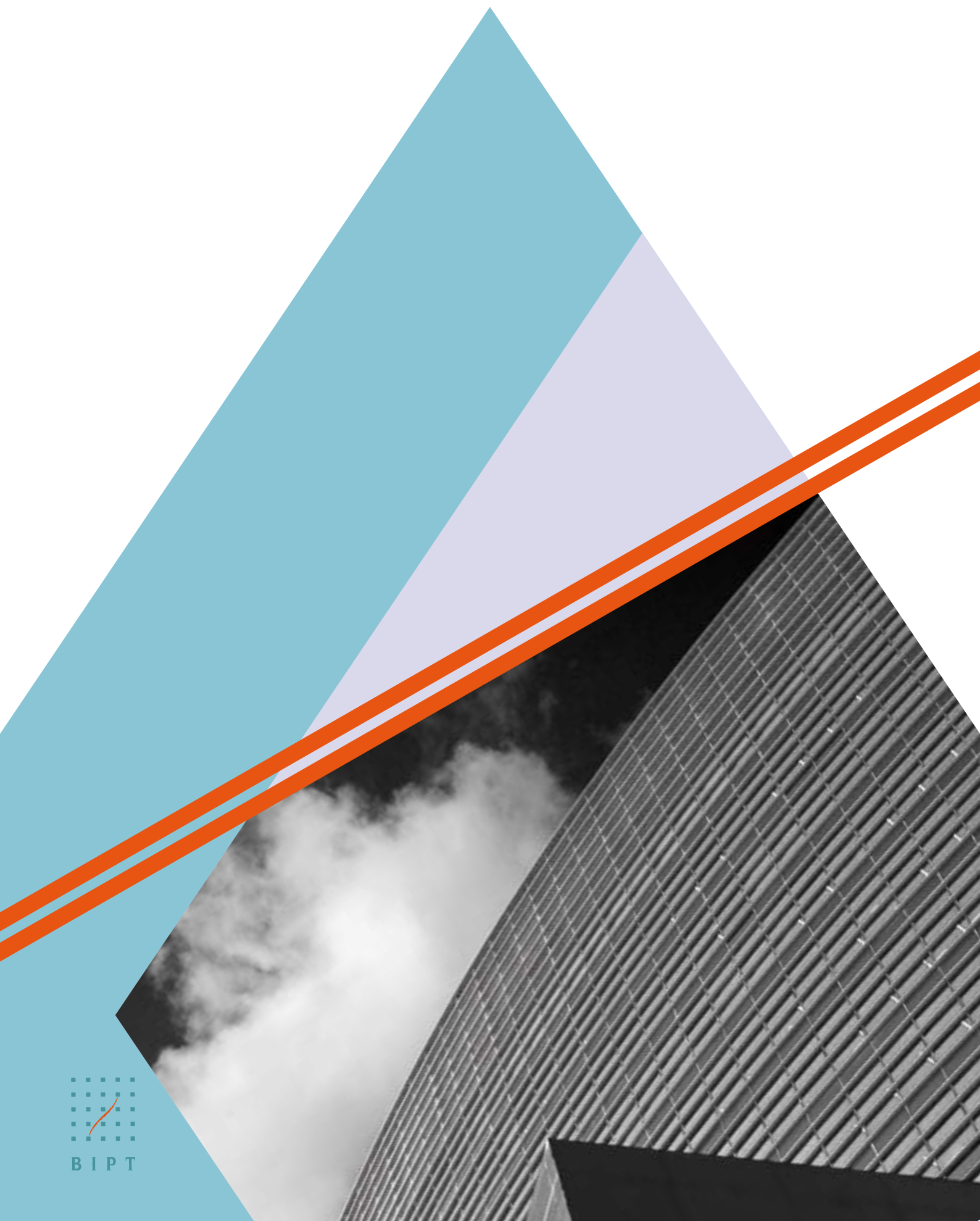


ANNUAL REPORT 2009

BELGIAN INSTITUTE FOR POSTAL SERVICES AND TELECOMMUNICATIONS





Message from the Chairman of the Council

A few months ago some thirty countries were forced to close their airspace completely due to the eruption of an ice-covered volcano, thus bringing the stream of passengers and freight flights to a halt. In that period many people managed to make inquiries about the situation, notify and reassure their families or employers and even come up with a “plan B” to reach their destinations, thanks to the electronic communications services. Meetings that could not be cancelled or postponed without losses, were held by means of video conferencing. Now that the situation is stable again, it is clear that the losses – which the European Commission has already estimated at about two billion euros for the European aviation sector and tour operators – could have had far worse consequences, if it had not been for the electronic communications networks.

This example goes to show that the information and communication technology has become an essential part of the economy, the competition between companies and the importance of investments, which create jobs and therefore indirectly foster well-being in the community. The situation may have evolved considerably in the past fifteen years, still we have to admit that the results since the start of the liberalisation processes do not yet meet everybody’s expectations. Despite the end or near end of the monopolies, the environment is less competitive than expected, the price level remains high and consumers sometimes feel frustrated because special offers seem to be significantly inferior to those advertised in the neighbouring countries.

Such being the case, people hold high expectations for BIPT. On behalf of my fellow members of the BIPT Council, who took office on 23 November 2009, I declare that we will all labour to stimulate the competition, to contribute to the development of an internal market and to ensure that the consumer’s interests are protected. On the basis of just and well thought-out decisions, BIPT will apply the regulatory

framework strictly and vigorously. As a reminder, BIPT is a sector regulator that implements a number of provisions, arising from the European regulatory framework and falling within the federal competences, regarding (i) market regulation (network access, wholesale prices regulation, non-discrimination, ...) and sector policy for competition; (ii) the protection of consumers and privacy; (iii) the protection of weak users by means of the universal service; (iv) public safety (emergency services, emergency measures, network safety, capacity of criminal investigation officer and other particular tasks, ...).

To take up the challenge, BIPT will reinvent its method of working. BIPT's new method strives to improve all necessary aspects in order to ensure an efficient and stable regulation which will allow operators to elaborate and develop their strategies and which will allow consumers to enjoy improved performances as well as better protected consumer rights. We will operate in an utterly transparent way and take into account the realities and needs of all those concerned: operators, resellers, consumer associations, politicians, ...

We will meticulously investigate all points of view, without neglecting our independence and without compromising the general well-being. Through efficient and calculated measures BIPT will be respected as a strong and independent regulator.

The following pages summarise the wide range of activities BIPT staff have to carry out. A few random examples: follow up the management contract of the incumbent postal operator, assign frequencies, organise examinations to grant licences to users of the radio frequency spectrum, manage the numbering space, monitor spectrum interferences, analyse markets, check equipment, attend international forums, inform consumers, ...

Even though not all our officials are mentioned in this report, the following pages pay tribute to the teams that keep BIPT running. Have a good read.



Luc Hindryckx
Chairman of the Council of BIPT

Message from the Council

The Belgian Institute for Postal Services and Telecommunications hereby presents its sixteenth annual report, looking back on the activities carried out by the Institute in 2009. In 2009 the Belgian Institute for Postal Services and Telecommunications was managed by Eric Van Heesvelde (Chairman of the Council), Catherine Rutten, Georges Deneff and Michel Van Bellinghen (members of the Council). Their six-year term which started in April 2003 came to an end when the King appointed their successors: Luc Hindryckx (Chairman of the Council), Catherine Rutten, Charles Cuvelliez and Axel Desmedt (members of the Council). As this team took office at the end of November 2009, the members present the activities planned and managed by their predecessors and pay tribute to their efforts and work, illustrated below in the form of a brief retrospective and also more extensively in the following pages.

The complicated matter of radio spectrum management was raised as early as January 2009. The concern of the Institute was to conform to the principles which are generally accepted nowadays. Those principles include, among other things, the introduction of allocation methods which are based on the market, the introduction of *spectrum trading*, more flexibility in licences (technological neutrality, service neutrality, more flexibility in coverage requirements) and to treat the different networks as equally as possible, regardless of the frequency band used. The Institute organised a broad strategic consultation on the radio spectrum, more in particular regarding the matter of the prolongation of the mobile licences and the purpose of the digital dividend.

Furthermore the Constitutional Court deemed in a judgment that the federal authority was not qualified as regards radiation standards, thus putting an end to years of services to the public by BIPT.

During the following month and the month after that BIPT considered its possibilities to interfere with next generation networks through consultations on WBA VDSL2 (wholesale broadband offer) and the BROTSOLL Ethernet lines (leased lines wholesale offer). Later that year a ruling by the Brussels Court of Appeal in October nullified the analysis of the markets of the “leased lines” cluster (markets 7, 13 and 14). The Court motivated its decision by stating that the three community media regulators should have been consulted. That approach finds its legal basis in Article 3, 4°, of the Framework Directive that requests the Member States to consult the different regulatory institutions and to cooperate with them. Paradoxically the Court recognised that the cooperation agreement between the Institute and the three regulators does not concern the leased lines services.

In April 2009 the Institute extended the deadline to respond to the consultation on the preliminary drafts of the Act transposing the third Postal Directive, which is to be entirely (including the annexes) transposed into national law by 31 December 2010. The positions and observations formulated have been gathered in a communication that was published on BIPT’s website in May.

Furthermore BIPT published a tool allowing the consumers to find the tariff plan that best fits their user profile. (www.besttariff.be).

Also in May a document was submitted for consultation establishing that the change of habits regarding the consumption of Internet services has caused the users’ demands for ever-growing bandwidth to increase considerably. The different variations of xDSL technologies and the development of the Eurodocsis standard are an attempt to satisfy that demand. We appear to be on the verge of attaining the technical limits while the demand is expected to rise further¹. The operators will be forced to consider replacing the copper or coax cables by optical fibre. How can we encourage them to concentrate on the roll-out of optical fibre? The Institute formulated a number of proposals that the reader can find at p. 30.

On 4 June 2009 an act appeared in the Belgian Official Gazette authorising the Institute to take renewal decisions carrying retroactive effect in case of annulment by the Brussels Court of Appeal. BIPT immediately seized this opportunity and launched a draft decision in July renewing the decision regarding markets 11 and 12. A draft decision was submitted for consultation regarding the information the operators

1. THE ONLINE SERVICES REQUIRE MORE AND MORE BANDWIDTH FOR WATCHING TV PROGRAMS ONLINE AND RECORD THEM WITH AN EVER-IMPROVING IMAGE QUALITY (HD, SUPER HI-VISION OR 3D), FOR THE USE OF INTELLIGENT ENERGY METERS, TO REPLACE OFFICE APPLICATIONS WITH ONLINE APPLICATIONS, TO CONSULT E-HEALTH APPLICATIONS, ...

have to provide to their customers to allow them to efficiently use the tariff simulator. For the relevance of the suggestions the consumers receive through this tool directly depends on the quality and the level of detail of the information they enter in their user profile.

Finally the Brussels Court of Appeal partially annulled BIPT's market analysis decision on mobile termination rates (market 16).

In June and July 2009 BIPT launched two consultations on the separated accounts of Belgacom. For BIPT does not only ensure that Belgacom's wholesale tariffs do indeed reflect the costs incurred by the operator with a significant market power while it continues to reap the benefits of its investment but it also verifies whether these costs were correctly allocated in order to exclude all competition distorting cross-subsidisation between the operator's services. These documents regarded the financial years 2006 and 2007; the decisions in question were taken in December 2009.

The Brussels Court of Appeal did, however, annul BIPT's decision regarding the non-tacit renewal of Proximus's GSM licence.

In August 2009, when the fear for the economic consequences of a pandemic H1N1 virus mounted², the Institute gladly assisted the Influenza crisis centre by publishing a document for the companies in the postal and electronic communications sector regarding the introduction of a business continuity planning that, as the name suggests, constitutes the master tool for a company to keep on functioning in spite of temporary difficulties or a serious crisis situation.

In September 2009 the Institute published an announcement stating that, in spite of what most of the press alleged erroneously, BIPT's Council whose mandate expired at the end of April 2009 was by no means in a state of "current affairs" or "resigning". For the then members of the Council had maintained all of their rights and powers, both legally and factually, and have thus executed their tasks normally until the appointment of their successors by the King.

The Brussels Court of Appeal annulled BIPT's decision regarding the non-tacit renewal of Mobistar's GSM licence that same month.

In October 2009 the Institute launched new consultations on WBA VDSL2 as regards the BROBA profiles and the ADSL2+ development curve, the Ethernet transport costs for BROBA and WBA, BROBA Ethernet as well as regards the VDSL2 modems.

In November 2009 the Institute submitted a preliminary draft of amendment to Article 30 of the Electronic Communications Act with a view to the development of a global regulation for the unique fees applying to the bands listed in that provision. In order to obtain the right to set up a radio network for mobile telephony and to provide the corresponding service based on the GSM standard the mobile telephony operators have to pay a unique concession fee. That was also the case for the DCS 1800 standard as well as for the issuing of the 3rd generation mobile telephony licences. That principle should also apply to the radio access in the 2500-2690 MHz frequency band.

This consultation was extended the following month by a document shedding a new light on the amendments of Articles 30 and 51 of the Electronic Communications Act as the draft Royal Decree amends the GSM licensing scheme as well as the possibility for a fourth UMTS player to acquire both 2100 MHz frequencies and 900 MHz frequencies and the possibility for all players interested on the market to acquire 2600 MHz frequencies (4G). That substantial dossier with multiple implications will be dealt with in the future.

The Institute's different missions were accomplished thanks to the work of all officials; all members of the Council wish to sincerely thank the Institute's staff for the professionalism, motivation and effort they exhibit every day.

2. ON 11 JUNE 2009 THE WORLD HEALTH ORGANISATION (WHO) PROCLAIMED ALERT PHASE 6, THE HIGHEST STATE OF ALERT.



Charles Cuvelie
Member of the Council

Luc Hindryckx
Chairman of the Council

Catherine Rutten
Member of the Council

Axel Desmedt
Member of the Council

The Council

1. Luc Hindryckx

2. Charles Cuvelliez

3. Catherine Rutten

4. Axel Desmedt

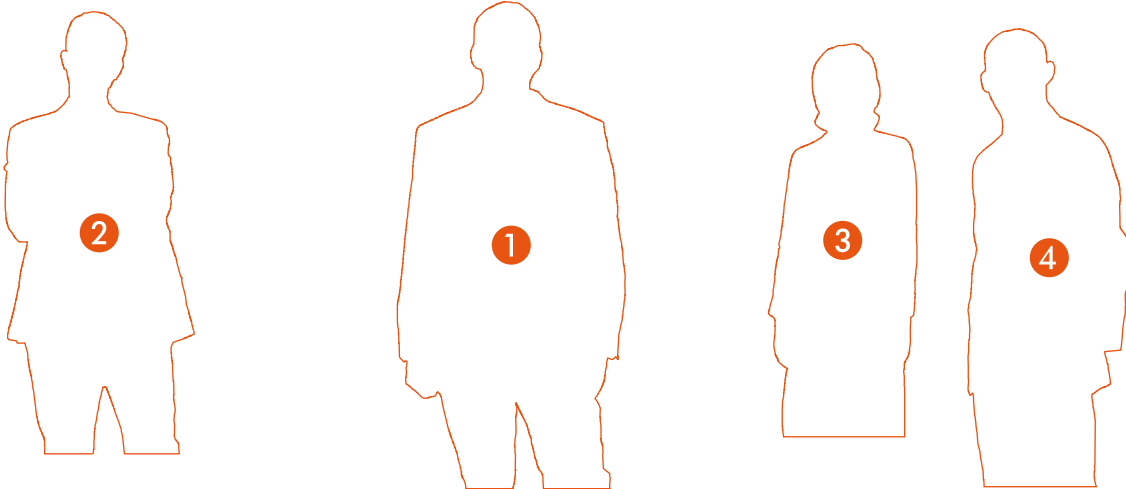




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§1

§ 1 OUR IDENTITY

Tasks

Historically the postal and telecommunications sectors have long been characterised by the existence of public service monopolies. This market model was challenged by the first attempts at a controlled introduction of forms of competition in the early 80s. In the fully liberalised market of electronic communications and that of postal services, which is now being liberalised, the Belgian Institute for Postal Services and Telecommunications carries out tasks of economic regulation, technical organisation and compliance with the regulatory frameworks. BIPT ensures that interests of sector players and users are protected for the benefit of the community. Four keywords underpin its actions: independence, transparency, cooperation and dialogue.

In the implementation of this new competitive policy, two concerns have guided the legislator. On the one hand, the introduction of the market mechanism into the electronic communications sector and at a slower rate in the postal sector, and on the other hand safeguarding the citizens' interests.

Fields of activity

The national federal authorities have empowered the Belgian Institute for Postal Services and Telecommunications with the management of two sectors: the electronic communications (including radiocommunications) and the postal sector. In 2007 that scope was extended to broadcasting in Brussels, insofar as this falls within the power of the Federal State.

The Belgian legislator created the Belgian Institute for Postal Services and Telecommunications by an Act, promulgated on 21 March 1991, in order to ensure the management of the electronic communications and postal services sectors. Its designation clearly indicates it: the Institute is competent in both areas of activity. BIPT started its activities in July 1993. The Act of 17 January 2003 transformed BIPT into an institution of public interest with a status of its own, thus ensuring its independence of government.

ELECTRONIC COMMUNICATIONS

Within the space of about fifteen years, telecommunications have undergone a technological revolution. These technical developments took place alongside the progression of market liberalisation in Europe. The notion of "electronic communications" covers all forms of communication, by radio waves and fixed lines (copper wire, coax cable, optical fibre). This "open" and flexible definition allows for future technological developments and reflects the principle of technological neutrality, which is one of the essential provisions within the European regulatory framework on electronic communications.

BIPT exercises its powers through two kinds of activities in particular:

- + the first concerns regulatory tasks in the liberalised telecommunications markets. BIPT makes the necessary arrangements in order that the regulatory framework is observed, competition can develop fully and correctly, some tasks of public interest are carried out and consumer interests are protected.
- + the second concerns the exercise of supreme authority in specific technical fields. Certain resources, such as the electromagnetic spectrum or the numbering space, are scarce: a regulator is required to share, regulate and monitor their use with accuracy.

The Institute carries out yet more technical tasks of public interest.

BROADCASTING IN BRUSSELS-CAPITAL

Since the coming into force of the Act of 16 March 2007 amending the Act of 30 March 1995 on broadcast distribution networks and the pursuit of broadcasting activities in the bilingual Brussels-Capital Region, BIPT has become the broadcasting regulator of federal competence in Brussels, i.e. for broadcasting bodies which are established there and which neither fall within the competence of the French Community nor the Flemish Community.

POSTAL SERVICES

The postal sector is also involved in a process of liberalisation. BIPT has logically been entrusted with the task of overseeing compliance with the regulatory framework and the smooth operation of the liberalised part of the market. Moreover BIPT is in charge of monitoring certain aspects of the management contract binding La Poste to the State. That management contract regards the terms for the execution of certain tasks by La Poste, as well as the financial contribution of the State.

Values

The general interest requires an assessment of the advantages and disadvantages for all parties concerned: the operators, the various categories of users and government. Special attention should be paid not only to boosting competition but also to protecting the users (mainly residential users) against potential market abuse.

INDEPENDENCE

The Act of 17 January 2003 bestowed on the Belgian Institute for Postal Services and Telecommunications a status that guarantees its independence. The governing body of BIPT is the Council, composed of four members, including a chairman, who has a casting vote in case of a hung vote. The Council takes its decisions autonomously and independently of the executive branch. It has no links whatsoever with the operators active on the relevant markets. Obviously, any party involved can challenge the Council's decisions before a competent court of law.

TRANSPARENCY

As an administrative authority, BIPT has an obligation to motivate its actions while observing the confidentiality of certain pieces of information concerning the companies and/or their products. In addition, the Institute's articles of association allow every person who is directly and personally involved in a decision of the Council to be heard in advance.

COOPERATION AND DIALOGUE

In its daily practice, the Institute favours dialogue and consultation. The decision-making process is preceded by consultations. BIPT then sends out its draft opinions or decisions and studies the comments given on these drafts. In case of disputes between them, the operators have the option of requesting a conciliation procedure with BIPT before considering other appeals (e.g. with the Competition Council). As for the cooperation with the Communities, the Competition Council, the European Commission and the regulatory authorities in other Member States, readers are referred to page 33 and following.

The Council

The Council, composed of Eric Van Heesvelde, Catherine Rutten, Georges Deneff and Michel Van Bellinghen, should have been officially renewed on 24 April 2009. The appointment of the members of the renewed Council took place on 9 October 2009; they took up office on 23 November 2009 and temporarily divided the responsibilities as follows:

LUC HINDRYCKX, CHAIRMAN OF THE COUNCIL, IS IN CHARGE OF:

- + the general coordination of the Institute's policy;
- + drawing up the management plan;
- + external communication;
- + the coordination of the support services of IT/Translators, Personnel and Training, Budget, Billing and Logistics;
- + the representation of the Institute within the IRG³ and the ERG (European Regulators Group).

CATHERINE RUTTEN, MEMBER OF THE COUNCIL, IS IN CHARGE OF:

- + the **Department for economic analysis of the telecoms market**: all economic aspects regarding telecommunications, including the tariffs of the public service (market analysis, SMP (significant market power), tariffs, cost models, calculation of universal service costs, statistics), access and interconnection (reference offers BRIO, BROBA, BRUO, BROTSOLL);
- + the **International Telecoms Relations Department**: coordination of the activities at the level of the ERG, the IRG (Independent Regulators Group), the European institutions, the ITU (International Telecommunication Union), the WTO (World Trade Organisation) and CEPT (European conference of postal and telecommunications administrations);
- + the **Budget and Logistics Department**: BIPT budget, accounting (collection of revenues and management of outgoings), Purchasing Department, equipment.

CHARLES CUVELLIEZ, MEMBER OF THE COUNCIL, IS IN CHARGE OF:

- + the **Postal Services Department**: strategy, legal and economic aspects, monitoring of compliance with legislation (authorisations, universal service, quality standards, tariffs) and of the management contract of La Poste, international postal bodies;
- + the **Monitoring Department, the Public Service, Consumers, Universal Telecoms Service**: monitoring of frequency use (including radio broadcasters in the FM band), radiation standards (certificates), radio interference, monitoring universal service obligations and the management contract of Belgacom, information on the universal service, mixed commission on telecommunications, relations with consumer organisations, protection of consumer rights, implementation of the legislation on telephone tapping and emergency services;
- + the **IT and Translation Department**: management and purchasing of IT equipment and software, management of the internal network and development of software and translation of documents (French – Dutch – German – English).

3. BY VIRTUE OF REGULATION NO 1211/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 25 NOVEMBER 2009 THE ERG AND THE IRG GAVE WAY TO THE BODY OF EUROPEAN REGULATORS FOR ELECTRONIC COMMUNICATIONS (BEREC).

AXEL DESMEDT, MEMBER OF THE COUNCIL, IS IN CHARGE OF:

- + the **Department for the legal aspects of telecommunications**: regulatory framework of telecommunications and radio communications, general legal support to other departments, disputes, conciliation, international treaties, protection of privacy, Ethics Commission (excluding La Poste);
- + the **Department for technology, use of telecommunications and radio communications**: (international and national) spectrum coordination, international organisation for radio communications, management of the frequency plan, computerisation, monitoring equipment and notifications in accordance with the R&TTE Directive (radio equipment and telecommunications terminal equipment), (international) standardisation; issuing of radio communications authorisations and of voice telephony and fixed networks authorisations, declarations of telecommunications services, management of the numbering plan, domain names, number portability, use of numbers;
- + the **Personnel Department**: status of the BIPT staff, sector committee, training.

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§2

§ 2

BIPT AND ELECTRONIC COMMUNICATIONS

Legal framework

In the area of telecommunications, technological innovation continues to dictate in large part how the regulatory system progresses. Digitisation for instance has made it possible to offer several types of content through networks of different kinds such as the cable network or the telephone line. At the same time, the Internet has become a global platform for a range of electronic communications services. Thanks to their convergence, the information and communications technologies have opened up new possibilities. The European legal framework for electronic communications responds to this technological convergence, and extends and adapts the advantages of liberalisation to electronic communications in general.

THE ELECTRONIC COMMUNICATIONS ACT

Belgium promulgated its Electronic Communications Act on 13 June 2005. As already stated, the European directives subject all electronic transmission networks and services to the same regulatory framework on the basis that the telecommunications, broadcasting and information technology sectors have started to converge. As powers in broadcasting are shared with the Communities, the scope of the Act of 13 June 2005 was restricted to telecommunications.

Until mid-February 2009, BIPT implemented the requests of the Minister of Enterprise and Simplification regarding the finalisation of two preliminary drafts of the act amending the Acts of 17 January 2003 (the Act on BIPT's status and the Act on the appeals and the settling of lawsuits) and the Act of 13 June 2005 on electronic communications, the content of which was summarised in the previous annual report. It regarded among other things requests to adapt the preliminary drafts to the opinions of the Council of State's Legislation Department of 16 December 2008, translations, notes to the Consultation Committee, the drafting of correlation tables, etc.

The draft of the Act amending the Act of 17 January 2003 on the status of the regulator of the Belgian postal and telecommunications sectors and amending the Act of 13 June 2005 on electronic communications resulted in the Act of 18 May 2009 pertaining to various provisions regarding electronic communications, published in the Belgian Official Gazette of 4 June 2009. That Act amends, among other things, the confidentiality rules applying to the information the operators communicate to BIPT, enhances the regulator's powers to impose sanctions and improves the cooperation between the emergency services and the operators, in particular by creating a fund for the emergency services.

