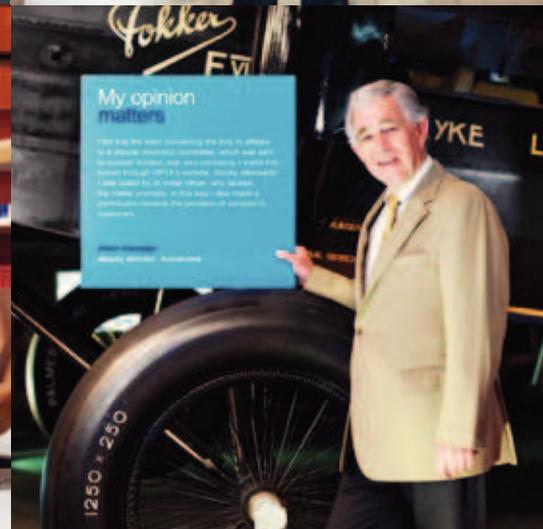


# annual report

2009





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OPTA is paid directly for its regulatory work by the market parties that fall within its jurisdiction. This represents 90% of the work which OPTA carries out. The Ministry of Economic Affairs pays for the rest of its work. OPTA has performed its duties with fewer people and resources for the fifth consecutive year without compromising the quality of its regulatory work. There are numerous ways in which OPTA maintains contact with stakeholders for the purposes of regulation: by telephone, post, through informational meetings, its website and other forms of communication. This interaction represents the key theme of this annual report: nine views of the services provided by OPTA in 2009.

# Reader's guide

OPTA focuses on the world of tomorrow and looks further than today. Yet once a year in our annual report we shift our gaze. Then OPTA examines what has happened in the past year. OPTA's annual report consists of two parts: our annual report and accounts, and our market monitor. This market monitor provides an overview of the developments occurring in the electronic communication and postal markets.

In this annual report OPTA renders account for its operations and results in 2009 based on its most important work and various occurrences. These accounts are structured in accordance with the principle, from policy-based budget to policy-based accounting: what OPTA sought to achieve in 2009, what we achieved, and what we did for this purpose. The annual accounts answer the question as to how much expenditure is required to for OPTA to get through its workload, and serve to provide an insight into the organisation's financial affairs. This publication includes the abbreviated version of OPTA's annual accounts.

OPTA feels that it is important that our annual report is comprehensible. A glossary has therefore been included. You will find it in the appendix.

## Annual report

OPTA's annual report comprises part of our accountability cycle, which we pursue throughout the year to keep the outside world informed of developments in the market, our view of those developments and our operations. At the beginning of 2009 OPTA published its *Focus on 2009*. It set out what OPTA would be focusing on as part of its regulatory work during 2009. In our annual report and market monitor OPTA reviews the past year.

## Disclaimer

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## The OPTA Commission

The OPTA Commission consists of three independent experts who are appointed by the Minister of Economic Affairs. Each has his own specialism. Chris Fonteijn is the chairman of the Commission and represents the legal entity known as OPTA. Together with two non-executive Commission members, Mark de Jong and Annet Aris, he bears ultimate responsibility for all of the decisions that OPTA takes.

In accordance with the provisions of Section 7 of the Independent Post and Telecommunications Authority Act the Commission may also appoint associate members. These are people who have special expertise in one or more of OPTA's regulatory domains. They may provide advice and perform their duties in close consultation with the Commission. OPTA has appointed Annetje Ottow to serve as an associated member of the Commission. She advises the Commission on legal matters.



**Chris A. Fonteijn**  
**OPTA Commission Chairman**

Chris Fonteijn read Law at the University of Leiden and performed his national service in Military Intelligence. From 1980 until he took office as OPTA Commission Chairman on 1 September 2005 he was active as a lawyer at NautaDutilh, where he had become a partner in 1988. Fonteijn specialised in business and energy law, held various positions in the course of time, and spent a number of years working for NautaDutilh in the Middle East. In his last few years with the firm he headed its Energy and Utilities Group.



**Prof. Dr. Mark W. de Jong**  
**Deputy Chairman of the OPTA Commission**

Mark de Jong graduated in Economics. Since 1990 he has served as a professor specialising in service management and innovation at the University of Amsterdam. He has worked for the OECD in Paris and TNO, the Dutch Institute for Applied Scientific Research, in Delft. Between 1993 and 2005 De Jong worked for KPN, his last post as a member of the KPN Mobile management board. Prior to this he was head of the Corporate Strategy and Regulatory Affairs department. From 2005 to 2009 he served as the general manager of Novay in Enschede. Since 1 February 2006 he has been a non-executive member of the Commission and its deputy chairman.



**Annet P. Aris**

**non-executive Commission member**

Annet Aris graduated from the University of Wageningen, following which she obtained a Master of Business Administration (MBA) at INSEAD. She has been serving as an assistant professor of Strategy at the latter institution since 2003. There she developed the MBA module, Managing Media Companies. In addition to this, she is a regular guest lecturer at the Rotterdam School of Management, amongst other things. She is a member of the supervisory council of Stichting Beeld en Geluid, and of the supervisory boards of Hansa Heemann AG, Rellingen and the Sanoma Group, Helsinki. From 1985 to 2003 she held various positions at McKinsey & Co. in Amsterdam, London and Munich, serving as a partner and media practice manager in Germany in recent years. She has been a non-executive member of the Commission since 15 March 2008.



**Prof. Annetje T. Ottow**

**associate Commission member**

Annetje Ottow read Law at the University of Leiden and followed this with postgraduate studies in Queen Mary College at the University of London. She completed her doctorate at the University of Amsterdam in 2006. Since August 2007 she has served as a senior lecturer in Public Economic Law at the University of Utrecht. Ottow spent more than four years working as a researcher with the Institute of Information Law at the University of Amsterdam. Between 1990 and 2006 she worked as a lawyer, from 1998 as a partner in the Market Regulation and Competition department of the firm, Houthoff Buruma, and later on as a legal consultant. She has been an associate member of the OPTA Commission since 1 April 2006. [◉](#)



## Joining forces

Sometimes OPTA and the Consumer Authority cross paths. This also occurred in relation to telemarketing during 2009. We were both investigating the same company and worked closely together when preparing to pay it a visit. This took some getting used to in the beginning. Each of us has a unique mode of operation. Nevertheless, the outcome was good: a jointly announced business visit paid to several sites. It sent out a powerful message.

