



IBPT

Formulaire de couverture à joindre à la réponse à une consultation publique organisée par l'IBPT

INFORMATIONS GÉNÉRALES - Consult-2020-D8

Titre et date de la consultation : “Projet de Décision du Conseil de l'IBPT concernant l'analyse des redevances uniques (« one time fees ») et de la redevance de location mensuelle (« SLA Repair ») dans le cadre des offres de référence des câblo-opérateurs pour l'accès à l'offre de télévision et pour l'accès à l'offre large bande.

Dénomination de la personne morale répondant: **Orange Belgium SA**

Personne physique de contact du répondant: **D Segers, Regulatory Affairs Director, dirk.segers@orange.com**

CONFIDENTIALITE DES DONNÉES

Les informations suivantes sont considérées comme confidentielles par le répondant (cocher les cases appropriées) :

- Rien
- L'identité de la personne morale répondant
- L'identité de la personne physique de contact au sein du répondant
- Certaines parties de la réponse

Dans ce dernier cas, le répondant fournit une version publique et une version confidentielle de sa contribution. Dans la version confidentielle, les parties confidentielles sont clairement identifiées dans le corps du texte.

En cas de conflit entre le présent formulaire et une indication figurant dans la réponse (en particulier la mention standard en matière de confidentialité contenue dans les e-mails), le répondant reconnaît que l'IBPT ne doit tenir compte que du présent formulaire.

AVERTISSEMENT

Conformément à l'article 140 de la loi du 13 juin 2005 relative aux communications électroniques, les projets de décision de l'IBPT susceptibles d'avoir des incidences importantes sur un marché pertinent font l'objet d'une consultation publique dont les résultats doivent être rendus publics, dans le respect des règles de confidentialité des données d'entreprise.

Il est donc dans l'intérêt du répondant d'identifier de manière exhaustive et précise les informations confidentielles de manière à éviter que ces informations ne soient rendues publiques dans le cadre de la publication des résultats de la consultation publique.

Les répondants sont cependant tenus de ne qualifier d'informations confidentielles que les seules informations qui ont réellement cette qualité, l'IBPT ayant la possibilité de contester le caractère confidentiel d'informations en vertu de l'article 23, §3, de la loi du 17 janvier 2003 relative au statut du régulateur des secteurs des postes et des télécommunications belges.

NOM, DATE ET SIGNATURE

Dirk Segers

12/11/2020 (the form is not signed due to the current unusual circumstances. If a signed copy is requested this can obviously be provided.)

Orange Belgium comments related to “Projet de Décision du Conseil de l'IBPT concernant l'analyse des redevances uniques (« one time fees ») et de la redevance de location mensuelle (« SLA Repair ») dans le cadre des offres de référence des câblo-opérateurs pour l'accès à l'offre de télévision et pour l'accès à l'offre large bande.

Preliminary note

Orange Belgium submits these comments in English and references to the draft decision are references to the BIPT draft. The same comments apply to the draft decisions of the other regulators for the services for which they are responsible. In case a French or Dutch version of these comments are required this will be provided on request.

Before all, Orange Belgium welcomes that progress with this important matter is made and that more clarity regarding the charges for a number of services will be provided soon. We also welcome that a number of comments put forward during the related preconsultation have been incorporated in the present draft decision.

Unfortunately, this draft document comes more than *2 years* after the entry into force of the market analysis decision of 29 June 2018. This decision of 2018 has defined temporary charges as approximation for the cost-oriented charges that the market analysis decision imposed to apply for the type of services under consideration by the current draft decision. Some of the intermediate charges that were defined based on Proximus-alike services, appear to be clearly and substantially above the charge levels put forward in the draft decision. Orange Belgium therefore asks the regulators for reasons of legal certainty and to avoid further unnecessary timeconsuming discussions and costs, to speed up the process towards a final decision so that the proper, cost-oriented tariffs, finally apply.

The comments below are listed by section, in sequence of the BIPT draft document.

Part I. Legal and methodological aspects.

This section does not raise any material comments and is a proper representation of the applicable framework.

(*minor*) The wording of paragraph 16 of the draft document might create confusion (subject to how this paragraph is understood it could imply that another, future decision will be taken with respect to the elements put forward) while it is Orange Belgium's understanding that this is not necessarily the case.

Part II. Analysis of the cost models for access to networks of the cable-operators

General comments on part II of the draft decision

In general, Orange Belgium takes note of the feedback provided by the BIPT with respect to Orange Belgium's earlier comments. Overall we agree with the choices made and the adopted way forward (eg §32). The absence of comments regarding elements contained in the draft decision should not be

understood as the absence of an opinion regarding the element put forward but rather as an agreement and alignment with the proposal as put forward by the BIPT.