The draft of the Act amending the Act of 17 January on the appeals and the settling of lawsuits following the Act of 17 January 2003 on the status of the regulator of the Belgian postal and telecommunications sectors was adopted on 31 May 2009 and published in the Belgian Official Gazette of 10 July 2009. This text clarified the terms and conditions for the appeal procedures with BIPT and the Competition Council. The legal uncertainty regarding the settling of lawsuits should disappear thanks to the following measures: clarifications regarding a carefully defined method for submission with the identified body, a strict pro-

cedural scheme for the exchange of documents, a carefully defined right to act, a definition of the legal action taken by the minister in charge and a precise definition of the role of the Court of Appeal as regards the annulment and suspension of administrative acts.

THE COOPERATION AGREEMENT WITH THE COMMUNITIES

Following the judgment of the Court of Arbitration of 14 July 2004 a cooperation agreement was permanently concluded on 17 November 2006 between the Federal State and the three Communities. This agreement arranged the management of electronic communications as far as it falls under a competence shared between the federal level and the Communities. After a process of approval by the respective legislative assemblies it came into force at the end of September 2007.

In the part relating to regulation the chief principle underpinning the cooperation agreement of 17 November 2006 is that each competent authority is required to inform the others about its draft decisions. The other regulators will then be given a short time span in which to examine them and if need be to respond by activating the cooperation procedure. In that case the Conference of Regulators (CRC), which is composed of the federal and community regulators, convenes to reach an agreement on the measure planned. If no consensus is reached, the matter can be taken up at political level and it will be up to the ministers of the respective governments to find an agreement then.

After the cooperation agreement had come into operation the various regulatory bodies convened in accordance with that agreement to draw up the CRC's internal regulations, which then will have to be approved by an "interministerial" committee of the Federal State and the Communities.

At the moment the Conference of Regulators gathers every three months to exchange information and to discuss files of common interest.

DISPUTES

Among the actions brought against decisions of the Institute in the course of 2009 the following cases, which are especially important for the economic regulation of the sector, deserve particular attention:

1. Belgacom brought an action before the Brussels Court of Appeal against the BIPT Council Decision of 12 November 2008 adding an addendum to the market analysis decision of 10 January 2008 – The impact of the next generation networks "NGN" and the next generation access "NGA" on the markets for broadband access;
2. Belgacom brought an action before the Brussels Court of Appeal against the Council decision of 6 November 2008 on the definition of markets, the analysis of terms of competition, the identification of operators with a significant market power and the definition of appropriate obligations for the markets 3 and 5;
3. Infrabel brought an action before the Brussels Court of Appeal against the BIPT Council Decision of 26 March 2009 on the introduction of UMTS in the frequency bands 880-915 MHz and 925-960 MHz (items 3 and 4);
4. Belgacom brought an action before the Brussels Court of Appeal against the Decision of 22 April 2009 on the methodology to allocate the costs related to the database of the social element of the universal telecommunications service and to the calculation elements specific to the years 2006 and 2007;
5. KPN brought an action before the Brussels Court of Appeal against the Decision of 22 July 2009 aimed at imposing a deadline to KPN Group to put an end to the non-compliance with the obligations of BASE regarding 3G service delivery (decision notified to BASE in a letter of 28 July 2009);
6. Belgacom brought an action before the Brussels Court of Appeal against the Renewal Decision of 2 September 2009 correcting the Market Analysis Decision of 10 January 2008 regarding the broadband access markets;
7. Belgacom brought an action before the Brussels Court of Appeal against the decision of 29 September 2009 aiming at imposing provisional measures to postpone the introduction of a "service fee" for the VAS calls from a mobile network.

In 2009 a judgment by the Brussels Court of Appeal also marked the disputes regarding the market analyses in the following cases:

1. the judgment of 23 March 2009 by the Court annulled the BIPT Council Decision of 11 October 2006 on the replicability of the secure access offer to the series of shared numbers of Belgacom;
2. the judgment of 7 May 2009 by the Court partially annulled the BIPT Council Decision of 10 January 2008 on the analysis of the wholesale markets for broadband access (markets 11 and 12);
3. the judgment of 19 May 2009 by the Court annulled the BIPT Council Decision of 29 November 2006 on the tariffs for blocks⁴ & tie cables⁵ and the Decision of 6 June 2007 on the order form for blocks & tie cables;
4. the judgment of 30 June 2009 by the Court partially annulled the BIPT Council Decision of 11 August 2006 on the definition of markets, the analysis of the terms of competition, the identification of SMP operators and the definition of appropriate obligations for market 16 (action for the suspension and annulment);
5. the judgments of 20 July 2009 and 22 September 2009 by the Court annulled the decisions of 25 November 2008 regarding the renunciation of the tacit renewal of the licences for the installation and operation of two GSM mobile telephony networks (respectively Belgacom Mobile and Mobistar);
6. the judgment of 15 October 2009 by the Court annulled the BIPT Council Decision of 17 January 2007 on the definition of markets, the analysis of terms of competition, the identification of SMP operators and the definition of appropriate obligations for the markets of the "leased lines" cluster (markets 7-13-14).

4. A "BLOCK" IS A DEVICE CONNECTING 100 OR 48 COPPER PAIRS DESTINED FOR AN OPERATOR, TO WHICH BELGACOM CONNECTS THE LOCAL LOOP ELEMENTS REQUESTED BY THE OPERATOR.

5. THE "TIE CABLE" IS A CABLE CONNECTING THE BLOCKS DESTINED FOR AN OPERATOR AND THE OPERATOR'S EQUIPMENT IN PHYSICAL COLLOCATION.

Economic regulation

MARKET ACCESS

The Institute handles all notifications of the operation of fixed and mobile telecommunications networks and the telecommunications services provided on them.

Registrations 2009	
Type of service	Total
Public telephony service	5
Public network	4
Voice services	17
VoIP service	14
Carrier Select/Carrier Preselect	1
Other voice service	2
Other services	25
Leased lines	4
Internet access	18
Other	3
Other network	1
Total number of registrations	52

MARKET ANALYSES

The market analyses allow determining the obligations that are imposed on the electronic communications markets in order to guarantee fair competition between the players present; consequently, they constitute a key element of the applicable regulatory framework. They are based on the recommendations by the European Commission to determine the markets that are susceptible to ex ante regulation. Since the introduction of the 2002 regulatory framework the European Commission has published two recommendations: the first dates from 11 February 2003 containing a list of 18 markets and the second from 17 December 2007 with a list of 7 markets.⁶ In the table below the relevant markets of both recommendations are mentioned and their concordance is indicated in order to be able to easily determine which analysis of the second or third round follows which analysis; this is crucial as the obligations on a market may be removed or modified when a new analysis is completed successfully.

Relevant markets from the 2003 Recommendation	Relevant markets from the 2007 Recommendation
1. Access to the public telephone network at a fixed location for residential customers	1. Access to the public telephone network at a fixed location for residential and non-residential customers
2. Access to the public telephone network at a fixed location for non-residential customers	
3. Publicly available local and/or national telephone services provided at a fixed location for residential customers	
4. Publicly available international telephone services provided at a fixed location for residential customers	
5. Publicly available local and/or national telephone services provided at a fixed location for non-residential customers	
6. Publicly available international telephone services provided at a fixed location for non-residential customers	
7. The minimum set of leased lines	
8. Call origination on the public telephone network provided at a fixed location	2. Call origination on the public telephone network provided at a fixed location
9. Call termination on individual public telephone networks provided at a fixed location	3. Call termination on individual public telephone networks provided at a fixed location
10. Transit services in the fixed public telephone network	
11. Wholesale unbundled access (including shared access) to metallic loops and subloops for the purpose of providing broadband and voice services.	4. Wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location
12. Wholesale broadband services	5. Wholesale broadband services
13. Wholesale terminating segments of leased lines.	6. Wholesale terminating segments of leased lines..
14. Wholesale trunk segments of leased lines.	
15. Access and call origination on public mobile telephone networks	
16. Voice call termination on individual mobile networks	7. Voice call termination on individual mobile networks
17. The wholesale national market for international roaming on public mobile networks	
18. Broadcasting transmission services, to deliver broadcast content to end users	

6. IT IS CUSTOMARY TO INDICATE THE MARKETS BY THE NUMBER THEY WERE GIVEN IN THE RECOMMENDATIONS; BELOW THE MARKET NUMBERS OF THE FIRST RECOMMENDATION RECEIVE THE EXTENSION "(03)" AND THOSE FROM THE SECOND RECOMMENDATION "(07)".

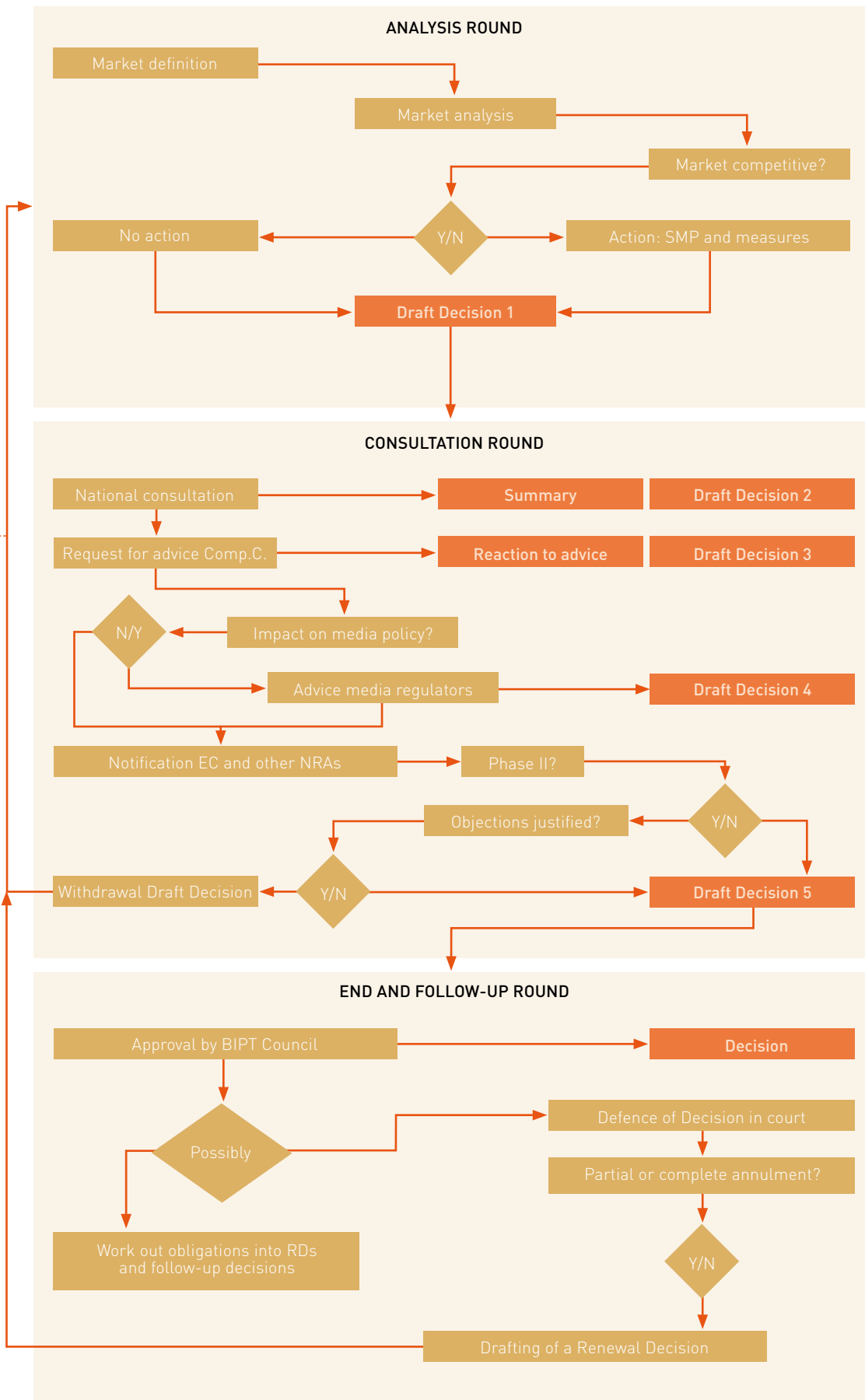
It should be noted that even when a market has been removed from the European list, BIPT may decide to continue to regulate that market following a thorough market analysis showing that the competition in Belgium still requires regulation and provided that the market concerned meets the three criteria test described in the 2003 Recommendation cumulatively. As a reminder, those three criteria are:

- + entry barriers and the development of competition, namely structural, legal or regulatory barriers;
- + the dynamic aspects, in other words, the question whether the market shows signs that it will, in time, evolve in the direction of effective competition without a need for ex ante regulation;
- + the relative efficiency of competition law.

The European Commission declared that this test did not need to be carried out for the markets listed in the recommendation unless the national regulatory authority wishes to prove that a market from the recommendation is insufficiently competitive in order to go without ex ante regulation.

In general the market analysis procedure entails two rounds: the analysis and the consultation. The analysis round includes the market definition, the market analysis, the determination of companies with a significant market power (SMP) and the definition of obligations. The consultation round consists of submitting for consultation the draft decision drawn up during the analysis to, consecutively, the sector, the Competition Council, in some cases the media regulators, the European Commission and also the other national regulators.

Below you will find a diagram of the steps to be followed by BIPT in the course of the market analysis procedure. It should be noted that justice has evolved compared to the previous years. In 2009 the Brussels Court of Appeal partially or completely annulled BIPT decisions and encouraged the Institute to adopt renewal decision with retroactive effect in conformity with the power it is entrusted with by virtue of the Act of 13 June 2005, amended by the Act of 18 May 2009. These renewal decisions with retroactive effect are intended to fill the legal gap that would arise when decisions of the Institute are annulled *ex tunc* and it is consequently considered that they never existed.



The second round of the market analyses was planned in 2009. Due to circumstances that was not possible: the partial annulment of the Decision of 10 January 2008 by the Brussels Court of Appeal and certain developments (triple play) on the markets 4(07) and 5(07) pushed the Institute to once more appeal to the consultant Analysys Mason who assisted during the first round. Much more time was needed to successfully complete the new analysis than planned.

The table below gives an overview of the progress made as regards the market definition and the obligations imposed. The market analyses completed before 2008 are marked in grey.

State of progress of the market analyses (situation on 31 December 2009)											
Basic analysis	Round	Date of the decision	Next analysis	Round	Phase						Note
					Analysis round	National consultation	Opinion Comp. Council	Opinion media regulators	European notification	Conclusion	
Market 1(03)	1	19-06-2006	Market 1(07)	2							
Market 2(03)	1	19-06-2006									
Market 3(03)	1	11-08-2006									3rd round
Market 3(03)	2	06-11-2008	Market 3(03)	3							
Market 4(03)	1	11-08-2006									Competitive
Market 5(03)	1	11-08-2006									3rd round
Market 5(03)	2	06-11-2008	Market 5(03)	3							
Market 6(03)	1	11-08-2006									Competitive
Market 7(03)	1	17-01-2007	Market 7(03)	2							
Market 8(03)	1	11-08-2006	Market 2(07)	2							
Market 9(03)	1	11-08-2006	Market 3(07)	2							
Market 10(03)	1	11-08-2006	Market 10(03)	2							
Market 11(03)	1	10-01-2008	Market 4(07)	2							
Market 12(03)	1	10-01-2008	Market 5(07)	2							
Market 13(03)	1	17-01-2007	Market 6(07)	2							
Market 14(03)	1	17-01-2007									Competitive
Market 15(03)	1	02-05-2007									Competitive
Market 16(03)	1	11-08-2006	Market 7(07)	2							
			Broadcasting market	2							

In addition to the market analyses the Institute had to take a number of renewal decisions in 2009 to fill the legal gap following the partial or complete annulment by the Brussels Court of Appeal of several analyses regarding markets 11(03) and 12(03), 7(03), 13(03) and 14(03), 16(03).

The table below gives the state of affairs of the new market analysis decisions.

State of progress of the renewal decisions (situation on 31 December 2009)											
Basic analysis	Round	Date of the decision	Judgment	Round	Phase						Deadline
					Analysis round	National consultation	Opinion Comp. Council	Opinion media regulators	European notification	Conclusion	
Market 11(03)	1	10-01-2008	2008/AR/787	2	██████████	██████████	██████████	██████████	██████████	██████████	02/09/2009
Market 12(03)	1	10-01-2008	2008/AR/787	2	██████████	██████████	██████████	██████████	██████████	██████████	02/09/2009
Market 7(03)	1	17-01-2007	2007/AR/930	2	██████████						
Market 13(03)	1	17-01-2007	2007/AR/930	2	██████████						
Market 14(03)	1	17-01-2007	2007/AR/930	2	██████████						
Market 16(03)	1	11-08-2006	2006/AR/2332-2628-2629	2	██████████						

REGULATION OF THE OPERATOR WITH SIGNIFICANT MARKET POWER AS REGARDS ACCESS AND FIXED TELEPHONY

FAIR CONDITIONS

After the confirmation of its status as an SMP operator in 2006 Belgacom remained subject to a certain regulation regarding access to its infrastructures, and also for certain wholesale and retail services.

As such Belgacom is under the obligation to propose reference offers for interconnection (BRIO), local loop unbundling (BRUO) and bitstream access (BROBA). These reference offers are designed to establish the tariffs and conditions under which Belgacom opens up its network to alternative operators.

BRIO

As regards fixed telephony, BRIO lists the conditions under which Belgacom makes its interconnection network accessible to other operators (the interconnection network being the part of the network beyond the “local loop”).

However, the BRIO is much more than a mere table of tariffs for the conveyance of calls on sections of networks. This document also includes quality standards, technical specifications regarding the services offered or the existing infrastructure, ordering procedures, delivery times, etc. The BRIO can be consulted on Belgacom’s website.

Any change made by Belgacom to the BRIO offer has to be communicated to BIPT before its publication. The latter then exercises its right to demand changes, possibly even before the publication.

Furthermore, BIPT is often compelled to intervene to guarantee the development of fair competition on the market. The decisions of BIPT are preceded by a consultation of the companies concerned. The public consultations are published on the Institute’s website.

However, in 2009 BIPT had to take provisional measures to postpone the introduction of a “service fee” for the VAS calls (*value added services*) from a mobile network. By doing so BIPT wanted to give the alternative operators more time to adapt their computer systems and to distinguish between the VAS calls according to their fixed or mobile origin. These provisional measures ended on 2 December as BIPT decided not to extend them after the initial two-month period.

BIPT also intervenes when an operator is about to lose his interconnection with Belgacom (due to failure of payment of his interconnection invoices). In such cases BIPT ensures that the decision to stop the interconnection is not taken unjustly.

As BIPT no longer has to organise negotiations regarding and the publication of a new BRIO version each year, it can put its resources to use for the future regulation of IP interconnection, resulting from the introduction of the NGN technologies (next generation network)⁷ in the core network. With reference to the migration to IP interconnection (Internet Protocol) a specific working group was created between the operators and the Institute to study the different aspects of that migration such as the interfaces and the protocols, the consequences of a change to the network architecture (e.g. as regards the number and the location of the interconnection points), the definition of the interconnection products (e.g. the interconnection on the transport and service level, the continuity of the development of the existing wholesale products), the actual organisation of the migration (e.g. planning, processes, tests). That working group gathered on a regular basis in 2009.

The table below lists the consultations launched in 2009 concerning BRIO and/or interconnection as well as the sector’s response rate.

Consultations in 2009	Publication date	Number of respondents
Public consultation of 5 November 2009 regarding the necessity to extend the provisional measures to postpone the introduction of a “service fee” for the VAS calls from a mobile network	5/11/2009	13

The table also mentions the decisions taken in 2009 in this matter and indicates any legal appeals.

Decisions in 2009	Adoption date	Challenged in court
Decision of the BIPT Council of 29 September 2009 aiming at imposing provisional measures to postpone the introduction of a “service fee” for the VAS calls from a mobile network	29/09/2009	Yes
Public consultation of the BIPT Council of 24 November 2009 regarding the necessity to extend the provisional measures to postpone the introduction of a “service fee” for the VAS calls from a mobile network	24/11/2009	No

BRUO, BROBA AND WBA (WHOLESALE BROADBAND ACCESS)

The BRUO, BROBA and WBA offers are aimed at providing a wholesale broadband offer. The BRUO offer grants alternative operators fulltime access to all or part of the transmission capacity of the final wire, which connects the subscriber to the network. Through BROBA the alternative operator leases capacity from Belgacom on the connection equipment (DSLAM: *digital subscriber line access multiplexer*) as well as ATM (*asynchronous transfer mode*) transmission capacity in Belgacom’s ATM network to access it and interconnection with this network. In the new WBA offer the alternative operator also leases capacity but it is provided through Belgacom’s Ethernet network and VDSL2 connection equipment. These offers are particularly important with regard to Internet access as they enable operators to present an alternative offer without having any customer access infrastructure (BRUO) and without having the same high-density infrastructure as Belgacom (BROBA & WBA). By doing so they contribute to boosting competition and diversifying the offer both on the Internet access market and the market of Virtual Private Networks.

7. THE CONCEPT OF AN NGN NETWORK IS DETERMINED BY ITS ARCHITECTURE THAT IS BASED ON A TRANSFER PLAN IN PACKAGE MODE AND CAN REPLACE THE SWITCHED TELEPHONE NETWORK AND THE OTHER TRADITIONAL NETWORKS. THE OPERATOR HAS A UNIQUE NETWORK CORE ALLOWING HIM TO PROVIDE SERVICES (VOICE, DATA, AUDIOVISUAL CONTENT ETC.) TO THE SUBSCRIBERS BY MEANS OF DIFFERENT FIXED AND MOBILE ACCESS TECHNOLOGIES.

Tuning of the reference offers to the network evolutions

The Decision of 10 January 2008 regarding the market analysis obliged Belgacom to also make VDSL2 available based on a bitstream offer. In August 2008, Belgacom sent a draft offer to the Institute. Early 2009 the Institute submitted a number of propositions for consultation to the sector in order to adapt the offer's qualitative and the quantitative aspects. BIPT adopted a decision on 30 September 2009 on the qualitative aspects. The unique fees were also determined but as regards the monthly tariffs a different draft decision was formulated in 2010.

On 24 July 2009 Belgacom sent BIPT an addendum to the *bitstream reference offer* (BROBA) to introduce Ethernet as a transport technology in its core network for the existing BROBA products (ADSL, ADSL2+, Re ADSL, SDSL). As from March 2010 the alternative operators will be able to migrate from ATM to Ethernet. As far as the new WBA VDSL2 reference offer also uses Ethernet as a transport technology in the core network, there are similarities between the addendum and what already exists in the WBA offer. A consultation on this matter was launched on 21 October 2009. Based on the answers received and following a number of business meetings a final decision will be published as soon as possible.

At the end of November 2009 Belgacom created a discussion group to study the impact of the exchanges' closure on the regulated products; the discussion should result in the modification of the reference offer. These modifications will then be submitted to BIPT that will analyse their relevance and will take the appropriate decisions subsequently.

Optimising the operational processes

Following repeated complaints from the sector about the poor quality of the service provided by Belgacom to the alternative operators, BIPT asked a team of external analysts to carry out a thorough audit of all operational processes that are used for the provision of services to the wholesale and retail departments. In April 2009 all telecommunications sector players were invited to participate in the customer satisfaction survey to identify the problem areas for the operators. Their answers were analysed in June 2009 after which the audit team tackled the operational processes and formulated conclusions that were sent to BIPT and, in second place to Belgacom. Under the supervision of the audit team the company was able to suggest written corrections and additions to the report that could not be finished in 2009. BIPT should adopt a decision including a summary of the report but also remedies to face the irregularities found.

It should be noted that since the report was distributed the first time in August 2009 negotiations were conducted with Belgacom to find and apply the best solution to each of the problems raised. Anyhow, the KPIs (*Key Performance Indicators*), which according to the alternative operators do not reflect Belgacom's performance correctly, are in dire need of adaptation. Belgacom believes that the KPIs do reflect the reality but is prepared to cooperate with BIPT to improve or develop them in order for the alternative operators to have a better view of the operational processes. The KPIs that will be completed, will be discussed in a draft decision that will be submitted to the sector.

Before the audit on the operational processes was performed, Belgacom had launched two operational projects, entitled "*Certified Technician*" and "*Open Calendar*" intended on the one hand to provide a better access to the Belgacom network for the alternative operators' technicians who would hold a certificate following an exam and on the other hand to develop a new system for orders and previsions that would provide the alternative operators more transparency. The software for those projects should be delivered in October 2010 ("*Certified Technician*") and March 2011 ("*Open Calendar*"). BIPT will ensure that those deadlines are observed.

Overview

Consultations	Date	Number of respondents
WBA VDSL2 qualitative aspects	28/01/2009	5
BROBA profiles and ADSL2+ <i>Deployment Curve</i>	11/02/2009	3
WBA VDSL2 <i>Rental Fee</i>	11/02/2009	4
BRUO <i>Rental Fee</i>	11/02/2009	3
WBA VDSL2 <i>One Time Fees</i>	02/09/2009	3
BROBA profiles and ADSL2+ <i>Deployment Curve</i>	30/09/2009	5
BROBA & WBA Ethernet transport costs	14/10/2009	5
WBA VDSL2 modems	21/10/2009	9
BROBA Ethernet	21/10/2009	4
Renewal decision Blocks & Tie Cables tariffs	2/12/2009	3

Decisions	Adoption date	Challenged in court
WBA VDSL2 – qualitative aspects	30/09/2009	
WBA VDSL2 – <i>One Time Fees</i>	02/12/2009	

BROADBAND

Strategic options to encourage the development of the broadband market

Early April 2009 BIPT launched a sector consultation at the request of the Minister of Enterprise and Simplification and presented a report on the state of affairs regarding broadband in Belgium and the ways to stimulate its development; that report was developed at the request of BIPT by the consultants of Analysys Mason in cooperation with the international law firm Hogan&Hartson.