**Jan Willem Zevenhuizen**  
senior regulatory assistant, Consumer Authority

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## About OPTA

OPTA ensures that there is sufficient competition in the electronic communications and postal markets. It does this by studying these markets and intervening in advance where necessary. OPTA will intervene as long as there is an active party holding significant market power in a market. Where there is sufficient competition and consequently an absence of significant market power, any measures which OPTA has adopted may be phased out. Because of trends, such as consolidation (the merger of businesses) and convergence (the coalescence of technologies), markets are constantly changing and regulation consequently remains tailored.

OPTA protects the interests of consumers and business users. This OPTA does by ensuring that they are aware of their rights, by punishing providers for any abuse on their part, and by making the internet safer. User confidence in the communication markets promotes demand for communication services.

Finally, OPTA ensures the existence of basic conditions, such as the availability of enough new telephone numbers, which allows the communication markets to function properly. In addition, OPTA regulates the postal market.

All of this is set out in the legislation and regulations under the terms of which OPTA performs its regulatory duties. OPTA's mission is what guides it when performing its duties.

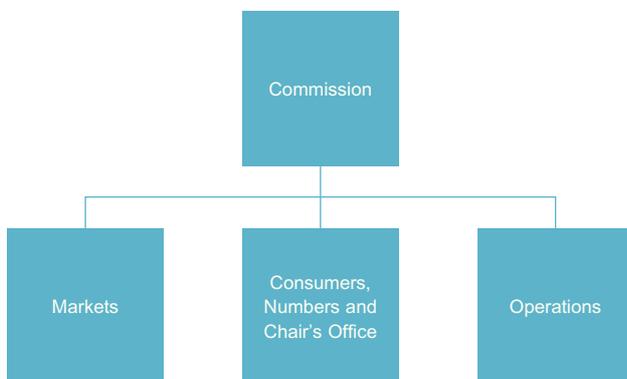
### Mission

OPTA ensures that there is competition and confidence in the communications sector in the interests of consumers.

### Framework

OPTA is an independent administrative body (IAB), which enforces legislation and regulations enacted by the legislature. This refers to the Telecommunications Act [*Telecommunicatiewet*], the Postal Act [*Postwet*] and relevant European and subordinate regulations. Political responsibility for OPTA is vested in the Minister of Economic Affairs, although OPTA is independent and makes its own decisions irrespective of any political or business interests. The Minister may issue general directives but may not intervene in individual cases.

### Organisational chart



## Focus on 2009

OPTA published its first *Focus* in 2009. That *Focus* set out what OPTA wished to focus on in 2009 and was determined on the basis of internal considerations and external pointers. In the past year the *Focus on 2009* has played a guiding role for OPTA's management team. In this annual report OPTA reveals the activities that it has undertaken in response to its *Focus on 2009* and the results that have been achieved.

OPTA decided on the following focus points for 2009.

### Avoiding contraventions

(Introduction, p. 16)

Where possible OPTA directs its regulatory work with the aid of information about the market parties' adoption of preventive measures. This could occur in the form of a compliance programme, for example. In 2008 KPN was the first market party to agree on a compliance charter with OPTA. In 2009 OPTA presented KPN with its findings in relation to the structure and operation of the KPN compliance programme. The relevant report will be published externally in 2010.

### Ensuring internet safety

(Chapter 1.1, p. 21)

Spam, malware and botnets represent a growing problem on the internet. At the beginning of 2009 OPTA urged internet service providers to beef up their security and to provide better information to their subscribers. Businesses have also been protected against spam since 1 July 2009. OPTA has informed all of the relevant businesses about this. In 2009 OPTA also directed its attention towards new types of spam emanating from social networking websites such as Hyves and LinkedIn.

### Reasonable tariffs for calls in Europe

(Chapter 1.6, p. 25)

When taking out a new subscription for mobile phone services consumers do not pay much attention to the tariffs charged for telephone calls and SMS messages. As such, there is no incentive for providers to compete with each other in this respect. Because it is impossible for a national regulator to tackle the problem of high charges for calls in Europe, OPTA has pressed for intervention at the European level. Tariffs declined further in 2009.

### Reducing irritation caused by unwelcome telemarketing calls

(Chapter 1.8, p. 27)

A large group of consumers do not appreciate telephone sales calls. For this reason a legal telephone preference service register was set up in 2009 for those consumers who no longer wish to be called. OPTA has provided the telemarketing companies with information and education concerning the new legislation. In addition, OPTA has agreed on a collaborative protocol with the administrator of the telephone preference service register. Acting in close cooperation with the Consumer Authority, it has also examined whether there is proper compliance with the relevant regulations.

### Tackling the misuse of paid information services

(Chapter 1.10, p. 29)

Consumers are still surprised at times by the level of their telephone account as a result of calling information numbers. In 2009 OPTA checked applications for information numbers more strictly. It also provided information about the new regulations governing maximum tariff announcements. OPTA also carried out active and reactive regulation in relation to these regulations. In order to prevent any misuse OPTA checked applications for information numbers more strictly in 2009.

### **More competition in the business market**

(Chapter 2.3, p. 35)

Business users still depend on KPN's network to ensure that they have national coverage for their telephony and data services. Competitors have more affordable access to KPN's network thanks to more rigorous remedies, which followed from the market analysis decisions taken in 2008. Together with KPN and the various market parties, OPTA set out KPN's range of commercial services in 2009.

### **Encouraging investments in fibre optic networks**

(Chapter 2.3, p. 35)

Substantial investments are required for the establishment of fibre optic networks. Access to fibre optic networks is needed to ensure healthy competition. Long-term certainty is very important to investors. Uncertainty inhibits investments. An optimal balance between innovation and the retention of competition served as the basis for the formulation of the obligation to provide access and other policy rules governing the regulation of fibre optic networks. In 2009 the conditions were created for the further roll-out of fibre optic networks and the growth of competition in relation to them.