(*minor*) To avoid a possible misunderstanding regarding the costs under consideration, Orange Belgium suggests to adapt the title of this chapter (eg add “... for one-off and SLA PRO charges for access...” or alike)

Furthermore, Orange Belgium considers that information is lacking to allow a high quality detailed assessment of the charges put forward. It is not always clear which specific tasks/activities are taken into account for each individual service, and which assumptions were used to quantify the number of use cases for each major variant of a service.

We also refer to earlier comments (cf also § 33 of the draft decision) regarding the increasing efficiency that should be arrived at by *inter alia* IT-developments and the improving quality of the data underlying certain processes and tasks. In this context it should be noted that the access regulation as such has allowed the cable network operators to improve the quality and “clean-up” of their data on installations, customer locations, addresses, serial numbers, material installed, etc. These improvements will contribute to a higher efficiency – as well for the cable network operator as for the alternative operators - in the future.

To illustrate the possible efficiency gains via IT-developments, we refer to the “eligibility check” on the Telenet network. [REDACTED]

Insofar the very high levels of the mark-ups for IT and G&A are withheld, the cost-model should integrate the substantial efficiency gains that should derive from these developments (less manual tasks, less error handling, ...). At least one of the elements that could be considered to incorporate these evolutions is to perform a yearly “sanity check” reviewing:

- the number of one off services performed;
- the contributions paid for IT-development over the year via monthly and one-off charges;
- the new systems or systems improvements developed;
- the efficiency gains arrived at.

In case major diverging evolutions versus the underlying assumptions would occur, such review would allow to identify the need for corrective measures asap.

Orange Belgium also considers that a very careful approach must be taken when using the charges put forward in agreements for a given activity as “the” representative value for the cost of such service. A cautious approach should especially be applied when alternative operators, while lacking the scale of the SMP-operator, can demonstrate that certain activities can be outsourced at costs below the charges agreed between the SMP-operator and its supplier. One may not exclude upfront that in the agreements between the SMP-operator and its suppliers a balance is made between higher charges for services common to the SMP-operator and alternative operators and lower charges for services applicable for the SMP-operator only.

The goal of the actual decision should be to reduce the risk for over charges and future disputes.

One of the elements that could contribute to reduce the risk for disputes would be to define each service as precisely as possible and to clarify also which combination of charges may and may not be applied.

A second element would be to clearly define that no additional elements can be invoiced besides those listed in the actual decision. Orange Belgium refers to “Kabel Maatschappij” klachten which are actually invoiced by Telenet while such situations are not defined in the regulatory framework. [REDACTED]

Obviously a more clear regulatory framework would contribute to decrease the number of discussions regarding such situations, that should in any case be avoided.

Comments per subtitle and paragraph of part II of the draft decision

4. Introduction of the cost models

4.1. Tariff setting

§35: Orange Belgium considers it inappropriate that the costs for an activity which consists already 100% of IT-costs (i.e. it is a fully automated activity) continue to be subject to an IT and G&A mark-up. These additional mark-up charges will in this case clearly not be related to the activity under consideration (as it is fully automated already), and alternative operators should not be forced to (contribute to) pay for services they don't ask. Examples of such services are a service/product change on the Telenet footprint, the activation of a service on an address already known in the database of Telenet, a de-activation ...). With respect to “cost of material”, obviously this should not apply for material/equipment which would become the property of the cable network operator afterwards.

§37 and following (cf also the introductory comment): Orange Belgium considers that, when alternative operators can demonstrate more favorable conditions than the cable operators for certain services, such more favorable conditions should be taken into account as these would represent the more efficient operator solution. Orange Belgium considers that it cannot be excluded that certain terms and conditions agreed between the regulated cable network operator and its suppliers represent an agreement on a much wider set of services (in scale and scope) and that trade-offs between categories of services imply a too high charge for some services, possibly compensated by lower charges for services that are not relevant for alternative operators in this context.

Furthermore, taking into account that service agreements often include duration or volume discounts, applied on certain time intervals only, the real invoiced and paid amounts for the services over a sufficiently long period should be considered.

[REDACTED]

§40: Orange Belgium takes note of the proposed approach. Taking into account that the cable network operators had over 2 year to prepare and provide the related data, it should in any case be clear that the provision of “actual data” should not lead to any wholesale charge increase.

§41: Orange Belgium refers to the introduction comments. Based on the experience with a number of charges historically applied by the cable network operators for a number of services (for some of which the regulators demonstrated a 20-fold (!!!) difference between the charge asked by the cable network operator and the subsequently identified underlying cost), Orange Belgium considers that systematically also other data should be considered rather than relying mainly (if not only) on data provided by the cable network operators as “baseline”. Insofar the cable network operators did not provide useful cost data for certain activities, the underlying assumption should be that the related costs are not meaningful and hence be set at zero (it may well be that if there would be costs associated with such activity these are accounted for as part of other activities). In any case a future provision of more relevant data should not be rewarded by increases of regulated charges, as this would imply a pure reward of a late provision of data and a lack of timely cooperation by the SMP-operator.

