services, it implies that the bundle discount proportion should not be applied.

¹⁵ This is the approach used for eg Fixed Telephony in the December 2013 decision : the amount by which the retail tariff must be corrected before the application of the retail minus discount for a given service is in this case equal to the individual stand-alone value of the service prorated for the ratio of the bundle retail tariff over the sum of all individual retail values of the services in the bundle.

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- If the initial value is defined by a benchmark of the value of the service or device when taken in stand-alone mode (i.e. based on the retail charge of the service that applies independently on whether other services are taken with the related operator), then the bundle discount proportion should be applied.
- In case the initial value of a service is defined based upon a benchmark consisting of a set of values that are a mix of the above 2 cases, one has to apply the bundle proportion discount to these values that represent a stand-alone value, and subsequently use the corrected values to determine the retained value as correction for the retail tariff (without another application of the bundle proportion discount).

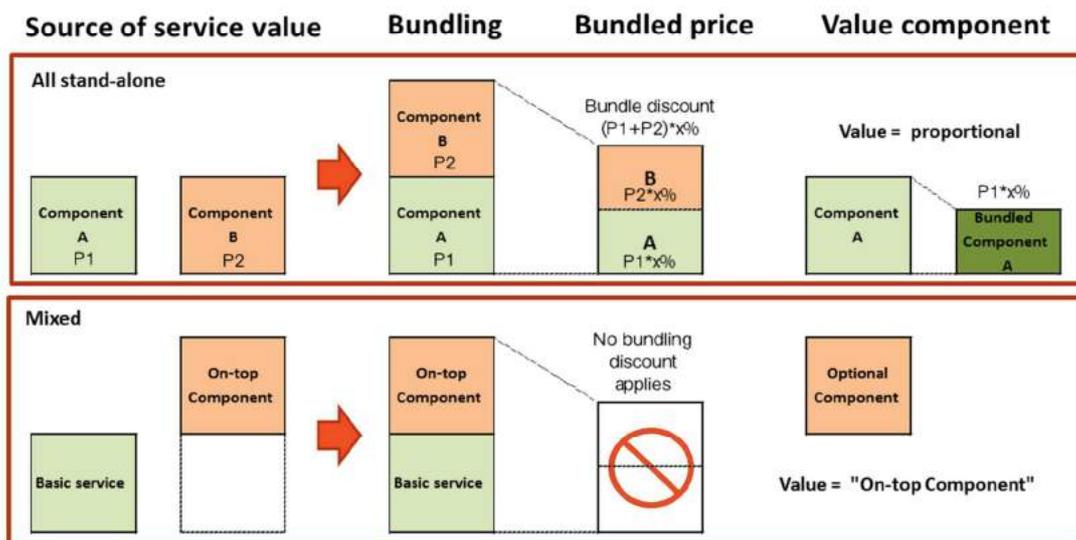


Figure 1: Handling of bundling

Mobistar disagrees with the valuation of the Wi-Fi access service (7.2.1).

Introduction

Mobistar agrees that the Wi-Fi access service must be taken up as service for which the retail value must be deducted from the applicable retail tariff before application of the retail minus formula. Mobistar questions however the end-user value retained (2 €), which is a clear underestimation of the real value for the end-user and this for a number of reasons:

- The number of "Wi-Fi-zones" in Belgium, in total, for the cable network users is around 1.5 Mio¹⁶, however with an uneven distribution across the different geographical markets (around 1.2 Mio Wi-Fi accesses are located on the Telenet coverage area). Via the "national roaming" agreement the total number of accessible Wi-Fi-zones reaches 1.5 Mio. This is substantially higher than the amount of hotspots of other markets abroad, and even there the retail stand-alone price for the Wi-Fi-access service is at least 4.99 €/month.

¹⁶ For Telenet: Wi-Fi coverage to nearly 1.1 million Homespots and around 1,500 public hotspots (Telenet Report Q2-2014).

For VOO we estimate 300-400k Homespots. VOO publicly reports access to 1.5 million Homespots:

Plus de 1.500.000 de points d'accès Wi-Free vous attendent (source Voo Website)

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- Comparison with FON : FON access offered in stand-alone requires additional equipment and power supply. In addition it requires an existing broadband connection. Purely taking the cost of the equipment for the determination of a retail value for FON is not correct as it does not take into account that part of the broadband subscription is de-facto allocated to FON (which limits the bandwidth available for the end-user).
- End-user surveys show that 2/3th of mobile phone internet users rely occasionally or only on external Wi-Fi solutions for mobile internet. Any mobile internet data tariff, offering a similar amount of data as the volume offered through the Wi-Fi solution, would be at a retail value of at least 10-15 €¹⁷.



Next to the underestimation of the value because of the above elements, the regulators should be aware that the “old” price for the Wi-Fi-access from Telenet was 15 €, not 5 €. The recent price change, at a moment when the approach for the determination of the new wholesale charges was becoming clear, is nothing more than an artificial price change by (especially) Telenet to limit the impact of the value of its Wi-Fi. Furthermore, the new retail price seems available to very bespoke customers, on a “negotiated” basis, only. Applying this new 1€ tariff as a possible indicator for the value of the service would create an erroneous and dangerous precedent, setting the scene for further and future artificial price manipulation. The regulators should give a clear sign, now, that such “marketing gaming” will not be supported nor rewarded.

Value of Wi-Fi from an end-user perspective

The value of “Wi-Fi” integration is important from a mobile data user perspective. Investor reports on other markets indicate that even in markets where there is a significantly less aggressive approach to Wi-Fi-hotspots in combination with community Wi-Fi, there is high user interest for these services.

A study of The Bank of America indicates that Mobile users (of all operators) are looking actively for Wi-Fi solutions to avoid data charges. This applies to over 50% of all mobile users for any operator, even for markets where no active push of Wi-Fi solutions (or major Wi-Fi community networks) exist.

¹⁷ Cfr Mobistar offer or Mobile Vikings.

L'offre Internet on Mobile		
	Recharge de 10€	Recharge de 15€
Vous recevez valable 1 an	10€ de crédit (33 min ou 100 SMS)	15€ de crédit (50 min ou 150 SMS)
Bonus à chaque recharge valable 31 jours	+ 750 MB + 500 SMS	NOUVEAU + 4 GB + 4000 SMS

€12

IN THIS BUNDLE:

2 GB mobile Internet

Order SIM card

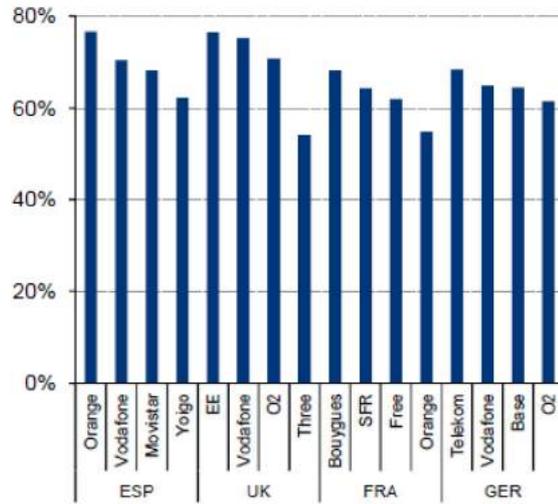
YOUR MAIN BENEFITS

- ✓ **Prepaid**
You'll be prepaid but have all the advantages of a subscription
- ✓ **Surf super fast**
You'll surf super fast with 4G

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Chart 27: Wi-Fi hotspots are popular

% of subs looking for Wi-Fi hotspots to avoid data charges



Source: BoFA Merrill Lynch Proprietary Telecoms Survey

Figure 2: Extract from a Proprietary Telecoms Survey published as a "European Telecoms" report by Bank of America / Merrill Lynch of March 10, 2015.

A recent Juniper Research also concludes that Wi-Fi networks will carry almost 60% of smartphone and tablet data traffic by 2019, after experiencing an almost fourfold increase in use.





Fixed High-speed Broadband Coverage

Coverage as % of households

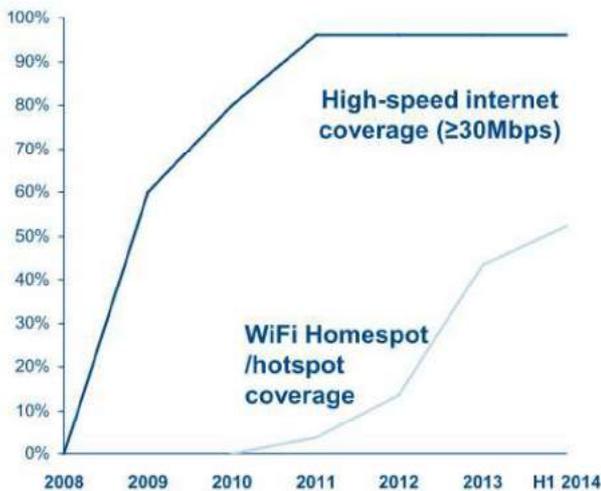


Figure 4: Wi-Fi Homespot/hotspot coverage as % of households (ADL Study: The Belgian Telecom Landscape)

The fact that in Belgium a very large majority of fixed broadband users participates in community Wi-Fi networks (1.5 Mio active Wi-Fi Homespots on Telenet & on VOO) indicates that they value the possibility to participate to the service in an important way as otherwise it would be unlikely that they would share their broadband connection, as the Bank of America study shows that around 60 % of customers would normally not be inclined towards sharing their broadband connection with others.

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Finally the fact that the Homespot functionality is provided by default¹⁹ as active service in Belgium may also explain the high penetration and high usage of this service. Markets where community Wi-Fi services are subject to an opt-in approach are typically less successful in achieving high penetration rates for the participation.

Value of Wi-Fi from an operator perspective

Cable operators bundle supplementary “free” public Wi-Fi access with their subscriptions as a means of retaining customers. As the figure below indicates, free Wi-Fi is an important factor in subscribers choosing to stay with their broadband provider. Almost two-thirds of respondents who knew that free Wi-Fi access was bundled with their home broadband subscription indicated that it was a “very” or “extremely” important factor in their choice of broadband provider.

Equally, half of all respondents indicated that they were at least moderately likely to switch broadband providers if they were offered free public Wi-Fi, with 22 percent saying that they would be “very” or “completely” likely to switch²⁰.

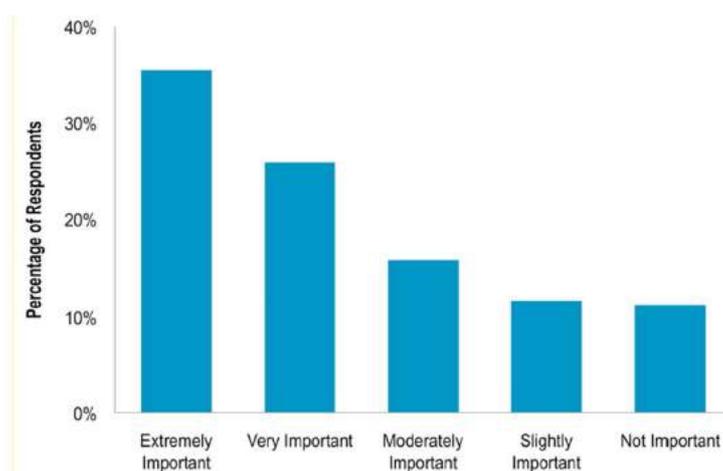


Figure 5: Cisco point of View: What Do Consumers Want from Wi-Fi?

Additionally the Solon survey of European Cable operators also indicates that the significant growth of Wi-Fi services offered by cable operators is mainly considered as a marketing tool: 72% of cable operators answering the corresponding questions see a very high or high marketing impact. The second most important reason is offloading of mobile data (for instance Telenet puts forward that up

¹⁹ “The shared equipment and connectivity provided to the Telenet internet customer are automatically part of Telenet Homespots unless the Telenet internet customer uses the opt-out.” (Article 1 §6 CONDITIONS OF USE FOR TELENET WI-FREE - <http://telenethotspot.be/en/terms-of-use>)

“Les Modems Compatibles de tous les Clients Internet sont automatiquement utilisés pour fournir un Signal Homespot aux autres Clients Internet, ce que chaque Client Internet accepte. Tous les Modems Compatibles ainsi partagés font partie du Réseau Wi-Free. Le Client Internet qui ne souhaite cependant pas que son Modem Compatible fasse partie du Réseau Wi-Free, peut désactiver le Signal Homespot de celui-ci par le biais du site internet myVOO.” (Article 3 §3.1 Conditions - <http://www.voo.be/fr/internet/wi-free/>)

²⁰ Cisco Point of View: What Do Consumers Want from Wi-Fi? p8

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to over 80 % of data traffic generated by mobile devices can be managed via Wi-Fi).. ARPU push is of clearly lower importance, with none of the operators believing it to have a very high or high impact²¹.