### **Greater choice via television cable**

(Chapter 2.4, p. 38)

Cable television still dominates the television market in the Netherlands. Alternatives to cable connections are beset by limitations. Satellite dishes may not be erected everywhere. Digitenne has a limited number of broadcasting stations and IP-TV makes heavy demands on internet connections. At the beginning of 2009 OPTA made it mandatory for the two largest cable companies, UPC and Ziggo, to resell analogue connections to other providers in administrative terms.

### **OPTA's regulatory work**

Preventing an offence from occurring is better than imposing sanctions after the fact. Businesses or consumers will have suffered harm by then. OPTA regulates the market together with it where possible, for example, by seeking solutions that enjoy market support or with the aid of self- or co-regulation. A solution which is formulated together with the market may be more effective in certain situations than any measure imposed by OPTA. In this way it may be possible to avoid drawn-out legal proceedings. This promotes certainty in relation to the law and investments. As such, OPTA endeavours to involve all relevant parties with due care and in an appropriate fashion. OPTA's actions are proportionate. This is to say that OPTA intervenes in a manner which is appropriate to the problem in question.

### **Avoiding contraventions from occurring in the telecommunications market**

Where possible, OPTA provides guidance by providing information to the various market parties or by adopting preventive measures. Market parties may turn to OPTA for general information concerning the interpretation of their legal obligations. In addition, OPTA provides support to market parties as they assume responsibility for ensuring their own compliance with the law (compliance assistance). OPTA helps market parties to determine the way in which they structure their organisation, so as to ensure that they comply with the relevant regulations by abiding by rules and procedures, with the result that it becomes second nature to them to do so.

### **KPN compliance charter**

In 2008 KPN signed a so-called compliance charter (referred to throughout as the charter). This charter covers arrangements determining the manner in which KPN expresses its own responsibility to comply with the Telecommunications Act in concrete terms.

In 2009 OPTA investigated KPN on various occasions in response to reports which KPN had itself made to OPTA. Having KPN actively report any issues of interpretation, or actual or potential offences together with appropriate follow-up on its part can have a positive impact on the manner in which OPTA imposes any sanctions in the event of a transgression. It also influences the manner in which OPTA is able to structure its regulatory work. The more an organisation is able to show that it is in control itself, the less frequently a regulatory authority needs to act ('regulation at a distance').

On several occasions in 2009 KPN presented OPTA with reports on the existence, structure and operation of its compliance programme. In turn OPTA reported the findings of its analysis of that compliance programme to KPN. As agreed in the charter, those findings are to be published on OPTA's website in the course of 2010.

Agreeing on a charter with OPTA does not incidentally mean that traditional sanctions, such as enforcement orders and fines will no longer be used. An effective compliance programme may serve as a mitigating factor when a fine or enforcement order is imposed. Nevertheless, it may also serve as an exacerbating factor, if the relevant compliance programme has not been implemented and applied in practice or not properly so, and is consequently ineffective. OPTA weighs up all relevant factors, so as to ensure that any action it takes is an appropriate, proportionate response to any offence that comes to its attention. This ensures that OPTA's regulatory work has maximum effect.

## Collaboration and advice

### National

In 2009 OPTA strengthened its collaboration with other stakeholders in the field of telecommunications in relation to various cases. OPTA also presented the Ministry of Economic Affairs with advice, sometimes together with other parties such as the Netherlands Competition Authority (NMa), the Radiocommunications Agency Netherlands, the Media Authority, the Consumer Authority and the Data Protection Authority.

### OPTA and the Ministry of Economic Affairs

In January sent the Ministry of Economic Affairs notes on its previous advice concerning the issue of licences for frequencies in the 2.6 GHz band, through which licensees are able to provide consumers with mobile communications services. The reason for this letter lay in the adoption of a resolution by the Lower House, the implementation of which OPTA felt would have an impact on competition in the electronic communications markets.

In July OPTA provided the Ministry of Economic Affairs with advice on two policy-related proposals: rendering the designated use of a number of frequency bands technology neutral and creating scope for new entrants when allocating frequencies in the 2.6 GHz band. As part of its advice OPTA came to the conclusion that both policy-related proposals would contribute to the achievement of the aim of the Ministry of Economic Affairs to treat frequencies efficiently and to offer consumers a choice.

## Complaints and praise

I have written a number of articles about the broadcasting market decisions, about their impact on Ziggo and UPC, as well as on new entrants: a great deal of complaints and praise. Everyone is slightly satisfied but no one is entirely so. However, that is simply the way it is in relation to the work performed by a regulatory authority. What was new in 2009 was that I could automatically receive updates from the OPTA website: very convenient!

**Vincent Andriessen**  
Journalist, Het Financieele Dagblad

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### OPTA and the Netherlands Competition Authority (NMa)

In October 2009 OPTA advised NMa for the purposes of assessing a merger, which would have seen the Reggefiber Group and the Amsterdam municipality's Development Operations department acquire control over Glasvezelnet Amsterdam. OPTA endorsed the conclusion drawn by NMa to the effect that there was no reason to assume that competition would be diminished as a result of the merger, provided that the parties complied with the relevant conditions.

The development of a superfast broadband network is very important for the further growth of the economy. Acting in accordance with the Crisis and Recovery Act [*Crisis- en herstelwet*], the Ministry of Economic Affairs implemented a legislative amendment which makes it easier for local government to participate in the development of fibre optic networks. OPTA is critical of the participation (financial or otherwise) of local authorities in market conditions in which healthy competition occurs between infrastructures and substantial investments are channelled into new networks. Thanks to such competition the Netherlands leads the world when it comes to the number of high-speed broadband connections. In December 2009 OPTA working together with NMa sent a response to a guide produced by the Ministry of Economic Affairs entitled *Goed op weg met breedband*, which deals with the question as to how new broadband networks are to be established. Although OPTA and NMa endorsed the key aspects of the guide, they stressed in their respective capacities that competition has shown itself to be the driving force behind innovation in the Netherlands. The view that public authorities should also make a financial contribution towards facilitating the roll-out of new networks is one which OPTA and NMa sought to place in perspective by doing so.<sup>1</sup>

### Collaboration within a European context

All European member states have a so-called national regulatory authority (NRA), which regulates electronic communication. OPTA is the Dutch one and works together with the other NRAs in Europe. This collaboration occurs in the Independent Regulators Group (IRG). The IRG has enjoyed its own legal persona since 1 September 2008. Its executive board consists of five chairpersons of the various NRAs, including the OPTA Commission chairman, Chris Fonteijn.

