Please find hereby the comments of COLT Telecom B.V. on the OPTA issue paper of May 22, 2006, relating to KPN's "ALL-IP" plans. Our response consists of a general part and a reply to the questions listed in the OPTA issue paper.

COLT is also a member of ACT and COLT supports the ACT response to this OPTA consultation.

OPTA has stated it wishes to make an inventory of the regulatory issues surrounding "ALL-IP" and provides preliminary standpoints on a number of issues. COLT is generally positive about OPTA's proposed approach to make an inventory of all issues but wishes to stress the fact that currently KPN is already very far advanced in planning its network evolution, and is informing the regulator and consulting the industry in circumstances that resemble a 'fait accompli'. OPTA should not hesitate to request adaptation of KPN's planning if its final standpoints would require so. Indeed, a lot is at stake for competition in the telecommunications infrastructure and service sectors in the Netherlands.

COLT

COLT is a leading European provider of business communications, offering data, voice and managed services, backed by best-in-industry customer service, to more than 50,000 midsize and major businesses and wholesale customers across Europe, including The Netherlands. COLT owns and operates one of Europe's most advanced networks with unmatched breadth and city density across 13 countries: the 20,000km network includes metropolitan area networks in 32 major European cities with direct fibre connections into 10,000 buildings and 13 COLT data centres. COLT Telecom Group plc is listed on the London Stock Exchange (CTM.L). Its majority shareholder is Fidelity, one of the world's largest investment fund management groups. COLT has 3,850 employees.

COLT Telecom B.V. offers services in the Netherlands based upon its own city fibre networks in the Randstad and uses wholesale access from third suppliers, among others KPN, to offer services to business users on a nationwide basis.

KPN ALL-IP

KPN announced on March 29, 2006 to its wholesale customers its plans to redesign the network, leading to an IP/Ethernet backbone with fibre into the 28,000 street cabinets and from there on VDSL (20 to 50 Mbit/s downstream) to the end users by 2010. This programme is also known as KPN "ALL-IP".

KPN stated that its underlying reasons are market drivers towards more bandwidth for triple and quadruple play in order to meet or beat the competition from cable and 3G mobile/wireless networks and cost-savings on infrastructure and systems. As part of this "ALL-IP" programme, Local Loop Unbundling (LLU) from Main Distribution Frames and several Interconnecting Leased Lines (ILL) wholesale services are scheduled to be phased out. COLT trusts that any such action is subject to OPTA approval, based upon the market analysis decisions which include obligations on the SMP operator not to withdraw access already granted. KPN proposes, alternatively, to offer subloop unbundling (SLU) access and collocation in 28.000 street cabinets in combination with commercial backhaul as well as commercial wholesale broadband access (WBA) at more points of interconnect than currently available and at different levels (metropolitan, national, not clearly defined at the moment).

KPN "All-IP" can be seen as a technical migration, the main goal of which is to strengthen its market position, including on many markets on which OPTA has found KPN to hold SMP. As a result of the announcement, the investment in LLU has come to a standstill. A number of companies involved in this or related business are up for sale (reportedly bbned, Essent Kabelcom, Casema). Other companies were acquired by KPN (Telfort, Digitenne/Nozema, Speedlink, Enertel, Demon). Others (both infrastructure investors and service providers) face a very uncertain future at the moment as a result of KPN's announcement. Hence the reality is more that KPN is likely to beat the competition than to meet it. An investment in access to 28,000 street cabinets seems far from reality at the moment. The KPN 'ALL-IP result and/or goal seems to be to (re)turn to services competition, or even resale rather than differentiated service provision, removing a certain amount of infrastructure competition (of which COLT represents a significant proportion) that has developed over the past 10 years in The Netherlands.

Goal of European and national law and regulations & OPTA actions

European law and regulation sets out to stimulate and ensure development of a level playing field in electronic communications. Infrastructure competition is to lead to innovative products with competitive pricing for the end-users (retail business and consumer markets). Law and regulation is technology-neutral. In defined relevant markets where there is significant market power (SMP), appropriate remedies such as regulated access obligations, non-discrimination, transparency, accounting separation and cost-orientation are recognised as being essential to ensure competition. These goals are subscribed to by The Netherlands as well.

