The future of regulating electronic communications networks: Options for the Netherlands

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Dr. Ulrich Stumpf

wik CONSULT

Overview

1. Key characteristics of current framework
2. Performance of current framework
3. How promote investment and competition?
   - ➢ Pre-2020 options under current framework
   - ➢ Post-2020 options for changes in framework

Presentation‘s focus is on regulation of physical and virtual access

1. Key characteristics of current framework

Key characteristics of current framework
Asymmetric regulation

- Asymmetric regulation is triggered by SMP in recommended market (as listed in Relevant Markets Recommendation)
- Remedies are realm of ACM though discretion narrowed down (Non-Discrimination and Costing Methodologies Recommendation)

2. Performance of current framework

Performance of current framework (1)
Competition

- Most NL retail markets are competitive or tending towards competition
- Entry based on regulated MDF access/VULA & ODF access
- Strong unregulated cable, consolidated into nationwide competitor
- Price competition: 4+ players
- Infrastructure competition: 2 players

Performance of current framework (2)
Investment

- NL fares well in NGA investment (30Mbps: 98% coverage; 100Mbps: 90% coverage)
- Largely driven by network upgrades by KPN (FTTC) and cable (DOCSIS3)
- FTTH investment mostly by KPN/Reggefibre (30% FTTH coverage) – significant, but some countries do better (e.g. FR, ES, PT)
- Entrants rely on regulated access and have not invested in FTTC/B/H
- Prospective need for more FTTH investment by all operators

3. How promote investment & competition?

How promote investment & competition in NL?
Options

- Pre-2020 options as determined by current framework
- Post-2020 options as opened up by 2020 revision of framework

Pre-2020 options under current framework (1)
Wholesale pricing flexibility

Option 1

- Wholesale pricing flexibility for VULA/ODF access (subject to not creating a margin squeeze)
- As required by Commission Recommendation
- Scope for higher EBITDA margins in the presence of competition between KPN and Ziggo?

Pre-2020 options under current framework (2)
Deregulation

Option 2

- Deregulation of VULA/ODF access (together with phasing out of MDF access)
- Was that suggested by Commission serious doubts?
- 2 infrastructures enough for end-to-end competition?
- Incentives for commercial VULA/ODF access agreements?

Post-2020 options for changes in framework (1)

Status quo

Option 1

- SMP approach is maintained
- Approach provides flexibility regarding VULA/ODF access …
  - not to regulate if 2 infrastructures are enough or
  - to regulate KPN and/or Ziggo if individually dominant or
  - to regulate KPN and Ziggo if jointly dominant

Post-2020 options for changes in framework (2)
Rebalancing of SMP and symmetrical remedies

Option 2

- Imposition and regulation of symmetrical access to fibre terminating segment, including access to co-investment (similar to current approach of ES/FR/PT)

- SMP approach is maintained as safeguard in case symmetrical access to fibre terminating segment …

  - does not create choice between 2+ FTTH operators (-> ODF access) or

  - does not create investment in FTTH (->VULA)

Post-2020 options for changes in framework (3)
Rebalancing of regulation and competition law

Option 3

- Imposition and regulation of symmetrical access to fibre terminating segment, including access to co-investment
- SMP-based regulation is abandoned, with operators to commercially negotiate VULA/ODF access
- Competition law (TFEU Art. 101 and 102, merger commitments) to address competition problems

Post-2020 options for changes in framework (4)
Full shift to competition law

Option 4

- Access regulation is abandoned, with operators to commercially negotiate access to fibre terminating segment and/or VULA/ODF access
- Incentive for reciprocal access arrangements between FTTH operators, as is the case for interconnection ("two-way access")?
- Competition law to address competition problems

Dr Ulrich Stumpf

WIK-Consult GmbH
Postfach 2000
53588 Bad Honnef
Deutschland
Tel.:+49 2224-9225-23
Fax: +49 2224-9225-68
eMail: u.stumpf@wik-consult.com
www.wik-consult.com