If the European Commission disagrees with a market analysis decision taken by an individual NRA, the IRG sets up a team of experts which provides advice to the relevant NRA. The advice provided by a team of expert colleagues has shown itself to be rather invaluable. Again in 2009 the IRG issued independent advice, amongst other things, on the Austrian broadband markets. As part of it a team of experts headed by OPTA's economic expert, came to the conclusion that the Austrian regulator was right to rule that mobile broadband connections constitute part of the broadband retail market.

Apart from the IRG, there is also a European Regulators Group (ERG). The latter also includes members of the European Commission. On the one hand, the ERG serves as an advisory body to the European Commission. On the other hand, its aim is to help ensure the existence of a consistent regulatory framework in all of the member states. The ERG does this by adopting a common position and publishing it. In 2009 the ERG considered the following matters, amongst others:

- international roaming;
- future payment regimes;
- the ability to replicate bundles; and
- the universal service.

<sup>1</sup> Reference: OPTA/AM/2009/203630.

In 2009 the IRG presented advice on a new regulatory telecommunications framework. The relevant legislation was promulgated in December. The BEREC Regulation, which established the BEREC (Body of European Regulators for Electronic Communications) in January 2010, is part of this legislation. The BEREC represents the next stage in the collaboration currently involving European regulators, the ERG. The European Commission will have to accord greater importance to any advice issued by the BEREC. In addition, the BEREC may also provide assistance for the purposes of market analysis decisions to other regulatory authorities in Europe on request.

#### **European developments**

Superfast broadband remains a key aspect of European policy. Ms Neelie Kroes has since announced this in her capacity as the new Commissioner for Telecommunications and Media. In this respect the European commission has presented a second draft recommendation for a new generation of local loop networks to the market for consultation. Together with the other NRAs, OPTA has responded to this recommendation through the ERG. In addition, on 30 August 2009 the European Commission drew up specific rules governing state aid for broadband networks.

#### **Evaluation of OPTA**

OPTA is an independent administrative body, a government agency which operates independently of a ministry. This means that the Ministry of Economic Affairs does not exercise direct control over the decisions which the independent OPTA Commission takes. The state secretary bears political responsibility for the appointment of the OPTA Commission and the approval of the organisation's budget. Under the terms of the Independent Post and Telecommunications Authority Act the state secretary has a duty to evaluate whether OPTA is still acting effectively and efficiently every four years, and to examine whether it should continue to carry out its regulatory work in the same way during the next four years. Last year OPTA's performance during the period from 1 October 2004 to 1 April 2009 was evaluated. The findings of this evaluation showed that it had done well to very well across the board and a number of recommendations were presented. For instance, it was stated that OPTA needed to seek dialogue with the market parties, to involve them more closely in its decision-making, to utilise their expertise more effectively, and to respond to their arguments properly. OPTA has also become more efficient and collaborates closely with other regulatory authorities. As such, OPTA is making a significant contribution towards improving the operation of the market. Consumers are benefitting directly from this in the form of lower prices and better services. Heemskerk, the State Secretary, has endorsed this view of the evaluation. As a follow-on from this, he has stated that OPTA should at any rate continue to exist in its current form during the current government's term. ●

# 1 Consumers

The protection of consumers represents one of OPTA's operational domains. OPTA checks to ascertain whether market parties comply with the law and takes action against any business which does not. What does consumer protection entail in concrete terms? Here are a few examples: combating spam, unwanted telemarketing, removing obstacles to switching faced by consumers, such as number portability or the term of their contract. Providing information to consumers through ConsuWijzer, so as to ensure that they can stand up for their own rights, is also an important part of OPTA's work.

## 1.1 Internet safety

The safety and reliability of communications services demands an active contribution from internet service providers. They need to arrange security and alert their subscribers to the existence of risks on the internet.

OPTA continued to devote a great deal of attention to safety on the internet and the reliability of electronic communications devices. The duty of care that internet service providers are required to exercise represents an important tool. Internet service providers have a duty to arrange security and to inform their subscribers about the risks to which they are exposed on the internet. This information is important to ensure that users do not become victims of computer crime.

### Information about risks

At the beginning of 2009 OPTA published policy rules on information. In them OPTA set out in concrete terms what it expected of internet service providers. The essence

of these rules lies in the provision of information about eight risks associated with the internet and the manner in which consumers can protect themselves against them. This information needs to be easier to find on the internet service providers' websites. These policy rules were drawn up following consultation with the internet service providers. The Commission has subsequently monitored compliance with these rules. All 36 internet service providers have received a letter setting out points for improvement. Most of the internet service providers have complied. Of them 12 have been warned, because they have not yet implemented appropriate improvements. Eventually, all of the internet service providers updated their websites, so as to ensure that they described all of the risks and the ways in which consumers can protect themselves from computer crime. In this way it is possible for consumers to obtain proper information to use the internet safely.

### Information concerning router security

In addition, OPTA undertook action for the purposes of enforcement in order to improve information concerning wireless router security. Research conducted by the Consumentenbond [Consumers Association] has revealed that many wireless routers have not been secured and can easily be misused by other people. If an internet service provider supplies a consumer with a router, it is required to provide the consumer with proper information as to how to secure it. OPTA has asked all of the internet service providers to provide information about securing all of the types of routers listed on their websites. The internet service providers have complied with this. The information provided by the internet service providers is confined to the types which they supply or have

supplied as part of their internet service subscriptions. As such, it does not apply to those routers which consumers buy in a shop. The internet service providers' duty of care does not extend that far.