Hence the regulator OPTA should ensure:

- Pro-active and ex-ante stance with clear standpoints based on full information sharing, fact-finding and economic analysis leading to oversight of all details
    - Study of the impact of "ALL-IP" on the competitiveness of the market as a whole
    - Reference offers for all access services
    - Network architecture and cost-modelling
- Long term pro-infrastructure investment with real choice in make or buy, offering certainty to the competing market players which in turn are enabled to offer differentiated services to wholesale, business and consumer markets. Competition on end-user markets is served best by the market mechanism at both retail and wholesale levels.
    - Reference offers for access services taking the ladder of investment as a starting position (replicability, timing, scale, not forgetting the possibility for service differentiation)
    - RO with cost-oriented tariffs, transparent and non-discriminatory conditions, clear operational definitions for SLU (access, collocation, backhaul) and WBA. If SLU remains a phantom (no replicability foreseen for new entrants), then stringent regulation of WBA is absolutely essential. No other "unregulated" wholesale services that cannibalize on entrant WBA or KPN WBA can be permitted to undermine competition. Non-discrimination must also mean same starting point for all parties.
    - Retail regulation to ensure absence of price squeeze between retail service and WBA and/or in turn with SLU.
    - Service differentiation needs to be a possibility at all levels in the chain.
    - Investments made in LLU need to be recovered either by maintaining regulatory obligations or by due compensation.
    - Migration framework, without affecting existing services and/or downgrading of customers.
    - Network architecture and cost modelling clear, long term certainty on tariffs, clear standpoints on legacy costs.

- Technological neutrality and forward looking market analysis
    - Avoiding leverage of SMP onto presumed “new markets”
    - Taking convergence and bundling into account
    - Inclusion of traditionally not much included “datacom” markets, remedies to include access to fiber, Ethernet leased lines

OPTA Questions

Vraag 1. Zijn er in algemene zin onderwerpen die u in dit issue paper mist en waaraan in een volgende fase aandacht besteed zou moeten worden?

- The justification of the necessity of KPN’s investment in “ALL-IP”, given its potentially very negative impact on infrastructure competition needs to be evaluated on its objective merits. If the KPN “ALL-IP” initiative is merely intended to enable KPN to escape from regulation and relegate its competitors to being mere resellers, OPTA must intervene to secure competitors’ ability to use the infrastructure they have invested in (fiber, LLU, etc.) by preventing predatory practices by the dominant operator.
- Network architecture and cost modelling has not been given any attention. KPN is able to leverage historic infrastructure (e.g. ducts built under monopoly conditions, street cabinets, historic right-of-way, etc.). This fact must be adequately reflected, and corrected, by OPTA analysis and intervention.
- The effect on legacy costs of this “ALL-IP” investment needs to be clarified.

Vraag 2. Hoe waardeert u ALL-IP in het licht van de ontwikkeling van de communicatiesector en in termen van betekenis voor de Nederlandse economie, en in het licht van de positie en verantwoordelijkheden van de met KPN concurrerende aanbieders?

The KPN “ALL-IP” result and/or goal seems to be to (re)turn to services competition, or even resale rather than differentiated service provision, removing a certain amount of infrastructure competition (of which COLT represents a significant proportion) that has developed over the past 10 years in The Netherlands. This effect is not in the interest of the Dutch economy.

Vraag 3. Wat is uw standpunt ten aanzien van het uitgangspunt dat het in eerste instantie aan KPN zelf is om in ALL-IP recht te doen aan haar verantwoordelijkheid ten aanzien van marktwerking en aan de aan haar in de marktbesluiten opgelegde verplichtingen?

OPTA is the national regulatory authority, and as such has an explicit mandate to promote competition, innovation, efficient infrastructure investment and end-user protection. It is not acceptable to leave it to KPN to structure the market, with OPTA as an observer, tweaking the competitive conditions at the margin. Responsibility for the effective functioning of the market mechanism and competition should not and cannot be left to KPN.

Vraag 4. Wat is uw standpunt ten aanzien van het geformuleerde uitgangspunt dat OPTA niet eerder ingrijpt dan wanneer is gebleken dat KPN aan haar verantwoordelijkheid geen of niet de juiste invulling geeft?