The analysis reveals that the growth of the Belgian broadband market is slowing down and that the competition, the dynamic and the price levels are insufficient. The document suggests a number of practical actions that could be taken to improve the conditions for broadband access for the consumer.

Those intervention fields are listed in the table below:

Main issues	Intervention fields	Practical actions
Deceleration of the growth of broadband penetration	1. Stimulate the demand for broadband Internet at retail level	1a. Encourage an increase of the pc penetration rate 1b. Focus on the lack of interest shown in Internet by certain population categories
A concentrated market leads to a lack of intensity of competition High retail prices	2. Stimulate market access by new players/empower the existing alternative operators in order to increase competition and to lower the prices	2a. Stimulate the consolidation of the cable network in Wallonia 2b. Inform the consumer about his actual needs as regards broadband services 2c. Ensure free migration in the operator's retail broadband spectrum when the operator changes the features (speed, download limit, etc.) of the offer to which the user was initially subscribed 2d. Study the migration process and simplify it for an end-user who wishes to switch to another broadband provider

The wholesale offers do not allow the alternative DSL operators to provide multiple play offers (Internet + TV) to the end-user at national level	3. Ensure the development of competition on the market for multiple play offers	3a. Impose the provision of a wholesale offer at national level based on which it is possible to provide TV services
Difficulties with the operational terms for the provision of its wholesale offers by Belgacom Operational difficulties and troubles regarding the service quality of Belgacom's wholesale offers The bitstream offers constitute the key to the development of the alternative operators	4. Improve the broadband wholesale offers (service quality, operational terms, availability timing, prices)	4a. Impose cost orientation for all of Belgacom's wholesale broadband offers 4b. Improve the operational terms for Belgacom's bitstream offers 4c. Carry out an audit regarding the provision of wholesale services by Belgacom to the alternative DSL operators 4d. Sharpen the non-discrimination obligation imposed on Belgacom, based on the principle of equal input
Difficulties regarding the street cabinets and the backhaul for the local loop unbundling	5. Boost the development of backhaul network infrastructure and updates of street cabinets that do not discourage the alternative operators from investing	5a. Encourage investments in local backhaul networks by local authorities 5b. Enhance the regulation of the wholesale backhaul offers of Belgacom 5c. Ascertain that the update of the street cabinets by Belgacom does not discourage the other operators from investing
Delay in taking decision by the regulatory and monitoring bodies All of BIPT's decisions are systematically attacked by Belgacom	6. Enhance the power and efficiency of the regulatory and competition authorities	6a. Extend BIPT's powers 6b. Shorten the time for intervention and decision-making by the Competition Council 6c. Enhance the cooperation between BIPT and the media regulators
Lack of predictability of the future for the development of the network and the regulation	7. Anticipate the regulatory principles for the regulation of FTTH access	7a. Demand transparency from the operators regarding the broadband network with reference to their projects for the FTTH roll-out 7b. Demand transparency regarding the key principles of the FTTH regulation
Lack of coordination and harmonisation compared to the rights of way and the sharing of infrastructure	8. Harmonise the access and the sharing of passive infrastructure	8a. Harmonise the rights of way in the public domain 8b. Facilitate the sharing of infrastructure

Policy measures to stimulate Fibre To The Home

To stimulate the development of “*Fibre To The Home*” the Institute formulated an opinion for the minister in which it analyses the terms for fibre optics roll-out and the difficulties to be faced and in which it suggests a number of actions that BIPT, the public authorities and others might undertake to encourage the spread of optic fibre. Those actions can be summarised as follows:

- + draw up guidelines for public-private cooperations;
- + harmonise the rights of way in the public domain;
- + stimulate infrastructure sharing:
 - inventory and publication of the available passive infrastructure;
 - roll-out of new passive infrastructure;
 - concrete cable duct between the road and the footpath;
 - development of guidelines to impose symmetric obligations for the access to the existing passive structure.

- + measures to limit the last-mile roll-out costs:
 - limit the last-mile costs aboveground or through microtrenching;
 - simplify the urban development rules;
 - lower taxes for the placing of optic fibres;
 - moratorium regarding the fees for the optical fibre networks.
- + stimulating the sharing of interior cabling:
 - obligation to install cable ducts in new buildings;
 - directives regarding the installation of optical fibre in existing buildings;
 - directives regarding the provision of access to interior cabling.
- + regulatory measures:
 - imposition of transparency for the FTTH plans;
 - clarification of the FTTH regulation.

The note was submitted to the sector for consultation. The reactions to the consultation and BIPT's opinion that was consequently revised will serve as a basis to all activities of the group "Ultrafast Belgium", created by the Minister of Enterprise and Simplification.

SEPARATE ACCOUNTING, MODELLING AND COST ACCOUNTING SYSTEM

BIPT has the task of verifying whether Belgacom's wholesale tariffs indeed reflect the costs that the SMP operator has to bear, while preserving a return on investment. To accomplish this task complex technical-economic models are needed, as well as reliable financial and non-financial data.

Setting interconnection tariffs in particular can be done by taking either a top-down or a bottom-up approach. In the first case, a cost model is used that is put together on the basis of an operator's accounts and that spreads the relevant costs across the different elements in the network and among the services that use these network elements. The bottom-up model on the other hand is put together on the basis of the volumes of traffic to be routed by an operator, whereby these volumes determine the optimum dimensions of the different layers in the network.

In principle, the bottom-up model better reflects the situation of an efficient operator. Depending on the case BIPT uses a top-down and/or a bottom-up model.

In order to verify whether the costs have been correctly allocated and to avoid competition-distorting cross-subsidies between the different services, the Institute monitors whether Belgacom meets certain requirements regarding separate accounts and each year it drafts a decision regarding the conformity of Belgacom's cost accounting system.

As regards the accounting separation BIPT adopted the decisions on the publication of a declaration of conformity for the separated accounts of Belgacom for the years 2006 and 2007 on 12 November 2009. A public consultation was launched regarding the terms for the implementation of the separate accounting obligation in accordance with Article 60 of the Act of 13 June 2005. During the next financial year a decision will be adopted regarding this matter. At the same time a public consultation will be organised in the framework of the adoption of a declaration of conformity regarding the separated accounts of Belgacom for the year 2008.

During 2009 BIPT, with the assistance of a specialised consultant, reviewed the method for the calculation of the cost of capital of the operators who are regulated. In 2010 a public consultation will be held to allow the operators concerned to give their opinion on this new method.

The table below lists the consultations ad hoc launched in 2009 as well as the sector's response rate.

Consultations in 2009	Publication date	Number of respondents
Consultation of 1 July 2009 regarding the separated accounts of Belgacom for the year 2006	01/07/2009	2
Consultation of 1 July 2009 regarding the separated accounts of Belgacom for the year 2007	01/07/2009	2
Consultation of 29 June 2009 on the modalities of the accounting separation obligation that SMP operators must respect	29/06/2009	3

The table below mentions the decisions taken in 2009 in this matter and indicates any legal appeals.

Decisions in 2009	Adoption date	Challenged in court
Decision of 28 January 2009 regarding the conformity of Belgacom's cost accounting system in 2007	28/01/2009	No
Decision of 17 June 2009 regarding the publication of a declaration of conformity for the separated accounts of Belgacom for the year 2005	17/06/2009	No
Decision of 12 November 2009 regarding the publication of a declaration of conformity for the separated accounts of Belgacom for the year 2006	12/11/2009	No
Decision of 12 November 2009 regarding the publication of a declaration of conformity for the separated accounts of Belgacom for the year 2007	12/11/2009	No

MONITORING OF THE RETAIL TARIFFS

Fixed telephony

On 11 August 2006, BIPT had taken a decision regarding the markets of call termination on each mobile network, in which it imposed on the mobile operators a gradual decrease of their terminating rates (decision on "market 16"). At the same date BIPT had also adopted a decision regarding the retail markets of publicly available telephone services at a fixed location (decision on "fixed telephony"), in which it imposed on Belgacom the obligation related to the bans of Article 64 of the Act of 13 June 2005, one of which is the ban on applying excessive rates.

By means of these two decisions BIPT aimed for residential and business customers to get maximum profit in terms of price by passing on the considerable cuts of the call termination rates on the mobile networks in the retail tariffs. As Belgacom had not completely passed on the cuts of the call termination rates for mobile calls in its retail tariffs, BIPT imposed a € 3,090,000 administrative fine in 2008. In 2009 no new cuts of mobile termination rates took place. Therefore BIPT did not act in that framework.

Based on a motivated complaint or at its own initiative the Institute carries out a preliminary analysis to determine whether there is a price squeeze in Belgacom's tariff offers. In 2009 such an analysis was carried out.

Leased lines

As already known, a leased line is a service that consists in providing a permanent transmission capacity between two points. This means that this capacity is completely allocated to one customer, who pays the operator a fixed monthly charge.

WHOLESALE LEASED LINES

Belgacom commercialises leased lines both on the retail market and the wholesale market. As regards the Ethernet wholesale leased lines, the tariff obligation consists in applying reasonable prices. In 2009 the Institute continued the analysis of the Ethernet leased lines wholesale tariffs and came to the conclusion that the initial tariffs proposed by Belgacom lead to a price squeeze. During that analysis Belgacom

submitted a new tariff proposal that does not cause a price squeeze compared to the Ethernet leased lines at retail level as long as no other discount is given than the one related to the duration applied in the analysis.

Consultations in 2009	Publication date	Number of respondents
Consultation on the draft decision regarding the price squeeze test for Ethernet BROTSoLL leased lines	20/02/2009	3

Decisions in 2009	Adoption date	Challenged in court
Decision of 8 April 2009 regarding the price squeeze test for the Ethernet leased lines	8/04/2009	No

The decision to apply the principles of the decision regarding the KPIs on the wholesale market for terminating segments was adopted on 18 March 2009 following all the usual consultations.

To solve the interpretation problems that arose between the reference offer for the terminating segments of leased lines (BROTSoLL) and the corresponding implementation decisions, a number of meetings with the sector were organised to determine a series of interpretation rules that, after consultation, were cast into a communication of 6 May 2009. Belgacom introduced an amendment in its reference offer's tariff annex. This was approved on 17 June 2009.

During the consultation regarding the above-mentioned price squeeze test the respondents made it clear that they think that there is a price squeeze between the tariff for the BROTSoLL Ethernet leased lines and Belgacom's Explore retail service. Belgacom argued that since the access to the Explore services does not involve leased lines, it was not necessary to compare the prices of the leased lines reference offer with the Explore prices; following a survey, the Institute concurred with that point of view.

BIPT still wishes, however, to carry out an analysis of that market segment and asked the operators on the market to supply all necessary data thereto. It is indeed important to guarantee that the operators on the market have access to the products and services that allow them to develop an offer equal to Belgacom's. We will get back on that in the next annual report.

On 15 October 2009 the Brussels Court of Appeal annulled the market analysis of the leased lines cluster (markets 7, 13 and 14). The Court motivated its decision by stating that the three community media regulators should have been consulted. That approach finds its legal basis in Article 3, 4^o, of the Framework Directive that requests the Member States to consult the different regulatory institutions and to cooperate with them. However, the Court recognised that the cooperation agreement between the Institute and the three regulators does not concern the leased lines services. The Institute is consequently drawing up a renewal decision.

Decisions in 2009	Publication date	Challenged in court
Decision of 18 March 2009 regarding KPI for BROTSoLL	16/05/2009	No
Decision of 17 June 2009 regarding a tariff amendment in the BROTSoLL offer	02/07/2008	No

Consultations in 2009	Publication date	Number of respondents
Draft communication regarding the implementation of BROTSoLL	05/03/2009	3

REGULATION OF THE OPERATORS WITH SIGNIFICANT POWER IN THE MOBILE TELEPHONY MARKET

TERMINATION RATES

The judgment of 30 June 2009 by the Brussels Court of Appeal annulled the modifications of the MTR rates (mobile termination rate) for the years 2006 and 2007 as laid down in the BIPT Decision of 11 August 2006 regarding market 16 for voice call termination on individual mobile networks.

The new BULRIC cost model ("*Bottom-Up Long Run Incremental Cost*"), that was developed by the company Analysys Mason Ltd for BIPT, is finished. A new draft decision regarding the regulation of market 7 for voice call termination on individual mobile networks that regards both the future regulation of the MTR call termination rates in Belgium during the new market analysis period (2010-2013) and the other aspects relating to market 7, was developed by BIPT's Department for economic analysis.

COOPERATION IN THE FIELD OF ECONOMIC REGULATION

COOPERATION OF THE SERVICE WITH THE BELGIAN COMPETITION AUTHORITIES

The Act of 17 January 2003 on the appeals and the settling of lawsuits following the Act of 17 January 2003 on the status of the regulator of the Belgian postal and telecommunications sectors has entrusted the Competition Council with the task of settling certain disputes between operators, both in the field of electronic communications and the postal sector. To look into these disputes the Institute appoints a representative to assist the officials of the competition authority in their tasks.

Furthermore, the Act of 13 June 2005 on electronic communications provides for the contribution by the Competition Council in drawing up decisions the Institute has to take in the context of the market analyses, in the form of an opinion that is binding as regards the imposition of certain remedies.

In 2009 the Competition Council issued advice on the draft decisions it was sent on the following dates:

- + 22 July 2009: draft decision regarding the renewal of the Decision of 10 January 2008 regarding the markets 11/03 and 12/03;
- + 26 October 2009: draft decision regarding market 1/07.

COOPERATION WITH THE COMMUNITY REGULATORS

The judgments of the Court of Arbitration of 14 July 2004 and of 13 July 2005 confirmed that cooperation between the Federal State and the Communities is necessary in order to manage certain parts of the electronic communications domain taken into account the ever-growing technological convergence of telecommunications and audiovisual services. The scope of these matters and the practical approach are determined in a cooperation agreement between the Federal Government and the Communities. This agreement concerns four regulatory bodies: BIPT, the VRM (Flemish media regulator), the CSA (high council for audiovisual matters) and the Medienrat.

The cooperation agreement stipulates that the draft decisions of one of those four regulatory authorities relating to infrastructure that can be used for both electronic communications and broadcast transmission, have to be sent to the other three regulatory authorities and then have to follow a procedure, consisting of four different phases:

- + phase 1: a preliminary evaluation that takes maximum 14 days;
- + phase 2: a second evaluation that takes maximum 7 days and is required in case comments were made during the preliminary evaluation;
- + phase 3: a referral to the CRC, a body composed of representatives of the four regulatory authorities, at the request of one of the parties involved;
- + phase 4: a treatment by the ICTRT, an interministerial committee that can only intervene if the CRC has not found a solution after 75 days.

In 2009, 13 draft decisions were submitted in the context of the cooperation agreement. Those 13 draft decisions all came from BIPT. In most cases the procedure did not go beyond phase 1: only in one case phase 2 was reached.

Draft decision	Date of submission	Phase
1. Decision of 26 March 2009 regarding the introduction of UMTS in the 880-916 MHz and 926-960 MHz frequency bands	30 January 2009	1
1+. Decision of 26 March 2009 regarding the introduction of UMTS in the 880-916 MHz and 926-960 MHz frequency bands	3 March 2009	2
2. Draft decision regarding WBA VDSL2	28 April 2009	1
3. Decision of 10 June 2009 on the extension of the temporary authorisation granted to TELENOR MOBILE AVIATION AS for the use of the frequency spectrum allocated to mobile telephony in Europe	11 May 2009	1
3. Draft decision regarding the access to the GSM-R network	25 May 2009	1
4. Decision of the Council concerning the granting to AEG Belgium S.A. of an authorisation for the operation of a public radio communications network with shared facilities according to the TETRA standard	12 June 2009	1
5. Decision concerning the imposition of a deadline to KPN Group Belgium to put an end to the non-compliance with the obligations of BASE regarding 3G service delivery	1 July 2009	1
6. Draft decision with retroactive effect correcting the market analysis decision of 10 January 2008 regarding the broadband access markets	14 July 2009	1
7. Draft decision regarding WBA VDSL2	11 September 2009	1
8. Decision of 12 November 2009 regarding the access to the 69.950MHz frequency for radio amateurs.	20 October 2009	1
9. Draft decision regarding WBA VDSL2 <i>One Time Fees</i>	10 November 2009	1
10. Draft decision withdrawing the Decision of 25 November 2008 on the tacit prolongation of the licence of BASE	20 November 2009	1
11. Draft decision regarding the user rights of MAC Telecom and Clearwire for the 3410-3500/3510-3600 MHz frequency bands for radio access	20 November 2009	1
12. Decision of 16 December 2009 on the extension of the temporary authorisation granted to Onair Switzerland SARL for the use of the frequency spectrum allocated to mobile telephony in Europe	20 November 2009	1

Apart from these formal forms of cooperation BIPT also cooperates with the community regulators and the competition authorities at an informal level by inviting them for business meetings and trainings organised for the BIPT staff such as the workshops “Carrier Ethernet” and “IMS” (*IP multimedia subsystem*).

COOPERATION WITH THE EUROPEAN COMMISSION

Article 7 of the Framework Directive lays down that the NRAs (national regulatory authorities) are to notify their market analyses and the obligations they intend to impose on the operators with a significant market power on the markets analysed, to the European Commission and the NRA’s of the other Member States. According to that same article the European Commission has a right of veto regarding the definition of the relevant markets as well as for the identification of operators with a significant market power on those markets and it may advise on the obligations imposed by the NRAs in order to solve the competition problems on the markets analysed. Since the publication of the Recommendation of 15 October 2008 regarding notifications, deadlines and consultations as intended in Article 7 of the Directive 2002/21/EC there is now a possibility to appeal to a “concise” procedure in a number of well-defined cases. BIPT took this opportunity once.

In 2009, BIPT notified two draft decisions. The Commission commented on one of those.

Code	Draft decision	Remark/Comment by the EC
BE/2009/0882	Motivate and specify KPIs for market 13	Concise procedure No comment
BE/2009/0949-0950	Renewal of the decision of 10 January 2008 regarding the markets 11/03 and 12/03	The European Commission commented on the high tariffs in Belgium and the possible connection with the lack of success of unbundling and on the fact that optical fibre is not included in the market definition.

MONITORING OPERATORS' AND SERVICE PROVIDERS' ACTIVITIES

A special cell is deployed to continuously see to it that the operators and service providers abide by the different legal provisions.

That department either acts of its own accord or on the basis of complaints from operators or service providers, or even at the request of other departments within the Institute by carrying out investigations on site when they suspect violations in the cases that they handle.

It is thanks to its actions that the Institute is able to:

- + monitor compliance with universal service obligations;
- + safeguard fair competition;
- + check compliance with the common rules imposed on the provision of services and the installation of infrastructure.

In their capacity of criminal investigation officers, the officials of that cell are also authorised to track down and report all offences within the framework of telecommunications law. Very often, they work in collaboration with the police services and the public prosecutor's offices or the ancillary departments cooperating with the police services, taking action in order to:

- + curb fraud against operators, service providers and consumers, which tends to increase on a permanently evolving market;
- + monitor respect for the confidentiality of communication and the protection of privacy.

Based on experience acquired in the field, the department also contributes to the Institute's think tank on measures that need to be taken to achieve effective regulation of the market.

In the framework of the verification of the operators' obligations imposed through or by virtue of Title IV, Chapter III of the Act the Institute has intensified the contacts with the operators who did not give satisfactory answers to the questionnaires sent to them.

Corrections were needed, especially for the operators active on the niche markets.

Special attention was paid to the follow-up of the operators' obligations providing services intended for the end-user.

The **Monitoring Department** urged the operators to accelerate the conclusion of protocols with the Office of the Ombudsman as laid down in Article 136 of the Act of 13 June 2005; this involved 42 operators.

Most of the problems are caused by the ignorance of non-generalist operators active on niche markets who believe these obligations do not apply to them or who cannot give a satisfactory answer to certain questions.

At this moment, the main operators providing almost all of the electronic communications networks and services to the end-users by themselves, comply with the rules.

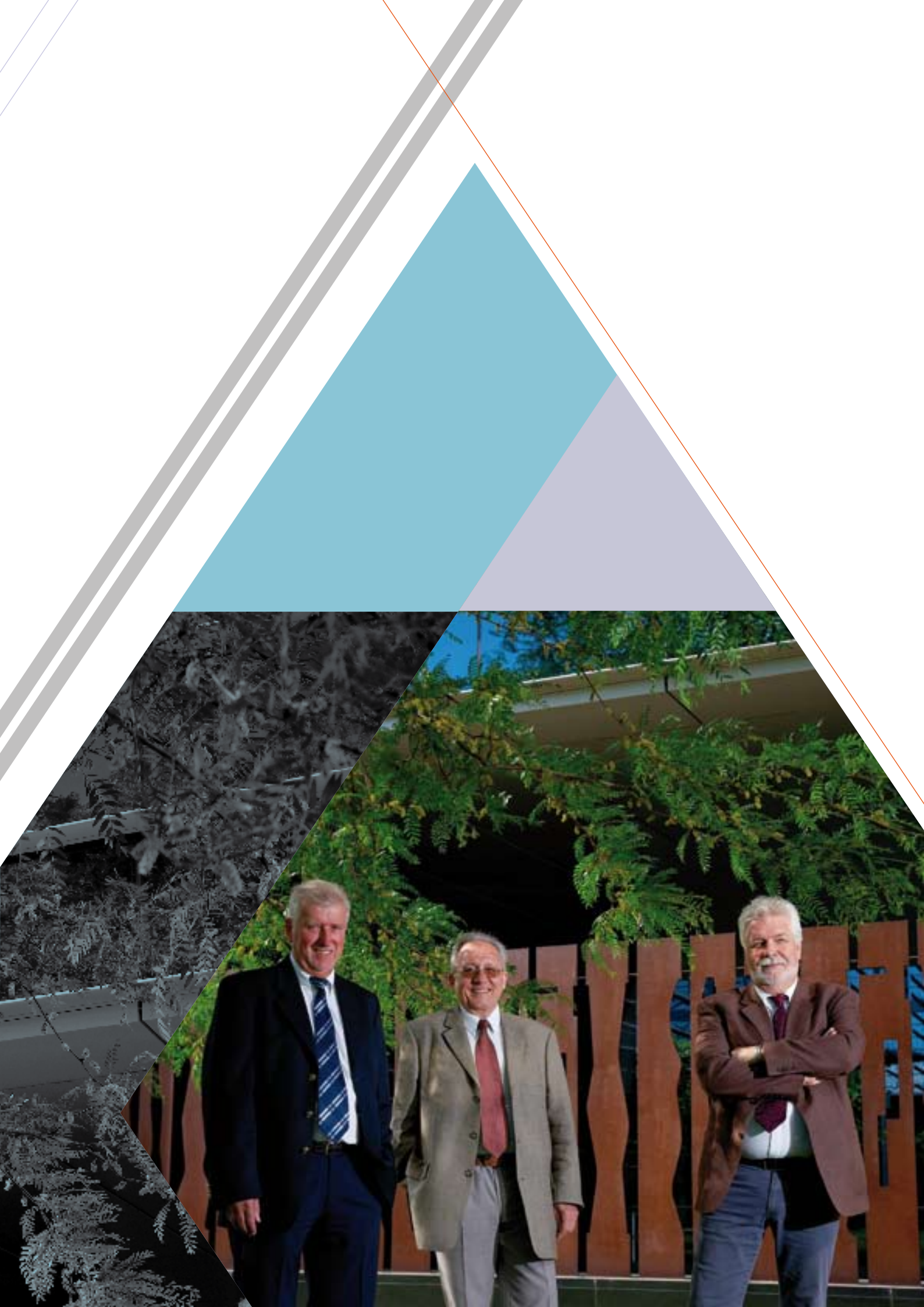
The tariff simulator that was introduced by the Institute to enable the consumer to determine which offer suits him best based on his user profile, was continuously monitored in order to verify the activation of all the different tariff plans by all operators involved.