### Tackling botnets

OPTA's initiative to tackle botnets represents the last part of the project involving internet service providers' duty of care. Botnets are networks of hacked computers often belonging to unsuspecting users, which are employed for the purposes of computer crime. Acting at OPTA's request 14 internet service providers have made arrangements with each other for the purposes of tackling botnets. They screen off infected computers from the internet and help the relevant users to clean their computers again. The extent to which they help users depends on the services which the relevant internet service providers provide. These arrangements came into effect on 1 January 2010. An evaluation will be conducted by the Internet Safety Platform.<sup>2</sup>

### Prohibition of spam

The spam prohibition has also applied to electronic messages addressed to businesses since 1 October 2009. In the course of 2009 OPTA undertook a great deal of education about the spam prohibition in order provide all of the parties concerned with detailed information. A list of frequently asked questions and answers has been posted on a new website at [www.spamklacht.nl](http://www.spamklacht.nl). Shortly before and after the date on which the amended legislation came into effect anyone who was unable to find an answer to his question, was able to present it again during a telephone consultation period. It was also possible to address questions to a special e-mail address concerning spam aimed at businesses. More than 200 questions were received.

### Punitive measures

After 1 October 2009 the number of complaints which OPTA received about spam rocketed to almost four times as much as before then, going from 12,000 complaints per annum to the same amount in three months. OPTA launched various new investigations in response. In addition, other investigations dating from the period prior to that were still current. OPTA has launched a total of 68 investigations in the past year. Based on this 51 warnings have been issued and 13 investigations were closed without any further action being taken, because it appeared that no offence had been committed.

In July 2009 OPTA imposed a fine of EUR 250,000.00 on a hardened spammer, who had previously received a warning about his e-mail messages announcing that 'Adverteren is gratis' [Advertising is free] and occasioning numerous complaints. Because this spammer continued to send spam in spite of the fine, OPTA also issued him with an enforcement order immediately.

In its *Focus on 2009* OPTA had announced that it would be looking at social networking websites, such as Hyves and LinkedIn. In October 2009 OPTA imposed a fine of EUR 12,000.00 on a person who had sent 3 million 'scraps' about an online game.

OPTA also took action against an SMS service provider, SD&P. This company was served with an enforcement order, because it did not offer a valid unsubscribe option in its SMS messages. An interim relief court suspended that enforcement order at the provider's request, because it ruled that the recipients of the messages of the provider in question had taken out a subscription for them. The court ruled that in the case of such a subscription there was no question of any 'unsolicited messages' and that the spam prohibition did not apply.

<sup>2</sup> A collaborative venture involving the market parties and the government for the purposes of improving internet safety for end users.

### Case law

OPTA's decisions are regularly contested in the courts. Because of privacy considerations OPTA had not disclosed the name of anyone who has submitted a complaint about spam to the suspected perpetrator. However, in January 2009 the Trade and Industry Appeals Tribunal (CBB) ordered OPTA to hand over the complainants' details to the offender in a specific case involving spam. A complainant is entitled to the protection of his privacy but any party who is fined also requires full access to the case file. For this reason OPTA has supplied the details of those complainants who consent to this, to the relevant offenders. From now on, when a complainant submits a complaint about spam, OPTA will always explicitly request his consent for the use of his personal details as evidence in any investigation involving the imposition of a fine.

The District Court of Rotterdam heard various cases in 2009 and its judgments were published at the beginning of 2010. The court upheld a fine of EUR 55,000.00 imposed on a spammer – who transmitted spam for a company called ID2001 – for misusing unsecured wireless routers belonging to unsuspecting users. A fine of EUR 240,000.00 for a business that collaborated with a spammer for the purposes of providing home-based work was quashed by the court, because it held that it had not been properly established that the business was also a genuine offender. OPTA will be filing an appeal against this ruling.

Judgment was also handed down in OPTA's first case involving the dissemination of undesirable software. OPTA had imposed fines totalling EUR 1 million for the infection of a total of 22 million computers throughout the world with software called Dollar Revenue. The court held that the fines imposed on one private individual and two businesses were lawful but not in the case of

another private individual and a third company. According to the court, fines totalling EUR 800,000.00 were rightly imposed. In a case involving the publication of news of these fines imposed for undesirable software, the District Court of Amsterdam ruled that it was not lawful for OPTA to mention the names of the businesses concerned before the fines had been decided on by the court. OPTA will also be filing an appeal against this judgment, because it undermines the cautionary and general preventive effect which that has.

### 1.2 SMS code of conduct

The SMS code of conduct represents an initiative taken by market parties active in the SMS sector to regulate themselves. For instance, consumers may submit a complaint concerning their account directly to the provider in accordance with this code of conduct. Providers are required to deal with complaints and call SMS service providers to account for any conduct which contravenes the code.

In the summer of 2009, a year after this stricter SMS code of conduct came into effect, OPTA and the Consumer Authority evaluated it. They concluded that the code of conduct was not effective. Amongst other things, the number of reports received by ConsuWijzer concerning SMS services rose drastically. To OPTA such self-regulation was not enough for it to relax its regulation of the SMS market.

The Ministry of Economic Affairs has incorporated the findings of this evaluation in its own evaluation of the code of conduct. Together with OPTA, the Consumer Authority and interest groups, the Ministry of Economic Affairs has submitted proposals for the improvement of the code of conduct. They are supposed to produce a new, stricter SMS code of conduct and fewer complaints in 2010.

### 1.3 Contracts

Consumers are entitled to cancel their contract in the event that their provider amends it to their disadvantage. If a provider amends his contracts, his customers must be notified of this four weeks in advance. Where an amendment is not to a customer's advantage, that customer is entitled to cancel his contract there and then free of charge. This cancellation right has been extended as of 1 July 2009. As of that date consumers are entitled to cancel their contract for internet, telephone, television or radio services at any time following the expiry of the initial term of that contract. The term of notice may not exceed one month.

#### Amendment of contract

In recent years OPTA has taken action for the purposes of enforcement on various occasions in cases where providers have failed to comply properly with the rules governing the amendment of contracts. For this reason OPTA revised its cancellation right evaluation framework in 2009. The revised version of its evaluation framework was presented to the various market parties in May. Both providers and interest groups responded to it. Based on those responses OPTA made a number of further changes to the evaluation framework, which was published at the beginning of 2010.

A number of complaints concerning the cancellation right were also received through ConsuWijzer in 2009. Providers also contacted OPTA themselves, if they had plans to amend their contracts. In 2009 OPTA investigated 16 cases involving providers who had amended their contracts. In a large number of cases it appeared that the provider had correctly applied the law. In two cases OPTA contacted suppliers by telephone or in writing, because they had failed to comply with the law. Those providers then correctly applied the cancellation right and provided their customers with all of the appropriate information concerning their rights.