OPTA should take a pro-active stance and exercise its powers for ex-ante intervention and oversight. OPTA must act now to avoid being in a position of tweaking at the margin of a process determined by KPN.

Vraag 5. U wordt verzocht te reageren op het standpunt van OPTA dat het voornemen om te migreren naar ALL-IP in zichzelf geen afbreuk doet aan de door OPTA in de marktbesluiten getrokken conclusies, noch aan de aan KPN opgelegde verplichtingen.

In principle the conclusions and resulting remedies of the market analysis stand-up. Additional remedies for converged and/or "new" old markets might be needed. The datacom market, for instance, has been left almost unregulated, there might be a renewed need to review. As KPN is revamping its network to include fiber, given the SMP position in many markets it might be a necessity to require access to fiber as a remedy.

Vraag 6: Is met de vraag onder welke voorwaarden KPN de transitie naar ALL-IP kan doorvoeren, wil door KPN aan haar verantwoordelijkheden recht worden gedaan, wat u betreft inderdaad de centrale vraag gesteld?

Yes, in addition a central question is if The Netherlands wants this move to potentially less infrastructure competition and less service differentiation and how this effect can be mitigated and/or compensated.

Vraag 7. De uitvoering van de ALL-IP plannen zou op termijn aanleiding kunnen geven om tot nieuwe marktanalyses te komen. Ten aanzien van welke markten zou dit volgens u het geval kunnen blijken te zijn? Zou het zo kunnen zijn dat de aanleiding ontstaat dat andere dan de huidige relevante markten geanalyseerd moeten worden?

The datacom market, for instance, has been left almost unregulated, there might be a renewed need to review. See ACT procedure against OPTA decisions re Leased Lines where we request among others Ethernet leased lines. As KPN is revamping its network to include fiber, given the SMP position in many markets it might be a necessity to require access to fiber as a remedy.

Vraag 8. Kunt u zich vinden in de in deze paragraaf 3.2.3 beschreven relatie tussen ALL-IP en de WPC?

Yes, nevertheless network architecture and cost-modelling is extremely important to ensure clarity on legacy costs and where new costs will be. In general a long term certainty on tariffs should be offered to the market. Hence, network architecture and cost modelling should be an integral part of the KPN "ALL-IP" review process which should be started now, not after KPN has been able to determine the parameters.

Vraag 9. Wat is uw standpunt ten aanzien van de relatie tussen de review van het Europese regelgevend kader en ALL-IP?

The 2006 review presents an opportunity to ensure that developments such as KPN's "ALL-IP" plans do not amount to the undue exploitation of a loophole by a dominant operator. The Dutch authorities should ensure that the review puts OPTA in a position (e.g. by a revision of the Access and Interconnection Directive 2002/19/EC) to take essential ex-ante measures to protect and develop sustainable competition. Powers should include instruments to address developments such as "ALL-IP" (e.g. imposition of functional/structural separation, possibility to mandate access to dark fibre and street cabinets, various forms of wholesale broadband access at several levels in the network hierarchy, etc.) and necessary tightening of regulations to ensure further development of a level playing field in electronic communications.

Vraag 10. Wat is uw standpunt ten aanzien van 'equivalence' in het algemeen en ten aanzien van de toepasbaarheid van het concept equivalence in relatie tot ALL-IP in het bijzonder?

The OPTA standpoint on equivalence is not supported. In general KPN is the price setter in the retail markets of most relevant markets. The "stoplight" model for review of retail tariffs has a number of shortcomings, see also the ACT procedures against the OPTA decisions in these.

Vraag 11. U wordt verzocht te reageren op de vraag of de verplichting van KPN om te voldoen aan redelijke verzoeken om MDF-access en om reeds verleende toegang tot faciliteiten niet in te trekken, betekent dat het KPN niet vrij staat om haar netwerk zo te veranderen dat deze vorm van toegang niet meer mogelijk is. U wordt tevens verzocht te reageren op OPTA's voorlopige oordeel hierover.