For cable and other fixed operators Wi-Fi networks are a key add-on service that helps to retain the customer base, to attract new customers, or to encourage adoption of new services (e.g. video streaming services on “non-TV” devices).

Finally, it is clear that a new entrant operator cannot replicate (technically or economically) a large scale public community Wi-Fi network. The community nature of the service induces a virtuous circle of network effects amongst its subscribers. Each additional participant to the network increases the value of the network for both the new user as all other existing users. A full parallel exists with the use and effects of on-net calling tariffs (as for instance practiced by mobile operators in France and condemned by the Court). It is not possible for a smaller new entrant operator to compete against such practices.

Value of the 2nd screen (7.2.2.)

Mobistar concurs with the conclusion of the regulators that the retail value to be considered for the provision of a 2nd screen TV service which includes the main channels – which is the case with respect to the offers that are bundled with the basic TV subscription – should be valued at least at 5 € when included in a bundle.

The following comments apply :

- For the main Flemish channels, as indicated by the draft decision, the Stievie service provides a benchmark for the value of the service in a stand-alone mode. Stievie is sold at 9.99 € (VAT incl.) per month²².
- The provision of 2nd screen TV typically requires to obtain additional rights for the channels that are included in the offer. Given the typical structure of such rights (a minimum guaranteed amount in combination with a monthly fee per user), new entrants face a clear cost disadvantage given the lack of economies of scale.
- Given that the value of the service was obtained via benchmarking with services that are on top of a bundle, the value of 5 € should in this case not further be adapted according to the bundle discount proportion²³

The retained value of 5 € is therefore proportional and reasonable.

Value of the E-mail service (7.2.3.)

The current applicable pricing methods demonstrate the arbitrary pricing of the cable network operators for these services. Notwithstanding this, there is indeed a clear value to offer such e-mail services to the customers. Apart from the value for the customers when using the service, the use of operator specific e-mail addresses (“@telenet.be”) increases the loyalty of the customers and creates an additional barrier to change operator. Furthermore, the fact that a high number of such e-mail addresses are offered as part of the bundle acts as a stimulus for the customers to rely with as many family members as possible on the service, further increasing the barriers to switching.

²¹ Solon Survey of European Cable Communication 2014 p20

²² As indicated by the draft decision, the data usage of the service is not included in this monthly fee.

²³ If the value of Stievie (9.99 €) would be used, the value should be reduced in a proportional way – i.e. be handled in a similar way as fixed telephony in the December 2013 decision. We repeat that the cable operators did not object against this approach.

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Based on the approach adopted, the retained value is fair and reasonable.

Country	Operator	Offer	Price
USA	Google	Google apps mail monthly fee	4,00 €
USA	Hotmail	Outlook.com addfree monthyl fee	1,66 €
USA	Yahoo	Yahoo adfree monthyl fee	4,16 €
Average			3,27 €

Value for the webhosting for personal pages (7.2.4)

Mobistar concurs with the value put forward. We refer also to the benchmark in annex.

Value for free or discounted premium content (7.2.5)

Concerning the approach chosen by the regulator.

Mobistar takes note of the approach chosen with respect to the new prices put forward by Brut  l  /VOO for VOOfoot. Mobistar understands that the approach takes into account the value of the service that is bundled in function of the proportion of actual users of the service. The method, not described in detail, is assumed to lead to a situation where an additional service with a low take up results in a low correction value, where a service with a high take up results in a high correction value.

Apart from having a serious number of other drawbacks, this approach is also not correct. It is clear that all the customers of the bundle which gives the right to a certain discount on a service outside of the bundle are benefiting from this right. The value of this right is therefore not dependent on the number of actual users of the right. This implies that there should not be a proportional correction for the value of the right in order to take into account the take up of the optional service, and that the amount to be used for the correction of the retail tariff before application of the retail minus % is equal to the value of the right included in the bundle.

Therefore, in this particular case, the subsidy is independent of the uptake of VOOfoot and therefore the subsidy should be fully extracted from the retail tariff before the application of the retail minus %

Illustration²⁴: assuming that the Foot-option is normally sold at 15 € but that the subscribers of a high-end pack at 50€ can subscribe to the Foot-option for only 5€, we conclude that the pack includes a right for a discount of 10 € for the Foot-option. All customers of the pack pay for and have the right to this discount of 10€, independently on whether it is used. Therefore the retail tariff should be adapted with 10 € before the application of the retail minus %

The approach put forward in the draft decision is not defensible for a number of additional reasons (obviously based on the current understanding of the approach):

²⁴ (prices are hypothetical and for illustration purposes)

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- It is de facto unmanageable and opens the door for price manipulation (and unpredictable effects and evolutions of the wholesale price for a given service).
 - o It creates a problem for new retail tariffs that are launched with such tariff component :
 - When a new retail tariff with such rights is launched by the cable operator there will be no customers having the additional service, leading to no correction of the wholesale price value of the additional right.
 - However, when after marketing/promotion/stimulation of the additional service by the cable operator a large number of its customers take up the additional service, the correction factor will be put at a higher (closer to the real) value.
 - Given however that – by definition – the underlying service is not available in wholesale, by that time it will be much more difficult for the new entrant operator to attract the cable operator customers as these will now be active users of a service not available in wholesale. As a consequence the barrier to change on average will be increased and the market potential for a new entrant is decreased.
 - o It creates a problem for existing tariffs that are upgraded with such tariff component:
 - Such situation arises when all customers of an existing tariff plan get additional rights/discounts for services out of the plan.
 - At the beginning, there will only be customers not using the additional right. Even if all new customers (i.e. the customers for which the new entrant must compete) make effective use of the additional right, the proportion of these new customers will be small if the underlying tariff plan is popular. This would lead to an artificially low correction factor for the bundle advantage, making it harder for the new entrant to be competitive.
 - The Telenet Familiedeal advantage (see further) is a typical example of such case.
- It leads to different retail price correction values for exactly the same retail service and having exactly the same retail characteristics between Brutélé and Nethys.

[REDACTED]

[REDACTED]

[REDACTED]

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- It opens (again) a door for the wholesale price to be arbitrarily influenced by the cable operator by marketing and/or pricing actions.
 - o By associating the value attributed to a given service to the proportion of real users of the service, the regulators open the door for arbitrary and unpredictable pricing. It is indeed fully outside the control of the regulators (or of the beneficiaries of the regulation) up to which degree a given service is actually taken up or not.
 - o Marketing actions by the SMP cable operator (eg promotions to push a given service or not, give the service for free during a period, advertising,...) may influence the take up of additional services in an unpredictable way.
 - o Referring to the previous element, it opens the door for a reshuffling of the services in and out of bundles in such a way that the wholesale prices are artificially increased while the own customers of the incumbent face minor price changes only. Note that the enormous price changes of certain additional services applied by Telenet in May 2015 shows clearly that such gaming is to be expected.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- It decreases the transparency of the wholesale tariffs and increases the need for regulatory oversight :
 - o In essence, in a retail-minus wholesale price approach the only confidential elements should be the avoided costs by the regulated cable operator.
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - o While on the other hand the regulators will have to monitor on a very regular base whether the change of the take up of a given service doesn't imply the need for an update (upwards or downwards) of the maximum wholesale charge...

[REDACTED]

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Conclusion regarding linking the value of a service with its take-up

In conclusion, it is in the interest of all parties to have predictable and clear rules regarding the value of the services that are not offered in wholesale. To link the value of such services with their take up by the customers of the regulated operator induces unneeded complexity and unpredictability. It also opens the door for creative marketing and it undermines the principles laid down in the December 2013 decision.

Other services and advantages – security, cloud, VOD (7.2.6)

Mobistar takes note of the fact that the regulators have not attributed values for a number of services that are offered to the retail customers and that are not offered in wholesale. The services offered today may indeed not be alternatives to the commercial offers of more specialised providers. However, Mobistar considers that close monitoring of these services is required as markets abroad show clearly that bundling of basic communications services with security and cloud services, of a more significant end-user value, may occur in the near future.

In any case, as no retail values for these services are identified, Mobistar assumes that the costs associated with these services (security, cloud, VOD) which are not part of the decoder/modem, have been integrated in the avoided costs.

Other additional services not offered in wholesale but offered in retail

In order to ensure transparency for all parties we invite the regulators to publish and maintain a list of services which are part of the bundled services as well as an indication if these services are being considered for the determination of the wholesale pricing as well as the reason why or why not. Such overview allows to identify the services to monitor for changes in value (a service currently not considered as having a marginal impact might become a must-have feature in the future) and can also contribute to provide a justification of the proportionality of the measures put forward in the present decision.

While the draft decision already addresses the value of an important number of services offered by the cable operators to their retail customers while these services are not offered to the wholesale customers, there are other services which clearly are of value to the customers while not being integrated in the decision. Mobistar considers that the services below should be considered to be taken into account for the correction of the retail price before application of the retail minus :

- Content related additional services (HD-XL, Studio 100, own content)
- Yellow House – Telenet (check-up of technical installation at home)
- Familiedeal – Telenet (bundled advantages with mobile)
- Triiing (fixed telephony app on mobile)
- Subsidy (for end-user equipment)
- Exclusive channels (eg. Studio 100 - Telenet)
- Other services, such as Zita²⁷, Snap²⁸, Piet Piraat

²⁷ "Zita is de portaalwebsite van Telenet voor jouw dagelijkse portie entertainment, lifestyle nieuws en fun. Geniet tijdens jouw koffie break van nieuws, gossip, ..." (source Google)

²⁸ "Op Snap! willen we je inspireren, doen lachen, informeren en trakteren zodat je de volle 100 % uit je tv, je internet en je smartphone haalt." (source Google)

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HD-XL channels offered by Telenet

In a number of bundles, additional content is provided for free by Telenet. The HD XL Pack (which provides HD versions of a number of channels) for example is clearly identified on the Telenet retail invoice but is offered for free by a promotion of the same amount.

Digitale televisie - [REDACTED]		[REDACTED]	
Abonnement		Periode	
HD XL Pack		26/01 - 25/02	5,50
Gratis HD XL Pack		26/01 - 25/02	-5,50
Huur HD Digicorder		26/01 - 25/02	8,70
Totaal Digitale televisie - [REDACTED]			€ 8,70

Figure 6: Extract Telenet Whop retail end-user Invoice

Historically, the HD XL Pack was offered to customers of other tariff plans at the indicated retail charge. Most (if not all) new tariff bundles integrate the service “for free”.

For retail offers including clearly identified elements which do have a stand-alone retail value, or for which benchmarking with other national or international services can be done, the stand-alone value should be used for the correction of the bundle retail tariff before application of the retail minus. In the case of HD XL Pack the correction of the pack price could be set at 5,50€.

Mobistar flags that, in case its recommended approach would not be withheld, an arbitrary discrimination would be created between additional services that are mentioned on the invoice and those that are not mentioned on the invoice. This could again open the door for price manipulation : indeed, Telenet could easily add a new retail price item such as “yelo TV” or “wi-free” on its retail invoice at a given value, and then give discount on the invoice for the same amount (i.e. do the same as for the HD XL Pack in the example). It is clear that there should not be a difference between the corrected retail price between the situation in which a service is offered for free and explicitly mentioned on the invoice and the situation in which it is not explicitly mentioned on the invoice.

Exclusive channels offered by Telenet

Telenet includes, in its basic pay TV offer, a number of channels that have an exclusivity agreement with Telenet and that therefore cannot be integrated in Mobistar’s retail offer. De facto this situation is identical to the situation of the premium content integrated (fully or partially) in the bundle. Today, Studio100 and Njam are such channels, of which the value should be excluded from the retail tariff as these channels are included in all Telenet’s digital TV offers while not being available to Mobistar.

Note that it is unclear if consideration was given to this element when defining the avoided costs, as there are indications that Telenet contributes to the production costs of these channels as well.

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Exclusive content produced by Telenet

Telenet is also extensively investing in local content²⁹ in order to further extend its offer. These investments are made possible by the retail tariffs charged to the customers while these services are not available to the alternative operators.