#### Punitive measures

In one instance OPTA had to secure compliance with a cancellation right with the aid of an enforcement order. The provider, Telfort, had raised its tariffs for fixed calls for consumers who had simultaneously taken out a subscription for fixed calls and internet services. However, Telfort only provided its subscribers with the opportunity to cancel their fixed calls services. OPTA was of the opinion that this increase in charges entitled subscribers to cancel both their fixed call and internet services. After OPTA served an enforcement order on Telfort in October, the latter offered those of its subscribers who had simultaneously agreed to internet and fixed calls services to cancel the entire agreement free of charge.

#### Observing the maximum term of notice

In April 2009 OPTA sent an informational letter to all providers of internet, telephony, television and radio services containing an explanation of the new regulations governing the maximum term of notice and the way in which it would be regulating and enforcing them. Because of their great importance to consumers OPTA conducted a random test at the end of August to ascertain the level of compliance with the new regulations governing the term of notice for the cancellation of contracts. The terms and conditions of cancellation were examined in the case of 30 providers. Of them 20 providers had terms and conditions of cancellation which complied with the new regulations but 10 providers did not. Those 10 providers received a warning and subsequently amended their terms and conditions of cancellation to bring them into line with the new regulations. OPTA continues to monitor compliance with the regulations governing the term of notice, so as to ensure that consumers continue to find it easy to switch.

## 1.4 Dispute resolution committee

If a consumer has a dispute with a telecommunications or internet service provider, he may apply to a telecommunications or electronic communications dispute resolution committee to hand down a ruling. OPTA feels that it is important for providers to affiliate to a dispute resolution committee. This can provide consumers with a ready opportunity to enforce their rights. OPTA has closely monitored compliance with the legally stipulated duty of telephone service providers to affiliate to a dispute resolution committee.

At the beginning of 2009 OPTA served an enforcement order on nine providers. Shortly after that the relevant dispute resolution committee denied access to its website because of security problems. It was no longer possible for providers to affiliate to it. OPTA extended the deadline by when providers could affiliate before any danger of punitive measures arose. Eventually, all of the providers who had been given notice affiliated to a dispute resolution committee, with the result that it is possible for consumers to approach that committee if they are involved in any dispute concerning telephony or internet services.

## 1.5 Tariff transparency

Acting at OPTA's behest, Newcom Research & Consultancy conducted a study into the transparency of telephone tariffs. This study considered the perception of customers and their experience of searching for information on tariffs. Newcom asked 1,200 consumers to state their experience and opinions for this purpose. In addition, Newcom asked a number of consumers to search for information about tariffs on telephone service providers' websites. The Ministry of Economic Affairs has also undertaken a study into the manner in which telephone service providers inform consumers about telephone charges. Both studies reveal

that consumers still find it difficult to find information about telephone tariffs. For this reason OPTA worked on improving tariff transparency in 2009.

In October the Ministry of Economic Affairs and OPTA organised a meeting, during which they called on the industry to make telephone tariffs more transparent. They asked telephone service providers to:

- publish all of their applicable charges in a place on their website that is easy to find;
- provide a standard list of their most important tariffs;
- disclose the interim balance of the amount to be invoiced and the remaining airtime; and
- to provide a breakdown of consumers' calling patterns.

The telephone service providers have since responded to these points for improvement and have presented their comments and their own ideas. In 2010 the Ministry of Economic Affairs and OPTA will decide precisely what telephone service providers will need to do in order to improve tariff transparency for consumers.

## 1.6 Mobile phone calls in Europe

### Adjustment of mobile call charges

On 18 June 2009 the European Parliament amended the existing regulations governing what mobile phone service providers may charge their customers for mobile phone calls on a foreign network within the EU.<sup>3</sup> The maximum rates for inbound and outbound calls were lowered to EUR 0.51 and EUR 0.23 per minute respectively on 1 July. In addition, mobile phone service providers may no longer round up calls to the minute in the case of regulated tariffs. On 1 July the maximum tariff for sending an SMS message was set at EUR 0.13.

<sup>3</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:167:0012:0023:NL:PDF>.



## It took some getting used to

I am favourably disposed towards the registration of postal operators as a result of the new Postal Act [Postwet]. It helps improve the quality of our industry and renders it transparent. Nevertheless, Business Post and OPTA had to get to know each other. It took some time before OPTA understood the structure of our organisation. I had the feeling that OPTA was still feeling its way around in the beginning. However, I am pleased that we have a centralised interlocutor for legal matters.

**Jan de Haan**  
national coordinator, Business Post

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Both before and after the new regulations were introduced, OPTA was in close contact with mobile phone service providers in order to ensure that all consumers would actually be able to benefit from the lower rates on 1 July 2009. The reduced tariffs for utilising the SMS abroad saved consumers approximately EUR 30 million in 2009.

#### **Protection against the high costs of mobile internet access**

In 2009 mobile phone service providers started preparing for new regulations governing consumer protection. In 2010 mobile phone service providers will have to protect consumers against unexpectedly high costs for mobile internet access. Regulations passed by the European Parliament stipulate that as of 1 March 2010 mobile phone service providers must offer their customers the option of capping mobile internet access costs abroad at no more than EUR 50.00 (excluding VAT) per month. As of 1 July 2010 all consumers will be afforded such protection, unless they themselves indicate that they do not want it. OPTA has discussed the implementation of these regulations with providers in the course of various meetings and consultations.

#### **1.7 Universal service**

The law stipulates that anyone who applies for a fixed telephone connection must receive one. KPN is the party designated by law to offer this so-called universal service (US). KPN has a duty to offer good quality and may charge a specific fee for this. Anyone in the Netherlands should also at least be able to opt for either of the following two types of subscriptions: an affordability subscription and an accessibility subscription (which KPN refers to as Belbasis [basic calls] and Belbudget [budget calls]). KPN has an obligation to offer these types of subscriptions.