Yes, COLT agrees with OPTA that KPN is obliged not to withdraw access that has already been granted, unless prolonged access cannot reasonably be demanded of KPN any longer. A request for MDF access is reasonable as long as KPN does not offer a full alternative for MDF access whereby the market conditions are such that effective infrastructure competition can develop.

Vraag 12. U wordt verzocht te reageren op het standpunt van OPTA dat – in het licht van ALL-IP – een verzoek om MDF-access niet langer als redelijk kan worden beschouwd indien KPN voorziet in een voor MDF-access volwaardig alternatief.

The market conditions should be such that effective infrastructure competition can develop. This implies access services regulation (cost-orientation, non-discrimination, transparency) as well as retail tariff regulation (squeeze protection). Operators need to agree, based on the full information picture, from which long term certainty can be derived, and have their investment in MDF returned (based on prolonged services for tariffs as currently known) or compensated.

Vraag 13. Wat is uw standpunt ten aanzien van de voor het volwaardige alternatief voor MDF-access te gelden randvoorwaarde dat het volwaardig alternatief zoveel mogelijk de beschreven min of meer structurele oorzaken van de AMM-positie van KPN adresseert?

Agreed, however OPTA has until now paid no attention to retail issues (squeeze in telephony and datacom markets), this should be addressed. Access alone is not enough.

Vraag 14. Wat is uw standpunt ten aanzien van de voor het volwaardige alternatief voor MDF-access te gelden randvoorwaarde dat dit alternatief de met MDF-access geadresseerde (potentiële) mededingingsbeperkende gedragingen even zo goed wegneemt?

Agreed, see 13.

Vraag 15. Wat is uw standpunt ten aanzien van de voor het volwaardige alternatief voor MDF-access te gelden randvoorwaarde dat dit alternatief voldoende recht doet aan de met ULL beoogde aard van concurrentie?

With LLU it was envisioned to have infrastructure competition with possibilities for as much service differentiation as possible. As said, it is very unclear to what extent infrastructure competition (with its effect in service differentiation) can be maintained and/or is feasible with a combination of SLU and WBA, the conditions of which are not at all clear today.

Vraag 16. Wat is uw standpunt ten aanzien van de voor het volwaardige alternatief voor MDF-access te gelden randvoorwaarde dat dit alternatief moet bestaan uit (de combinatie van) één of meer toegangsvormen, in combinatie met overgangsmaatregelen die samenhangen met de uitfasering van de MDF-locaties en de overgang naar de andere toegangsvormen?

Agreed. A review of replicability and remaining possibilities for genuine service differentiation is necessary here.

Vraag 17. Wat is uw standpunt ten aanzien van de voor het volwaardige alternatief voor MDF-access denkbare randvoorwaarde dat dit alternatief ook beschikbaar moet zijn voor nieuwe toetreders en voldoende flexibel moet zijn om nieuwe toegangsvormen te kunnen introduceren?

Agreed. However it should be clear that no “unregulated” wholesale services should be introduced by KPN that cannibalize on new entrant services (“wholesale wholesale” squeeze).

Vraag 18. Wat is uw beeld van het door KPN voorgenomen WBA-aanbod? Wat betekent WBA voor de concurrentiestructuur binnen de Nederlandse communicatiesector? Leidt

WBA volgens u tot nieuwe verdienmodellen? Wat betekent WBA in relatie tot de concurrentie tussen verschillende infrastructuren? Is het open wholesale model volgens u een duurzaam concept?

WBA offer has not been discussed with COLT. KPN has announced this service on June 16th. The offering has not been reviewed yet. COLT has serious concerns that the WBA offer will be structured in such a way as to relegate its competitors to mere resellers. KPN is in the lead with this commercial product and can change tariffs and conditions as it sees fit.

Vraag 19. Verwacht u van het WBA-aanbod gebruik te gaan maken, en onder welke voorwaarden? Op welke wijze en met welk doel denkt u van WBA gebruik te gaan maken? Hoe past WBA in de strategie van uw eigen onderneming? Ziet u WBA als een toegangsmodel dat voor uw onderneming ook in de toekomst van betekenis blijft, of ziet u WBA vooral als een opstap op basis waarvan verdere uitrol van uw eigen infrastructuur mogelijk wordt?