Telenet invests in Flemish programming
Agreement to acquire 50% stake in De Vijver Media

- Supply oxygen to Flemish audio-visual landscape to counterbalance foreign players who are increasing in strength
- In 2012, Telenet launched STAP, investing €30.0 million in local series and films over 4 years
- In June 2014, Telenet announced its intention to take a 50% stake in De Vijver Media for a consideration of €58.8 million, which consists of:
 - SBS Belgium's commercial free-to-air channels "VIER" and "VIER"
 - Woestijnevic content production house
- Strategic rationalization:
 - Ensuring continued diverse Flemish media landscape
 - Securing even better access to local content
 - Exploring new future revenue models
- Pending EC competition authorities approval
- No FY 2014 guidance impact as transaction will be paid in cash and will not be consolidated

Figure 7: Telenet invests in Flemish programming (Telenet Report Q2-2014)

Digital TV
Telenet further strengthens its entertainment position with both international and local programming

- International content – Home of HBO
 - Exclusive Flemish premieres until 2018
 - Access to critically-acclaimed original programming such as "Game of Thrones" and "Boardwalk Empire"
 - Airing within one day of US premiere
 - Includes selection of popular series such as "Band of Brothers" and "The Sopranos" and films from Orion
- Local content – Choukade of Amour
 - Original TV series of 13 episodes in the course of 2015, exclusively available for Rex & The subscribers
 - Available in entirety for large viewing
 - Financed through our existing STAP program of €25M spread over 4 years

Figure 8: Content further strengthens Telenet's entertainment position (Telenet Report Q3-2014)

In the context of the current decision it is unclear if these costs are or will be considered as avoided costs, or whether the value of the exclusive content, if offered for free or at a discount, will be taken into consideration to correct the retail tariff before application of the retail minus.

²⁹ "It's clear that with our STAP plan which invests EUR30 million in local series and films over the last four years we have been a good partner to the Flemish audio visual landscape for some time. Our announcement in June which -- on our intent to acquire 50% stake in De Vijver -- should be seen as the next step. The strategic investment will ensure a continued diverse Flemish media landscape and make sure we have good access to local content in the future." (John Porter - Telenet Group Holding NV – CEO - Half Year 2014 Telenet Group Holding NV Earnings Conference Call)

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Yellow-house

Telnet invests to continue to increase speed aiming at having to possibility to offer more services via broadband and thus increase revenues. In this frame they have launched “Yellow House”

10

We care – Introducing “Yellow House”

We are proactively contacting our customers for a free check-up of their current in-home installation



- We want to make sure they **get the most out of our products** and are ready for the future
 - Examples include hardware upgrades, optimizing in-home WiFi connectivity, installation and explanation of apps
- We have already **invited 60,000 customers...**
- ... of which we **already visited 10,000**;
- Recruiting 50 extra technicians;
- As of mid 2015, we are aiming for a run-rate of 500 check-ups / day.



Figure 9: Free customer visit to make sure the service is ready for the future (Telenet Report Q4-2014)

The “Yellow House” project (visiting all customers) aims:

- to ensure that the network is ready to higher speed
- push extra usage of the network (ensure Wi-Fi is working well and available in the whole house)³⁰

This action allows to increase the customers satisfaction (NPS) and to up-sell products both contributing to a reduced churn.

In addition this service is provided for free and thus financed by the income of the retail services provided by Telenet. As such service is not available in wholesale, the value of “Yellow House” should be taken into account for the determination of the wholesale prices.

Mobistar considers that the value of a *fun check* (a similar service provided by Telenet on request of the customer) should be considered as an additional promotion in the determination of the retail-minus percentage.

³⁰ “Probably the biggest initiative that we’ve made in this area over the last few years is something we’re calling the Yellow House. Given the trends, which Micha will talk about, in terms of fixed mobile convergence between Wi-Fi and mobile networks, it’s imperative that our Wi-Fi networks are delivering a ubiquitous service in our customers’ homes.” (John Porter - Telenet Group Holding N.V. – CEO - Q4 2014 Telenet Group Holding NV Earnings Call)

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Fun check

We komen bij jou thuis langs en zorgen ervoor dat al je toestellen goed geïnstalleerd zijn en optimaal met elkaar communiceren.

- Verplaatsing en analyse (15 min.): € 85
- Kost per 30 min. extra: € 25
- Materiaalkosten: Indien van toepassing

Figure 10: Fun Check (source Telenet retail pricing January 2015)

Triiing (Voice over Wi-Fi additional services to telephony)

Wi-Fi calling is an emerging trend which needs to be taken into account and valued in some way. Voice over Wi-Fi (VoWi-Fi) enables the user to make and receive voice calls as if conducted over a cellular connection.

In the UK, EE revealed on 11 March 2015 that it will launch voice over Wi-Fi (VoWi-Fi) from April on the upcoming Microsoft Lumia 640 and on the Samsung Galaxy S6 while 3UK already offers VoWi-Fi via its 3 inTouch app, as does O2 with its TU Go app. Vodafone announced plans to launch Wi-Fi calling and voice over LTE (VoLTE) this summer.

Telenet also puts the advantage of Triiing forward in its product comparison in the same way as National Unlimited & Free Calls to Europe as can be seen from the figure below:

	Internet & TV	Whop	Le plus populaire Whoppa
	€ 51,69 par mois	€ 65,49 par mois	€ 75,94 par mois
Internet rapide	Basic	60	160
En download	30 Mbps	60 Mbps	160 Mbps
En upload	3 Mbps	5 Mbps	10 Mbps
Volume	100 Go	150 Go	Téléchargement illimité
Wi-Free	✓	✓	✓
Téléphonie avantageuse			
Illimité, le soir et le week-end, vers les numéros fixes belges	X	✓	✓
2000 minutes vers les numéros fixes et mobiles en Europe et ailleurs	X	✓	✓
Triiing: téléphonez à partir de votre smartphone	X	avec un maximum de 2 applis Triiing par ligne fixe	avec un maximum de 5 applis Triiing par ligne fixe

Figure 11: <https://www2.telenet.be/fr/tout-en-un/comparer/>

There is clearly a value to Triiing as Telenet is limiting the access to Triiing to only 2 applications in the cheaper Whop subscription, where it offers up to a maximum of 5 such applications on the more expensive Whoppa tariff plan.

Triiing is intimately linked to the fix line in the 3P pack and allows free national calls and to benefit of free calls to Europe as if the calls were made from the fixed line in the pack.

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The image shows three vertical panels of text, each with a yellow number in a circle at the top. The first panel is circled in red. The text in the panels is as follows:

1
APPELS MOBILES GRATUIT ET AVANTAGEUX ...

- Les avantages de votre ligne fixe toujours en poche. La ligne fixe est incluse dans votre Whop ou Whoppa.
- Tout comme avec votre ligne fixe, l'appli et une connexion Wifi vous permettent d'appeler gratuitement des numéros fixes et mobiles belges et européens pendant les heures creuses.
- Pendant les heures pleines, selon les tarifs de votre ligne fixe.
- Tout aussi facile pour les clients Business, surtout pour les appels internationaux!

2
... DE VOTRE APPLI VERS TOUS LES NUMÉROS FIXES ET MOBILES

- Votre correspondant ne doit pas nécessairement avoir l'appli. Vous l'appellez sur son numéro habituel.
- Il n'a même pas besoin d'un smartphone et ne doit pas être en ligne, contrairement à d'autres services VoIP (Skype, Viber, etc.).
- En plus, l'appli vous affiche automatiquement la liste de vos contacts de confiance de votre smartphone, et votre ligne fixe reste n'est pas occupée.

3
PLUS D'APPELS COÛTEUX À L'ÉTRANGER

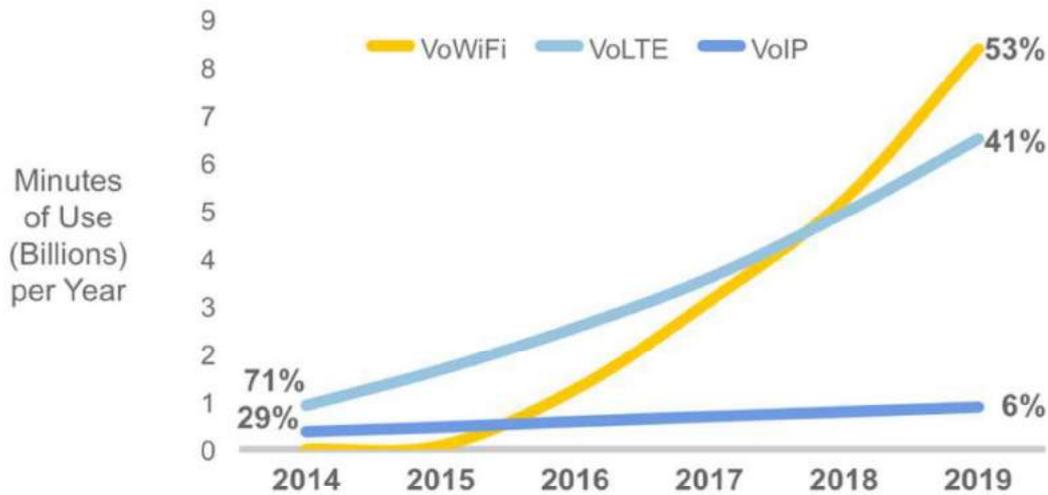
- À l'étranger, vous appelez par l'intermédiaire du réseau Wifi de votre hôtel ou d'un hotspot.
- Aux mêmes tarifs que votre abonnement FreePhone Europe.

Figure 12: <http://www2.telenet.be/fr/decouvrir/triing/>

The importance of Triiing is also confirmed by Telenet in a series of statements: "Triiing is a major benefit to customers... one of the driving factors of fixed telephony growth". The number of registered devices using "Triiing" increased from approximately 288,200 at December 31, 2014, representing around 25% of Telenet's fixed telephony subscriber base to approximately 325,700 registered devices at March 31, 2015. The fact that the number of possible devices that can be connected via Triiing changes between the two flagship bundles is an additional indication about the added value of this service. As Telenet states: "Our innovative VoIP app "Triiing" adds value to our fixed telephony proposition".

Figure below shows that VoWi-Fi is going to surpass voice over LTE (VoLTE) by 2018 in terms of minutes of use. By 2019, VoWi-Fi will have 53 percent of mobile IP voice, up from less than a tenth of a percent in 2014. Wi-Fi access has had widespread acceptance by MNOs globally, and it has evolved as a complementary network for traffic offload purposes—offloading from expensive cellular networks on to lower-cost-per-bit Wi-Fi networks. If we draw a parallel from data to voice, we can foresee a similar evolution where VoWi-Fi can evolve as a supplement to cellular voice, extending the coverage of cellular networks through Wi-Fi for voice within the buildings and other areas that have a wider and more optimum access to Wi-Fi hotspots. (Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2014–2019 – 03/02/2015)

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Note: VoLTE and VoIP are mobile-specific, VoWi-Fi could be from any Wi-Fi connection. Circuit-switched mobile voice is excluded from the mix. It would grow at 5 percent CAGR.

Figure 13: Mobile Voice Minutes of Use—VoWi-Fi, VoLTE, and VoIP (Source: Cisco VNI Mobile, 2015)

Taking the importance of Triiing as expressed above into account, Mobistar considers that a value of 5€ is probably a conservative approach.

Discounts on end-user equipment / Subsidies

Especially Telenet offers on a near permanent basis end-user devices (mobile telephones, tablet computers) at a discount when taken in combination with a subscription.

Whoppa

Whoppa avec iPad c'est que Telenet offre de mieux combiné avec l'offre iPad la plus renversante

75,94€ par mois
(Abonnement au câble compris)

+ 8,90€ par mois
(pendant 24 mois)

+ frais unique
(selon votre choix d'iPad)

iPad mini 2 à **214 euros au lieu de 299 euros** / iPad Air 16 GB Wi-Fi à **312 euros au lieu de 399 euros** / iPad Air 16 GB Wi-Fi + Cellular à **432 euros au lieu de 519 euros** offre valable du 01/01/2015 au 31/03/2015 ou jusqu'à épuisement des stocks.

Figure 14: <https://www2.telenet.be/fr/tout-en-un/whoppa-avec-ipad/>

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Similar to the handling of temporary recurring discounts, promotions by subsidy should be integrated in the definition of the wholesale price (it is unclear to Mobistar at the moment if these “subsidies” have been treated as “Promotions” under chapter 9 of the draft decision).

For these subsidies, we consider that an approach similar to the approach for other advantages for services out of the bundle but only offered in combination with the bundle (i.e. the approach for the discounts given for the premium content for Sporting TV or VOOFoot) should be followed.

Bundled advantages with mobile services (eg. Familiedeal)

Mobistar considers that a generic approach should be defined for advantages that affect services outside of the bundle but where getting advantage is linked with being a customer of the bundle. This is in particular – and in an increasing way – the case for mobile services, such as :

Familiedeal:

Telenet currently provides a financial advantage to its mobile customers when already being a fix Telenet customer.

de FAMILIE DEAL

De Telenet Familiedeal, da's altijd en overal vollenbak familie zijn.

Stap over, combineer Telenet thuis met mobiel en doe voordeel.

Maar weet je wat nóg straffer is?

Dankzij de Familiedeal doet zelfs heel je gezin extra voordeel. Als Whoppa-klant krijg je per gezinslid maandelijks €2 korting vanaf het tweede King abonnement. Nood aan wat meer belminuten of mobiel internet dan King? Geen probleem: het voordeel vanaf het tweede abonnement geldt ook op King Supersize en Kong.

Whoppa + King €15 + King €13 + King €13 ...