At the end of 2008 OPTA received complaints through ConsuWijzer from residents of a new neighbourhood in Utrecht called Het Zand. These complainants stated that KPN had been unable to supply a fixed telephone connection at their address for some time already. An investigation carried out by OPTA revealed that KPN had indeed failed to comply with its duty to supply a landline connection at a number of residential addresses in Het Zand. In March 2009 OPTA served an enforcement order on KPN to ensure that the relevant residents would be able to utilise KPN's fixed telephone service as soon as possible. The law does not stipulate a deadline by when KPN is required to comply with this obligation. OPTA was of the opinion that KPN should fulfil its duty immediately or as soon as possible in the case of such a request. KPN supplied a landline connection to all of the end users in Het Zand who required one by the deadline stipulated by OPTA, thereby complying with the enforcement order.

#### **1.8 Unsolicited telemarketing**

Prior to 1 October 2009 any business that sells products or services by telephone had to ask any consumer whom it called whether it could call him again for telephone sales purposes. This is referred to as the right to object. Since 1 October 2009 the legislation has included two additional obligations. Any business which wishes to conduct a telemarketing campaign must remove the telephone numbers of any consumers who have registered with the telephone preference service register from its files. A telephone salesperson also has to actively mention the telephone preference service register and also offer consumers the opportunity to register with it.

Preparations for the introduction of the telephone preference service register dominated 2009. OPTA encourages spontaneous compliance, and has invested a great deal of energy in education. A brochure has been prepared,

which provides a simple explanation of the telemarketing regulations. OPTA also gave presentations during sectoral meetings. Businesses and other organisations were able to ask questions about the telemarketing regulations via an e-mail address. OPTA answered hundreds of e-mail messages concerning this issue in 2009.

OPTA provided an explanation of the new telemarketing regulations for consumers on the ConsuWijzer website. The latter received more than 2400 complaints between 1 October and 31 December. In response to these complaints OPTA served warnings on three advertisers and one call centre. In addition, OPTA sent a letter to 28 businesses asking them to adopt measures to forestall complaints and sought information from 11 others. The latter businesses need to show that they are complying with the regulations. OPTA is still investigating these businesses.

The Ministry of Economic Affairs has appointed Stichting Infofilter to administer the telephone preference service register. OPTA has agreed on a collaboration protocol with Infofilter for the purposes of regulating compliance with the telemarketing regulations. This protocol stipulates that the administrator will satisfy any request from OPTA for information within one working day. OPTA will also receive direct access (online) to the register. The administrator and OPTA will regularly get together to discuss the operation of the register, any misuse of it, communication concerning it, and any signs of abuse in the telemarketing sector.

For the purposes of regulating compliance with the right to object OPTA launched an investigation into the telemarketing activities of Nederlandse Energie Maatschappij

together with the Consumer Authority.<sup>4</sup> This investigation was not completed in 2009. In addition, OPTA issued two warnings to businesses that had failed to offer the right to object.

### 1.9 Switching to a different provider

In 2008 internet service providers voluntarily agreed to do the following by no later than 1 January 2009:

- to affiliate to the electronic communications services dispute resolution committee;
- to publish unambiguous information about their switching procedures on their respective websites;
- to ensure that a consumer's contract with his former provider is cancelled in their capacity as his new provider; and
- to ensure that no less than 95% of any switches occur on the agreed date.

OPTA does not have any legal power to intervene if problems occur in respect of a switch from one provider to another. Nevertheless, OPTA closely monitors whether internet service providers comply with the arrangements that have been made.

The number of complaints received through ConsuWijzer declined from 2008 to 2009. However, consumers are still encountering difficulties when switching. A frequently heard complaint is that a new provider does not act in accordance with what it undertakes to do. A consumer thinks that his new provider will take care of cancellation for him but it turns out in practice that this is not the case. In May 2009 internet service providers arranged for a study to be conducted in respect of the 95% norm. This norm entails that 95% of switches are to take place on

<sup>4</sup> Normally OPTA does not disclose the name of any business which it is investigating, before a decision has been taken. However, in this case the business concerned has already confirmed in the media that an investigation is underway.

the agreed date subject to an interruption of services of no more than 24 hours. Research reveals that in 86% of cases consumers experience an interruption of services of less than 24 hours or one that is longer but in respect of which it cannot be shown that the relevant internet service provider is to blame. Internet service providers have not yet achieved the 95% norm, although the trend is favourable. Switching problems occur in the case of both those internet service providers that have voluntarily consented to the arrangements and those that have not given any undertaking to abide by them. OPTA discusses the signs that it receives from the market via ConsuWijzer with the Ministry of Economic Affairs.

## 1.10 Telephone numbers

### Administration and issue of numbers

OPTA issues telephone numbers for various services and purposes. It is required to ensure the proper administration of the stocks of numbers and to give timely notice, if there is a danger of these telephone numbers being used up. Where they are used unlawfully, it acts to enforce the law.

Number holders held 109 million numbers on 30 December 2009. This represents an increase of approximately 6% compared with 2008. OPTA notes that there has been an increase in the allocation of fixed and mobile phone numbers. The number of fixed phone numbers allocated rose by 5% in 2009 and that of mobile phone numbers by 6%. From 2008 to 2009 the overall quantity of number assignment decisions climbed by about 5%.

One of OPTA's important duties is to supply the market with telephone numbers. OPTA assigns numbers on demand. Applicants often fail to provide all the required information when they apply. This is responsible for

lengthy turnaround times. For this reason OPTA has had a tighter procedure in place for the administration of numbers since 1 July 2009. If applications for numbers are incomplete, OPTA does not consider them. As a result the issuing process has become more efficient and responsibility for the submission of a completed number application is placed on the applicant.

### Tackling the misuse of paid information numbers

OPTA actively tackles the misuse of paid information numbers. Examples of such misuse are unexpectedly long waiting times or disconnection without any service being provided. If it suspects that there has been any misuse, OPTA has the power to arrange for a number to be disconnected temporarily or to suspend any payment relating to that number. It may also cancel or suspend a number allocation or refuse to accept an application from anyone suspected of misusing numbers. In the event of misuse OPTA publishes a relevant notice in the *Staatscourant* [Government Gazette]. In this case any such telephone service provider is required to refund a disadvantaged consumer his money within two months following such publication.