COLT prefers to have WBA competition based on LLU/SLU as currently in the market. WBA could be step in the investment ladder. KPN’s WBA should be provided in such a way that it enables COLT to combine it with its own access network and differentiate its services.

Vraag 20. Wat is uw standpunt ten aanzien van de betekenis van WBA als mogelijk alternatief voor MDF-access?

WBA is unlikely to be an alternative to MDF-access. COLT prefer to have WBA competition based on LLU/SLU as currently in the market. It is foreseeable that there will be few, if at all, parties who are able to invest in SLU and offer WBA in competition with KPN. This offers little possibilities for service differentiation. If no competition in WBA then stringent regulation of WBA is needed to ensure non-discrimination (full replicability of KPN retail offers) and genuine service differentiation possibilities.

Vraag 21. Wat is uw standpunt ten aanzien van de relatie tussen WBA en hoge kwaliteit wholesale-breedbandtoegang?

Both need to be regulated at wholesale (access, non-discrimination, transparency) and with specific measures to prevent price squeeze (wholesale and retail).

Vraag 22. Wat is uw standpunt ten aanzien van de betekenis van SLU als mogelijk alternatief voor MDF-access? En in combinatie met een bepaald WBA-aanbod?

SLU will not be a full alternative for LLU. It is unclear if any other party than KPN can invest. It is unclear also if SLU (VDSL) and LLU (SDSL, eSDSL, ADSL 2+) can stand next to each other unless OPTA intervenes to protect interference that would jeopardise or even nullify existing investments. The Belgian regulatory authority BIPT has intervened, already in November 2004, to prevent that VDSL roll-out from street cabinets at full power would remove the competition of other xDSL technologies from the local exchange. The BIPT required Belgacom to reduce the power output of VDSL.

Vraag 23. Ziet u (naast SLU-backhaul en SLU co-locatie) nog andere onderwerpen die zeker kunnen stellen dat SLU kan bijdragen aan de ontwikkeling van een voor MDF-access volwaardig alternatief? Bijvoorbeeld in termen van nieuwe toegangsvormen of varianten op bestaande toegangsvormen?

Genuine WBA access at all network levels (i.e. RAP and below) is necessary for ladder of investment purposes. There is no technology which makes it compulsory for an incumbent to suppress one level of access. However there are incumbents who try to use new deployments to disguise or configure switching equipment as mere concentrators, in order to be able to refuse WBA at their level. OPTA should be very aware of this risk and vigorously act to prevent it from happening.

Vraag 24. Wat is uw beeld van het door KPN voorgenomen aanbod voor SLU-backhaul? Wat betekent SLU-backhaul voor de concurrentiestructuur binnen de Nederlandse communicatiesector, ook in termen van het thema infra- versus dienstenconcurrentie?

SLU backhaul is a necessity for potential SLU-operators who in turn can supply WBA. COLT prefers to have WBA competition. This offers possibilities for service differentiation.

Vraag 25. Wat zijn volgens u de modellen waarmee de SLU-backhaul geregeld zou kunnen worden? Welk model zou relevant zijn in het kader van het volwaardige alternatief voor MDF-access?

Unclear question.

Vraag 26. Als KPN geen SLU-backhaul zou willen aanbieden, wat zijn dan volgens u denkbare alternatieven? En wat zou dit betekenen voor de betekenis van SLU binnen het volwaardige alternatief voor MDF-access?

There is hardly any alternative if KPN is unwilling to offer SLU-backhaul. SLU-backhaul (dark fibre and transmission capacity) needs to be regulated.

Vraag 27. Verwacht u van het aanbod voor SLU-backhaul gebruik te gaan maken, en onder welke voorwaarden? Op welke wijze en met welk doel denkt u van SLU-backhaul gebruik te gaan maken? Hoe past SLU-backhaul in de strategie van uw eigen onderneming? Ziet u SLU-backhaul als een vorm van toegang die voor uw onderneming ook in de toekomst van betekenis blijft, of ziet u SLU-backhaul vooral als een opstap op basis waarvan verdere uitrol van uw eigen infrastructuur mogelijk wordt?