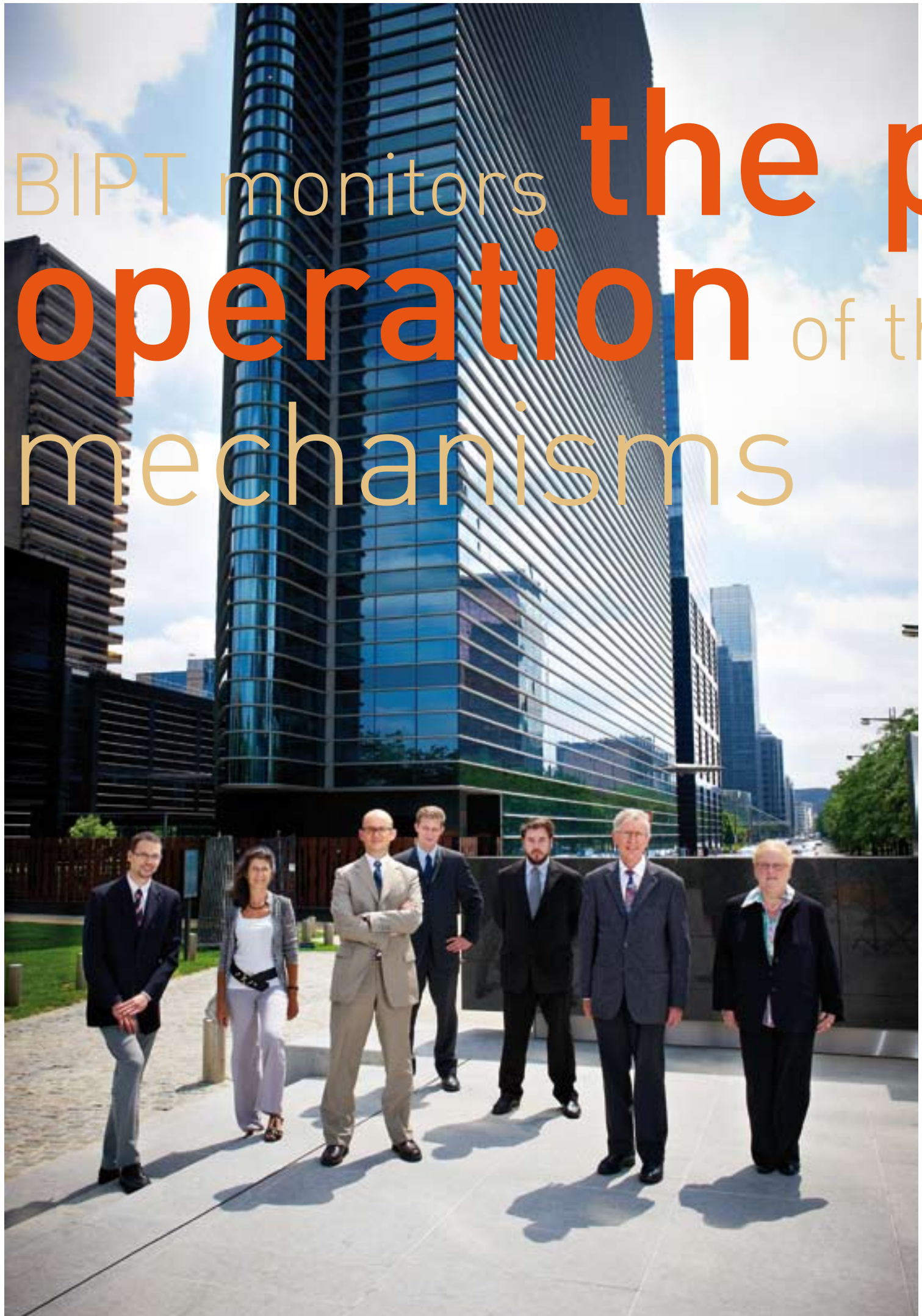
This cell's routine tasks henceforth also include the verification of the accuracy of the regular adaptation of the information provided by the operators on the tariffs applied as well as the concordance of these tariffs with those advertised in commercials and on the operators' websites. The comparison between what the operators introduce in the tariff simulator and what they publish electronically allows us to ensure (1) the coherence and the understanding of the tariff plan by the operators themselves and (2) the way in which they conform to the legal obligations regarding tariff communications. The tariff plans are sometimes so complex that these two verifications prove to be necessary. This verification of the offers introduced in the tariff simulator also enables us to return to a proactive and systematic monitoring method.

We are planning a substantial exchange of information with the Office of the Ombudsman for Telecommunications in order for the reactive verifications also to relate to what impacts users the most.

On the grounds of internal requests by the **Licensing** Cell and the **Consumer** Cell, 12 specific checks were carried out because an electronic communications service had not been declared or because the letters had remained unanswered.

Furthermore the cell also dealt with a case relating to a border conflict between operators as well as two fraud cases that were launched at the request of the prosecutor's office.





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User protection

Liberalising the market and introducing competition are aimed at bringing prices down on the one hand and diversifying the product offer and improving quality on the other hand. However, it must be seen to that no category of users is put at a disadvantage. This concern is expressed in European laws and regulations. BIPT monitors the proper operation of the protective mechanisms.

THE CONSULTATIVE COMMITTEE ON TELECOMMUNICATIONS

The Consultative Committee on Telecommunications is a forum on which all stakeholders of the sector have a seat. The Institute carries out the Committee's secretarial work, both at plenary level and in the various working groups. In these working groups the recommendations given by the Committee are prepared. Contrary to its involvement in other working groups, the Institute is in no way involved in the activities of the working group preparing the recommendations on the activities of the Institute, thus ensuring that the Committee can draw up its recommendations in full independence.

The Committee renders, either on its own initiative or at the request of the competent minister or of the Institute, recommendations on any matter relating to telecommunications. Furthermore, the Committee gives recommendations on the activities of the Institute, the general terms and model contracts of the electronic communications service providers and also on certain aspects of the universal service. In 2009 the Committee issued four recommendations. Otherwise all opinions issued by the Committee since 2006 can be consulted on and downloaded from the Committee's website (www.rct-cct.be).

THE ELECTRONIC COMMUNICATIONS UNIVERSAL SERVICE

The universal service principle means that in a market open to competition, all users should be guaranteed access to a minimum package of services of a given quality and at affordable prices. Without universal service obligations the operators would probably follow the logic of a market economy, namely drop the user segments with an insufficient rate of return from the shareholder's point of view. This short-term vision goes against the concept of wellbeing, which constitutes one of the goals strived after through the opening up of the market to the competition.

This package of services currently comprises:

- + access to a basic fixed public network (allowing among other things functional Internet access) and to a fixed telephony service;
- + a social element involving the provision of a social telephone tariff to certain categories of people;
- + the provision of public payphones;
- + the provision of a universal directory enquiry service;
- + the provision of a universal directory.

The Act of 13 June 2005 stipulates that the providers are designated for each element separately except as regards the social element – to which a separate method applies –, following an open procedure. In the case of the social element each operator is under the obligation to offer social tariffs; the fact that the end-user requests to be granted social tariffs may not be put forward as a reason for exclusion from one of the main advantages of the opening up of the markets, namely the possibility to choose one's operator freely. The disadvantage however is that each operator interprets the social tariff in his own way: because the Act stipulates that the discount is applied to the operators' "standard tariff", they can apply it to a part of their offer that is perhaps less relevant to the "social" end-user.

The Commission doubts, however, whether the Belgian legislation on the financing of the universal service complies with Articles 12 and 13 of Directive 2002/20/EC (Universal Service Directive). In that context and as the Royal Decree implementing Article 92 regarding the universal service financing mechanism had not been published, the Institute thought it appropriate to postpone the launch of these designating procedures.

The Act stipulates that Belgacom, however, continues to provide all elements of the universal service until 1 January of the year that will follow the designation by the King of the provider or the providers for each element of the universal service (except for the social element). That term may, however, be changed in the future, following the coming into force of the draft bill approved by the Council of Ministers of 17 December 2009.

The social element of the universal service consists of the provision by all operators of special tariff conditions to certain categories of beneficiaries. The social element system applies since the Act of 13 June 2005, and more in particular Article 74, came into effect. Both the financing of the social tariffs and the operational costs for the database of beneficiaries of social telephone tariffs are being challenged in court by the operators, which in time may represent a risk to the viability of the universal service social element which is especially critical in these times of crisis.

MONITORING OF UNIVERSAL SERVICE OBLIGATIONS

As regards universal service, the first mission of the Institute is to monitor the proper fulfilment by the universal service providers of their obligations. Given the transitional period regarding the provision of the universal service elements other than the social element, the monitoring of the execution of these elements only concerned Belgacom, the only relevant provider, in 2009.

The Institute also drew up the report on the universal service covering 2008. On the one hand that report presented the results of the monitoring activities carried out by the Institute to verify whether the provider correctly implements the universal services obligations. On the other hand it meets the obligation for the Institute laid down in Article 103, paragraph 2, of the Act of 13 June 2005 on electronic communications to report to the minister on possible adaptations of the universal service obligations.

Since 30 June 2005 the monitoring task of the Institute concerning the social element of the universal service has consisted in verifying whether operators do fulfil their obligation to provide the social telephone tariffs to the customers who belong to one of the categories of beneficiaries. The aim is therefore to monitor if the granting conditions are correctly applied by operators, if the latter grant the correct discounts and if these discounts are applied to their standard tariffs. In this context BIPT monitors compliance with the social tariffs granting procedure laid down in the Royal Decree of 20 July 2006. It also verifies the list of standard tariffs to which the operators apply discounts to prevent the operators from “*cherry picking*” (applying the social tariff where the impact on the turnover is smallest). The offers’ complexity increases in such a way that this point becomes ever more relevant: maintaining a standard tariff that is obsolete and unusual only to apply the social tariff to it, pushes the beneficiaries to an atypical use of electronic communications, isolating them even more.

Tests relating to the waiting times for calls to services requiring the intervention of an operator were carried out at different times and different locations with the universal service operator in order to monitor the evolution of the quality of this service over the entire year.

As regards directories the Institute was open to the requests from the sector to introduce a number of modifications in the legislation in order to limit the ecologic impact from the distribution of the universal directory while taking into account the development of the sector, the consumer’s habits and the arrival of electronic directories that can be consulted on the Internet.

UNIVERSAL SERVICE COSTS

Because of the current procedures at European level questioning the conformity of the Belgian legislation on the financing of the universal service with Articles 12 and 13 of Directive 2002/20/EC (Universal Service Directive), the Institute, as mentioned above, thought it preferable to suspend the calculation of the compensation payable by the operators for the social element of the universal service.

Because the compliance of the Belgian legislation on financing is also questioned for other elements of the universal service, and since the provider had not communicated a cost estimate for the provision of these elements, the Institute did not start to calculate the net costs for the universal service activities other than the social element.

IMPLEMENTATION OF THE NEW REGULATORY TASKS CONCERNING SOCIAL TARIFFS

Article 22, § 2, of the annex to the Act provides for the creation within the Institute of a database of beneficiaries of the social telephone tariff. This database has been operational since 2 May 2006 and makes it possible to check when entering the application whether a customer or any other member of his household, does not already benefit from a social tariff with another operator.

According to the procedure for the granting of social telephone tariffs, mentioned in Article 3 of the Royal Decree of 20 July 2006 laying down the operating conditions of the social element of the universal service regarding electronic communications, for each application submitted to operators, the Institute also checks if the applicant meets the granting conditions for the social tariff.

These checks carried out by the Institute's officials are partly computerised ensuring that first a request is made to the data of the Crossroads Bank for Social Security. When the Crossroads Bank for Social Security does not possess certain data, the Institute contacts the customer so that the latter returns a number of certificates.

In 2009, 39,000 new applications for social tariffs were entered into the database of beneficiaries of social telephone tariffs. Among them, about 28,000 required a "manual" treatment by the "STT" Department (Social Telephone Tariffs) created within the Institute.

As allowed by law, the Institute also works on the systematic verification of the files that are more than two years old. Up until today more than 40,000 old files have been checked.

The Act of 17 January 2003 on the regulator's status stipulates that the operators contribute to the financing of this database that lists the social telephone tariff beneficiaries. On 22 April 2009 BIPT published a decision on the methodology to allocate the costs related to the composition and the management of this database and to the calculation elements specific to the years 2006 and 2007. By virtue of that decision the invoices for the financing of the database costs for 2006 and 2007 were sent to the operators involved. An action for the annulment of this decision was brought before the Brussels Court of Appeal; this action, however, does not have a suspensory effect.

DETAIL OF THE STANDARD INVOICE

The Institute participated in the think tank to further tune the ministerial order, that determines the specifications to be mentioned on a standard invoice, to the reality of the bundles (fixed and mobile telephony, Internet, TV) and the electronic invoicing. The Ministerial Order of 12 November 2009 resulting from that think process now also specifies that the standard invoice should mention the expiry date for each contract concluded for a fixed term in a clearly legible fashion.

THE ETHICS COMMISSION

The Ethics Commission for the provision of premium rate services on electronic communications networks is entrusted with the task of ensuring the observance of the conditions under which premium rate services are offered to the public through electronic communications networks. This covers for example voting by telephone or text message on various TV shows (e.g. Eurovision Song Contest or Miss Belgium), downloading logos and ringtones for mobile phones, calling a central premium rate number to find out about duty doctors or chemists in a specific area or to consult the latest weather forecast, making dates via dating services, etc.

For these services mostly 0900 numbers or short five-digit SMS codes are used.

The law decrees that the rules for a correct offer of these services and number series that may be used for that purpose have to be laid down in an ethics code, which is proposed to the King by the Ethics Commission. The procedures the Ethics Commission will follow, are already laid down in a royal decree.

The law also decrees that BIPT provides the secretariat for the Ethics Commission.

In accordance with its legal tasks BIPT provided secretarial and generally operational support to the activities of the Ethics Commission.

This included among other things the organisation and minuting of meetings of the Ethics Commission, the implementation of the solution found to complaints regarding premium rate numbers that BIPT or the Ethics Commission received themselves, the preparation of (internal) working rules (more specifically as regards procedures and language), advice on and development of legislative measures that the Ethics Commission proposed to the Minister of Enterprise and Simplification in order to increase the efficiency of the Ethics Commission, having and reporting on exploratory talks with the Office of the Ombudsman for Telecommunications and the the Directorate-General Enforcement and Mediation of the FPS Economy with a view to the conclusion of a cooperation protocol, the preparation and the representation of the Ethics Commission as regards international forums (especially the IARN; see www.iarn.org) and the management and completion of a project to achieve a proposal for an ethical code, as stipulated in Article 134, § 2, of the Act of 13 June 2005.

To formulate a proposal for an Ethical Code the following steps were taken in 2009:

- + in January 2009 the Ethics Commission held hearings with the Office of the Ombudsman for Telecommunications, the FPS Economy, the WASP (Wireless Access Service Provider) Forum, the GOF (GSM Operator's Forum), Belgacom and the Platform Telecom Operators & Service Providers on a draft text, which was submitted for public consultation on 12 December 2008 through the Ethics Commission's website (www.telethicom.be);
- + after having processed the results from the public consultation, which ended on 30 January 2009, and having sought technical advice on a number of aspects of the consultation document⁸, an amended draft was submitted to the Minister of Enterprise and Simplification early July 2009, which enabled the latter to introduce a notification with the European Commission based on the Transparency Directive⁹. The notification which took place on 29 July 2009¹⁰ did not give rise to comments or

8. THERETO THE IARN'S INFORMATION CHANNEL WAS USED AMONG OTHER THINGS, TO SET A BENCHMARK FOR THE EXISTING PRACTICES AND TECHNICAL POSSIBILITIES REGARDING THE BILLING OF "PREMIUM RATE SMS" NUMBERS.

9. DIRECTIVE 98/34/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 22 JUNE 1998 LAYING DOWN A PROCEDURE FOR THE PROVISION OF INFORMATION IN THE FIELD OF TECHNICAL STANDARDS AND REGULATIONS REGARDING THE SERVICES OF THE INFORMATION SOCIETY

10. SEE THE NOTIFICATION NUMBER 2009/439/B (ELGIUM) ON THE WEBSITE [HTTP://EC.EUROPA.EU/ENTERPRISE/TRIS/](http://ec.europa.eu/enterprise/tris/).

- elaborately motivated opinions from the European Commission or other Member States during the so-called status quo period, which ended on 30 October 2009;
- + during the status quo period the text notified to the European Commission was also submitted for advice by the Minister of Enterprise and Simplification to the Commission for the protection of privacy. On 14 October 2009 that Commission issued a favourable advice (including a number of comments) on the draft Royal Decree¹¹;
 - + after having concluded the two consultations mentioned above the Privacy Commission's comments, a number of seemingly relevant comments on details made by the sector during the status quo period, as well as a number of modifications of an editorial nature and regarding legislative drafting, were processed in a final proposal of Ethical Code, which the Ethics Commission submitted to the ministers of Enterprise and Consumer Affairs in charge on 16 December 2009.

THE TASKS OF GENERAL INTEREST

One of the Institute's missions is to see to the integrity and safety of the public electronic communications networks. Among other things, the Institute has to coordinate the initiatives relating to the quality and safety of these services. In this context it regularly takes part in the meetings of the Coordination and Crisis Centre of the Belgian Government.

Moreover, the Institute cooperates with the Joint Commission on telecommunications (Comixtelec) in conformity with Article 14, § 2, 4^o, of the Act of 17 January 2003 on the status of the regulator of the Belgian postal and telecommunications sectors.

A draft Royal Decree decided upon by virtue of Article 106 of the Act, aiming at appointing the operators who have to work with Civil Protection and Comixtelec, was drafted and submitted for consultation to the authorities involved. It will be submitted for approval to the authorities.

This draft is closely related to the draft that the Institute proposed earlier to the minister's private office and is aimed at amending the Royal Decree of 10 December 1957 establishing a Joint Commission on telecommunications in order to tune this commission's tasks to the new electronic communications environment.

TARIFF SIMULATOR

The telecommunications regulatory framework¹² stipulates that BIPT has to provide for a tool on its website which the public at large can use to compare the tariff plans of the different operators offering electronic communications services on the Belgian market.

The modules for fixed telephony, mobile telephony and broadband/Internet access were officially launched on 2 April 2009.

Up until 31 December 2009 the public made 235,670 tariff comparisons. This result is split up as follows:

2009	Total number of visitors	Fixed telephony	Mobile telephony	Broadband/Internet access
April	150,819	3,348	56,557	60,787
May	11,126	2,604	4,234	4,288
June	8,179	1,911	3,306	2,962
July	6,223	1,589	2,404	2,230
August	10,562	2,148	5,159	3,255
September	7,011	1,740	2,739	2,531
October	19,245	3,872	8,588	6,785
November	15,310	3,503	5,121	6,686
December	7,195	1,664	2,730	2,801
TOTAL	235,670	52,510	90,838	92,325

The operators update all of their tariff plans and promotions. The Institute verifies and validates these data in order for the program to correctly represent the tariff offers on the market.

A fourth module including the combined offers and access to digital television is currently being tested and improved in cooperation with the sector. That module will be made available as soon as it is ready.

12. THE ACT OF 13 JUNE 2005 ON ELECTRONIC COMMUNICATIONS, ARTICLE 11, § 2, SUBSECTION 2: "IN CONFORMITY WITH THE TERMS LAID DOWN BY MINISTERIAL ORDER FOLLOWING ADVICE OF THE INSTITUTE, THE INSTITUTE SHALL MOREOVER PUBLISH UP-TO-DATE INFORMATION"

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Involvements in national and international institutions

At national level, the Belgian Institute for Postal Services and Telecommunications is actively involved in the forum of the Consultative Committee on Telecommunications. At international level, it keeps abreast of technological developments and constantly assesses their effect on regulation. Harmonisation between European regulators is aimed at adopting the same interpretation of the economic situation in order to create a genuine single European market for telecommunications. BIPT is involved in all international forums where future directions are set out.

THE CONSULTATIVE COMMITTEE ON TELECOMMUNICATIONS

As mentioned before at page 40 the Consultative Committee is a forum in which the various stakeholders of the sector are represented. Because of its composition the Committee acts as a privileged observatory of the developments and trends in the sector. BIPT actively participates in the Committee's activities. BIPT does not only have a seat on the Committee as an observer but is also in charge of the secretariat for the plenary meetings and the working groups, with the exception of the secretariat of the working group that deals with the Institute's activities.

EUROPEAN INSTITUTIONS

In 2009, the Council of the European Union completed the adoption of the new regulatory framework for electronic communications following a mediation procedure. This includes

- + *Directive 2009/136/EC* of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws;
- + *Directive 2009/140/EC* of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and Directive 2002/20/EC on the authorisation of electronic communications networks and services and Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office published in the Official Journal on 18 December 2009.

The two directives need to be transposed by 19 June 2011 while the regulation immediately comes into force on the day of its publication.

As regards the COCOM (*Communications Committee*) the activities were mostly focused on the draft recommendation on the call termination rates, the mobile satellite services and the matter of the new generation networks. The usual activities regarding the collection of broadband data and the follow-up of the procedure of Article 7 were continued.

IRG – ERG

(INDEPENDENT REGULATORS GROUP - EUROPEAN REGULATORS GROUP)

During 2009 IRG/ERG further supervised the review of the electronic communications regulatory framework and BIPT focused especially on the creation of the Body of European Regulators for Electronic Communications (BEREC).

CEPT AND THE ITU

BIPT also plays an important role in the work of the European Conference of Postal and Telecommunications Administrations (CEPT). BIPT helped among other things with CEPT's coordination activities preparing the IUT's 2010 Conference of Plenipotentiaries.

The Institute also sits on the Administrative Council of the European Radiocommunications Office in Copenhagen. This office supports CEPT's tasks.

Management of the electronicmagnetic spectrum, licences and frequencies

The management and monitoring of the spectrum fall within the brief of BIPT, which assigns the frequencies and delivers the licences. The users of the electromagnetic spectrum are numerous and varied.

FREQUENCY MANAGEMENT

BIPT has been assigned the task of managing the electromagnetic spectrum in Belgium. This encompasses both the daily management of frequency assignments and coordinations and the long-term policy on frequency plans and adjustments.

Frequency assignments for landmobile services are governed by the HCM Agreement (*harmonised calculation method*, previously the Vienna/Berlin Agreement) and constitute one of the main activities of the Frequency Management Cell.

Number of files processed regarding mobile services under the HCM Agreement Number of coordinations	2009
Coordinations from Belgium	632
Incoming coordinations from France	846
Incoming coordinations from the Netherlands	65
Incoming coordinations from Germany	182
Incoming coordinations from Luxemburg	44

Number of files per category			
	Geannuleerd	Gewijzigd	Nieuw
1st category	109	444	399
2nd category	4	1	2
3rd category	103	45	321
4th category			
5th category			
6th category	411	1 433	887
7th category			
8th category			

INDISPENSABLE INTERNATIONAL COORDINATION

Although BIPT is not responsible for the planning of frequencies for broadcasting, its **Frequency Management Cell** is responsible for the daily requests for coordination and the application of international agreements (Geneva 1975, Geneva 1984, Stockholm 1961, Wiesbaden 1995, Chester 1997, Maastricht 2002) as well as the application of the LEGBAC Agreement.

This cell is also responsible for coordinating frequencies for satellite links (earth stations, networks, etc.) and radio relay links as well as for the correspondence with the ITU Radiocommunication Bureau.

Types of files	Number
1961 Stockholm Agreement 1997 Chester Agreement (DVB-T: <i>Digital Video Broadcasting - Terrestrial</i>) 2006 Geneva Agreement	435
1984 Geneva Agreement	2,085
1975 Geneva Agreement	0
1995 Wiesbaden Agreement/2002 Maastricht Agreement (T-DAB: <i>Terrestrial Digital Audio Broadcasting</i>)	5
HCM Agreement (general)	120
Earth stations (Art. 9), satellites (Art. 9), radio relay links	1,105
Miscellaneous (coordinations, interference, temporary frequencies, information, ...)	1,411
Comixtelec	178
ITU – Radiocommunication Bureau and Conferences	160
CEPT – ERO (European Radiocommunications Office) – ECC (Electronic Communications Committee)	1
Satellite organisations (Eutelsat, Intelsat, ESA (European Space Agency) ...)	2
Total	5 503

A few important achievements by the **Frequency Management Cell** in 2009 were:

Spectrum consultation and spectrum study

From 26 January 2009 BIPT held a public consultation, at the government's request, on the future spectrum management in the 790-3400 MHz bands. In this connection an appeal was also made to an external consultant. The final report on the extensive study that was drafted by the internationally renowned consultants Analysys Mason/Hogan & Hartson on the topic "Strategic spectrum management as regards radio access systems in the 790 MHz – 3400 MHz frequency bands", was submitted in due time. Together with the consultation's results, this report, the final version of which was published on BIPT's website, constitutes one of the main cornerstones for the definition of the spectrum management in the 790-3400 MHz band for the years to come.

Radio interfaces

The new versions (B3.1 (V2.1), B3.2 (V2.1) and B3.2 (V2.1)) of radio interface B3 for wireless access systems, including Radio Local Area Networks (WAS/R-LANs) that lay down the terms for the use of this equipment on the Belgian market, were approved by the Council on 18 November 2009 and published on the Institute's website.

A new radio interface I1 for safety-related applications for intelligent transport systems (ITS), including vehicle-to-vehicle, vehicle-to-infrastructure and infrastructure-to-vehicle communications, laying down the terms for the use of this equipment on the Belgian market, was also cast in a decision by the Council and published on the website.

To keep up with the fast market evolution as regards radio equipment a notification procedure for new versions of other existing radio interfaces was completed; namely the interfaces E1, E2, E4, E6 to E16 and E18 to E29 for radio relay links. These interfaces determine the technical requirements the equipment has to meet. The frequency bands in which the equipment can operate are also specified. This decision thus includes the rules to be observed when setting up radio relay links. These radio interfaces regarding radio relay links are necessary in order to avoid harmful interference to radio communication and are part of the national frequency plan.

The introduction of UMTS at 900 MHz

A BIPT Council Decision on the introduction of UMTS in the 880-915 MHz and 925-960 MHz frequency bands was approved on 26 March 2009. The Royal Decree of 28 March 2007 amending the Royal Decree of 18 January 2001 fixing the specifications and the procedure for granting licences for third-generation mobile telecommunications systems came into effect on 1 July 2008. That Royal Decree stipulates that the radio network of a 3G operator who is a 2G operator and has frequencies at his disposal in the 880-915 MHz and 925-960 MHz bands, can be rolled out in these bands. In Belgium the three 3G operators (Belgacom Mobile, Mobistar and BASE) are also 2G operators each having frequencies in the 880-915 MHz and 925-960 MHz bands.

Therefore, as from 1 July 2008 the three 3G operators are allowed to set up their 3G networks in those parts of the 880-915 MHz and 925-960 MHz bands that have been allocated to them. The Decision of 26 March 2009 lays down the UMTS carrier waves that may be used. Infrabel has started a legal procedure before the Brussels Court of Appeal against that decision.

Support for the development of a new regulatory framework for public mobile services

As requested by the Minister of Enterprise and Simplification BIPT held a consultation about the draft Royal Decree amending the Royal Decree of 7 March 1995 on the establishment and operation of GSM mobile telephone networks, the Royal Decree of 24 October 1997 on the establishment and operation of DCS-1800 mobile telephone networks and the Royal Decree of 18 January 2001 fixing the specifications and the procedure for granting licences for third-generation mobile telecommunications systems.