Figure 15: Familiedeal offer of Telenet (source Telenet website)

Other examples:

Telenet nearly systematically links its mobile phone discounts to being a customer of Telenet for another service for a certain period (eg, for the summer 2015 sale conditions on mobile devices, it requires to be a Telenet customer for fixed services for at least 4 months). In the past there were major discounts on mobile services based on the fact if the end-user was already a Telenet fixed services customer or not (cfr. below).

Service	Telenet-klant	Niet Telenet-klant
KING	€15/maand	€20/maand
KONG	€50/maand	€70/maand

Figure 16: Example of specific promotion for existing customers (source Telenet website)

Approach to be followed:

In such cases, Mobistar considers that the full amount of the advantage should be taken into account for the determination of the wholesale price. (cf value of partially included services)

Mobistar comments – Cable wholesale price consultation

External confirmation of the valuation of some additional services.

Mobistar notes that “low end-offers” such as SNOW and Scarlet Trio, both providing fixed telephony in addition of television and broadband services, cannot be qualified as commercial success. Base Company announced in December 2014 the end of its SNOW offer. The market share of Scarlet is not impressive.

This is in spite of the fact that these offers are priced significantly – if not very significantly – below the 3P-offers of the cable operators (& Proximus). The main differences between these offers are :

- Absence of 2nd screen
- Absence of TV-replay
- No community Wi-Fi
- Less content (although presence of the main content according to CIM-statistics)
- Lower internet speed (although the speeds offered would clearly be sufficient when considering the replies to e.g. the consumer perception studies from the BIPT).

The price difference between e.g. the Scarlet Trio offer³¹ and the Proximus 3P Start³² offer is 19€ (these offers are taken to compare given that the underlying networks are the same). This difference of 19€ can be considered as a very high level indication regarding the perceived end-user value that might be attributed to the set of additional services that are not included the wholesale offers.

The additional services provided in the Proximus packs are also put forward in their commercials: *“Ondek onze packs. Die bieden heel wat voordelen: gratis bellen met een vaste lijn na 17 uur, toegang tot 13 miljoen Wi-Fi Hotspots wereldwijd en tot de Cloud, tv-kijken waar u wilt op uw tablet of smartphone”* (Extract Proximus leaflet – June 2015).

³¹ The Scarlet Trio offer has following characteristics for broadband: 30Mb download/4Mbps upload/unlimited volume and is sold at 39€ (Source: Scarlet Infofiche – June 2015)

³² The Proximus 3P start offer has following characteristics for broadband: 50Mb download/3Mbps upload/150Gb and is sold at 57,95€. An “unlimited” volume pack is sold for an additional 7,5€ (Source: Proximus Infofiche – June 2015)

Mobistar comments – Cable wholesale price consultation

Regarding Chapter 8 : approach for the decoders and modems.

Mobistar agrees that the approach had to be reviewed.

Mobistar welcomes the approach retained for the correction of the retail tariff for the value of the decoder and modem. The approach retained in the December 2013 decision clearly led to unacceptable results as indicated in the new draft decision.

The new approach is fully coherent with the approach retained for the correction of the other services offered in retail but not in wholesale, i.e. a correction of the retail tariff with the value of the decoder / modem before the application of the minus percentage. As the beneficiary of the regulated wholesale offer still has to develop, produce, operate and maintain its own, fully different and independent modem and decoder, there is indeed absolutely no reason why the beneficiaries should pay a wholesale charge derived from a retail tariff that included the retail value of the decoder and modem, while these devices are not offered to the beneficiary of the wholesale offer.

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Mobistar comments – Cable wholesale price consultation

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Mobistar comments – Cable wholesale price consultation

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Mobistar comments – Cable wholesale price consultation

Regarding chapter 9, Promotions.

Introduction

Mobistar welcomes the fine-tuning of the overall approach in order to take the promotions and discounts into account in a way that is more consistent with the initial market analysis. Mobistar agrees with the analysis put forward by the regulators, indicating that promotions and discounts should not be integrated via a correction of the ARPU, but via a correction of the avoided costs, independently of the nature of the promotion/discount. These costs are indeed part of the “subscriber acquisition costs”, and it is clear that the cable operators avoid these costs when a customer is acquired by an alternative operator.

[REDACTED]

[REDACTED]

The approach put forward meets the objectives and is proportional

The approach put forward by the draft decision, i.e. including promotions in the avoidable costs and adopting a minus based only on the new customers for a transitional period, seems a reasonable and proportional alternative to the above.

This approach meets the objectives set by the Regulatory Framework. [REDACTED]

[REDACTED]

[REDACTED]

Mobistar comments – Cable wholesale price consultation

- The methodology conforms with the ***principle of non-discrimination*** and will ***ensure that there is no distortion of competition*** between cable operators and the beneficiaries of the wholesale offer as:
 - The methodology seeks to avoid the creation or maintenance of first mover advantages obtained by other means than competition on the merits;
 - To attract new customers, a new entrant will have to give a promotion to every new customer while its customer base – in the beginning - will only be composed of new customers. As the existing customer base of the incumbent operator is already very important, the portion of the latter's new customers benefitting from promotions is relatively small. These two situations, i.e. an important existing customer base (by definition given the SMP status of the operator) on the one hand and an (almost) inexistent customer base on the other hand, require that those avoided costs that are only attributable to new customers are properly reflected in the regulated wholesale conditions. Hence, the temporary adoption of a minus percentage based solely on the basis of the avoided costs for gross adds is in conformity with the principle of non-discrimination;³⁴
 - new entrants would otherwise be at a competitive disadvantage vis-à-vis the incumbents since incumbent cable-operators will amortize/cross-subsidize promotions and discounts on their entire customer base while competing with new entrants which only have new customers for whom the generated revenues are still subject to promotions and discounts.

The approach avoids artificial effects by creative marketing of the cable operators

The approach as retained in the December 2013 had unintended and unjustified consequences, or could even lead to near dead-lock situations for the handling of certain types of promotions and discounts.

Indeed, depending on the nature of the action undertaken by the cable operator, the same financial incentive given to the end-user would end up in a different driver for the retail minus calculation, leading to a different minus percentage for the application of the wholesale price calculation :

- A device with a value of say 300 € that is given for free with a new subscription (see figure) would be considered as a marketing cost and therefore lead to an increase of the avoided costs for the cable operator.
- If the same value of 300 € would be given by eg offering a free installation (100 €) in combination with 4 months service for free (50 € per month) resulting in a similar financial incentive of 300 €, then this would lead to a reduction of the revenues per user and subsequently to a decrease of the ARPU.

³⁴ Note that the December 2013 decision identified that certain costs were to be allocated to the gross adds, however the decision did not clarify in which way this allocation was done.

Approach for promotions and discounts must reflect economic reality in non-arbitrary way.

Cable operator can provide an end-user incentive either by providing :

- A discount on the service → wholesale pricing affected via ARPU
Impact of 300 € (eg 6 months free) on cable operators ARPU is marginal
- A gift (impact on marketing cost) → WHS pricing affected via retail minus %
Impact of 300 € (eg iPad mini) on minus % is much higher than via ARPU

=> Same bonus for customer ends up in different wholesale charge impacts



Current approach dilutes promotional effects and does not allow to compete

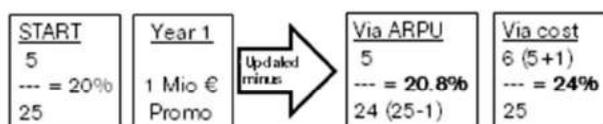


Promotions and gifts are part of subscriber acquisition costs and should be properly addressed

Approach for promotions and discounts must reflect economic reality in non-arbitrary way.



Illustration of arbitrary effect in case no consistent approach for promotions and discounts is adhered to.



The figure illustrates the effects of these approaches :

Assuming a situation, without promotions & discounts, where there are 5 Mio € avoided costs for 25 Mio € revenues, leading to a minus percentage of 20%, then the effect of a promotional action of 1 Mio € would lead :

- if the 1 Mio € is imputed on the ARPU, the new minus becomes $5/(25 - 1) = 20.8\%$,
- if the 1 Mio € is considered as avoided costs, the new minus becomes $(5+1)/25 = 24\%$.

However, for the alternative operator, in essence the competitive impact of both promotions is the same and there are no reasons why the wholesale price would be different. Under the December

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2013, the question could also be raised how the approach would be if the cable operator were to offer its customers the choice between either the device as a gift or the reduction on the invoice.

Given that both types of promotions or discounts are considered as “cost of acquisition”, the updated approach does no longer lead to this unwanted, undesirable and anticompetitive effect.

The approach is also adopted by other regulators

Moreover, Mobistar supports the draft decision considering that the same rationale has been adopted by other NRA’s:

- OFCOM, Pay TV Statement, 31 March 2010

“1.146 The main categories of cost that contribute to the retail-minus calculation, based on Sky’s management accounts, are:

(...)

Subscriber acquisition costs

1.157 We have separated out subscriber acquisition costs from Sky’s other marketing costs since subscriber acquisition costs are driven by the number of gross additions, unlike other operating costs which are driven primarily by the total number of subscribers.”³⁵

- OFCOM, Fixed Access Market Reviews: Approach to the VULA margin, 19 March 2015

Discount costs

6.423 BT typically offers a discount to the monthly subscription prices of its superfast broadband offers for a number of months to newly acquired subscribers.

Guidance

We would treat several months’ discount to the monthly subscription prices for newly acquired superfast broadband customers as an upfront cost by multiplying the amount of the discount by the number of months during which it applies. When assessing the VULA margin, we would use the discounts that applied to each product tier during the compliance period.”³⁶

“In this Statement, we specify a ‘retail minus’ margin control on the wholesale VULA price”^{37, 38}

“6.61 BT sets different prices for residential superfast broadband subscribers depending on when they took out their subscription. We proposed to assess the VULA margin by reference to the prices charged to **new superfast broadband subscribers**.

(...)

³⁵ Pay TV Statement Annex 7, pp. 28-30.

³⁶ Pp. 236-237.

³⁷ Footnote 198 of the document quoted: “The VULA margin is the retail price minus the wholesale price of VULA. Requiring a minimum VULA margin is mathematically identical to requiring the wholesale VULA price to be no more than the retail price minus that minimum margin.”

³⁸ P. 60.

Mobistar comments – Cable wholesale price consultation

6.65 We have considered whether, when assessing the VULA margin, we would take into account:

- the prices paid by BT's entire base of superfast broadband subscribers regardless of when they took out their subscription; or
- the prices BT charges to new superfast broadband subscribers only.

6.66 **We consider that the use of the prices BT charges to new superfast broadband subscribers only** is likely to support our regulatory aim.

6.67 The prices BT offers to new subscribers are the most relevant prices when considering a rival operator's ability to acquire new subscribers and to compete effectively against BT. We also agree with confidential respondent [...] that using the prices paid by BT superfast broadband subscribers regardless of when they took out their subscription would potentially allow BT to support a low margin on new subscribers by setting a high margin to its existing subscribers. We are concerned that other operators may find it difficult to replicate such a pattern of prices and may thus find it difficult to compete for new superfast broadband subscribers. **This is because BT currently has a larger existing base of superfast broadband subscribers than other operators using VULA on its network** (see Section 3)." (emphasis added)³⁹

- BIPT Guidelines on the assessment of margin squeeze – 11 July 2007

According to paragraph 69 of these guidelines, when promotions are offered on an important volume of the consumption, the sole promoted products are taken into account for the calculation of the revenues in a margin squeeze test.

The fact that an important share of the products are promoted has been singled out to make this type of products a category of its own. This guideline shows that promotions cannot just be deducted from the revenue stemming from all of the products.⁴⁰

- European Commission – Guidance in the application of Article 102 TFEU

"As with exclusive purchasing obligations, the likelihood of anti-competitive foreclosure is higher where competitors **are not able to compete on equal terms for the entire demand of each individual customer**. A conditional rebate granted by a dominant undertaking may enable it to use the 'non contestable' portion of the demand of each customer (that is to say, the amount that would be purchased by the customer from the dominant undertaking in any event) as leverage to decrease the price to be paid for the 'contestable' portion of demand (that is to say, the amount for which the customer may prefer and be able to find substitutes)."

³⁹ Pp. 135-136.

⁴⁰ § 69. "In certain circumstances, it might prove relevant to define the increment that will be subject to the margin squeeze test as being the discounted products. This might particularly be the case where the promotions and discounts granted for a product have a particular feature, such as an important volume of consumption". Free translation of "Dans certaines circonstances, il peut être pertinent de définir l'incrément qui fera l'objet de l'analyse dans le test de ciseaux tarifaires comme les produits faisant l'objet de ristournes. Ce peut être le cas, en particulier, si les promotions et les ristournes octroyées pour un produit possèdent une caractéristique particulière, telle qu'un volume important de consommation".

