

PRESS RELEASE

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Proximus/EDPnet (Towercast case law): the Belgian Competition Authority terminates proceedings following the divestiture of EDPnet to Citymesh

The Belgian Competition Authority (“Authority”) has today been informed of the conclusion and completion of an agreement pursuant to which Proximus has divested EDPnet Belgium to Citymesh. Further to this agreement, the Authority has decided to terminate its abuse of dominance proceedings opened in March 2023 with respect to the takeover of EDPnet’s assets by Proximus.

On this occasion, Prosecutor General Damien Gerard stated as follows: *“The divestiture of EDPnet to Citymesh will preserve and strengthen competition in the Belgian telecommunications sector, by guaranteeing the continuity and competitiveness of EDPnet and facilitating the emergence of a new operator, to the benefit of Belgian consumers and businesses. This result was made possible by the decisive action of the Authority, the full cooperation of the Telecommunications regulator BIPT and the collaboration of the companies involved.”*

On 21 March 2023, the Authority opened *ex officio* proceedings pursuant to Article IV.39, 2° of the Code of Economic Law (CEL) with respect to the takeover of EDPnet's assets by Proximus, as ordered on the same day by the Ghent Enterprise Court, Dendermonde section, within the framework of a judicial reorganisation procedure. The purpose of the proceedings was to determine whether the takeover constituted an infringement of Article IV.2 CEL and Article 102 of the Treaty on the Functioning of the European Union (“TFEU”), which prohibit abuses of dominance.

EDPnet is the main alternative telecommunications operator providing wholesale and retail broadband internet access services at national level in Belgium, and the only effective competitor to incumbent Proximus on copper and fiber networks, capable of serving tens of thousands of customers, notably residential customers.

On 12 April 2023, the Prosecutor General requested interim measures for the first time on his own initiative, in accordance with Article IV.72 CEL, in order to prevent any risks of a substantial impediment to effective competition that might result from the integration of EDPnet within Proximus, and thereby to preserve the useful effect of the proceedings on the merits.

On 21 June 2023, by decision no. ABC-2023-RPR-17 ([ABC-2023-RPR-17 PUB.pdf \(abc-bma.be\)](#)), the Competition College held that the Prosecutor General had demonstrated *prima facie* the existence of an abuse of a dominant position on the part of Proximus resulting from the takeover of EDPnet, due in particular to the elimination of EDPnet as an independent alternative operator active on both the wholesale and retail broadband Internet markets. The Competition College hence considered that it was urgent to adopt interim measures to avoid a situation likely to harm the general economic interest if Proximus’ acquisition of EDPnet became irreversible.

The Competition College thus ordered Proximus to (i) ensure the continued viability, market value and competitiveness of EDPnet, (ii) keep the activities of Proximus and EDPnet separate, under the supervision of a

hold separate manager, (iii) protect EDPnet's business by ensuring that Proximus does not access and collect confidential information relating to EDPnet, and (iv) appoint an independent monitoring trustee to verify Proximus' compliance with the ordered interim measures.

In its decision, the Competition College confirmed the legality of the *ex officio* proceedings initiated on the basis of the Towercast judgment of the Court of Justice of the European Union of 16 March 2023, thereby confirming the Authority's ability to apply the concept of abuse of a dominant position to non-notifiable mergers, without having to establish any additional restriction distinct from the transaction in question.

On 6 November 2023, Proximus and Citymesh entered into and completed an agreement pursuant to which Proximus divested EDPnet Belgium to Citymesh. The takeover of EDPnet by Citymesh, the new entrant in the Belgian telecoms sector (notably in partnership with the operator DIGI), is likely to preserve and strengthen competition in the future, to the benefit of consumers and businesses, and therefore meets the concerns of the Prosecutor General that gave rise to the opening of the *ex officio* proceedings and the request for interim measures.

For the Authority, the restoration of competition and its possible improvement in the future as a result of the terms and structural nature of the agreement concluded between Proximus and Citymesh, outweigh the interest of establishing the existence of an abuse of a dominant position on the merits and of imposing, where appropriate, a remedy and/or fine at a later stage. The conclusion of this agreement will also enable the Authority to save significant resources and thus increase the effectiveness of its action.

In these circumstances, and without prejudice to the qualification of the practice in question under Articles IV.2 CEL and 102 TFEU, the Authority considered, pursuant to Article IV.45, para. 1, 3° CEL, that the case no longer warranted investigation for priority and procedural economy reasons, and therefore decided to terminate the ongoing proceedings.

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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)