The judgement of 20 July 2009 by the Brussels Court of Appeal annulled the BIPT decisions on abandoning the tacit extension of the 2G licences. At the request of the Minister of Enterprise and Simplification a new consultation was held at the end of 2009 about a draft amending the Royal Decree of 7 March 1995 on the establishment and operation of GSM mobile telephone networks, the Royal Decree of 24 October 1997 on the establishment and operation of DCS-1800 mobile telephone networks and the Royal Decree of 18 January 2001 fixing the specifications and the procedure for granting licences for third-generation mobile telecommunications systems.

Other accomplishments of the **Frequency Management** Cell can be found at page 80 and following.

SITE SHARING

For the purpose of site sharing, the law provides for a database manager. This task is currently performed by the non-profit-making association R.I.S.S. The R.I.S.S. has had the database itself accommodated in the offices of the Institute, which, since 2008, also ensures the processing of the sites in the database. This access involves a website featuring a map of Belgium with a zoom function to the required region, and showing where the operational sites are located. Also the locations for which a building permit has been applied for or those accepted for a specific site can be checked.

The available data were submitted to a thorough quality check in order to guarantee correct coordinates and address details. New sites that are added, are also checked.

The procedure used by operators to inform one another of a planned site construction or extension (the so-called Procedure Act¹³) is also managed by the Institute.

BIPT also oversees the smooth operation of site sharing. To this effect, BIPT attends the R.I.S.S. meetings to take note of the decisions on the one hand and to offer the necessary support in the guidance process on the other.

LICENCES FOR PRIVATE RADIO COMMUNICATIONS NETWORKS AND INDIVIDUAL STATIONS

The table below lists the total number of issued licences on 31 December 2009 in the different categories of individual stations or private radio communications networks.

Number of licences for private radio communications networks and individual stations			
		Permanent	Temporary
1st category	Private mobile networks	1,058	208
2nd category	Fixed networks	184	-
3rd category	Public administrations	672	6
4th category	Private mobile networks at the common 27 MHz frequency	1	X
5th category	Radio amateurs	5,014	X
6th category	Fixed and mobile networks within the limits of one property	3,805	1,168
7th category	Remote control of scale models	Exempted from licence	
8th category	CB ¹⁴ radio telephones B27	18,983	X
Satellites	Satellite networks	44	63

RECOGNITION OF OPERATORS

Trunked networks (trunk radio positioning)

The CNH Belgium company was granted a licence to operate a radio positioning network on the Belgian territory.

The AEG company was granted a licence to operate a TETRA network (*terrestrial trunked radio*) on the Belgian territory.

Radio amateurs

Examinations

The number of candidates for the basic licence amounts to 144 (132 in 2008). 84 candidates have taken the HAREC exam (*harmonised amateur radio examination certificate*) compared to 95 the year before. The success rate for the basic licence is 77% and 56% for the HAREC exam, which is a lot more difficult.

Maritime radio communications

Examinations

640 candidates participated in the SRC¹⁵ exam (compared to 451 in 2008) with a success rate of 85%. 1,982 candidates turned up for the VHF exam (compared to 1,343 in 2008), 1,696 of which passed (86%).

For the GOC (*general operator's certificate*) and the ROC (*restricted operator's certificate*) exams the number of candidates was respectively 114 of which 102 passed and 119 of which 87 passed.

Over 43,000 persons hold a ship station licence. These licences are renewed every five years.

14. CITIZENS' BAND

15. SHORT RANGE CERTIFICATE

Licences

In 2009 the total number of ship station licences amounted to 14,382 (compared to 13,324 in 2008), distributed among 10,870 pleasure boats, 3,081 commercial river vessels, 291 seagoing vessels and 140 fishing boats.

Aeronautic radio communications

a. Certificates

In 2009, the Institute granted 364 operator certificates for an aeronautical station on the basis of examinations organised by the FPS Mobility and Transport, as compared to 392 in 2008.

5,600 persons currently hold an aeronautical station operator licence.

b. Licences

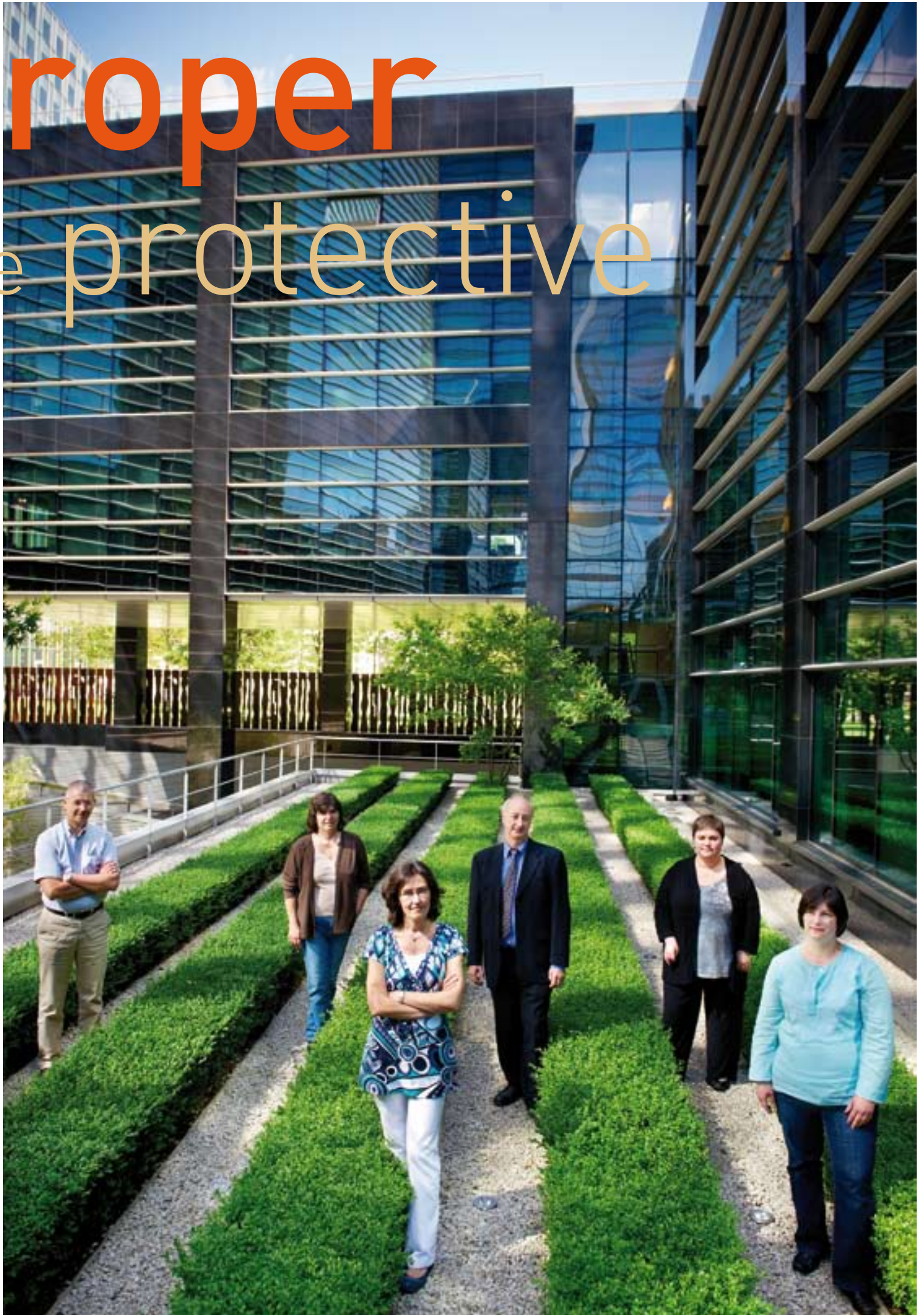
Currently 1,705 licences for aeronautical stations are managed by the Institute: 1,004 for installations on board aircraft and 701 for portable stations.



BIPT monitors **the p** **operation** of th mechanisms



proper e protective



Guarantees for spectrum users

Managing and monitoring the electromagnetic spectrum guarantee that radio communications work properly for the benefit of all users. For various reasons radio communications networks and equipment may experience interference of a radio of electromagnetic nature. The fight against these interferences is imperative. For this purpose, prevention and repression are complementary policies; however, BIPT clearly favours the former policy. Indeed, its officers provide information and advice, they monitor and carry out inspections. However, if necessary, offenders are reported. Goods may also be confiscated.

SPECTRUM MONITORING

Tasks

NCS (the National Spectrum Monitoring Department) is responsible for “policing the radio waves” in the broad sense of the word. In addition to the directorate in Brussels, the NCS has five monitoring centres across the country, in Anderlecht, Liège, Seneffe, Antwerp and Ghent.

Basically, its tasks can be broken down into five main categories:

- + dealing with radio interference: every citizen and every authority can report to the NCS any radio interference of which they claim to be a victim. The NCS technicians, who have professional measuring equipment, track down the source of the interference and take the necessary measures to eliminate it;

The interference that is experienced may be of a very different nature. It may involve interference on air traffic frequencies – with disastrous consequences if it is not eliminated as soon as possible -, interference in professional networks – which may endanger the users’ lives, such as networks used on construction cranes -, interference on GSM networks – causing companies that are essential to citizens’ lives to get into trouble -, interference on the radio communications networks of the police ... Also possible is interference of various origin during the reception of radio and TV programmes – a tramway may interfere with the reception of a television programme – interference in small wireless equipment such as garage door remote controls – which experiences interference from the neighbour’s wireless headphone, for instance – or baby alarms where instead of the baby talking only some electromagnetic creaky noise comes through ...

- + preventive checks on professional radio networks; most new radio networks are monitored by the NCS technicians. This ensures that these networks are set up in accordance with their licences and that the frequency, capacity and antenna height are compliant with the plans of the Frequency Management Department. It also means that the use of illegal transceivers can be curtailed;
- + checks during major events: NCS is present at various events that attract a large number of radio frequency users, to ensure that licences are observed and to resolve cases of radio interference;

The sort of events that are monitored is very varied: they range from a local biking race such as the Flèche Wallonne or the Ronde van Vlaanderen or a local motocross to the Formula 1 Belgian Grand Prix in Francorchamps ...

- + collaboration with the police services and the public prosecutor's offices: these regularly make use of BIPT's expertise in the field of radio communications;
- + since 2001, the NCS had also been performing the task of monitoring compliance with the standards governing exposure of the public to non-ionising radiation. However, since the Constitutional Court's judgement of 15 January 2009 the federal authority is no longer qualified to set the radiation standards in this matter. As a consequence of this judgement BIPT, which had been entrusted with this task at the federal level, no longer carries out measurements. Still, in the course of 2009, there were talks with the regions to consider the possibility of concluding cooperation agreements between the federal and the regional level, so that the regionalised bodies are able to profit by BIPT's expertise in this matter.

As a new task tests were performed, in 2009, on Wi-Fi networks used by the public at large, in order to verify to what extent these were protected. The measurements involved were taken from the public highway. The purpose of these tests is to offer a service to the public. As a matter of fact, the use of Wi-Fi networks is widely spread and many users are not aware that their Internet access can be used for evil intentions. The first series of tests, performed on some hundred networks, showed that about 65% of those networks have a minimal encryption.

As to broadcasting the NCS continued its special effort started in 2008 after the French Community had adopted its frequency plan. The NCS cooperates with the community regulators and at their request fulfilled various tasks of particular expertise.

Those measuring results have contributed to the first optimisations of the French Community's frequency plan. In cooperation with the judicial authorities the NCS also stopped the broadcasts by a pirate radio station.

Also noteworthy is the fact that a number of GSM repeaters¹⁶ interfering with GSM traffic, were confiscated in 2009. One of these pieces of equipment was taken out of operation on a Brussels construction site and another had been used to get GSM coverage in the underground offices of a firm that performed medical checkups. Because they have been installed without the operators' consent and without taking account of their network planning, GSM repeaters are a source of interference and trouble for the operators.

Supplementary tasks

To enable them to perform their general task of policing the radio waves, the NCS members have the capacity of a criminal investigation officer and regularly join forces with the police services.

All security services have 24/7 access to an NCS duty service.

The NCS has twenty-three fully equipped measurement vehicles at its disposal in order to conduct activities in the field. In 2009, two vehicles were replaced.

In addition, the NCS has six fixed measuring stations, designed for the automatic monitoring of radio frequency use. Because of the move of BIPT's administrative offices in 2008, a new location for this measuring station, which used to be on the Astro Tower, was looked for. After having considered a site in Laken, discussions are now taking place with the services of National Defence in order to use a site in Peutie.

16. PRIVATE ANTENNA MEANT TO SPREAD AN ENHANCED GSM SIGNAL LOCALLY.

In 2009, BIPT was again present with a stand at the Ghent Boatshow. This is the biggest maritime exhibition in the country and attracts some 60,000 visitors each year. BIPT seizes this opportunity to provide information to users of radio equipment on boats about equipment requirements, operator certificates, exams, interference, etc. Specifically for the visitors of this event a newsletter was published. More than 2,000 copies were distributed at the BIPT stand. This newsletter provides current news and information about all aspects of radio communications at sea and on inland waterways. The newsletter can also be downloaded from the Institute's website (www.bipt.be).

Finally, the heads of the NCS participated in the following international working groups: CEPT/ERC/WGFM-PT22 (*Monitoring*), CEPT/RA1 (*Enforcement*), RAINWAT COMMITTEE (*Maritime*), CEPT/WGFM-PT46 (*Maritime*). These working groups each represent a special interest to the NCS:

CEPT/ERC/WGFM-PT22 (Monitoring)

This working group unites the technical departments of the CEPT administrations who are tasked with spectrum monitoring and monitoring with a view to standardising the measuring procedures, with measuring campaigns at the request of other CEPT bodies and with exchanging technical information. One of the main items for the NCS in 2009 was the discussion of the results of the measuring campaign regarding Super High Frequencies organised in France in 2008, in which Belgium participated.

CEPT/RA1 (Enforcement)

This European working group uniting the bodies tasked with market and spectrum monitoring issues common rules and promotes the exchange of information between the member states. In 2009 a new *benchmarking* campaign of the various European monitoring bodies was launched. The results are expected by 2010. A letter to the European Commission was drafted regarding long range cordless phones using the aeronautic bands. The United Kingdom has presented the organisation of the frequency monitoring to be set up during the 2012 Olympics and appeals to the support from other countries' monitoring bodies to lend a hand during this event.

Comité RAINWAT (Maritime)

The Regional Arrangement concerning the Radiotelephone Service on Inland Waterways" is a regional arrangement concluded between 17 countries, mainly Rhine and Danube countries. The purpose of this arrangement was to establish common safety principles and rules on inland waterways. During this year's meetings a complete review of the arrangement was prepared. Belgium also manages the website (www.rainwat.bipt.be) for these international meetings. The international arrangement can be downloaded from this website in French, German and English. The Dutch version can be found on the BIPT website (www.bipt.be).

CEPT/WGFM-PT46 (Maritime)

PT46: CEPT meeting of European countries where preparatory discussions and consultation take place about the regulations for seagoing vessels. The meetings mainly involve discussions about the evolution of the GMDSS system, the exams to obtain the GMDSS-certificates, information about other maritime meetings such as COMSAR (*Sub-committee on radiocommunications and search and rescue*).

In addition, new developments regarding equipment or international communications systems are closely followed, to check whether this equipment does not interfere with the GMDSS system. This year the review of the exam syllabus of the SRC and GOC certificates was one of the focal points. This group also proposed to launch a distress flowchart. It was approved by IMO (*International Maritime Organization*) in 2009 and will be used by BIPT to inform users in a simple way about how to send out a distress call at sea.


The table below provides a round-up of activities conducted in 2009.

NCS Interventions	
"Interference" cases	430
Preventive checks on professional users	586
Checks during events	123
Monitoring of broadcasts	82
Monitorings - other	396
Radiation measurements at transmission sites	14
Various cases – tasks performed at the request of authorities	615

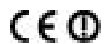
The "Monitorings – other" category specifically includes monitorings of maritime frequencies, checks of radio amateurs or CB users, assistance during checks on the road ...

CONFORMITY OF EQUIPMENT

Radio and telecommunications terminal equipment cannot be marketed unless it meets the requirements of Directive 1999/5/EC of the European Parliament and the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity (R&TTE Directive). According to the text the appropriate CE marking has to be affixed on all radio and telecommunications terminal equipment, on their packaging as well as on the accompanying documents.

The CE marking always includes the CE sign at the minimum. This marking looks like this: .

If a licence is needed for the use of the radio equipment or if the equipment uses frequencies, the use of which is not harmonised in Europe, the CE marking must include an alert sign (information sign).

In that case the CE marking at least takes the following form: . The information sign alerts the user to the fact that limitations apply for using the equipment.

Radio equipment operating in frequency bands, the use of which is not harmonised in Europe (and which consequently bears the information sign in the marking) has to be notified to the Member State in which it is marketed. This is commonly known as the obligation of notification, as stated in Article 6.4 of the Directive. In 2009, 906 devices were notified in accordance with this procedure. This is a 38% drop. Following the taking effect and/or adaptation of a number of provisions by the Commission regarding the harmonisation of the radio spectrum, the number of notifications is expected to decrease even more.

The European Commission makes a "One Stop Notification" or OSN procedure available on its server (<https://webgate.ec.europa.eu/osn>). The person responsible for the notification according to Article 6.4 can send his notification to a single central address. The system then distributes the application to the administrations of the Member States who have accepted the OSN principle. Up to now, 26 countries, including Belgium, have done so.

This procedure is very successful because out of 906 files submitted 829 (86%) were introduced by way of OSN. The rest was submitted by e-mail (52) or by regular mail (25).

In order to use this OSN procedure, one needs to register first. This can also be done by means of the link mentioned above.

Equipment operating in frequency bands the use of which is harmonised in the Community does not have to be notified to BIPT. This equipment is part of the so-called "Class 1" category.

It is advised to regularly consult the list of "Class 1" equipment. This list can be consulted directly on the site www.ero.dk/rtte, a subdivision of the ERO website (the European Radiocommunications Office). The technical parameters which this radio equipment has to comply with in order to fall under the "Class 1" category are also mentioned on this site and are linked to the reference number of the relevant subclass.

MONITORING OF EQUIPMENT

It was noticed that a fairly large quantity of devices are still marketed that do not or only partially comply with legal requirements. These infringements create unfair competition and disadvantage those manufacturers and importers who do observe the legal obligations (more quickly on the market – less costs). Such monitoring is conducted in everybody's interest, from manufacturers, importers and vendors to users and public authorities. Market surveillance is considered to be one of the keys to the successful implementation of the R&TTE Directive.

In 2009, more than 650 inspection visits took place, mainly to shops; still, some 75 public markets were also inspected.

Sometimes, repressive measures were called for. The checks conducted in 2009 thus led to the seizures listed in the table below.

Equipment seized during checks in 2009			
Terminal equipment		Radio equipment	
Telephone equipment	9	Remote-controlled toys	1,175
Answering machines	116	Remote-controlled camping lamps	968
		Remote-controlled bite alarms (fishing)	898
		Computer equipment (RF)	316
		Radar detectors (receiver)	300
		Car reverse camera (RF)	226
		FM transmitters	217
		Scale models	127
		Remote-controlled mains sockets	121
		Object finders (RF)	114
		Walkie-talkies	113
		Cordless telephones	99
		Remote controls	95
		GSM equipment	94
		RF video cameras	92
		Low-power transmitters in the FM band	70
		Other	550
Total	9	Total	5,575

Once again, regulations were often found to be violated, wittingly and unwittingly. Nevertheless the administrative requirements for terminal equipment as such are fairly straightforward.

In the case of radio equipment operating in frequency bands, the use of which is not harmonised within the European Union, and which consequently has to bear the “alert sign” in the CE marking, it was often noted that there was no list of the countries in which such equipment may be used. BIPT believes that this information should always be included. This indispensable information has to be mentioned on the packaging as well as in the instructions for use. The Institute always takes action when this information is lacking. A potential buyer of such radio equipment needs that information to know whether the equipment may or may not be used. The use of such equipment in an unauthorised place may cause interference, with all ensuing consequences.

It was also noted that a great number of radio devices which do not comply with the prevailing legislation are still on the market. Moreover, some of these devices operate on frequencies that are not authorised in Belgium. In these cases too, the Institute invariably takes action. This is probably partly because of mail order being easy (via the Internet) and the often aggressive manner of advertising all kinds of cheap radio equipment (via spam mail). Also the price difference, caused by favourable exchange rates among other things, may incite users to buy equipment over the Internet. This often involves equipment that is similar but which is not destined for the European market. The buyer/importer has every interest in being adequately informed indeed, in that case he bears all responsibility.

Many irregularities are still being observed in the sector of radio-controlled toys (remote-controlled toy cars, etc.). It occurs that these products comply with the Toys Directive (the renewed Directive 2009/48/EEC became effective on 20 July 2009), but that no heed was taken of the provisions in the R&TTE Directive.

Postal items containing radio equipment are also frequently checked. In 2009, in that respect 130 checks were carried out. Many of these items contain devices bought on the Internet – directly from the manufacturer or via an auction website (eBay for instance). In many cases the equipment does not comply with the legal requirements and is seized. An alarming fact is that a lot of non-CE marked equipment is offered through these auction sites. This is also often the case with GSMs bought through the Internet in non-European countries.

During a check such equipment was always seized. The party concerned is always notified of this. Any equipment that has no CE marking whatsoever, cannot be admitted to the Belgian market.

When violations are observed, these are always reported and the goods are seized in most cases. The violations are then followed up by the public prosecutor’s office. That means that there is no point in approaching the Institute for information about any case. The public prosecutor’s office then decides whether legal action is needed. In 2009, 409 initial reports were made. During the follow-up of the court cases, a further 100 reports were made.

In Belgium a BIPT licence (commonly known as a “licence”) has to be obtained before certain types of radio equipment can be possessed and used. Sellers of such equipment are required to have a general holder’s licence. This general holder’s licence is free of charge and can be obtained upon simple request. The sale of such equipment is not permitted to persons who do not have an individual licence. A monthly statement of sales has to be submitted to BIPT. This statement has to include the buyer’s details.

At the start of 2009, 172 French-speaking and 386 Dutch-speaking persons had a general holder’s licence.

The Royal Decree of 18 December 2009 on private radio communications and user rights for fixed networks and trunked networks (which became effective on 1 January 2010) lays down an annual fee (13,50 euro in 2010) for obtaining a general holder's licence. As a consequence the number of general holder's licences is likely to drop considerably.

Additional explanation and information on the R&TTE Directive are available at the European Commission's website: <http://europa.eu.int/comm/enterprise/rtte/>. Apart from the text of the directive, this website also contains further information and common interpretations. Useful information can also be found on BIPT's website. It is available at www.bipt.be under "Equipment" in the section "Radio Communications".



BIPT establishes number
which **clearly** stat
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Management of telephone numbering

Numbers are essential in offering telecommunications services over telecommunications infrastructures. They are for both end-users and providers the key that provides access to services. BIPT sees to it that the supply of numbers is constantly sufficient enough and adequate for normal market development. To telecommunications operators equal access to adequate number series is of paramount importance, in terms of quality as well as quantity, for the balanced development of a competitive market. For end-users numbers contain information about the kind of services and the corresponding rates. For this purpose BIPT establishes numbering plans, which clearly state which destination corresponds with which number.

REGISTRATION OF NUMBER CAPACITY

The Institute also ensures the actual number management, which includes tasks such as the allocation, reservation, withdrawal, transfer and monitoring of use (maintenance policy) of numbering capacity. As to the latter aspect extensive attention was given – including by means of a number of notices of default – to compliance by the telecommunications operators with the regulation.

Early July 2009 for instance, a few infringement procedures were started vis-à-vis Mobistar and Proximus, in order to make sure they observe these maximum end-user tariffs for Infokiosk calls.

The table below provides an overview of the number of files treated per number series for 2009.

Number series	Destination	Reservations	Allocations	Cancellations	Transfers
1yxx	short numbers CSC (Carrier Select Code), VPN (Virtual Private Network), etc.	{n} 3 {p} 0	2	0	5
4pq	mobile services	{n} 1 {p} 4	1	1	10
70-700	national services	{n} 1	0	0	7
78	national services	0	0	0	1
79	special Internet access	0	0	1	0
800	freephone services	0	1	0	1
90A x 1.000 nrs	services based on premium rate numbers	0	7	25	4
MNC	mobile network codes	{n} 0 {p} 1	0	1	0
ISPC	international signalling codes	{n} 0 {p} 2	2	0	1
NSPC	national signalling codes	{n} 29 {p} 0	9	2	29
PQYZ	geographical numbers	{n} 176 {p} 1	99	110	0
TMNC	TETRA mobile network codes	{n} 3 {p} 0	1	0	0
SMS/MMS	short SMS/MMS numbers	{n} 209 {p} 23	292	-	2,512

(where n = new reservation(s); r = renewal of existing reservation(s))

All available information on the national numbering plan – such as the lists of reserved and allocated numbers – is published on the website (www.bipt.be).

POLICY MEASURES

Aspects regarding traditional numbering

On 18 February 2009 the consultation on possible policy options for the evolution of geographical numbers was launched. A number of options including their impact were identified and analysed there. On the basis of the reserved written reactions a further analysis was made and the decision was taken to ask more detailed information from the operators. The provisional conclusion is that this issue should be addressed again within the context of the introduction of NGN networks.

Special attention was also given to the problems with the implementation of the Royal Decree of 24 March 2009, which on the one hand amends a number of provisions of the Royal Decree of 27 April 2007 on managing the national numbering space and the grant and withdrawal of number user rights (Belgian Official Gazette of 28 June 2007) changing a few lines and adds a few clarifications on the other. Examples are that the maximum rates for calls to Infokiosk numbers made from GSM phones are brought into line with those from the fixed network, that number portability is also introduced for nomadic VoIP numbers and that the SMS/MMS numbering plan is further clarified and adapted.