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The test for anti-competitive rebates applies only to the contestable portion of the demand. The logic behind this reasoning is the same as the one behind the adoption of a minus based only on new clients: undertakings cannot compete on an equal footing because of the important market share of the dominant position/incumbent operator. Competitors can access/have accessed a portion of the demand that is relatively lower/negligible as compared with the dominant undertaking/incumbent operator's market share. The circumstance that competitors are pretty much locked out of an important part of the demand tells such a difference between the two portions of the demand that rules aiming at impeding distortion of competition/promoting competition are exerted on the portion of the demand that competitors can access/have accessed. Here, this portion corresponds to the new clients who, by hypothesis receive a promotion.

Both the Commission Guidance on rebates and the measures taken by the CRC aim at a sound competition on the market since the one aims in itself at ensuring that there is no distortion or restriction of competition and the second aims at stimulating competition. Hence, the measure drafted by the CRC is justified.

Regarding the start-up phase :

The introduction of the start-up phase can be considered as a proportionate and reasonable measure to address the fact that beneficiaries of the regulation will, at the start, not have any customers making use of the regulation at all. Mobistar wants to raise the following comments :

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[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

The start-up phase should be long enough to build a meaningful customer base

The start-up phase should be long enough for a new entrant to build a customer base which has a significant proportion of customers (in particular customers making use of cable services based on cable wholesale access offers) that are no longer subject to average revenues that are reduced due to promotions in an important way. The period should also be long enough for a reasonably efficient operator to acquire sufficient scale. In essence, a new entrant faces 3 competitive disadvantages :

- On revenue side, all customers are “new” customers which had to be acquired recently and therefore subject to reduced tariffs due to the promotions and discounts that were needed to attract them (eg free installation, free activation, free service during 2 months, ...), and to upfront investment costs (decoder, modem, installation). On top of this, other upfront acquisition costs, such as sales commissions, apply. The sum of the promotional elements and marketing and sales costs is referred to as “subscriber acquisition costs” (SAC) which is an important element in the business case of any operator⁴²

⁴² According to a Solon Survey of European Cable Communication (2014) the most expensive broadband sales channel remains door-to-door, with an average SAC per gross add of 6.1 months of broadband ARPU. The most efficient channel is inbound calls reaching costs per gross add of on average 2.8 months of ARPU. Note that,

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Mobistar comments – Cable wholesale price consultation

We note that past experience shows that several years are necessary in order to acquire a sufficiently large customer base allowing for economies of scales to materialize. This is especially the case for operators entering or re-entering a different market :

[REDACTED]

- We estimate that BASE Company only attracted 35k customers in nearly 2,5 years⁴⁵ while providing a 3P offer at a very attractive price.
- Mobistar, via its satellite TV offer and its Starpack product, could only attract around 30k customers in 3 years.

[REDACTED]

Based on this, we can conclude that the transitory period must be maintained for at least 3, if not 4 years.

Note that in Mobistar's point of view, and to some degree in a similar way as the length of the transition period, the scale achieved by a specific operator should not be a decisive factor to determine the length of the transition period, as this may induce counterproductive incentives: if a small scale operator could benefit of a longer start-up phase, it might be incentivized to grow slowly (as such operator would benefit longer from the transitional period, whereas a more efficient and competitive alternative operator would be penalized for its efficiency) . This would clearly be an undesirable outcome, and it would also lead to a reduction of the predictability of the applicable wholesale conditions.

[REDACTED]

⁴⁵ Between February 2013 and July 2015

[REDACTED]

Mobistar comments – Cable wholesale price consultation

Regarding Chapter 9: Conclusion on promotions & discounts

Mobistar supports the conclusions and the adaptations made to the December 2013 decision.

Mobistar notes that this approach also brings the pricing decision more in line with some of the allocation factors identified already in the December 2013 decision, i.e. the allocation of certain costs to “gross adds” / “new customers”. In the December 2013 it was not clear how this allocation principle influenced the wholesale charges.

Mobistar notes that the draft decision does not mention explicitly the percentages for the minus for the various services for the various regulated operators for the various periods. **We assume that these will be added to the decision.** It may be considered to include 1 decimal in the minus %

[REDACTED]

Mobistar comments – Cable wholesale price consultation

Regarding Chapter 10: tariffs for own profiles

Mobistar welcomes the introduction of a predefined approach.

Mobistar welcomes that the draft decision includes a definition of the method that will (or should) allow to determine in an **upfront and predictable** way the wholesale charge applicable for the alternative operators' own broadband profiles, i.e. for broadband profiles that are not offered by the regulated cable operator to its own retail customers.

[REDACTED]

In general terms, Mobistar considers that the method is not sufficiently reliable and that there are too many interventions needed to come to what could be considered as reasonable and proportional wholesale tariffs in line with the ongoing market practices or expectations⁴⁸. For instance, as put forward in § 126.3; the wholesale tariff for the 60/3/unlimited profile would be set at the same wholesale tariff of 40 € as the clearly higher and more powerful 80/4/unlimited profile. In this situation, the alternative operator has clearly no incentive at all to differentiate its offer (as the wholesale tariff paid for the lower service is equal to that of a higher service).

[REDACTED]

⁴⁸ Mobistar thinks this may be due to the linear nature across all data points of the equation identified for the price determination, where in reality the retail tariffs for broadband prices are – nearly by definition - not defined in a fully linear way. Typically tariffs are defined with reference to the tariff applicable for the “lower” service offer and with reference to the “higher” service offer. Some retail tariffs may also have been defined with very specific user segments in mind (eg retention offers), or may continue to exist while not being commercialized actively anymore. It seems that such profiles impact the overall formula, where this may not be appropriate.

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Mobistar comments – Cable wholesale price consultation

Regarding chapter 11: additional elements regarding the control of the tariffs

Mobistar welcomes the measures regarding the control of the tariffs.

Considering the significant wholesale price variations experienced following the December 2013 decision, Mobistar welcomes that corrective measures to prevent anti-competitive effects of retail price changes by the cable-operators are defined. [REDACTED]

Regarding chapter 11.2: Measures to avoid excessive variability of the wholesale prices.

Freeze of the value of services

Mobistar welcomes the principle of freeze which helps to improve the predictability and stability of the wholesale prices over time⁵².

Given that experience shows that the cable operators succeeded to artificially increase the wholesale tariffs by adapting their retail offers or bundles, Mobistar suggests to provide – insofar possible within the constraints of the market analysis decision - for a more general freeze on the wholesale tariffs resulting from the decision and not only on some elements of the retail minus.

In any case such freeze should be applied on the value of the different services which are not directly defined in the retail offer of the cable operator (such as second screen, Wi-Fi, ...).

[REDACTED]

The need for a longer period is also acknowledged in the Jefferies analyst report⁵⁴.

In order to balance the need for predictability and the market change, Mobistar proposes a freeze period of (at least) 2 years.

⁵² Since the access request of Mobistar in December 2013, the cable operators have changed several times their retail offers, mainly through price increases and by adapting their offers (removal of VOO foot, addition of new advantages). Such variations have resulted mainly in wholesale price increases. These frequent changes are negative for a new entrant, not only for the price instability but also for the operational and commercial uncertainty they entail: new prices need to be integrated in the operational systems and might require a review of the retail tariffs of the alternative operator. So far such price increases have had a limited impact, since Mobistar did not launch commercially yet.

[REDACTED]

⁵⁴ *"The observation that its regulation is based on the shifting ground of cable retail tariffing is not lost on IPBT, and the regulator itself suggests to 'freeze' the regulation for one year in order to produce visibility. However, **this is not a time scale relevant for making the business decision to add customers with a lifetime of 8-10 years, in our view.**" - Jefferies – Mobistar – 28 May 2015 (we underline)*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Regarding chapter 11.3: measures to take into account possible evolutions of offers

Measures are needed and justified

[REDACTED]

Mobistar understands that the regulation of the cable operators should not block them to launch new retail offers, so it is likely that “new” additional services will emerge over time. For instance already today many fixed operators include eg cloud services and mobile service in multiplay service bundles. Towards the future, other new services (payment, home protection,...) are likely to be included in the bundled offers as well.

Mobistar therefore welcomes the proposal to take additional measures to anticipate and to – where needed - reflect such evolutions of the retail offers in the wholesale prices.

These evolutions can occur in different ways: (i) a new service is being integrated in the cable-operators packs⁵⁵ or (ii) a current service which has been identified but not taken into account for the determination of the wholesale price becomes an important component of the pack⁵⁶.

In both cases the wholesale price should be reviewed taking the impact of the retail offer change into account.

[REDACTED]

⁵⁵ As mentioned in §134-136 of the BIPT draft decision

⁵⁶ As mentioned in §137 of the BIPT draft decision

[Redacted]

[Redacted]

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Mobistar comments – Cable wholesale price consultation

Regarding chapter 11.4: Taking into consideration positioning of 2P and 3P offers

Mobistar welcomes the correction brought to the December 2013 decision. Such measure is adequate as it is based on the nature of the problem identified: avoid that a new entrant pays more for a same service without objective justification. Doing so the measure promotes efficient entry.

To avoid uncertainty regarding which retail offer should in such case be used as basis for the determination of the wholesale offer tariffs, Mobistar considers that, as a general rule, the alternative operator should be allowed to choose the retail offer based on which the applicable wholesale price will be defined. Such approach is the least intrusive with respect to the commercial flexibility of the regulated operator whereas it provides the necessary guarantees for the alternative operators to be entitled to wholesale offers at competitive tariffs.

Mobistar comments – Cable wholesale price consultation

Regarding chapter 12: Conclusion

Mobistar welcomes the large majority of conclusions and changes put forward in the draft decision.

These changes are required to ensure that the cable regulation disposes of a wholesale tariff framework that ensures that alternative operators can enter the market in an economically sustainable way.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mobistar comments – Cable wholesale price consultation

Comments on other elements & issues

Mobistar notes that a series of elements have not been taken into consideration in the draft decision while Mobistar considers that these elements might have been taken up.

Application of the revised minus for the supplementary services.

For the wholesale subscriptions ordered so far by Mobistar in the context of the technical tests it is conducting on the cable network, the cable operators have invoiced Mobistar systematically for the activation and installation fees at the “retail-minus” wholesale rate. These services are basically systematically provided for free through promotions and discounts to their own customers.

It is not fully clear if these promotions were integrated in the promotions as part of the reviewed minus %. In any case, to avoid any risk on misinterpretation, Mobistar strongly recommends that the draft decision explicitly mentions that the revised minus percentages (during the transition phase and afterwards) apply also for all supplementary services (activation, installation, technician intervention, additional data volumes).

As put forward in the December 2013, we suggest to repeat and further clarify that if a service is provided for free in retail it must also be provided for free in wholesale.

This applies for instance for the installation fees that are NOT charged by Telenet for a “do it yourself” DIY installation. As Mobistar is “doing the installation itself”, there is no reason why Mobistar should pay an installation fee for these cases.

Review mechanism elements of the price decision

While it may partially be outside the scope of the present decision (as other rules may prevail in the governance of the decision within the overall context of the CRC and the regulators involved), Mobistar invites the regulators nevertheless to define, as clearly as possible, the maintenance mechanisms for a number of elements in the present decision. [REDACTED]

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Mobistar comments – Cable wholesale price consultation

[REDACTED]

[REDACTED]

Methodology in case of profile change

Mobistar invites the regulators to define what happens in case a cable operator changes or introduces new profiles as the current decision does not provide a clear or predictable situation.

[REDACTED]

[REDACTED]

[REDACTED]

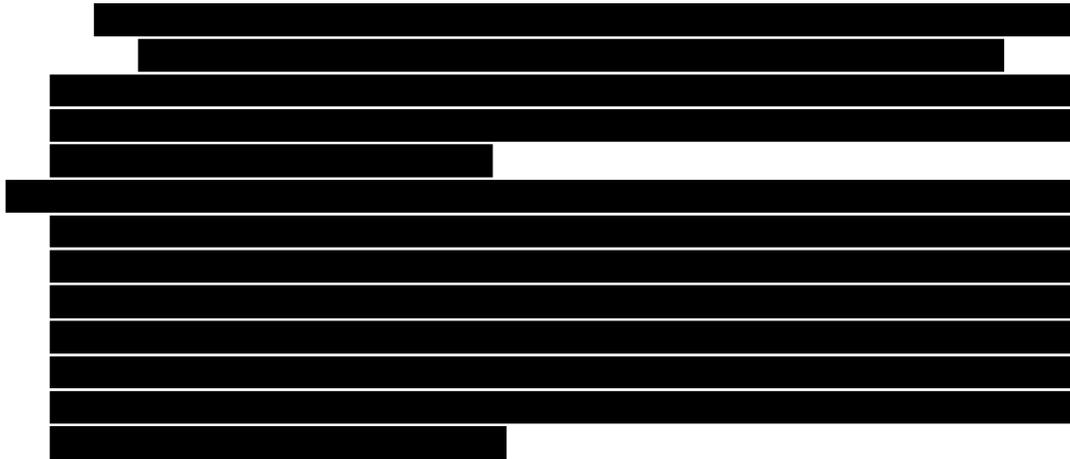
[REDACTED]

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Mobistar comments – Cable wholesale price consultation



Regarding the determination of the set-up charges

In the initial decision of December 2013, the regulators described⁶², that a part of the set-up fees are integrated in the definition of the retail minus %.

