

Proximus/edpnet case (post-Towercast): the Auditor General requests interim measures to ensure the continuity of edpnet's activities and its operational and commercial independence from Proximus

The Belgian Competition Authority confirms that the Auditor General has for the first time made use of his prerogative to request directly the adoption of interim measures by the Competition College (the "College"), pursuant to Article IV.72 §1 of the Code of Economic Law. These interim measures aim to ensure the continuity of the activities of edpnet while maintaining its operational and commercial independence from Proximus pending the outcome of the investigation on the merits.

In view of the applicable legal deadlines, the College as the decision-making body is expected to decide on the merits of the request for interim measures no later than the first half of June.

As a reminder, the Auditor General announced on 22 March the opening of an ex officio investigation into a possible abuse of a dominant position by Proximus, the incumbent operator in the Belgian telecommunications sector, consisting of the takeover of the activities of edpnet, an alternative operator, in the context of a judicial reorganisation procedure. The opening of this investigation follows the Towercast judgment of the Court of Justice of the European Union of 16 March 2023 (C-449/21), which confirmed the possibility of applying Article 102 TFEU to non-notifiable concentrations. The opening of an investigation does not prejudice its possible outcome.

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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)