An internal study was made about the management of the Belgian branch of ITU standard X.509 concerning *object identifiers*¹⁷ (OID) for PKI¹⁸ (*public key infrastructure*) systems. A summary including a policy proposal and legal analysis was sent to the Minister of Enterprise and Simplification. The study concludes that a body should be designated to issue the OIDs for the Belgian branch. The scope of OIDs is to be situated mainly outside the domain of electronic communications and this type of identification systems also competes with other standards. Taking account of the above, BIPT is not asking for any powers in this field. In any case, this matter is beyond the scope of the Act of 13 June 2005 on electronic communications.

Consultation with the operators was started about the issue of number blocks that are no longer allocated to any operator, but still contain operational numbers. This situation is a result of historical factors because a number of operators have gone bankrupt.

A decision was adopted relating to the approval of Belgacom's request for the transfer of the entire 09 332 number block from Telenet to Belgacom.

Following a market consultation the BIPT Council adopted a communication on 2 December 2009 concerning the Institute's policy to guarantee non-discriminatory access to short numbers for SMS and MMS services with added value. The communication offers a pragmatic short-term solution for (1) entrants to the market who also want to have access to short SMS/MMS numbers as well as for (2) the existing players who want to join afterwards during a reservation.

At the request of the Minister of Enterprise and Simplification a draft Royal Decree was established in order to make an exception to the SMS/MMS number plan for value added services for VTМ. Based on the answers to the consultation that was held and on its own further analysis, BIPT gave a negative opinion on this draft Royal Decree. The reasons for this negative opinion are (1) the discriminatory nature of the exception and (2) the fact that this makes it impossible to implement the Ministerial Order of 12 December 2005 on blocking calls to certain categories of SMS/MMS numbers. Also a policy note was prepared containing a number of proposals to improve the regulation and operational management of SMS/MMS short numbers.

Efforts were made to improve the accuracy of the data in the numbering database and to enhance the coherence with the central reference database for number portability.

17. AN OBJECT IDENTIFIER (OID) IS AN IDENTIFICATION TO GIVE AN OBJECT A NAME. THE OID SPACE CONSISTS OF HIERARCHICALLY ALLOCATED NAMES WHERE THE "ROOT" IS COMPOSED OF THREE "ARCS": 0: ITU-T, 1: ISO AND 2: JOINT-ISO-ITU-T.

18. A PUBLIC KEY INFRASTRUCTURE (PKI) IS A SYSTEM FOR THE ISSUE AND MANAGEMENT OF DIGITAL CERTIFICATES. THROUGH THE USE OF PKI IT IS POSSIBLE THAT A CERTIFICATE MANAGED BY A CERTIFICATE AUTHORITY (CA), IS USED BY ITS HOLDER IN RELATION WITH ANOTHER INDIVIDUAL. THE CA GUARANTEES THE CERTIFICATE'S INTEGRITY AND AUTHENTICITY AND THEREFORE VOUCHES FOR THE IDENTITY OF THE CERTIFICATE HOLDER.

Aspects concerning Internet "Naming" and "addressing"

As requested by the Minister of Enterprise and Simplification BIPT established a number of scenarios about e-mail and URL (*uniform resource locator*) interception mechanisms and submitted these to the sector for consultation. This was done within the framework of a bill amending the Act of 13 June 2005 on electronic communications in relation to switching operators. On 24 September 2009 an analysis containing several proposals was sent to the Minister of Enterprise and Simplification.

The introduction by ICANN (*Internet corporation for assigned names and numbers*) of the new generic top-level domain names was followed up, along with the institutional evolution of ICANN, including within the framework of the interaction with national authorities. The *High Level Group on Internet Governance* coordinates the European Union's viewpoint in that domain. The IGF (*Internet Governance Forum*) was also followed up at the request of the Minister of Enterprise and Simplification. The BIPT Council formulated a viewpoint about BIPT's role in this matter.

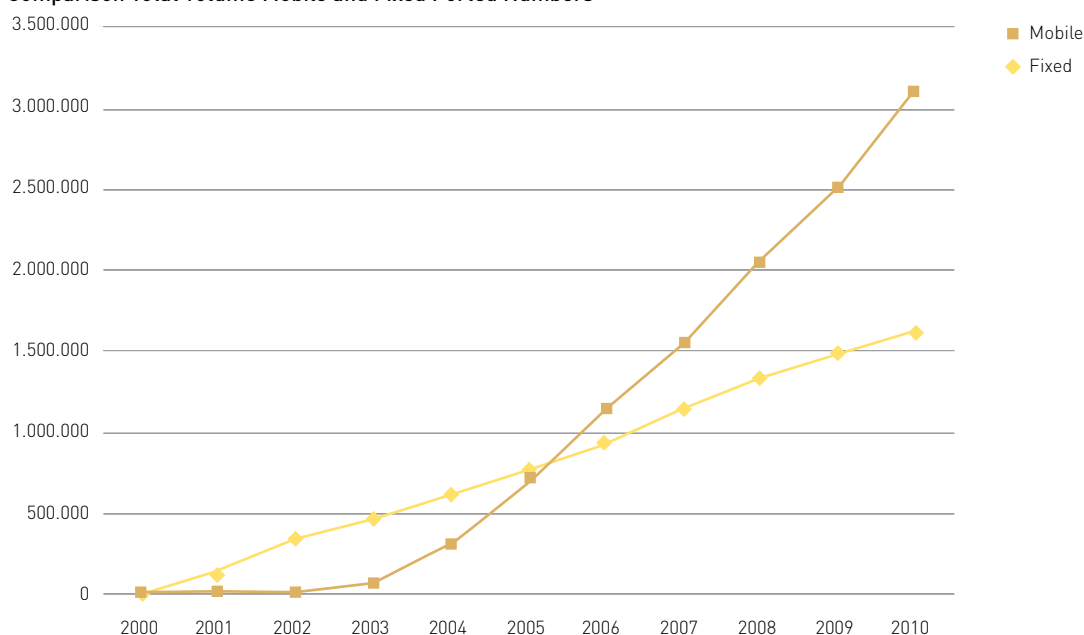
NUMBER PORTABILITY

Number portability is a key priority in the telecommunications policy. There are two basic reasons for this. Every change of call number entails additional administrative work and costs for end-users and has a highly negative direct impact on potential customer contacts. Furthermore, there is increasing concern among new operators about being treated unfairly if their potential customers had to change numbers. Research has shown that a lack of number portability seriously limits the chances of these newcomers.

As in the previous years BIPT continued to supervise the operation of the non-profit-making association "Number Portability". A number of cases were treated to gain access to the ported numbers database, in accordance with the provisions of the BIPT Council Decision of 2 February 2005 laying down the tariffs of the number location information service for third parties of numbers ported exclusively for their own purposes and for routing their own communications services and validating a number of specific terms regarding access to that service.

The graph below shows the evolution in the number of fixed and mobile ported numbers.

Comparison Total Volume Mobile and Fixed Ported Numbers



It should be noted that as a number can also be ported back to the first operator or be deactivated, the net number of ported numbers at a given time is lower than the sum of all portings.

At the end of 2009 the threshold of 3 million ported mobile numbers was exceeded. This means that about 30% of all mobile phone users and 20% of fixed telephone users have already used the possibility to port their number.

THE CARRIER PRESELECT AND SELECT SERVICE

	Numbers with Carrier Preselect	Percentage of increase
1 January 2001	114,735	
1 January 2002	381,566	232,5 %
1 January 2003	595,627	56,1 %
1 January 2004	850,384	42,8 %
1 January 2005	1,115,761	31,2 %
1 January 2006	1,048,672	- 6 %
1 January 2007	908,751	-13,3 %
1 January 2008	837,849	-7,8 %
1 January 2009	808,751	-3,5 %
1 January 2010	758,778	-6,2 %

The decline in the net number of activations noted since May 2005 when the maximum number of activated numbers was reached, i.e. 1,135,000, continued in 2009.

The law has bestowed
the status of

in scientific fields



ed on BIPT f expert



Technical tasks of general interest

BIPT carries out yet more tasks of general interest. The law has bestowed on BIPT the status of expert in scientific fields such as the measurement of electromagnetic fields and the security of networks.

ANTENNAS AND ELECTROMAGNETIC FIELDS

Following judgment 2/2009 of 15 January 2009 of the Constitutional Court BIPT is no longer authorised to check the environmental aspect of electromagnetic radiation. From now on this is the Regions competence. Yet, the Institute is still competent for checking electromagnetic radiation around antennas.

COMBATING MALICIOUS COMPUTER SOFTWARE

The security of networks, the protection against unauthorised access, the manipulation or destruction of the information circulating or saved on them and the protection of users who are connected to them belong to the technological bases that are essential for the development of the information society and are to be protected as well as possible.

Following the damage caused in 2000 by the "I love You" virus, the e-Security Platform was set up within the Institute; it provides a duty service offering a point of contact 24/7 and every day of the week. By providing this duty service and offering information, BIPT wanted to limit the risks of computer viruses spreading.

In 2005 a change came about regarding malicious programmes, which mainly pursue financial profit by deceiving, abusing and swindling not only the average user, but also companies. This trend has increased exponentially since then. The attacks are more specific, targeting only a limited group, as a result of which they are very hard to detect in time.

The security services market has boomed so that the situation has calmed down considerably for the e-Security Platform.

In 2009 the political authorities decided to create a national CERT ("*Computer Emergency Response Team*") to fulfil the Institute's task referred to in Article 113 of the Act of 13 June 2005 on electronic communications. Therefore, the e-Security Platform was dissolved at the end of 2009.

The national CERT has been integrated into BELNET, which offers Internet connectivity with the State, and with the Belgian academic institutions and universities. The national CERT carries out its mandate under Article 113 of the Act of 13 June 2005 on electronic communications. The CERT has been created by Fedict, the Federal Public Service Information and Communications Technology, which assumes the charges for a year. CERT is a "registered trademark" of Carnegie Mellon (CERT CC); the national CERT has been authorised by Carnegie Mellon to use this acronym, thereby indicating implicitly that the national CERT complies with the operational requirements imposed by Carnegie Mellon on a CERT. The CERT's activities include watching out for computer threats, such as viruses.

SECURING NETWORKS

By taking part in numerous activities regarding network security both at national and international level, BIPT provides the contribution of the Belgian regulatory authority for the electronic communications sector.

The result of the ever-increasing technological complexity is that IT and telecommunications are more and more interwoven. As to network security the added value offered by BIPT, as opposed to other federal bodies, is its unique expertise in the field of telecommunications and its privileged link to the telecoms operators. In that respect it is tasked by the authorities to fulfil a catalyst function toward the sector and

has to make every stakeholder aware to make an effort for securing the networks; this involves the basic principle of precaution in terms of *business continuity*.

That is why the Institute cooperates with BelNIS, the “Coordination Platform on Information Security” created by the Government in 2005. This is a consultative body, which without taking any compulsory measures, harmonises all problems between players concerning the protection of information and networks and which promotes the propagation of good practices.

Some aspects of BIPT’s contribution to Comixtelec also relate to the protection of networks in crisis situations, regardless of whether their origin is natural or created by man (voluntarily or not).

BIPT’s activities are largely guided by European initiatives in that field. Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection imposes on the Member States a number of measures in this field aimed at “*business continuity*”.

Moreover, the European regulatory framework for electronic communications networks and services is being revised at European level. The amendments proposed by the European Commission greatly amplify the obligations in the field of protection and reliability of networks and services. Verifying and imposing these measures are a great challenge for the Institute.

In 2009 the Institute actively participated in the activities of ENISA, the European Network and Information Security Agency. ENISA regularly publishes documents regarding security matters for citizens, SMEs and governments. These documents can be consulted on the following site: <http://www.enisa.europa.eu/publications>. We would like to point out that the purpose was to integrate ENISA into BEREC, proof that network security and regulation of electronic communications are more and more interdependent.

On 15 September 2008, the European Parliament agreed to extend the agency’s mandate by three years.

EMERGENCY SERVICES

Apart from investigating interference on the radio networks of the emergency services and eliminating it, BIPT also has the task to verify whether operators fulfil their legal duty to cooperate with the emergency services.

In 2005 the political authorities decided to incorporate into the Act of 13 June 2005 the obligation for operators to provide calling line identification for calls to Teleonthaal/Téléaccueil (mental health helpline), the Poison Centre, Zelfmoordpreventie/Prévention Suicide (centre for suicide prevention), Child Focus (the European Centre for Missing and Sexually Exploited Children) and children’s telephone services. This is necessary for the emergency services, not only to enable them to act efficiently, but also to combat malicious calls. The alertness of the emergency services is diminished by malicious calls, the number of which rises because of the emergence of new services and technologies where the caller can remain anonymous.

Since early 2009 the operators are informed about conforming the Teleonthaal/Téléaccueil exchanges (106, 107, 108), so that the caller identification is always visible.

In order to make the emergency call services more efficient, it does not suffice to show the caller identification: the location is crucial. A Royal Decree¹⁹ provides for this matter for the mobile operators. That Royal Decree aims at implementing a unique and effective procedure for mobile operators to send location data of a mobile call to the emergency services. An ad hoc group on localisation bringing together

19. ROYAL DECREE OF 27 APRIL 2007 PROVIDING FOR THE SUPPLY OF LOCATION DATA FOR EMERGENCY CALLS FROM MOBILE NETWORKS TO EMERGENCY SERVICES IN ACCORDANCE WITH ARTICLE 107, PARAGRAPH 3, OF THE ACT OF 13 JUNE 2005 ON ELECTRONIC COMMUNICATIONS.

the operators and emergency services involved as well as the Institute, met several times during the second half of 2008 and elaborated a technical solution.

A number of terms, especially the financing, were further elaborated, but the legal basis was introduced by the Act of 18 May 2009 pertaining to various provisions regarding electronic communications. When the implementing orders needed were drawn up a number of difficulties were found, which have caused some delay in the legislative work.

“Nomadic” services based on IP technology appeared in 2006. These services allow the end-user to connect his terminal equipment to any connection point and then to use the service. A number of operators offer nomadic voice services which give the impression to end-users to be similar to a public telephone service with additional facilities, such as nomadicity. A BIPT consultation in 2006 already showed that no operator can guarantee the localisation of an emergency call when the caller uses a nomadic (voice) service by means of IP technology, which makes it nearly impossible for the emergency services to send assistance on site if the caller is personally unable to indicate his position to the emergency services at the time of the emergency call. However, the numbers of the persons using these services were identifiable, because they were limited to specific number blocks. Because of the Royal Decree of 24 March 2009 amending various provisions of the Royal Decree of 27 April 2007 on managing the national numbering space and the grant and withdrawal of number user rights (Belgian Official Gazette of 22 April 2009) however, full number portability for the users of such services was introduced, thus making it impossible for the emergency services to identify a calling number with certainty as a number of a person using nomadic services.

The review of the European regulatory framework regarding electronic communications networks and services was finalised on 18 December 2009. In 2010 its effect on the operation of the emergency services and the “locatability” of the caller should be determined.

In 2007 the 116XYZ number series came into use. Number 116000 was granted in 2008 to the European Centre for Missing and Sexually Exploited Children (“Child Focus”), which could also already be reached through the national Belgian emergency number 110. This was laid down in the Royal Decree of 8 March 2009.

The European number 116111 for child helplines and the number 116123 for emotional support helplines still have not been assigned in Belgium. The existing Belgian emergency services that are apt to operate these numbers showed no interest because they were not prepared to give up their national three-digit number, which was a prerequisite for being allocated the 116XYZ number, and also because of the difficulty that arose from various languages having to be supported by a single (emergency) number instead of three-digit numbers in which 1 determines the language in which the answer will be given.

LEGAL INTERCEPTION OF ELECTRONIC COMMUNICATIONS

In 2009, BIPT continued its task of drawing up the list of the operators’ “coordination cells for Justice”, updating them if necessary and sending them to the department for criminal policy of the Federal Public Service of Justice.

As to the obligations regarding legal interception the Royal Decree of 9 January 2003 implementing Articles 46bis, § 2, subsection one, 88bis, § 2, subsections one and three, and 90quater, § 2, subsection three, of the Code of Prosecution and Article 109ter, E, § 2, of the Act of 21 March 1991 is still valid, since the former provisions of Article 109ter, E, § 2, were adopted in the Act of 13 June 2005, in Article 127 among others.

The draft Royal Decree amending the Royal Decree of 9 January 2003 is currently still following the legislative procedure.

The Institute attended the meetings of the national consultation forum on telecommunications of the judicial and police services.

DATA RETENTION

The European Parliament and the Council adopted Directive 2006/24/EC on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks services on 15 March 2006, also known as the “Data Retention Directive”.

This directive had to be transposed into national law by 15 March 2007. Belgium has used the possibility offered to postpone the application of the Directive until 15 March 2009, a deadline which has been passed in the meantime.

The European Directive lays down that no later than 15 September 2010, the Commission shall submit to the European Parliament and the Council an evaluation of the application of this Directive (or of its possible amendment, considering its sensitive nature).

The transposition of this Directive in the form of a Royal Decree and an amendment to Article 126 of the Act of 13 June 2005 on electronic communications was prepared by the NOT platform (“nationaal overleg telecom”), chaired by the Federal Public Service of Justice and the members of which are the Federal Public Service Economy, SMEs, Self-employed and Energy, BIPT, the federal police, the Board of the Procurators General, the examining magistrates, the federal public prosecutor’s office and National Security.

BIPT submitted the draft transposition for consultation, which led to response from all parties involved in this file (the Human Rights League, ISPA Belgium, the Bar, the order of Physicians, etc.), stressing the protection of privacy.

On 18 June 2008 BIPT formulated a positive opinion and on 2 July 2008 the Commission for the protection of privacy gave a negative opinion; the latter was taken into account, specifically by fixing the duration of data retention on twelve months. The Commission for the protection of privacy expressed a conditional opinion on 1 July 2009.

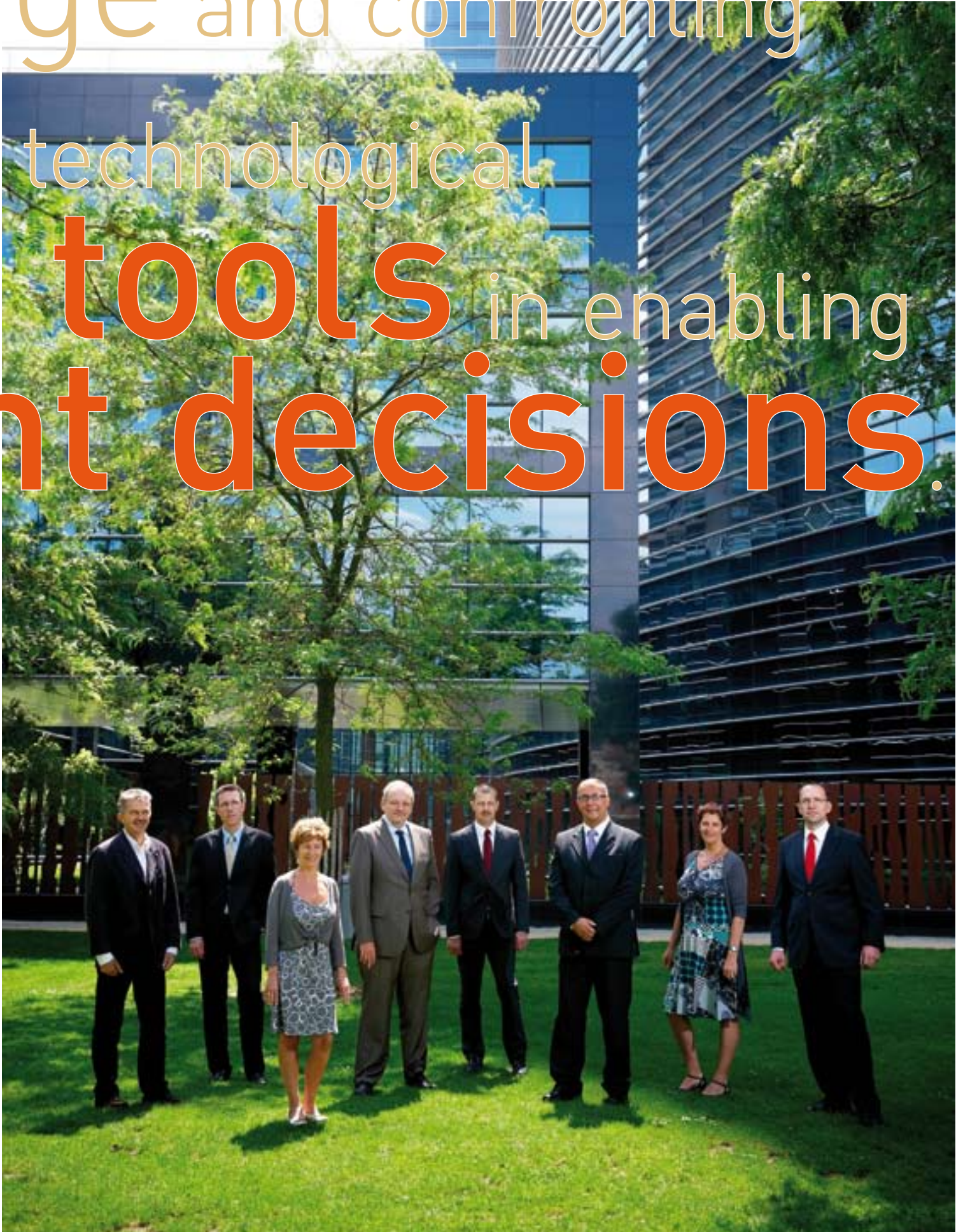
After the privacy issue, the problems with the system for compensating the operators remained. Legislatively-technically speaking, this issue is provided for in the annex to the Royal Decree on the operator’s duty to cooperate.

At the end of 2009 the ministers in charge reached a consensus to entrust BIPT with the task of objectively determining the cost of the practical implementation of the Data Retention Directive.

Exchanging knowledge
points of view on
developments are **key**
people to take the **right**



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technological
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decisions.



Involvement in national and international institutions

Exchanging knowledge and confronting points of view on technological developments are key tools in enabling people to take the right decisions. The officials of the Belgian Institute for Postal Services and Telecommunications are constantly in contact with their opposite numbers who work for foreign regulators. Through its active involvement in that respect, BIPT is able to follow and influence certain policies.

The Frequency Management Cell of BIPT followed up the following files:

Radio Spectrum Policy Group (RSPG)

The RSPG (*radio spectrum policy group*) continued the activities in the joint RSPG/ERG subgroup that was created and which focuses on new competition challenges resulting from a more flexible management of spectrum. The group also discussed allocation and price fixing methods for a more effective use of spectrum, on the subject of "cognitive radio", the digital dividend and the main items on the WRC (*world radio-communication conference*) 2012 agenda.

Radio Spectrum Committee (RSC)

The RSC made an evaluation of Commission Decision 2005/50/EC on the harmonisation of the 24 GHz range radio spectrum band for the time-limited use by automotive short-range radar equipment in the Community. To that end a mandate was given to CEPT to perform technical studies for which the interim report was already submitted.

A new proposal to review the annex to Commission Decision 2006/771/EC regarding short-range devices was submitted to the EU Member States in the RSC (*radio spectrum committee*) at the end of 2009 and adopted. The aim is to have an annual review of this extended annex to this decision from now on.

Furthermore, the RSC also treated a draft decision on harmonised conditions of use in the 790-862 MHz frequency band for terrestrial systems capable of providing electronic communications services (the digital dividend).

A third draft version of the Commission decision on harmonised conditions of use of radio spectrum for mobile communication services on board vessels (MCV services) in the GSM 900 and GSM 1800 MHz frequency bands in territorial waters was treated extensively and will be submitted in 2010 to the EU Member States in the RSC for voting.

Attention was also paid to Decision 2008/411/EC regarding the 3.4-3.8 GHz band. The satellite industry requests for procedures to be drafted for coordination between the satellite earth stations and the development of terrestrial wireless broadband networks.

CEPT

The Frequency Management Cell participated in CEPT's different meetings such as the ECC plenary meeting ECC (*electronic communications committee*), the FM working group (*Frequency Management*), the RA working group (*Radio Affairs*), the CPG (*Conference Preparatory Group*), TG4 (*Task Group 4*), ...

DVB-T

Following the RRC-06 planning conference and the GE06 Agreement reached the activities for the transition were continued (gradual transition from analogue to digital transmitters). This must of course be seen within an international context, taking into account the different transition dates applied by the different neighbouring countries.

BIPT's **Network Security Cell** participated in the following working group meetings:

"Civilian Communications Planning Committee" from NATO's "Civilian Emergency Planning" Department.

BIPT chairs this working group from 4 June 2008 for a period of three years. The working group deals with topics related to electronic communications in crisis situations and supporting aid provided in crisis situations, and issues recommendations in this field. Belgium particularly participated in the activities related to the integration of Computer Security Incident Response Teams (CSIRTs) into the emergency and crisis planning for electronic communications.

"European Networks and Information Security Agency" ("ENISA");

The Institute's representatives attended meetings by the Agency's Management Board.

The coordination platform for network and information security of the Belgian government ("BelNIS" - Belgian Network Information Security)

BIPT actively contributed to the implementation of the action programme based on the White Paper regarding network and information security of the Belgian government's coordination platform for network and information security ("BelNIS").

FPS Economy's crisis cell

The think tank on the continuity of the operation of the public electronic communications network in crisis situations ("*Business Continuity Planning*") was continued. This closely related to the protection of the critical Belgian infrastructures and to the recent publication of the European Directive on the protection of critical European infrastructures. BIPT continued the consultation to determine BIPT's role in the management of the issues relating to guaranteeing continuity of the operation of the public electronic communications networks in crisis situations.

Ecosoc Cell

Following the emergence of the flu pandemic the government's Coordination and Crisis Centre activated its Ecosoc Cell, charged with the coordination of the implementation of the measures required to limit the socio-economic impact of the possible generalisation of the pandemic. The Institute participated in this Cell's activities.