Mobistar understands the principles as described on the following picture:

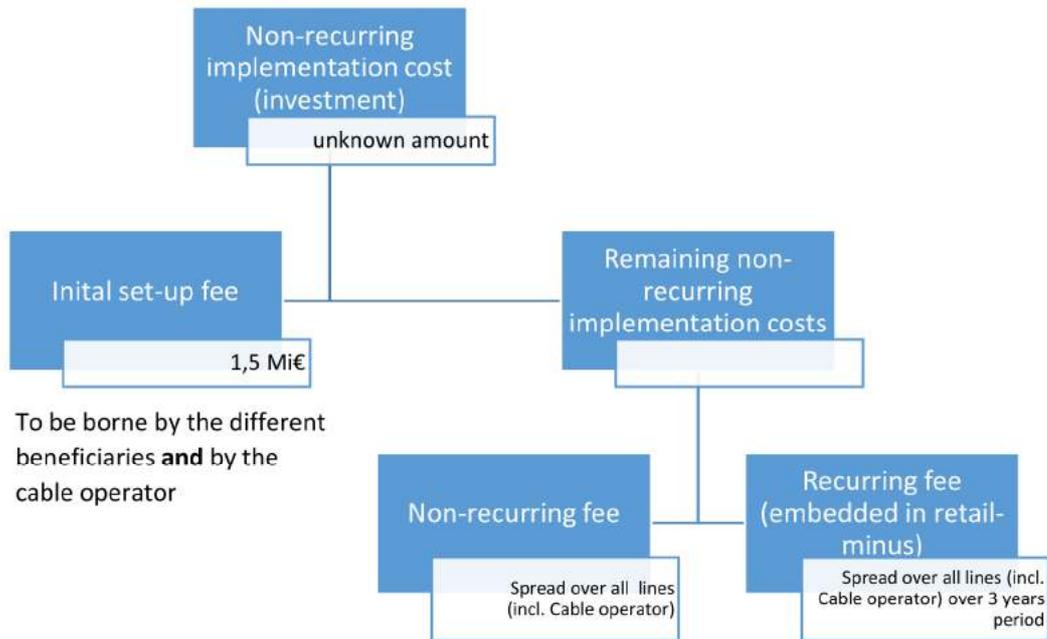


Figure 17: Allocation method of the non-recurring implementation costs (investments)

The calculation of the different outputs (initial set-up fee, non-recurring fee per line & recurring fee – embedded in retail-minus) have been based on a number of assumptions which need to be reviewed in the frame of the current price decision:

⁶² Section 7.3 in the BIPT Decision

Mobistar comments – Cable wholesale price consultation

Number of Beneficiaries:

Although not formally public, we understand from different statements from the market players that Proximus has formally requested access to different cable operators. If this is effectively the case the market should be informed by the regulators (given the potential impact on already paid set-up costs) and the number of beneficiaries should be adapted accordingly.

Magnitude of the implementation costs

In their initial decisions the regulators have based their calculation on estimations of the initial implementation costs on figures put forward by Coditel which was considered as an efficient operator. These estimations were subject to review following an audit of the real costs. We understand that the different regulators have performed an audit of the implementation costs incurred by the cable operators. We consider that the result of the audit should be included in the present price review OR that a reference is made to the ongoing review of the set-up costs (so that market participants are informed about a possible future further correction of the wholesale charges) while taking all the necessary precaution in order to ensure that only the costs of an efficient operator are taken into account⁶³.

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⁶³ We also refer to the legal proceedings regarding the set-up costs and certain statements put forward by the regulators about the level of set-up charges incurred by the various cable operators.

Mobistar comments – Cable wholesale price consultation

Regarding the determination of retail minus %

Lack of clarity on the impact of the reviewed elements

We understand from the draft decision under consultation that a number of changes put forward are impacting the retail minus % while the exact result is not part of the decisions but can only be obtained or assumed via the XLS calculation sheet.

Minus 2P

	Decision 2013	After transition period	During transition period
Telenet	23%	21%	28%
Voo - Brutélé	23%	23%	35%
Voo - Nethys	23%	28%	40%
Numericable	20%	22%	27%

Minus TV numérique

	Decision 2013	After transition period	During transition period
Telenet	30%	25%	37%
Voo - Brutélé	30%	31%	44%
Voo - Nethys	30%	30%	43%
Numericable	20%	7%	20%

Minus TV analogique

	Decision 2013	After transition period	During transition period
Telenet	30%	27%	37%
Voo - Brutélé	30%	35%	45%
Voo - Nethys	30%	34%	44%
Numericable	20%	24%	24%

Mobistar comments – Cable wholesale price consultation

We strongly suggest the regulators to include the retail minus % in the final decision in order to avoid any misunderstanding and to increase the robustness of the decision.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allocation of General & Common Cost (FAC)

The initial pricing decision is unclear on how the avoidable General & Common costs have been taken into account for the determination of the retail minus.

For the sake of clarity, Mobistar considers that the initial decision only considered the pure incremental costs that are avoided, while it should also have integrated part of the common costs.

Valuation of the content

The value retained (in the December 2013 decision) is too low.

Mobistar considers that the amounts considered for content are far below the real content TV costs. These charges are assumed to correspond with the amounts paid by the cable operators to the different content providers, while they are in any case very far below the costs that Mobistar is facing to get access to the same content.

Mobistar comments – Cable wholesale price consultation

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Mobistar comments – Cable wholesale price consultation

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Change of the amount of the content costs mentioned on the retail invoice

The retail minus formula implies (implicitly or explicitly) that it is the charge mentioned by the cable operators on their retail invoice as being the charge for content that is reduced from the retail price before application of the minus.

This implies that changes in this amount are reflected fully in the wholesale price. The definition of this 'content' amount charged to the end-users by the cable operators is (at least for Mobistar) not clear. Does it cover the rights for all content, for linear and PVR functions, for 2nd screen or mobile use, for all channels (including or excluding exclusive channels), for analog and digital, for HD and SD formats (and 4K in the future) ? Up to which degree does it also cover commitments for

[REDACTED]

Mobistar comments – Cable wholesale price consultation

advertisements on commercial channels ? Does or does it not (partially) include rights related to VOD, catch-up TV ?

Additional guarantees are required so that an artificial reduction of the content rights amount invoiced to the retail customers (possibly rebalanced by a price increase of other components of the offer) and/or invoicing of content charges via the invoice at a level below the real content charges do not impact the wholesale price negatively. As illustration, the retail price of the following 20.57 € per month TV services are fully identical, the wholesale prices are definitely not (note that the below example makes abstraction of the “decoder” issue).

Offer A : 13 € service + 4 € content + 3.57 VAT = 20.57 €. Wholesale (30% minus) = 9.1 €

Offer B : 15 € service + 2 € content + 3.57 VAT = 20.57 €. Wholesale (30% minus) = 10.5 €, i.e. over 15 % more expensive than the wholesale price for offer A...

During the last months we have seen that the value of the content of several cable operators have changed impacting the wholesale price for cable access. It is unclear if these changes have been submitted or approved by the regulators. With the recent renewal of the VOO offer we are unable to retrieve a stand-alone value for the content and so unable to determine/verify the applicable wholesale price.

We therefore urge the regulators to define the stand-alone content cost to be taken into account for the determination of the wholesale price and to make sure that it are the regulators who approve, in a proactive way, any changes to these.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Invoice of data volumes consumed

Mobistar asks clarifications in relation with the handling of data-usage and its invoicing in the present decision.

Mobistar considers that data-volume accounting must be non-discriminatory vis-à-vis the cable operator's retail offers. We note for instance that Telenet counts only half of the night traffic.

Piek- en daluren bij een abonnement met vast volume

Nacht (daluren)	<ul style="list-style-type: none">• Tussen middernacht en 10 uur 's morgens (nachtsurfen)• Je internetverbruik telt maar voor de heft (1 GB = 0,5 GB). Dat betekent dat je...<ul style="list-style-type: none">• Telemeter 's nachts maar de helft van je verbruik bijhoudt• 's nachts dubbel zoveel kunt versturen en ontvangen als overdag
Dag (piekuren)	<ul style="list-style-type: none">• Tussen 10 uur 's morgens en middernacht• Je internetverbruik telt volledig (1 GB = 1 GB)

Figure 23: Datavolume accounting rules Telenet (<http://klantenservice.telenet.be/content/wat-zijn-de-piek-en-daluren-bij-een-abonnement-met-vast-volume>)

Mobistar considers that wholesale data-volume invoicing should be made as independent as possible of the cable operator's retail invoicing to avoid that changes to the retail invoicing approach imply systematic changes to the wholesale invoicing approach.

Mobistar considers that data traffic should be aggregated for all wholesale customers. Indeed, taking the assumption of a volume limitation of 150 Gb for a given profile, there is from a wholesale network technical point of view no difference if customer A consumes on a monthly basis 100 Gb & customer B consumes 200 Gb or if both customers consume 150 Gb. To address the data traffic invoicing on an aggregate basis, either by the overall total or by activated broadband profile, facilitates the wholesale invoicing and is pro-competitive, as it enhances the possibilities for the alternative operators to differentiate their offer from the cable operator's offers.

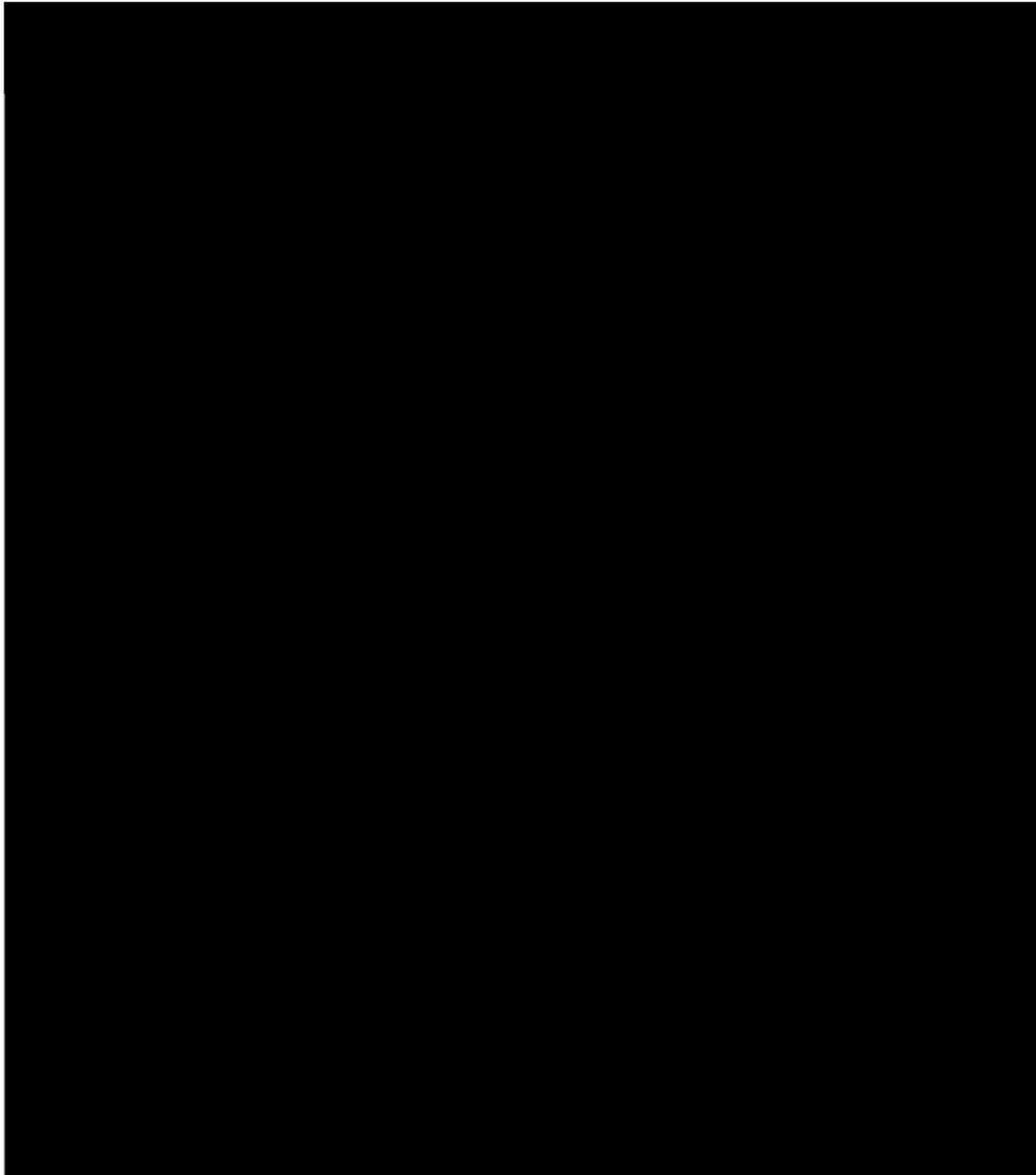
Mobistar comments – Cable wholesale price consultation

Incoherencies – lack of clarity in XLS Calculation sheet

We understand from the draft decision that the wholesale price is determined by discounting the additional services of the “cleaned 2P retail price” and the application of a retail-minus % on this result. The “cleaned 2P retail price” itself is calculated from a pseudo retail price (incl. premium content revenues but excl. decoder & excl. content costs) of which the 2P components are retained.