§42: With respect to the use of Proximus as reference, Orange Belgium understands the point of view of the BIPT but considers that the approach retained should be assessed on a case by case, service by service basis. Furthermore, the regulators could consider to assess a number of cost-drivers in the context of the services under consideration (in terms of cost/costumer, cost/connection, maintenance and operational charges, etc to identify if the assertion in this paragraph is right. The huge differences in margins (eg EBITDA) could be an indication of the quite different cost structure faced by a “copper” versus “cable” network operator

4.2. Non-modelled services

4.2.1. Set-up costs

Orange Belgium notes that its comments in the context of the pre-consultation with respect to the set-up costs have not been taken into account. [REDACTED]

4.2.2. Interconnection costs

(*minor*) §55: We note a difference in the wording between the Dutch and French version of the draft decision. We assume the Dutch version prevails.

Orange Belgium has no further comments regarding the interconnection costs and agrees with the approach put forward regarding these costs (eg no set-up charges to be invoiced).

5. Analysis of directly attributable staff costs

§60: Orange Belgium agrees with the approach put forward but suggests to add, at the end of the paragraph, that in case of future revisions of the underlying contract via which a price increase would be requested, a validation will be done if the reviewed charges are still representative of an efficient operator. We also refer to the general comments above and the comments regarding §37, regarding the use of the alternative operator contracts as additional reference in case there is doubt regarding the appropriateness of certain charges and the need to cross-check the true amounts invoiced and paid for services over time).

5.1. Activation & installation

As indicated in its general comments, Orange Belgium requests that the decision provides more transparency about all tasks and use cases covered by a given charge.

§64.1: Orange Belgium considers that the current, “blended” charge, which is the same charge independently on the type of the activated line, has the clear disadvantage that it must assume a given distribution regarding the origin of the customers to be activated on the cable network. This distribution is however a value that is hard to predict and that will evolve considerably over time. Furthermore, to have charges per type of activation would clearly reflect the underlying costs much more appropriately. For instance, for the activation of an already “digital interactive cable” customer that has to be activated by an alternative operator, efficient systems would imply a fully automated process – with very low variable costs.

(*minor*) §64.5: Typographical error at start of the § in the French version.

activation or repair at another Telenet retail customer on a given date), the de-installation is not time-constrained and it would by consequence not require a material bespoke travel/transport time. [REDACTED]

5.3 Repair

§92.1: For the avoidance of any doubt, Orange Belgium requests an explicit confirmation that no fee/charge applies for ingress *detection*. Orange Belgium understands that the proposed tariff applies to the *resolution* of an ingress and that no fee shall be charged for the detection activity.

Orange also notes that the Ingress/current leakage can only be invoiced in case this can clearly be linked to an intervention of an alternative operator. In case the start date of the ingress cannot be linked to the intervention date of an alternative operator technician, the activity cannot be charged to the alternative operator.

The resolution outcome must confirm that it was actually an ingress that was detected.

§92.3: Wrongful Repair Request: Orange Belgium considers that, as for a “useless visit” (§113.3), the cable operator must provide proof that the repair was wrongful indeed. This will also allow Orange Belgium to reduce the number of wrongful repair requests. A simple log of a technician is not sufficient but a picture should be added.

There should be sufficient guarantees that by a sequence of interventions by various players there cannot be “false” identifications of wrongful repair requests. [REDACTED]

Means to allow better validation and verification should be considered, such as a more regular exchange of signal measures or exchange of information regarding network adaptations.

Orange Belgium notes that the wrongful repair use case refers to either a situation with customer visit or without such visit, while only the second one is currently described. Given that the “single installer” situation reduces very strongly the need for interventions “with customer visit” by the cable network operator, Orange Belgium strongly suggests to differentiate between the use cases and the applicable charges as it is clear that an intervention – be it wrongful or not - that includes a customer visit, induces substantially more costs. The difference should be made in the same way it is made for the “dual visit” and the “single visit” (i.e. street intervention only). [REDACTED]

[REDACTED]

5.4. Monthly charge for SLA Pro Repair

In general terms, Orange Belgium considers the situation created by the cable network operators with respect to the SLA Pro as a blatant infringement of their regulatory obligations (cf §98). Orange Belgium considers that the regulators should end the situation of non-compliance immediately and impose firm penalties on the cable network operators because of their persistent and continued non-compliance with the obligations imposed via the market analysis decision of 29 June 2018.