FPS Interior

Some of the Institute's representatives have cooperated in the preparation of the legislation pertaining to the transposition of the critical infrastructures directive. This preparation is coordinated within the Interior Federal Public Service by the Government's Coordination and Crisis Centre.

The **NCS (National Spectrum Monitoring Department)** participates, as mentioned earlier, in the activities of the CEPT/ERC/FM-PT22 (*Monitoring*), CEPT/RA11 (*Enforcement*), CEPT/RR2 (*Maritime*) and Rainwat Committee (*Maritime*) working groups.

The **Numbering Management Department** continued presiding the working group "*Numbering, Naming and Addressing*" of CEPT/ECC (*Electronic Communications Committee*). Progress was made as regards the harmonisation of numbering plans in Europe, numbering for M2M communication (machine to machine) and the future evolution of geographical numbers, the development of complementary instruments for 116 and the development of measures to safeguard the integrity of the identification of the calling line (CLI - calling line identification).

Through the **Equipment Cell** the Institute is also active in European forums (European Commission, TCAM Committee (telecommunications conformity assessment and market surveillance), ECC (electronic communications committee), Administrative Cooperation (ADCO), ETSI (European telecommunications standard institute), EMC Working Party (electromagnetic compatibility), EMC SLIM (simpler legislation for the single market) etc.) who devote themselves to continuing the European harmonisation.

BIPT **checks** the C individual licenc companies active in the p



declarations and CES submitted by the postal sector



§3

§ 3

BIPT AND THE POSTAL SECTOR

Legal framework

AT THE EUROPEAN LEVEL

Following the publication of the 2008/6/EC Directive, hereinafter the “Third Postal Directive”²⁰, in the European Union’s Official Journal on 27 February 2008 numerous Member States worked on the transposition of this Directive. For most of the Member States, including Belgium, are to liberate the market by 31 December 2010. Only a certain number of Member States have until 31 December 2012 to open up their postal market.

The European Commission provided technical support to the Member States for the transposition of the Third Postal Directive through working groups (13 March 2009 and 12 October 2009) and the plenary meetings of the *Postal Directive Committee* (27 April 2009 and 15 December 2009) in which BIPT participated and through various bilateral meetings with the Member States.

AT THE BELGIAN LEVEL

At the Belgian level the transposition of the Third Postal Directive was continued. Early 2009 a preliminary draft was formulated amending the Act of 21 March 1991 on the reform of certain economic public companies and the Act of 17 January 2003 on the status of the regulator of the Belgian postal and telecommunications sectors.

At the request of the sector and the Minister in charge of the postal sector the draft was submitted for consultation during April and May 2009 on BIPT’s website: 12 parties concerned responded to the consultation.

The preliminary draft was further discussed by the Ministers in charge during June and July 2009 and again in November and December 2009. On 17 December 2009 the Council of Ministers approved the preliminary draft.

As regards the activities mentioned above BIPT:

- + issued advice, on its own initiative or at the Minister’s request, on certain technical aspects of the Third Postal Directives (evaluation of the market, calculation of the universal service costs and their possible financing, immaterial advantages, tariff aspects, access to the postal network, exclusive rights, designation of the universal service provider, quality control, productivity, etc.);
- + gave technical and legislative support to and followed the governmental negotiations (working groups between private offices of the ministers) when so desired by the Minister and the Government.

20. DIRECTIVE 2008/6/EC OF THE EUROPEAN PARLIAMENT AND THE COUNCIL OF 20 FEBRUARY 2008 AMENDING DIRECTIVE 97/67/EC WITH REGARD TO THE FULL ACCOMPLISHMENT OF THE INTERNAL MARKET OF COMMUNITY POSTAL SERVICES

THE MANAGEMENT CONTRACT BETWEEN THE STATE AND LA POSTE

Evaluation

At the request of the Minister of Enterprise and Simplification BIPT drew up a list of points to be improved for the 5th management contract. In addition an outline was made of the invoicing of the public services included in the 4th management contract and the issue of the contracting-out was analysed in view of the new postal directive.

Customer satisfaction survey

In conformity with Article 18 of the fourth management contract La Poste carries out a customer satisfaction survey once a year, under the supervision of BIPT, regarding the way that La Poste fulfils its public service duties. The results of this survey are published annually.

The satisfaction is measured by means of 11 satisfaction indicators. The first indicator regards the “general satisfaction” and provides an answer to the question: “How satisfied are you with regard to La Poste?”.

The remaining ten satisfaction numbers relate to specific fields of study. For each study field different questions are asked. The table below shows the results per field:

- + sending and receiving letter post;
- + sending and receiving parcels;
- + newspapers and periodicals;
- + registered items;
- + client information;
- + the physical state of the post office;
- + the service in the post office;
- + the Postal Point;
- + the eShop;
- + customer service.

	Private persons							Companies						
	2003*	2004*	2005*	2006*	2007	2008	2009	2003*	2004*	2005*	2006*	2007	2008	2009
General satisfaction	71	74	75	76	75	82	81	78	75	79	81	82	82	84
Sending - receiving letter post	86	84	87	89	84	86	86	74	77	77	80	84	87	94
Sending - receiving parcels**	95	94	94	96	94	92	94	84	81	83	86	88	88	89
Newspapers & periodicals	93	94	95	96	94	89	93	83	79	78	77	81	87	88
Registered items	76	70	71	77	72	73	74	71	68	68	67	71	73	75
Providing information to customers	69	70	69	74	74	77	79	64	66	66	71	72	70	70
The physical state of the post office	73	70	71	74	74	75	75	64	66	66	67	74	72	72
Service in the post office	76	77	76	81	79	79	79	67	68	65	71	72	73	74
Postal Point					90	86	87					90	87	84
eShop **					100	93	85					88	93	95
Customer service **					73	71	69					56	53	72

* These scores were obtained by recalculating the figures by means of the new method.

** Limited sample results for the private persons thus leading to a result that only gives an indication regarding the satisfaction

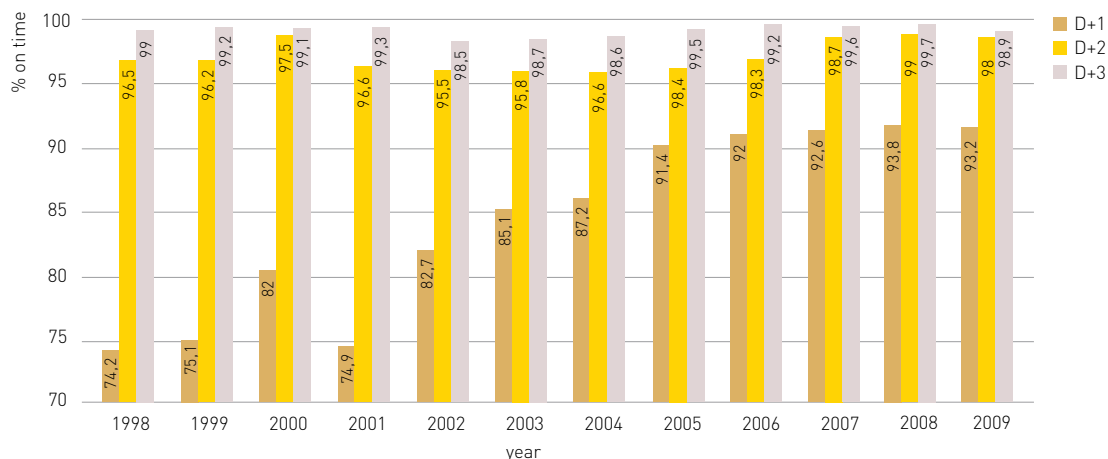
21. THE GENERAL SATISFACTION IN 2009 IS THE AVERAGE OF THE GENERAL SATISFACTION OF THE PRIVATE PERSONS IN 2009 AND THE GENERAL SATISFACTION OF THE COMPANIES IN 2009

22. THE GENERAL SATISFACTION IN 2003 IS THE AVERAGE OF THE GENERAL SATISFACTION OF THE PRIVATE PERSONS IN 2003 AND THE GENERAL SATISFACTION OF THE COMPANIES IN 2003

The general satisfaction regarding La Poste is improving as in 2008 82.5%²¹ of the customers declared being satisfied, compared to 74.5%²² in 2003.

The results for the priority items in 2009 indicate that 93.2% of the domestic priority items reach their destination on Day + 1 and 98% on Day + 2. The results for the non-priority items in that same period indicate that 97.3% of the domestic non-priority items reach their destination on Day + 2 and 98.9% on Day + 3. During these twelve months more than 59,330 priority and 12,194 non-priority test letters were sent.

Results of the transit time monitoring for priority items since the BIPT inspections of 1998



The average quality reached as defined in Article 9, 2°, a), of the fourth management contract between the State and La Poste is the index that calculates the percentage of single piece mail delivered on time. The quality is measured using an index based on a small users basket of postal services that are part of the universal service. In accordance with Article 16, 2°, of the fourth management contract this small users basket is composed as follows, with an indication of the share of each postal service in the basket:

1. domestic priority single piece mail (40%);
2. domestic non-priority single piece mail (27%);
3. domestic registered single piece mail (10%);
4. domestic single piece packages (7%);
5. incoming priority cross-border single piece mail (16%).

In the table below the results of the transit times regarding small user services are given.

General quality regarding the observation of the delivery time

Category + Time	Ponderation	Result
Prior D + 1	40	93.2
Non Prior D + 2	27	97.3
Registered items D + 1	10	94.9*
Postal parcels D + 2	7	97.4*
Incoming international letter post D + 1	16	93.4
TOTAL QUALITY INDEX	100	94.8*

* BIPT has not yet received an official report on the registered items and parcels.

The overall result of 94.8% is the average quality reached in 2009.

Economic regulation

UNIVERSAL SERVICE – COST – METHOD

Under the authority of BIPT the consultancy agency KPMG studies the new method for the allocation of the common costs as suggested by La Poste. KPMG verified the model's accounting relevance and whether the model proposed complies with the Belgian and European legislation at hand and proposals were made to adapt the calculation method of the model suggested with a view to conformity with the above-mentioned requirements. At the same time KPMG analysed the universal service net costs for the years 2009 until 2013 in the old and new model.

TARIFFS

BIPT gave its a posteriori approval to La Poste's 2008 tariff increases for the services in the small users basket and for the preferential and conventional services reserved for La Poste, in accordance with Article 33 of the Royal Decree implementing Title IV of the Act of 21 March 1991 on the reform of certain economic public companies.

The small users basket is a basket of postal services mainly used by residential customers, self-employed and small companies and the annual price increases of which are restricted via a specific formula. Indeed, if a number of conditions set by La Poste are fulfilled it is possible to enjoy a cheaper preferential tariff. Direct customers such as banks, department stores and mail-order firms that frequently deliver large volumes for distribution through the public network, may enjoy the conventional tariffs.

Furthermore BIPT made an additional analysis of La Poste's adapted proposal regarding the convergence between direct customers and intermediaries in the framework of its new tariff plan for 2009. The new system provides for two contract types as of January 2009:

- + the "committed revenue contract": the contracting party contractually commits itself to achieve a given annual volume. If the contracting party does not reach the volumes agreed, it pays the higher tariffs of the other contract ("deferred rebate contract") completed by a financial sanction. Generating more volumes does not give right to higher volume discounts.
- + the "deferred rebate contract": the contracting party does not conclude any contractual obligation to achieve a given annual volume set in advance (only the volume to be reached is indicated). The contracting party pays a higher basic tariff and receives no lower discounts on the annual volume following the lack of commitment.

Both the committed revenue contract and the deferred rebate contract also provide, in addition to discounts based on annual volumes, for discounts based on operational aspects, i.e. the number of items per delivery, data quality, use of e-masspost and packaging.

In principle both contracts are accessible for direct customers as well as for intermediaries.

Furthermore BIPT organised a public consultation on 12 November 2009 to gain insight in the vision of the sector on La Poste's special tariffs for business users, bulk mailers or intermediaries as of 2010. Thirteen organisations have participated in this consultation.

In addition BIPT is making its own detailed analysis of the above-mentioned preferential and conventional tariffs and contacts for the administrative and direct mail items delivered by La Poste to the direct customers and the intermediaries (or routers or mailhandlers). In the new model ("pass-through model"), which the designated universal service operator, La Poste, would like to introduce as of 2010, the annual discount volumes will be calculated exclusively on the basis of the individual volumes of the actual sender, namely he who is at the origin of the item addressed to the addressee.

DECLARATIONS AND INDIVIDUAL LICENCES

In accordance with secondary legislation (see Moniteur belge of 17 January 2006) BIPT continued to process the declarations and individual licences submitted by the companies active in the postal sector.

By the end of December 2009 measures had been taken for 11 individual licences and 213 declarations had been treated.

The procedures to declare in default the companies not complying with the law were pursued as well.

It is important to note here that the Brussels Court of Appeal passed a judgement on 3 December 2009 “UPS Belgium – BIPT” confirming that the requirement of declaration and the compliance with the essential requirements by the legislator are evidently and fundamentally considered necessary to enable BIPT as a regulator, in implementing the Postal Directive, to monitor the postal market and in particular to guarantee that the essential requirements are observed by the postal operators by means of specific sanctions. The Court specified that the definition of postal services as mentioned in the Belgian legislation, complies with the Postal Directive. This is a welcome decision that finally puts an end to the many discussions and arguments of express operators.

On the BIPT website (Postal sector → Regulation) you will find all declarations and individual licences.

User protection

THE UNIVERSAL SERVICE

Based on the management contract BIPT verified whether La Poste fulfils its obligations.

BIPT completed the calculation of the 2008 universal service costs, which showed no unreasonable burden.

CONTRIBUTIONS FOR THE OFFICE OF THE OMBUDSMAN FOR THE POSTAL SECTOR

Within the framework of the extension of the powers of the Office of the Ombudsman for the Postal Sector BIPT pursued the procedures and actions necessary to calculate the amount of the contributions from the companies that are active in the Belgian postal market. At the end of 2009 the invoices were sent for the 2009 contributions of the Offices of the Ombudsman to gather the financial means in order to finance the Office of the Ombudsman for the Postal Sector. In this case too, procedures were started to declare in default non-conforming companies.

Involvement in national and international institutions

THE CONSULTATIVE COMMITTEE ON POSTAL SERVICES

The Committee is still awaiting a royal decree organising its composition and operation. A new file was submitted to the Minister of Enterprise and Simplification.

The Consultative Committee was informed about the method to determine the contributions from the postal operators in the charges of the Office of the Ombudsman. Those contributions are determined on the basis of the operating costs of the Office of the Ombudsman and on the complaints against the operators that are treated.

The Committee held a plenary meeting on 27 March 2009 to issue its advice on the transposition of the Third Postal Directive.

THE POSTAL DIRECTIVE COMMITTEE AND OTHER ACTIVITIES OF THE EUROPEAN COMMISSION

The Institute continuously followed the developments in the implementation of the Postal Directive. In this framework the Institute participated in the workshops of 13 March 2009 and 1 April 2009, organised by the EC and focusing on:

- + the universal service obligation;
- + the obligations ensuing from licenses;
- + the access to the postal infrastructure;
- + the role of the national regulatory authorities, the universal service cost calculation, the external dimension of the European postal policy, market supervision and consumer protection in a liberalised postal market;
- + cost allocation and internal accounting with separate accounts;
- + the *Postal Directive Committee* of 27 April 2009 and 15 December 2009 focused on: the transposition of the Third Postal Directive, the discussion of the results from the working groups on the transposition of the Third Postal Directive, the activities of the UPU (*universal postal union*) and WTO (*world trade organization*), the information exchange regarding the regulatory dialogue with third countries (China and United States) and the issue of taxes in the postal sector.

BIPT replied to the detailed questionnaire by the consultant and participated actively in workshops organised by the European Commission in which WIK-Consult, commissioned by the Commission, carries out a study on the future role of regulatory authorities in the framework of a more competitive postal market on the one hand and ITA Consulting, which in cooperation with WIK Consult also carries out a study, commissioned by the Commission, regarding the developments on the postal market since 1997 on the other hand. These studies can be consulted on the website of the European Commission (http://ec.europa.eu/internal_market/post/studies_en.htm).

In addition, this working group follows up the standardisation activities of the European Committee for Standardisation (CEN/TC (*technical committee*) 331 "Postal Services"). CEN/TC 331 "Postal Services" harmonises the quality standards at European level. This standardisation is an indispensable tool to guarantee interoperability between the various national networks and an efficient universal service in the European Union. BIPT mainly monitors the adaptations to the existing European quality standards.

EUROPEAN COMMITTEE FOR POSTAL REGULATION (CERP)

Moreover, BIPT will make sure that CERP will be able to continue playing its role as it is laid down in the Third Postal Directive. In 2009 CERP started thinking on its structure and role in the framework of the new future obligation of the Third Postal Directive that states that the national regulatory authorities have to cooperate closely and have to assist each other within the appropriate bodies.

Within CERP BIPT is in charge of two project groups, namely the "Market Supervision" group and the "Sustainable Development" group and it is a member of the "Steering Group". As a member of the Steering Group it will contribute actively to the adaptation of CERP's structures in order to meet the obligations of the new postal directive.

CERP held two plenary meetings, in May 2009 in Luxembourg and in November 2009 in Monaco respectively.

During these two plenaries CERP organised four forums the themes of which were:

- + *"Concepts of Universal Service Provision"*;
- + *"What effect will technology and media convergence have on postal market definition going forward"*;
- + *"Is there a need for quality of service measurement in a liberalised market? If yes: what should be measured and by whom?"*;
- + *"Duties and responsibilities of NRAs in a liberalized market"*.

During the plenary meetings the activities are explained and the reports of the various project groups are approved: cost accounting and price regulation, universal service financing, consumer affairs, statistics, regulatory authorities, sustainable development, market monitoring, policy and universal service.

During the CERP plenary meeting the CERP recommendations "Recommendation on best practices for cost accounting rules III" and "Recommendation on best Practices for Price Regulation" were approved as well as the following CERP reports:

- + *"Regulatory approaches on consumer relations"*;
- + *"National Regulatory Authorities"*;
- + *"CERP Quality of Service Report 2008"*;
- + *"Implementation Guide: Universal Service"*;
- + *"Application of EN 13850 regarding national needs and peculiarities"*.

BIPT remained active in the following working groups:

- + "NRAs (national regulatory authority)" project group which focuses on the licensing scheme and the access to the postal infrastructure;
- + "USO (universal service obligation) and Financing" project group (USO is, let us remind you, a cornerstone for the postal liberalisation);
- + "Consumer" project group;
- + *"Pricing and Cost Accounting" project group*: this group is of great importance in view of the liberalisation of the postal sector in 2011;
- + *"Statistics" project group*: This project group focused on the implementation of the new Article 22a of the latest Postal Directive and the follow-up of the most recent collection of postal statistics by Eurostat;
- + *"Universal Service" project group*: this Universal Service PT is devoted to the more strategic aspects of the universal service (its essence, its sustainable nature and its adaptation to demand);
- + *"Supervision/Market Data"*, focusing on the way in which the quality of postal services is measured;
- + *"Policy" working group*, which is dedicated to the reform of the UPU (cf. infra) in addition to the activities in relation to the Postal Directive.

UNIVERSAL POSTAL UNION

Belgium was elected as a member of the Council of Administration and as a member of the Postal Operations Council. BIPT consequently assumed its responsibility as a representative of Belgium in the Council of Administration.

BIPT participated in UPU's activities during its *Postal Operations Council (POC)* and *Council of Administration (CA)* conference in March and November of 2009.

Within the Council of Administration BIPT presides over the "Reform of the Union" and the "Acts of the Union" working groups.

The "Reform of the Union" working group concentrated on the following main themes:

- + a study on the impact of the new players in the postal sector on the UPU;
- + the restructuring of the Union;
- + the extrabudgetary activities;
- + the Union's status.

The Acts of the Union working group focused its activities on the review of the Acts of the Unions in view of the formal legislative drafting.

Furthermore BIPT attended the meeting and submeetings of Committee 4 of the CA regarding the strategic planning of the UPU activities. BIPT shall in particular follow the implementation of the current strategic plan that was drafted in 2008 under the guidance of Belgium.

BIPT also attended the meeting on terminal dues, the regulatory aspects of this matter as well as the CA meeting regarding the universal service provision.

BIPT also closely followed the debates relating to the postal sector's ecological issue and the sustainable development and the social responsibilities of the sector's public organisations and companies.

The procedure for the Belgian approval of the Acts of the Geneva Congress continues. The dossier was submitted to the minister in charge with a view to the approval by the Senate during the months to come.

The policy mainly focused on staff's **careers** and deliberations



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§ 4 THE INSTITUTE'S OPERATIONS

Staff

In 2009 the support services built further on the existing initiatives. As regards personnel this entailed the wrapping up of several additional recruitments and the implementation of the social agreement for social benefits. This included an update of the amounts for those who are eligible for a scholarship and for those who use the children's holiday scheme. Furthermore a fair parting scheme was developed for those who retire and a seniority bonus was granted to those who have been working for BIPT for 25 and 35 years.

In addition it is systematically strived after to tune the policy to the changing circumstances. To that effect a case was opened for example to convert, within one and the same budget, a number of degrees that are less in demand and hard to recruit for that matter, into a number of positions that are more in sync with the actual needs.

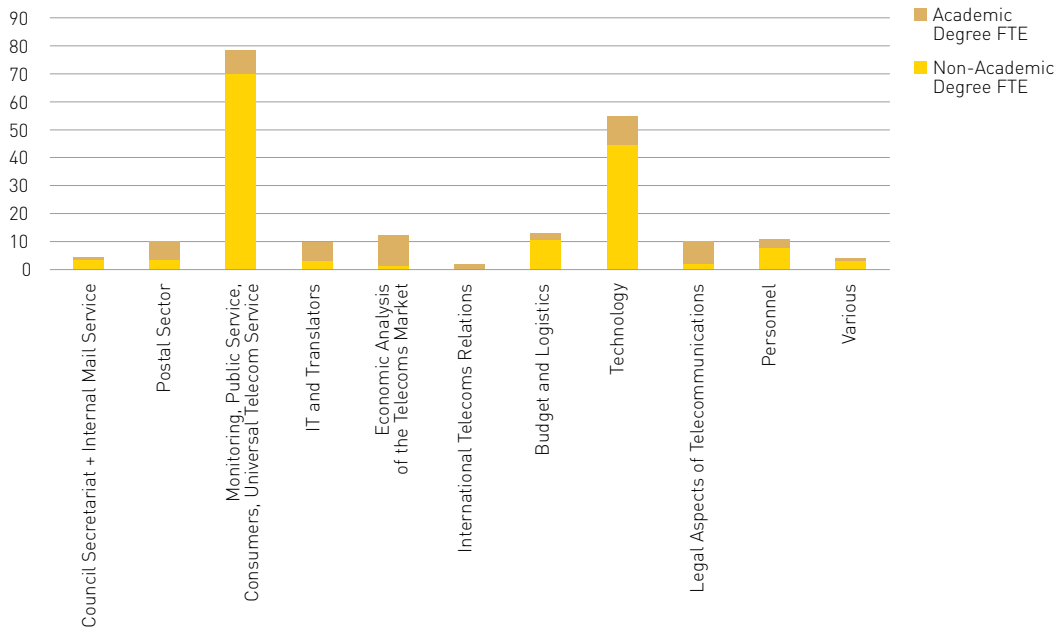
The policy mainly focused on the staff's careers and social deliberations in general. This led to all necessary preparations being made so that in 2010 the examination for the promotion of administrative staff to level B can be organised and all necessary legal initiatives being undertaken to allow for promotions to level A.

As regards the personnel statuses, a new category of assignees was created²³, aimed specifically at BIPT staff who were members of the Council and a draft decision was submitted to introduce the new increased end-of-year bonus for public servants. Furthermore talks with the trade unions were launched on the introduction of further modifications to the personnel statuses.

As the Institute had no choice but to ask new advice to the Minister of Civil Service, it was not possible to finish the dossier on the integration of members of staff from the Office of the Ombudsman for the Postal Sector.

23. BY VIRTUE OF THE ROYAL DECREE OF 16 NOVEMBER 2009 AMENDING THE ROYAL DECREE OF 11 JANUARY 2007 LAYING DOWN THE ADMINISTRATIVE STATUS OF THE STAFF OF THE BELGIAN INSTITUTE FOR POSTAL SERVICES AND TELECOMMUNICATIONS AND THE ROYAL DECREE LAYING DOWN THE FINANCIAL STATUS OF THE STAFF OF THE BELGIAN INSTITUTE FOR POSTAL SERVICES AND TELECOMMUNICATIONS (BELGIAN OFFICIAL JOURNAL OF 20 NOVEMBER 2009) AND ARTICLE 17, § 2, OF THE ACT OF 17 JANUARY 2003 ON THE STATUS OF THE REGULATOR OF THE BELGIAN POSTAL AND TELECOMMUNICATIONS SECTORS, AS AMENDED BY THE ACT OF 30 DECEMBER 2009.

Human resources that BIPT has at its disposal in order to carry out all its missions



Equipment

ICT AT BIPT

In 2009, the Institute continued its annual investments in the field of IT, security maintenance contracts, and the partial renewal of its computer fleet and software licences.

Two general projects regarding computerisation and IT maintenance of the Office of the Ombudsman for the Postal Sector and the Office of the Ombudsman for Telecommunications have been launched. The following annual report will look back on the implementation of these missions.

Finances

In 2009 BIPT's revenues and expenditures showed no structural differences compared to the previous years. The revenues comprise fees for frequency licences, numbering plans, licences and declarations of telecommunications networks and services, as well as declarations of operation regarding other services, including in the postal sector.