We have noted that the calculations in the XLS calculation sheet provided with the draft decision under consultation seem not correct as for VOO the revenues of the premium content seem not integrated in the pseudo retail price (incl. premium content revenues but excl. decoder & excl. content costs⁶⁷ – [REDACTED])

⁶⁷ In the calculation sheet the “Retail price to consider (incl. VAT)” (line 28) does contain the “Price of discounted premium content (incl. VAT)” (line 25) for the Telenet Packs incl. Premium content access while these are not included in the VOO offer incl. Premium content access.



We assume that this is due to a factual error that will be corrected in the XLS calculation sheet that will be provided with the final decision.

Furthermore we understand from the XLS calculation sheet that the wholesale price is dependent of parameters which are currently not known (ao the adoption rate of Premium content packs –eg VooFOOT) which are not provided and will likely be considered as confidential.

While we consider that the wholesale charge should not be dependent of the uptake of a retail service of the cable-operator (we refer to our comments earlier), should the regulators not follow our reasoning, we invite the regulators to clearly communicate the applicable wholesale prices in their final decision.

Annex I - Handling of free activations

Activation fees

We note that the activation fee is not always due. For instance Telenet does not apply this cost when the customer already has an active service or when he is moving:

1 Activer des produits Telenet sur notre réseau

Vous bénéficiez déjà de l'internet, de la téléphonie ou de la TV digitale de Telenet ? Dans ce cas, vous ne payez plus aucuns frais d'activation, même si vous optez par ex. pour un service supplémentaire ou un autre produit ou si vous déménagez.

Si par contre, vous ne bénéficiez pas encore de l'internet, de la téléphonie ou de la TV digitale de Telenet ? Dans ce cas, vous ne payez qu'une seule fois les frais d'activation de 50 € sur notre réseau.

Figure 25: screenshot of <https://www2.telenet.be/fr/installation-de-telenet/>

For the handling of the activation fee, a distinction should be made between the different situations.

Telenet

For Telenet we note that that the basic installation is always offered for free to Telenet's retail clients opting for the "Self starter". The work to be performed by a Telenet technician for the installation of a Mobistar service is less than the work to be performed by a Telenet technician for a "Self starter" installation of a Telenet retail customer (i.e. to provide the basic installation for the delivery of the service).

2 Installation : par vous-même ou par Telenet ?

Pour l'installation de vos services Telenet, vous avez le choix : soit vous préférez vous en charger vous-même, soit nous nous en occupons. Veuillez indiquer votre choix lors de votre commande (en ligne).

- vous installez vous-même vos services, il va de soi que cela ne vous coûte rien.
- Si vous faites appel à un de nos installateurs, les frais s'élèvent à 85 € ou 99 € selon le type d'installation.

Figure 26: screenshot of <https://www2.telenet.be/fr/installation-de-telenet/>

	Self Starter ¹	Installation Confort ²	Installation Confort Plus ²
Prix	Gratuit	€ 85	€ 99
Qui ?	Vous-même	Telenet	Telenet
Quoi ?	<ul style="list-style-type: none"> Après avoir passé votre commande, vous retirez votre Self Starter Box dans un point de vente Telenet. Ensuite, vous vous chargez vous-même de l'installation. 	<ul style="list-style-type: none"> Notre installateur choisit avec vous l'emplacement où se fera l'installation. Il installe tous les appareils Telenet et raccorde tous les câbles. Il veille à ce que vous puissiez utiliser vos services Telenet sans attendre. 	<ul style="list-style-type: none"> Notre installateur choisit avec vous l'emplacement où se fera l'installation. Il installe tous les appareils Telenet et raccorde tous les câbles. En outre, il fixe convenablement tous les câbles UTP au mur. Il veille à ce que vous puissiez utiliser vos services Telenet sans attendre.

Figure 27: Details on installation Whoppa product (<https://www2.telenet.be/fr/tout-en-un/whoppa/commander-whoppa/>)

The scope of the installer's work when a *Self Starter* installation is requested is clearly described on the Telenet website and more than what is done in the case of a wholesale activation (installation of the modem & testing of the Wi-fi). The rest of the installation (installation & connection of the decoder) must be done by the end-user.

> **J'effectue l'installation**

> Powerline & Modem Battery Pack

> Échanger

> Ça ne marche pas

En quoi consiste la finalisation d'une configuration de base ?

L'installateur se rend chez vous. Il veille à ce que tout le nécessaire soit là **pour vous permettre de poursuivre les travaux**. Il ne réalise donc pas l'installation complète, mais il prépare tout.

Concrètement, cela signifie que...

- * l'installateur place l'amplificateur – à l'endroit où arrive le câble – et fixe l'amplificateur au mur
- * **il raccorde l'amplificateur au modem**
- * il active le modem, la Digibox ou le Digicorder et votre numéro de téléphone fixe (existant)
- * **il vérifie le bon fonctionnement de votre connexion WiFi (dans la pièce où le modem se trouve)**

Que devez-vous encore faire vous-même ?

- * placer le modem à l'endroit où vous le voulez
! Vous avez besoin de 2 prises de courant libres (éventuellement avec une allonge)
- * terminer l'installation
 - * raccordement (les câbles UTP et Coax se trouvent dans la boîte Self Starter)
 - * raccorder l'ordinateur, la Digibox/le Digicorder
 - * ...

Notre installateur vous remet tous les appareils dont vous avez besoin pour ce faire. Ensuite, vous vous chargez de tout à l'aide du [guide Self Starter](#).

Figure 28: <http://klantenservice.telenet.be/fr/content/en-quoi-consiste-la-finalisation-dune-configuration-de-base>

VOO

For VOO we note that that the installation includes the installation of the equipment.

3 L'installation

Ce que VOO fait pour vous

- Le déplacement d'un technicien sur le lieu d'installation de vos services. Vous serez averti de l'arrivée de l'installateur par un code SMS ou un message automatique sur votre ligne fixe
- La mise en service du (des) produit(s) VOO demandé(s)
- La vérification de la (des) prise(s) de télédistribution qui alimente(nt) le VOOcorder et/ou le modem. Le remplacement des prises défectueuses ou non conformes est gratuit.
- Le placement gratuit d'un amplificateur (NIU) si la configuration technique de votre habitation l'impose ou, le cas échéant, le placement gratuit d'un dérivateur (-4,-4) à l'intérieur de votre habitation. Si vous disposez déjà d'un amplificateur (NIU) avec 1 sortie DATA et que vos produits et services requièrent 2 sorties DATA, le technicien remplace gratuitement votre amplificateur actuel par un amplificateur à 2 sorties DATA.

Cliquez sur le produit que vous désirez installer :



Télévision numérique



Internet



Téléphonie

Pour la Télévision interactive uniquement

- La vérification du câble de télédistribution à l'intérieur de votre habitation. Le remplacement du câble défectueux ou non conforme est gratuit à concurrence de 15 m par VOOcorder (ou 2 m par modem) entre le point de fourniture et la prise du VOOcorder. Le câble sera fixé au mur. Au-delà des 15 mètres par VOOcorder (ou 2 m par modem), le câble sera facturé au mètre (pose et fourniture) au [tarif en vigueur](#). Un devis vous sera soumis pour signature.
- La mise en service du VOOcorder (via un port péritel ou HDMI).
- Une courte démonstration des fonctionnalités de base du VOOcorder (± 10 minutes).

Figure 29: <http://www.voo.be/fr/installation/deja-raccorde/>

Based on the fact that the scope of work of the cable operator technician is much broader in retail than in wholesale a correction of the wholesale cost of the activation should be included in order to take the difference in scope into account

This is partially done by Telenet which does not invoice an “activation” but only the “travel expense fee” of the technician:

4.1.3. Installatievergoeding

Indien Telenet een Installatie heeft uitgevoerd in het kader van een Activering wordt er bijkomend een installatievergoeding aangerekend.

Installatievergoeding	EXCL BTW (EUR)
Vergoeding voor verplaatsing	49,17

Figure 30: WHS Installation fee for TV only (Telenet - TLN-WRO-GA-G-P-PAAA V1 2 Tarieven TV)

4.1.3. Installatievergoeding

Indien Telenet een Installatie heeft uitgevoerd in het kader van een Activering wordt er bijkomend een installatievergoeding aangerekend.

Installatievergoeding	EXCL BTW (EUR)
Vergoeding voor verplaatsing en eerste kwartier	54,09

Figure 31: WHS Installation for TV+Broadband (Telenet - TLN-WRO-GA-G-P-PAAB V1 2 Tarieven Bundle)

We note that these fees seem to be based on the retail tariffs for the travel expense fee and 15 minutes work of a technician (for repairs).

Herstelling	
Verplaatsingskost en eerste kwartier	€ 85 (alleen als oorzaak herstelling bij de klant ligt)

Figure 32: Extract One-off costs - Retail pricelist Telenet (January 2015)

In case of a DIY installation no fee at all is invoiced:

Enmalige kosten

Activering

- Heb je al internet, telefonie of digitale tv van Telenet? Dan betaal je geen activeringskosten meer.
- Ben je nog geen Telenet-klant? Dan betaal je maar 1 keer € 50 voor de activering op ons netwerk.

Installatie

! Er moet een meerderjarige aanwezig zijn bij een installatie of herstelling.

Self Starter-installatie	gratis
Comfort-installatie	€ 85
Comfort Plus-installatie	€ 99

Herstelling

Verplaatsingskost en eerste kwartier	€ 85	(alleen als oorzaak herstelling bij de klant ligt)
Werkuren per begonnen 30 minuten	€ 25	
Avondafspraak	+ € 15	(altijd betalend)
Zaterdagafspraak	+ € 5	(altijd betalend)
Dringende afspraak	€ 130	(altijd betalend)
Niet nakomen herstellingsafspraak zonder te verwittigen	€ 85	

Figure 33: Extract One-off costs - Retail pricelist Telenet (January 2015)

In any case the installation charges that are applied in wholesale should be reviewed based on the difference of the scope of work between a wholesale installation versus a retail installation⁶⁸.

In addition and in line with the CRC decision when an auxiliary service (as installation, activation or repair) is provided for free in retail it must be offered for free as well in wholesale.

Therefore the installation fees should not be applied when these are not applicable in retail. This can be done by directly waiving the installation fee or by handling the “installation promotion” as a discount

Activation fee in case of a move at Telenet

In the case of a move the activation is free when the customer already has a Telenet service (except if the end-user only has analog TV).

The installation fees are identical as for a normal activation (for free in case of a *Self-Starter*).

Quel est le coût d'un déménagement ?

Activation

- Vous aviez **déjà internet, la téléphonie fixe ou la TV digitale** de Telenet et vous faites déménager ces services ? Dans ce cas, vous ne payez pas de frais d'activation
- Vous aviez **ATV only** ? Dans ce cas, vous payez 50 € de frais d'activation

Installation

- **Installation par l'utilisateur (Self Starter) : gratuit**
- L'installateur Telenet : 85 € (Installation Confort) ou 99 € (Installation Confort.Plus)
- [En savoir plus](#)

Besoin d'un raccordement à la télédistribution ?