§95: Given the refusal to provide such data, Orange Belgium considers that, until reliable data are provided and a decision can be taken, the service should be provided for free. If charges are to be cost-oriented, and if no reasonable or trustworthy costs are provided in a period of 2 years after the decision that implied the need to do so, the only logical conclusion would be to impose a charge of the costs that were demonstrated, i.e. 0 €.

§100: Orange Belgium does not agree with this clause. Orange Belgium is of the opinion that the regulators should focus on ensuring they get proper and relevant cost-information from the cable network operators to determine this tariff, and not build on a “proposal” from the cable network operators for this service. Given the continued refusal to provide specifications for this service, to count on a reasonable proposal from the cable network operators for this service seems, at best, naïve. In any case, a revision of the tariffs that will result from the decision now put forward should **not** be subject to any increase during at least 24 months [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In any case Orange Belgium expects the charges for such B2B SLA to be substantially lower than the charges for Proximus. Indeed, the typical nature of the cable networks (where a single network issue often impacts several customers) and the fact the network is exhaustively used for TV-services (implying the need for quick problem resolution in the evening and during the weekend as well) implies that intervention teams have to be available anyway for B2C-related activities outside of office hours. This situation also implies that the incremental cost to support a B2B SLA is most likely very small (the BIPT might consider to run some simulations based on the number of regular repair interventions and the number of “B2B SLA Specific” intervention), if not neglectable. By consequence, in the absence of proper specific cost-information associated with this SLA, the wholesale charges should clearly be set at a strict minimum.

§101: Orange Belgium continues to consider that, while “staff costs” are clearly a key driver regarding such costs, Proximus cannot “simply” be taken as valid reference. The amount of resources required to

guarantee a given SLA-level is mainly a function of the number of incidents/interventions that are required over a given period in general *on top of the resources that are required to ensure the overall standard QoS levels*. Based on the draft decision it is not clear if a comparison between Proximus and the cable networks regarding this aspect was made. [REDACTED]

5.5. Colocation / Co-mingling

§103: We refer to the above comments regarding the costs for the SLA PRO repair. It is simply unacceptable that more than 2 years after the market analysis decision that clearly imposes obligations on the cable operators within a certain time period, the situation in which no reliable cost-data are provided continues.

We refer also to our separate contribution to the draft reference offer decision for VOO and Brutélé on one hand, and the separate contribution on the draft reference offer proposal from Telenet for collocation on the other hand.

Orange Belgium would expect a high degree of similarity for the offers for the different cable operators. At least a more uniform “harmonized” terminology and alignment of the key services could be considered (for instance the relevance of “administrative fees” or “quotations” with one operator but not with the other). A degree of alignment would make the work for alternative operators who have to deal with all cable network operators clearly more simple (note that the request for such harmonisation and/or alignment of terminology and services also applies for other domains).

5.6. Installation related support services

5.6.2.1. Mass migration

Orange Belgium considers that the BIPT should at least ask/impose a tariff for the most basic migration type (i.e. all customers with profile X are to get profile Y). Such “basic migrations” are a common practice and the cost associated with such service should not be unpredictable.

5.6.2.2 Rates for migrations and configurations of profiles

Orange Belgium considers that the charges put forward are excessive taking the highly automated nature and the potentially high volume of these transactions into account. The processes for these services imply basically a lack of (meaningful) manual intervention. [REDACTED]

Orange Belgium therefore asks to have a substantially lower tariff for IT-only tasks (see also the comments regarding the IT mark-up). [REDACTED]

Orange Belgium notes that depending on the nature of the costs underlying other activities, a similar approach could be followed: eg. for de-activations, these can be executed all together by a single batch on a daily basis (the cable operator could for example run a job to execute all deactivation requests of the day at 20:00 h (or later)). In that way the IT-resources can be optimized and the incremental cost of the additional one-off activities can be minimized.

5.6.2.3. Cancellation / new visit scheduling

Orange Belgium agrees that the cancellation of an intervention after 12h00 the day before the intervention can be invoiced. [REDACTED]

On the other hand Orange Belgium considers that a cancellation before 12h00 should not lead to an additional cost. Telenet confirmed that the booking of the interventions, which is done in a completely automated manner, is only done in the afternoon of the day before the day the interventions are performed so any changes before noon of the preceeding day are transparent and do not incur an incremental cost. In addition the rebooking of an intervention should be free of charge. It is definitely not acceptable that an annulment would lead not only to a cost related to the annulment but also to a cost related to the new booking. A booking should be free of charge no matter if it is related to a new intervention or a previously annulled intervention.

6. Overhead and IT related costs

Orange Belgium refers to its comments regarding other, earlier consultations and considers these comments as repeated here.

§132: As indicated before, Orange Belgium considers that the charges for the “IT-only” activities are overly high. Based upon its own data, the amounts put forward don't seem to reflect the costs of an efficient operator.

[Redacted text block]

[Redacted text block]

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