

PRESS RELEASE

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The Belgian Competition Authority opens an ex officio investigation into a possible abuse of dominance by Proximus in the context of the takeover of edpnet, in application of the Towercast case law

Edpnet is an operator active in the supply of broadband communications services in Belgium, which is currently undergoing a judicial reorganisation procedure. In the context of this procedure, several offers for the takeover of edpnet have been submitted, including one by Proximus. Given the turnover of edpnet, its sale is not subject to examination and prior authorisation by the Belgian Competition Authority (BCA) under merger control.

By judgment of 21 March 2023, the Ghent Enterprise Court, Dendermonde section, ordered in first instance the transfer of edpnet's activities to Proximus.

In view of the serious indications of substantial obstacles to competition that were brought to his attention, the Prosecutor general of the BCA decided, after consulting the Director of Economic Affairs, to open an investigation pursuant to Article IV.39, 2° of the Code of Economic Law (CEL) concerning a possible abuse of a dominant position by Proximus as a result of the acquisition of edpnet. This case is referred to as CONC-RPR-23/0001.

In this respect, the Prosecutor general points out that the Court of Justice of the European Union handed down a landmark judgment on 16 March in Case C-449/21, Towercast, in which it clarified that a concentration of undertakings which does not meet the mandatory ex ante merger control thresholds provided for under national law may be analysed by a competition authority of a Member State as constituting an abuse of a dominant position in the light of the structure of competition on a market with a national dimension. In other words, the Court of Justice has unambiguously confirmed the competence of national competition authorities to analyse ex post non-notifiable concentrations under merger control, on the basis of Article 102 of the Treaty on the Functioning of the European Union (TFEU), which is equivalent to Article IV.2 CEL.

The opening of an investigation does not prejudge its possible outcome and the company concerned will be fully involved in the procedure.

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The Belgian Competition Authority (BCA) is an independent administrative authority that contributes to the definition and implementation of competition policy in Belgium. Concretely, the BCA pursues anti-competitive practices, such as cartels and abuses of a dominant position, and reviews the main merger operations. The BCA cooperates with the other competition authorities of the member states of the European Union and the European Commission within the European Competition Network (ECN)