BIPT is obliged by law to transfer the balance between its revenues and expenditures to the Treasury, taking into account an annual cash reserve to be established during the budgetary conciliation.

Personnel and operating costs of the Offices of the Ombudsman for Telecommunications and for the Postal Sector are borne by the respective sectors. In a sense BIPT acts as prefinancer.

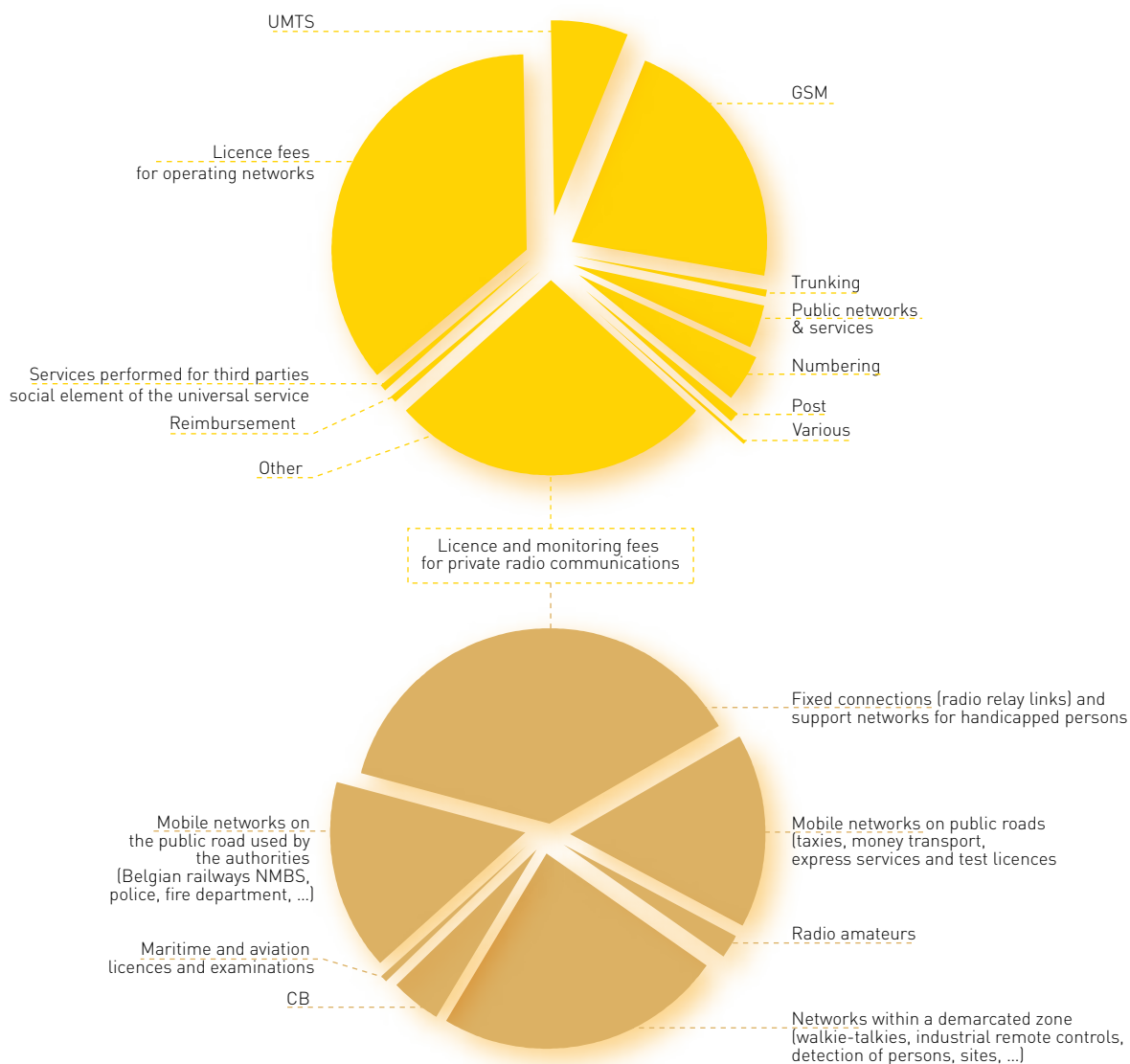
ACHIEVEMENTS OF BIPT – 2009

Revenues	euros	Expenses	euros
Reimbursement	266,373	Staff	18,862,690
Licence and monitoring fees for private radio communications	16,792,381	Operation	5,583,258
Public licence fees	22,621,913	Investment expenses	1,175,872
Post	5,130	Coordination organisations	1,561,094
Depreciations	0	Treasury	3,900,000
Various ²⁴	408,121	CF/RT ²⁵	4,631,265
TOTAL	40,093,918	TOTAL	35,714,179

24. THIS AMOUNT INCLUDES A ONE-TIME FEE OF 403,653 EUROS FOR DEFAULT INTERESTS FROM A DISPUTE CASE.

25. THESE ARE THE SALARIES FULLY ASSUMED BY BIPT OF THE STAFF THAT IS ASSIGNED TO THE RADIO AND TELEVISION LICENCE FEE DEPARTMENT.

Division of the income sources of the BIPT Council



The following events in 2009 should be noted because of their financial impact:

- + the exemption from licence for CBs: by virtue of the Royal Decree of 18 December 2009 (annex 2, 8°), the B27 radio communications equipment (CB) was exempt from licence in accordance with a Belgian radio interface (power of less than 4W and with no more than 40 channels). This simplification impacted 19,000 spectrum users who paid an amount of € 33 each year, the obligatory contribution into the fund combating over-indebtedness. Article 185 of the Programme Act of 23 December 2009 stipulates that BIPT contributes to the fund combating over-indebtedness by depositing 1,200,000 each year, an amount that is deducted from the fees collected from the electronic communications operators and electronic communications services providers;
- + the obligatory contribution to the financing of the archiving and the studies at the expense of the federal public service "Mobility and Transport";
- + Financing of the DG Telecom: Article 209 of the Programme Act of 23 December 2009 provides for the transfer of human, financial and material resources necessary for the preparation, implementation and assessment of the policy on telecommunications and postal services from the Institute to the FPS "Economy, SMEs, Self-employed and Energy".

ACCOUNTING

In 2009 the Accounting Department further developed the pilot project for the electronic processing of incoming invoices. Together with the IT Department the needs were analysed and the computer interface was set up. Specifically, all incoming invoices will be scanned, after which they will automatically be allocated to the right department and the right budget item, before having them approved electronically by the authorised persons.

The necessary steps were also taken to switch to the electronic payment system of the Financiële Post, called Pay@Finpost. This payment system, specially developed for the Federal Public Services, should make it possible to send payment orders in an electronic, safe and quicker way to the Financiële Post.

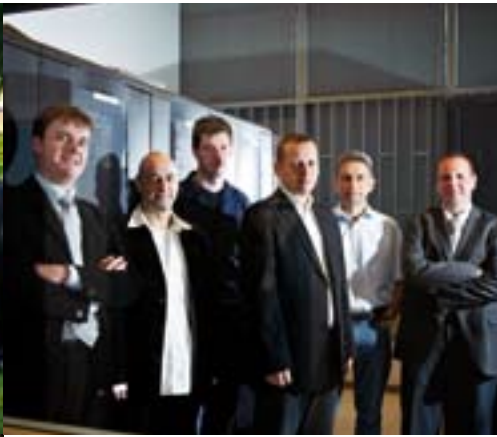
In total 75,015 accounting operations were carried out in 2009. These represent all operations entered into the journal entries of the BIPT accounts. Overall 34,965 invoices were sent to licence holders. For the purchase of material and for services provided or work performed 3,490 invoices were received. The number of financial transactions that were processed, including payments made and revenues received, amounted to 36,560.

BIPT provides information
and **advice**, monitoring
inspections



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PRACTICAL INFORMATION

List of the Council decisions adopted in 2009

Decisions	
12/01/09	Decision of the BIPT Council of 12 January 2009 on radio interfaces B1, B6 and B9
14/01/09	Decision of the BIPT Council of 14 January 2009 on the evacuation of the 3400-3450/3500-3550 MHz band
28/01/09	Decision of the BIPT Council of 28 January 2009 regarding the conformity of Belgacom's cost accounting system for 2007
18/03/09	Decision of the BIPT Council of 18 March 2009 regarding the analysis of market 13 (2003) concerning the key performance indicators for quality (KPIs)
26/03/09	Decision of the BIPT Council of 26 March 2009 on the introduction of UMTS in the 880-915 MHz and 925-960 MHz frequency bands
08/04/09	Decision of the BIPT Council of 8 April 2009 regarding the price squeeze test for Ethernet leased lines
22/04/09	Decision of the BIPT Council of 22 April 2009 on the methodology to allocate the costs related to the database of the social element of the universal telecommunications service and to the calculation elements specific to the years 2006 and 2007
05/05/09	Decision of the BIPT Council of 22 April 2009 on radio interface D3
08/04/09	Decision of the BIPT Council of 8 April 2009 regarding the granting to CNH Belgium NV of a licence for the operation of a public DGPS radiolocation network on the Belgian territory
10/06/09	Decision of the BIPT Council of 10 June 2009 on the extension of the temporary authorization granted to TELENOR MOBILE AVIATION AS for the use of the frequency spectrum allocated in Europe to mobile telephony in order to provide mobile telephony services on board aircraft flying over Belgian territory
17/06/09	Decision of the BIPT Council of 17 June 2009 regarding a request for derogation by Belgacom NV in accordance with Article 3, subsection 2, of the annex to the Act of 13 June 2005 on electronic communications
17/06/09	Decision of the BIPT Council of 17 June 2009 on the GSM-R network
17/06/09	Decision of the BIPT Council of 17 June 2009 imposing a deadline on Orange Business Belgium to put an end to the non-compliance of Article 50, § 6, of the Numbering RD of 27 April 2007
17/06/09	Decision of the BIPT Council of 17 June 2009 regarding a modification to the BROTSOLL reference offer
17/06/09	BIPT Council Decision of 17 June 2009 on the publication of a declaration of conformity for the separated accounts of Belgacom for the year 2005
29/06/09	Decision of the BIPT Council of 29 June 2009 concerning the granting to AEG Belgium NV of an authorisation for the operation of a public radio communications network with shared facilities according to the TETRA standard
22/07/09	Decision of the BIPT Council of 22 July 2009 imposing a deadline on Mobistar to put an end to the non-compliance with Article 48, subsection 1, Article 50, § 3, and Article 50, § 5, subsection 1, 3 and 5 of the Numbering RD of 27 April 2007

Decisions	
22/07/09	Decision of the BIPT Council of 22 July 2009 imposing a deadline on Belgacom Mobile to put an end to the non-compliance with Article 48, subsection 1, Article 50, § 3, and Article 50, § 5, subsection 1, 3 and 5 of the Numbering RD of 27 April 2007
22/07/09	Decision of the BIPT Council concerning the imposition of a deadline onto KPN Group Belgium to put an end to the non-compliance with the obligations of BASE regarding 3G service delivery
02/09/09	Decision of the BIPT Council of 2 September 2009 correcting the market analysis decision of 10 January 2008 regarding the broadband access markets
29/09/09	Decision of the BIPT Council of 29 September 2009 aiming at imposing provisional measures to postpone the introduction of a "service fee" for the VAS calls from a mobile network (public version)
30/09/09	Decision of the BIPT Council of 30 September 2009 regarding WBA VDSL2
14/10/09	Decision of the BIPT Council of 14 October 2009 concerning the provision of information to enable consumers to make an independent evaluation of the cost of alternative usage patterns
12/11/09	Decision of the BIPT Council of 12 November 2009 regarding the separated accounts of Belgacom for the year 2006
12/11/09	Decision of the BIPT Council of 12 November 2009 regarding the separated accounts of Belgacom for the year 2007
12/11/09	Decision of the BIPT Council of 12 November 2009 regarding the access to the 69.950 MHz frequency for radio amateurs
12/11/09	Decision of the BIPT Council of 12 November 2009 regarding the conformity of the cost accounting system of La Poste for 2006
18/11/09	Decision of the BIPT Council of 18 November 2009 on radio interfaces B3.1, B3.2, B3.3 and I.1
18/11/09	Decision of the BIPT Council of 18 November 2009 on radio interfaces E1, E2, E4, E6 up to E16 and E18 up to E29
24/11/2009	Decision of the BIPT Council of 24 November 2009 regarding the necessity to extend the provisional measures to postpone the introduction of a "service fee" for the VAS calls from a mobile network (public version)
02/12/2009	Decision of the BIPT Council of 2 December 2009 regarding WBA VDSL2 One Time Fees – Public and confidential versions
16/12/2009	Decision of the BIPT Council of 16 December 2009 on the extension of the temporary authorization granted to ONAIR Switzerland SARL for the use of the frequency spectrum allocated in Europe to mobile telephony in order to provide mobile telephony services on board aircraft flying over Belgian territory
22/12/2009	Decision of the BIPT Council of 22/12/2009 regarding radio interfaces A1 to A10, B2, B4, B5, B8, B13, B15 to B17, C1, D1, D2, F1, and G1
24/12/2009	Decision of the BIPT Council of 24 December withdrawing the Decision of the BIPT Council of 25 November 2008 on abandoning the tacit prolongation of the licence to establish and operate the network of the DCS 1800 operator (BASE)

Consultations

Consultation of the BIPT Council of 28 January 2009 regarding the WBA VDSL2 draft decision

Market consultation by the BIPT Council at the request of the BIPT Council of 28 January 2009 regarding the possible policy options for the evolution of geographical numbers

Consultation of the BIPT Council of 11 February 2009 regarding the WBA VDSL2 rental fee draft decision

Consultation of the BIPT Council of 11 February 2009 regarding the BRUO rental fee draft decision

Consultation of the BIPT Council of 11 February 2009 as regards the BROBA profiles and the ADSL2+ development curve

Consultation of the BIPT Council regarding the draft decision on the price squeeze test for Ethernet BROTSoLL leased lines

Consultation of the BIPT Council regarding the request for derogation by Belgacom NV in accordance with Article 3, subsection 2, of the annex to the Act of 13 June 2005 on electronic communications

Consultation of the BIPT Council of 5 March 2009 regarding the implementation of BROTSoLL

Consultation of the BIPT Council of 11 February 2009 regarding the BRUO rental fee draft decision

Summary of the Consultation of the BIPT Council on the methodology to allocate the costs related to the database of the social element of the universal telecommunications service and to the calculation elements specific to the years 2006 and 2007

Consultation of the BIPT Council of 3 April 2009 regarding the draft bills transposing Directive 2008/6/EC of the European Parliament and the Council of 20 February 2008 amending Directive 97/67/EC

Public consultation of the BIPT Council of 9 April 2009 regarding the analysis of market 1(07) (2nd round)

Consultation of the BIPT Council at the request of the Minister of Enterprise and Simplification regarding the strategic options to encourage the development of the broadband market

Decision of the BIPT Council of 8 April 2009 regarding the separated accounts of Belgacom for the year 2005

Decision of the BIPT Council of 8 April 2009 regarding the separated accounts of Belgacom for the year 2006

Consultation of the BIPT Council regarding the draft Royal Decree amending the Royal Decree of 7 March 1995 on the establishment and operation of GSM mobile telephone networks, the Royal Decree of 24 October 1997 on the establishment and operation of DCS-1800 mobile telephone networks

Extension of the consultation of the BIPT Council of 3 April 2009 regarding the draft bills transposing Directive 2008/6/EC of the European Parliament and the Council of 20 February 2008 amending Directive 97/67/EC

Consultation of the BIPT Council on the opinion to the minister concerning the actions that might contribute to stimulate fibre to the home

Summary of the consultation of the BIPT Council at the request of the Minister of Enterprise and Simplification of 3 April 2009 regarding the draft bills transposing the third Postal Directive

Draft decision of the BIPT Council of 17 June 2009 concerning the provision of information to enable consumers to make an independent evaluation of the cost of alternative usage patterns

Consultation of the BIPT Council of 29 June 2009 on the terms of the accounting separation obligation that SMP operators have to respect

Decision of the BIPT Council of 1 July 2009 regarding the separated accounts of Belgacom for the year 2007

Decision of the BIPT Council of 1 July 2009 regarding the separated accounts of Belgacom for the year 2006

Consultation of 13 July 2009 about the draft Royal Decree changing a number of provisions of the Royal Decree of 27 April 2007 on managing the national numbering space and the grant and withdrawal of number user rights

Consultation organised by the BIPT Council at the request of the Minister of Enterprise and Simplification of 23 July 2009 on the legislative proposal amending the Act of 13 June 2005 on electronic communications regarding operator switching

Consultation of the BIPT Council of 2 September 2009 concerning the Institute's policy to guarantee non-discriminatory access to short numbers for SMS and MMS services with added value

Consultation of the BIPT Council of 2 September 2009 regarding the WBA VDSL2 one time fees draft decision

Decision of the BIPT Council regarding the access to the 69.950 MHz frequency for radio amateurs

Draft decision of the BIPT Council of 30 September 2009 as regards the BROBA profiles and the ADSL2+ development curve

Draft decision of the BIPT Council of 14 October 2009 on the Ethernet transport costs for BROBA and WBA

Consultation of the BIPT Council on the draft decision regarding the radio interfaces B3.1, B3.2, B3.3 and I.1

Consultation of the BIPT Council of 21 October 2009 regarding the VDSL2 modems

Consultation of the BIPT Council of 21 October 2009 regarding BROBA Ethernet
Draft decision of the BIPT Council on the transit market (2nd round)
Draft decision of the BIPT Council on the call origination market 02/2007 (2nd round)
Consultation of the BIPT Council regarding the necessity to extend the provisional measures to postpone the introduction of a "service fee" for the VAS calls from a mobile network
Consultation of the BIPT Council of 28 October 2009 regarding Belgacom NV's request for the transfer of the entire number series 09 332 from Telenet NV to Belgacom NV
Consultation of the BIPT Council regarding the special tariffs of La Poste for services for non-residential customers, bulk mailers or intermediaries
Consultation organised by the BIPT Council at the request of the Minister of Enterprise and Simplification of 18 November 2009 on the amendment of Article 30 of the Act of 13 June 2005 on electronic communications
Consultation of the BIPT Council regarding radio interfaces A1 to A10, B2, B4, B5, B8, B13, B15 to B17, C1, D1, D2, F1, and G1
Draft decision of the BIPT Council of 2 December 2009 on the decision with retroactive effect amending the blocks & tie cables decision of 29 November 2006
Consultation at the request of the Minister of Enterprise and Simplification
Communications and opinions
Communication by the BIPT Council of 14 January 2009 regarding the implementation of the BROTSOLL offer
Strategic spectrum management as regards radio access systems in the 790 MHz – 3400 MHz frequency bands
Communication by the BIPT Council of 28 January 2009 regarding the construction of new sites and the coordination of the excavation work for ducts
Communication by the BIPT Council of 21 January 2009 on the use of the APRS technology by the holders of a category 5 licence
Opinion of the Competition Council regarding BIPT's draft decision that completes the analysis of market 13 concerning Key Performance Indicators (KPI - Key Performance Indicators)
Annex to the Decision of 28 January 2009 regarding Belgacom's cost accounting system for the year 2007
Report of the BIPT Council on the implementation of the universal telecommunications service in 2008 and recent developments
Opinion by the BIPT Council of 18 February 2009 on the terms and conditions for the provision of the basic identification data by the providers of telephony services to the telephone directory publishers and the enquiry service providers
Communication of 4 March 2009 of the BIPT Council on the interference of the WLAN systems in the 5GHz band on weather radars
Communication by the BIPT Council of 20 March 2009 on the appropriate follow-up of the ruling by the Constitutional Court regarding the emission standards for antennae between 10 MHz and 10 GHz
Launch of the website www.besttariff.be : a tool for tariff comparison in order to phone and surf cheaper
Communication by the BIPT Council of 8 April 2009 on Belgacom's telephone tariffs
Communication of 6 May on the BROTSOLL leased lines
Communication by the BIPT Council of 26 May 2009 on the results of the customer satisfaction survey for the year 2008
Communication by the BIPT Council of 26 August 2009 at the request of the crisis centre regarding the setting up of a Business Continuity Planning : preparation for the outbreak of an influenza pandemic
Unofficial coordination of the Decision of 10 January 2008 regarding the broadband access markets
Press release by the BIPT Council of 23 September 2009
Report of the BIPT Council on the implementation of the universal telecommunications service in 2008 and recent developments
Consultation of the BIPT Council of 2 December 2009 concerning the Institute's policy to guarantee non-discriminatory access to short numbers for SMS and MMS services with added value

Texts published in the Belgian Official Gazette in 2009 with a view to the amendment and/or implementation of the Acts of 17 January 2003 and of 13 June 2005

Date	Belgian Official Gazette	Title
09/12/2008	02/02/2009	Royal Decree amending the Royal Decree of 11 January 2007 laying down the financial status of the staff of the Belgian Institute for postal services and telecommunications
08/03/2009	16/03/2009	Royal Decree amending the Royal Decree of 2 February 2007 regarding emergency services implementing Article 107, § 1 and § 3, of the Act of 13 June 2005 on electronic communications and pertaining to various provisions regarding electronic communications for the emergency services.
24/03/2009	16/04/2009	Royal Decree regarding radio access in the 3410-3500 / 3510-3600 MHz and 10150-10300 / 10500-10650 MHz frequency bands
24/03/2009	22/04/2009	Royal Decree amending various provisions of the Royal Decree of 27 April 2007 on managing the national numbering space and the grant and withdrawal of number user rights
18/05/2009	04/06/2009	Act pertaining to various provisions regarding electronic communications
12/11/2009	23/11/2009	Ministerial Order fixing the level of detail of the detailed basic invoice for electronic communications
16/11/2009	20/11/09	Royal Decree amending the Royal Decree of 11 January 2007 laying down the administrative status of the staff of the Belgian Institute for postal services and telecommunications and the Royal Decree of 11 January 2007 laying down the financial status of the staff of the Belgian Institute for postal services and telecommunications
18/12/2009	30/12/2009	Royal Decree regarding private radio communications and the user rights for fixed networks and trunking networks
23/12/2009	30/12/2009	Programme Act
30/12/2009	31/12/2009	Act pertaining to various provisions

List of the abbreviations used

ADSL: Asymmetric Digital Subscriber Line

ATM: Asynchronous Transfer Mode

BRIO: Belgacom Reference Interconnect Offer

BROBA: Belgacom Reference Offer Bitstream Access

BROTSOLL: Belgacom Reference Offer for Terminating Segments of Leased Lines

BRUO: Belgacom Reference Unbundling Offer

CA: Council of Administration of Administratieve Raad

CAS: Cost Allocation System

CB: Citizens' Band

CEPT: European Conference of Postal and Telecommunications Administrations

CERP: Comité européen de régulation postale (European Committee for Postal Regulation)

COCOM: Communications Committee

COMIXTELEC: Commission mixte des télécommunications or Mixed Commission for telecommunications

CPS: Carrier Pre-Selection

CRC: Conference of Regulators of the electronic communications sector

CSA: Conseil supérieur de l'audiovisuel (high council for audiovisual matters)

CSC: Carrier Select Code

CT: Cordless Telephone

DCS: Digital Communication System

DG: Directorate-General

DNS: Domain Name System

DSLAM: Digital Subscriber Line Access Multiplexer

DVB-T: Digital Video Broadcasting - Terrestrial

ECC: Electronic Communications Committee of Comité voor elektronische communicatie

ECTA: European Competitive Telecommunications Association

EMC: Electromagnetic compatibility

ENISA: European Network and Information Security Agency

ERG: European Regulators Group

ERO: European Radiocommunications Office

ESA: European Space Agency or Europese organisatie voor ruimteonderzoek

ETSI: European Telecommunications Standard Institute

Full VP: Full Virtual Path

GOC: General Operator's Certificate

GSM: Global System for Mobile communications

HAREC: Harmonised Amateur Radio Examination Certificate

HCM: Harmonised Calculation Method

IARN: International Audiotex Regulators Network

IMS: IP Multimedia Subsystem

IP: Internet Protocol

IRG: Independent Regulators Group

ITU: International Telecommunication Union

KPI: Key Performance Indicator

LEGBAC: Limited Exploratory Group on Broadcasting to Aeronautic Compatibility

LPD: Low-Power Device

MSS: Mobile Satellite Services

MTR: Mobile Termination Rate

NCS: National Spectrum Monitoring Department

NGN/NGA: Next Generation Network/Next Generation Access

NRA: National regulatory authority

NTP: Network Termination Point

OCR: Optical Character Recognition

OLO: Other Licensed Operator

PMR: Professional Mobile Radio

ROC: Restricted Operator's Certificate

RSC: Radio Spectrum Committee

RSPG: Radio Spectrum Policy Group

R&TTTE: Radio and Telecommunications Terminal Equipment

SDH: Synchronous Digital Hierarchy

SDSL: Symmetric DSL

SLIM: Simpler Legislation for the Single Market

SMP: Significant Market Power

SMS: Short Message Service

SRC: Short Range Certificate

TCAM: Telecommunications Conformity Assessment and Market Surveillance

T-DAB: Terrestrial Digital Audio Broadcasting

TG4: Task Group 4

UMTS: Universal Mobile Telecommunications System (universeel systeem voor mobiele telecommunicatie)

UPU: Universal Postal Union of Wereldpostvereniging

VDSL: Very High Rate DSL

VHF: Very high frequencies

VoIP: Voice over IP

VPN: Virtual Private Network

VRM: Flemish Media Regulator

WAPECS: Wireless Access Policy for Electronic Communications Services

WBA: Wholesale Broadband Access

Wimax: Worldwide interoperability for Microwave Access

WLR: Wholesale Line Rental

WRC: World Radio Conference

WTO: World Trade Organisation

xDSL: Digital Subscriber Line

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