

The Belgian Competition Authority opens an investigation into a proposed cooperation agreement for the roll-out of fiber networks in Flanders

The roll-out of high-performance fiber networks is essential for the future of the economy. Accordingly, on 16 October 2023, the Belgian Competition Authority (“BCA”) announced its intention to examine any agreement or proposed agreement for cooperation between telecommunications operators for the roll-out of fiber infrastructures in Belgium.¹ This announcement followed the 10 October 2023 communication from the Belgian Institute for Postal Services and Telecommunications (“BIPT”) on cooperation agreements to roll out FTTH (“Fibre to the Home”) networks.²

Following these statements, the operators Proximus/Fiberklaar and Telenet/Wyre initiated discussions concerning a possible cooperation for the roll-out of fiber networks in the areas of medium population density of Flanders. Following the conclusion of a memorandum of understanding between the operators in question, the BCA Prosecutor General has decided to open an *ex officio* investigation to determine whether the envisaged cooperation is likely to adversely affect competition between telecommunications service providers within the meaning of Articles IV.1 CEL and 101 of the Treaty on the Functioning of the European Union, which prohibit anti-competitive agreements between undertakings.

In particular, the investigation will have to determine whether, and to what extent, the envisaged cooperation is likely to reserve a fair share of the cost-savings and other efficiency gains for the users of the networks (in terms of, *e.g.*, access conditions, scope and speed of rollout). Given the level of investment required to roll out fiber networks, the investigation will adopt a long-term perspective, taking into account the existing market structure, as well as the roll-out prospects and competitive dynamics likely to prevail in the absence of the cooperation project in question.

The investigation will be conducted in collaboration with the BIPT, pursuant to the Royal Decree of 8 May 2014 concerning cooperation between the BIPT and the Authority. The opening of an investigation in no way prejudices 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)

¹ Belgian Competition Authority, Press Release N°43/2023 of 16 October 2023, available at: https://www.belgiancompetition.be/sites/default/files/content/download/files/20231016_Press_release_43_BCA.pdf

² Belgian Institute for Postal Services and Telecommunications, Communication of 10 October 2023, available at: [Communication cooperation agreements roll out FTTH networks 2023-10-10 \(bipt.be\)](https://www.bipt.be/sites/default/files/content/download/files/20231010_Communication_cooperation_agreements_roll_out_FTTH_networks_2023-10-10_(bipt.be))