- Pour utiliser vos services Telenet, vous avez besoin d'un raccordement à la télédistribution dans votre habitation. **En règle générale, il est déjà présent**, sauf p. ex. dans une nouvelle construction.
- **Pas encore de raccordement à la télédistribution ?** Celui-ci coûte **50 €**
- [En savoir plus](#)

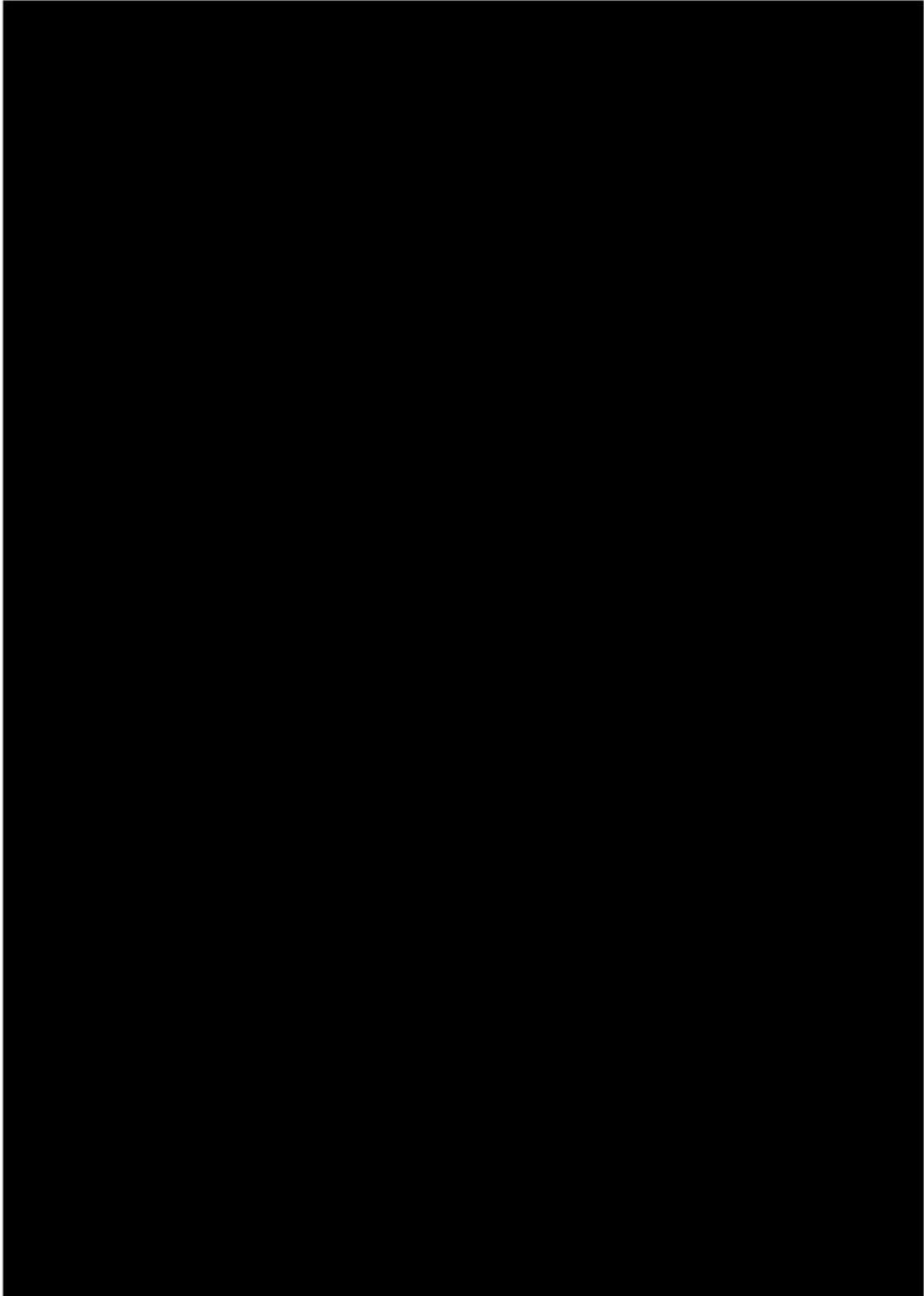
Figure 34: <http://klantenservice.telenet.be/fr/content/que-co-te-un-d-m-nagement>

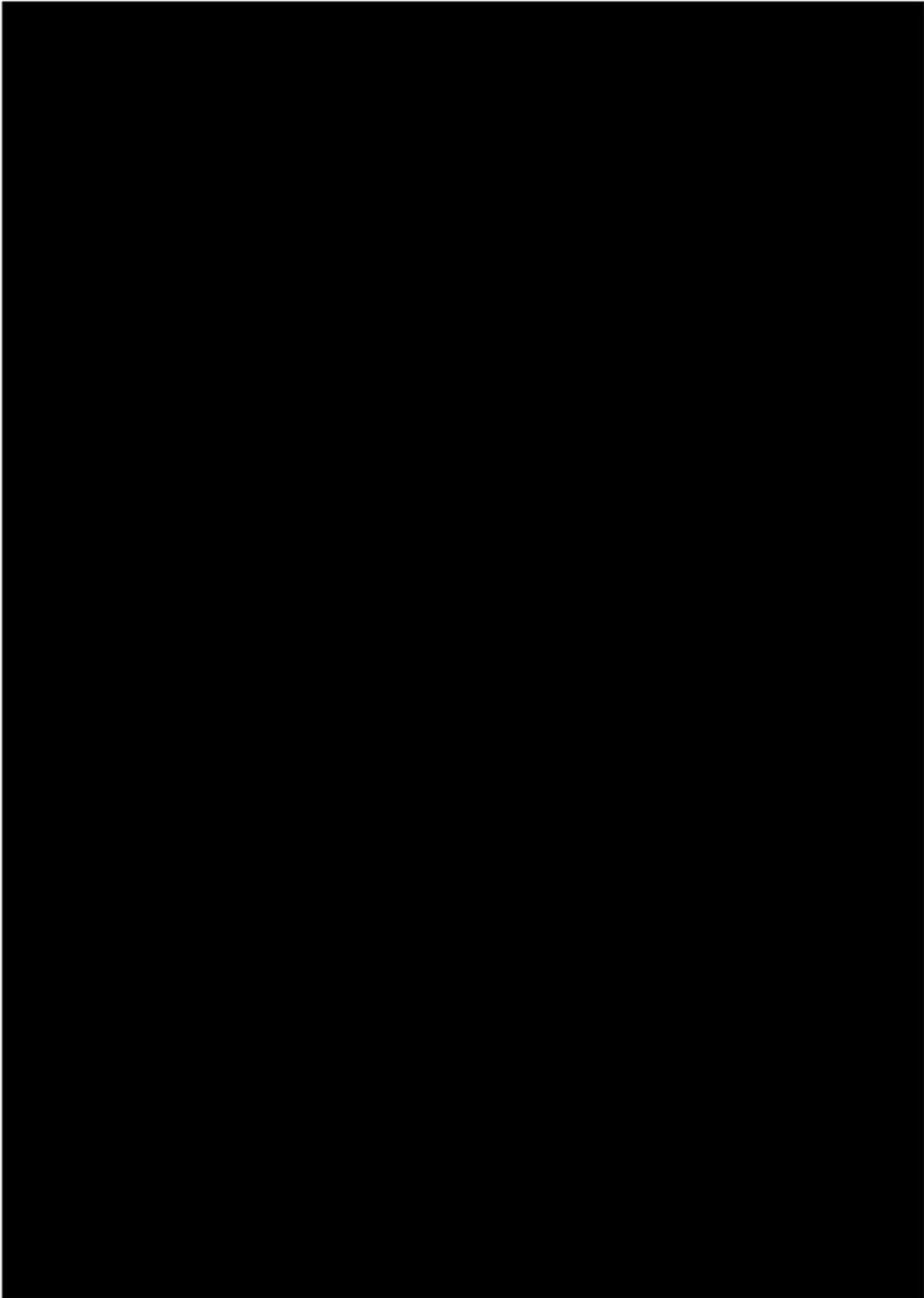
From the above, it is clear that in a large number of situations the retail customers can obtain an installation and/or activation for free depending on the exact start situation and the chosen installation model.

Furthermore, in practice, the amount of work required from Telenet for a wholesale installation is less than the amount of work to be performed in the context of the above interventions for retail customers.

The most logical approach would therefore be to waive the installation and activation fees fully for the abovementioned cases, including those in which the customer does not physically move but only changes the service provider of the TV-services while keeping the same network operator (i.e. a migration from the cable operator to an alternative operator).

⁶⁸ Note : based on this reasoning, Mobistar considers that the installation fee is always for free for Telenet as the scope of work of the wholesale installation is similar to the retail DIY installation.





Annex III : External reactions and references to the draft decision.

Mobistar has bundled hereafter some extracts of analysts' reports or press articles, highlighting the difficulty for an alternative operator to enter the market when building on the regulated wholesale cable offers. These comments were made in spite of the fact that the new pricing proposal put forward lower wholesale charges. External sources point also to the possibilities for the cable operators to undermine the regulation.

Investor view - Deutsche bank – 24 June 2015

We therefore believe that wholesale prices, despite recently being cut, are not low enough for Mobistar to have a material impact on the market. We expect the launch to be progressive and not be earlier than Q4 of this year.

Mobistar - Jefferies – 28 May 2015

MOBB 'carefully welcomes' a regulatory draft on wholesale cable tariffs. Key price levels have reduced by 20%-40%. However, these are tied to the (discretionary) cable retail tariff portfolios through rather complex calculations. Cable will have room to 'play' through adjustments of their retail tariff structures. While MOBB's cable resale cost base looks much improved now, it will clearly remain heavily dependent on continuing regulatory support.

Complexity of regulation requires continued scrutiny by IBPT. What strikes us analysing the regulatory draft is the immense complexity of the methodology. Individual current tariffs of individual operators are analysed, applying imputed valuations for 'unobservable' elements of the retail offers in order to exclude them from the headline retail price. All this results in different discounts for each product group of each operator, further differentiated between a 'start-up phase', and afterwards. And so far this is just for one region (Brussels), with the decisions for other regions to follow separately. What has happened here is that the straightforward 'retail-x' recipe has been broken up during the trench warfare between the interested parties into a regulatory quagmire. **We see significant room for cable operators to undermine the regulation in its current form through changes to their retail portfolio structures** (e.g., no longer explicitly quantifying a STB cost, including new services, or removing observable price differentiation between analog and digital TV). Each adjustment of this sort could force the regulator into updating the analysis - for each service element, for each operator, in each region. It is entirely conceivable that the cable operators will in fact adjust retail portfolios such that the regulatory methodology either implies improved wholesale prices or even 'breaks' (so that the required adjustments to the regulatory method open avenues for future legal challenges). **The observation that its regulation is based on the shifting ground of cable retail tariffing is not lost on IPBT, and the regulator itself suggests to 'freeze' the regulation for one year in order to produce visibility.** However, this is not a time-scale relevant for making the business decision to add customers with a lifetime of 8-10 years, in our view. MOBB will permanently depend on the 'dripfeed' of continuing regulatory support as commercial cable offers change. Given the regulator's track record of effectively abandoning meaningful copper unbundling and wholesale regulation (Belgium never had a vibrant copper reseller/unbundling market, and Scarlet gave up and sold out to Belgacom), this does present a risk in our view.

Investor view - UBS – 16 June 2015

Wholesale cable regulation changes unlikely to be big game changer

We think the recent changes to the wholesale cable regulation 'retail-minus' rate mechanism related to the set-top box fees, value add services and transition period discount (EUR 2/month) has created some leeway for Mobistar but unlikely to be a big game changer unless the regulation changes to 'cost-plus' (which remains challenging). We expect Mobistar's entry will have a moderate impact as their offering will probably be similar to the low-end product like Scarlet around €40/month with limited content.

Competitor views (Bank of America – Merrill Lynch – 8 June 2015)

- **Mobistar fixed threat:** Belgacom believes their wider customer experience is superior, combining Wifi, replay TV, access to content on the move to counter the threat. Belgacom also has a fighter brand Scarlet if price discounting becomes more aggressive.
- **Can MOBB be competitive?** Yes versus old price point. They still need to buy content, run platform, add set top boxes etc. Will not be easy to be so competitive. TNET feels their platform is significantly more advanced and their customer care and quality standards are high. Furthermore TNET hopes locally sourced content should provide a materially differentiating factor to defend.

We could also refer to the recent interview of Dominique Leroy in *L'Echo*, "Proximus a plus à perdre qu'à gagner d'une fusion avec KPN", 6 juillet 2015:

"Cette année, Mobistar va proposer la télévision. À des tarifs inférieurs à ceux de Proximus TV..."

Il y aura une différence au niveau du service, mais aussi du contenu: nous proposons 80 chaînes, avec du sport, des films et des séries, sans oublier une offre pour les enfants. Et Netflix. Si Mobistar veut proposer un large éventail de contenus, il ne pourra pas être moins cher. Et si son offre est moins étoffée, nous pouvons le contrer avec notre marque meilleur marché – Scarlet – qui propose un nombre de chaînes plus réduit, à un prix inférieur.

Nulle part on n'a vu un acteur du mobile réussir dans des services de ligne fixe comme la télévision. Le contraire est moins complexe: une carte SIM dans un GSM, on se connecte et c'est tout. Mais pour proposer des services de ligne fixe, vous devez aller chez vos clients, investir dans des décodeurs, dans une plate-forme et du contenu. C'est une tout autre affaire".