SLU backhaul is a necessity for potential SLU-operators who in turn can supply WBA. COLT prefers to have WBA competition. This offers possibilities for service differentiation. COLT prefers to have a regulated SLU backhaul product in place.

Vraag 28. Wat zijn volgens u de modellen waarmee de SLU co-locatie geregeld zou kunnen worden? Welk model zou relevant zijn in het kader van het volwaardige alternatief voor MDF-access?

Unclear question.

Vraag 29. Wat is uw standpunt ten aanzien van de door KPN voorgestelde 'overlay' en van de door KPN voor die overlay voorgestelde periode?

KPN "ALL-IP" is not a fact as of yet. As stated above, first the effect on infrastructure competition needs to be evaluated.

KPN suggest an overlay period until at least 2010. This seems in principle OK as long as there is an alternative and a market structure where effective infrastructure competition can develop. It should be clear that no price-squeeze on the retail market should exist with the "new" old KPN products. Operators need to agree, based on the full information picture, from which long term certainty can be derived, and have their investment in MDF returned (based on prolonged services for tariffs as currently known) or compensated. No forced leaving of LLU sites.

The example of BT 21 CN shows that such "wipe-out" changes are more difficult to implement than to announce. Most technological waves are seen as tsunamis when announced but end up cohabitating with the technology they are supposed to replace, just because a satisfactory 100% replacement of a complex system is always more difficult than anticipated.

Vraag 30. Wat is uw standpunt ten aanzien van de wenselijke invulling van een overgangsperiode en de in het kader van die periode relevante aspecten? Ziet u nog andere relevante aspecten?

Migration needs to be seamless for all wholesale and retail customers. Compensation should be given for stranded investments that are left without returns.

Vraag 31. Wat is uw standpunt ten aanzien van de in het kader van de door KPN voorgenomen verkoop van MDF-locaties relevante aspecten? Ziet u nog andere relevante aspecten?

Ownership of a building should not be a parameter in the phasing out of MDF access.
If KPN sells a location for which MDF access is still in demand, it should be required to demand that the new owner will continue to support MDF access for as long as there is demand for such access. Network architecture, modelling & field-testing need to take this into account.

Vraag 32. Wat is uw standpunt ten aanzien van de in het kader van de transitie naar het volwaardige alternatief voor MDF-access relevante aspecten? Ziet u nog andere relevante aspecten?

Reference Offers for all services are needed under the auspices of OPTA. Migration services need to be developed for seamless migration.

Vraag 33. Wat is uw standpunt ten aanzien van de mogelijke rol die OPTA zou kunnen of moeten innemen in het kader van de beoordeling of goedkeuring van een volwaardig alternatief voor MDF-access?

Pro-active, ensuring the full picture and all little details are set for the development of effective competition in the market.

Vraag 34. Wat zijn volgens u de relevante vraagstukken met betrekking tot de relatie tussen ALL-IP en vaste telefonie? Welke van die vraagstukken spelen op korte termijn, en welke op langere termijn? Op welke manier zouden deze vraagstukken tot een oplossing kunnen worden gebracht, en ziet u hierbij een rol voor OPTA?

The regulatory remedies imposed by OPTA as part of the market analyses, based upon an SMP finding, e.g. wholesale line rental, should not be called into question by network architecture changes. If necessary, the regulatory obligations should require KPN to properly emulate the access that has been granted and cannot be withdrawn.

Vraag 35. Wat zijn volgens u de relevante vraagstukken met betrekking tot de relatie tussen ALL-IP en wholesale- en retailhuurlijnen? Welke van die vraagstukken spelen op korte termijn, en welke op langere termijn? Op welke manier zouden deze vraagstukken tot een oplossing kunnen worden gebracht, en ziet u hierbij een rol voor OPTA?

The datacom market has been insufficiently regulated. See ACT procedure against OPTA decisions re Leased Lines where we request among other Ethernet leased lines. As KPN is revamping its network to include fiber, given the SMP position in many markets it might be a necessity to require access to fiber as a remedy. Also, as KPN will offer VDSL up to 50 Mb and up to 100 MB over fiber, the market analysis would have to take this into account.