

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

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Dr. Ulrich Stumpf

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/Reggefibere (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?

### 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](mailto:u.stumpf@wik-consult.com)

[www.wik-consult.com](http://www.wik-consult.com)