In 2009 OPTA published a notice in the *Staatscourant* in connection with such misuse on one occasion. On 30 March 2009 OPTA gave notice of the fact that the paid information number, 0900 7586500 (Scrappy's Electronics), had apparently been misused in 2008. As a result of this notice telephone service providers were required to refund the call charges incurred by all of the consumers who had phoned Scrappy's Electronics. In addition, in March 2009 OPTA arranged for the Makelaarsfoon and Juristenfoon information numbers to be disconnected temporarily on suspicion of misuse. Following an investigation OPTA came to the conclusion that the relevant information service provider had misused those information numbers and they were cancelled.

No objection was launched against that decision. At present OPTA is investigating whether any disadvantaged consumers should receive a refund from the relevant telephone service provider.

#### Transparency in relation to 18xy numbers

It is possible to call 18xy numbers to request number information and to be connected to any number that is obtained if necessary. Although such connection is allowed via an 18xy or 0900 number, a provider is required to comply with a number of legal requirements.

OPTA investigated 25 numbers in the 18xy series and two 0900 numbers. The reason for this lay in attention devoted by the media and complaints received from consumers concerning a lack of clarity about the charges after being connected through a subscriber information service. These investigations revealed that numerous offences had occurred. Of the 18xy service providers it appeared that 13 had failed to confine themselves to their designated duty, for example, immediately connecting a consumer with a telephone number that he had requested instead of giving him the opportunity to note it down. In the case of 25 numbers it was not sufficiently clear for what service the charge quoted had to be paid. For instance, not every announcement revealed that you are also required to continue paying the charge quoted after being connected. In the case of two of the numbers that were checked the tariff announcement was absolutely incorrect. Of the 18xy numbers 15 failed to mention relevant information about the call charges. In addition, OPTA discovered 11 instances of number misuse. OPTA issued a warning to all 27 providers for one or more offences and will be monitoring the subscriber information services that have received such a warning again in 2010.

#### Maximum tariff disclosure

Many businesses, such as insurance, energy and telecommunications companies, offer their customers telephone services. Consumers are greatly annoyed by the fact that they are required to pay for a business' poor accessibility by having to wait in a queue for a long period of time. It is for this reason that the legislature has tightened the regulations governing calls to 0900 numbers. A business is required to quote a maximum call charge, if its tariff exceeds EUR 0.15 per minute. Any business which provides such an information service and the relevant telephone service provider are required to determine the amount of this maximum charge together.

OPTA checks these tariff announcements monthly and by conducting random tests. When it discovers an offence, it issues a warning. This is followed by tougher enforcement measures, such as an enforcement order or fine. In 2009 OPTA checked the announcements of 1000 0900 numbers. Based on these checks OPTA issued 36 warnings to those number users that had failed to comply with the regulations. Almost all of the number users who received a warning have altered their tariff announcement. Notice of OPTA's intention to serve an enforcement order was sent to three number users, following which they changed their tariff announcement.

In addition, in May 2009 OPTA requested calling data from telephone service providers in order to obtain greater clarity about the number of cases in which callers were charged higher tariffs than the charges announced at the outset. In a large number of cases it appeared that higher rates had been charged than had been announced prior to the call proper. In response to this discovery OPTA sent a letter to telephone service providers and those businesses which provide information services, in which it offered assistance to help them comply with their maximum tariff disclosure duty. At the end of last year

OPTA requested information from KPN to carry out another check to ascertain whether there was improved compliance with this duty. OPTA requested this information from KPN, because as part of its compliance programme the latter has made considerable efforts to secure improved compliance with this duty in its own organisation and in those businesses which provide information services. OPTA will monitor compliance with this maximum tariff disclosure duty on the part of telephone service providers and number users. In addition, OPTA will alert consumers through ConsuWijzer of the need to check their telephone bills closely after calling such a number.

#### **Duty to affiliate to a dispute resolution committee**

As of 1 July 2009 users of 0906, 0909, 18xy and most 0900 numbers are required to affiliate to the information service providers dispute resolution committee and consumers are entitled to suspend payment of any disputed part of their telephone account, until their dispute is resolved. The aim of the new regulations is to provide consumers with better protection against the potential misuse of information numbers by number users. If a consumer fails to resolve a dispute with the relevant number user, he can enforce his rights without any major obstacles through the information service providers dispute resolution committee. OPTA monitors the duty of number users to affiliate and the right of consumers to suspend payment of their telephone account.

On 29 June 2009 OPTA sent a letter to number holders and telephone service providers to inform them about the new regulations. In response to complaints which OPTA received about 090x and 18xy numbers through ConsuWijzer, a total of 40 warnings were issued to the users of such numbers in 2009. The relevant number users subsequently affiliated to the dispute resolution committee or are still busy doing so. An enforcement

order was served on one party, HDVA, to secure its affiliation. OPTA has received numerous questions about the company, HDVA, through ConsuWijzer since the end of August 2009. Consumers received a leaflet in their letterbox containing an electronics advertisement. Anyone who wished to order a product had to call an 0900 number. The callers were then faced with the fact that no one answered the phone. HDVA has since affiliated to the information service providers dispute resolution committee. This means that consumers can approach the dispute resolution committee, if they fail to resolve a dispute with HDVA.

#### **Number retention**

Number portability means that a consumer can retain his own number when switching to a different provider. The obligation which telecommunications companies have to assist with this is supposed to ensure that it is easy for consumers to switch, which facilitates fair competition.

In 2009 OPTA again devoted itself to ensuring that consumers can retain their numbers. It served an enforcement order on Ericsson Telecommunicatie, because this provider had prevented a large group of consumers from retaining their number when switching to another provider. Acting at the request of Lycamobile, OPTA also investigated T-Mobile's refusal to comply with portability requests. OPTA subsequently served an enforcement order on T-Mobile, following which this provider ported the relevant numbers.

#### **Regulation of 112**

When a call is made to the emergency number, 112, mobile phone service providers have a duty to supply information about the caller's whereabouts to the emergency services.

The emergency centre and the mobile phone service providers' networks need to be properly coordinated with each other for this purpose. The Ministry of the Interior had agreed with the mobile phone service providers that this would be done by 1 April 2009.

OPTA has a duty to ensure that mobile phone service providers include this information with any call to 112. In February 2009 KPN stated that it was not in a position to include location details with any call emanating from a mobile phone without a SIM card. In May 2009 OPTA served an enforcement order on KPN, so as to ensure that the telecommunications company also includes location details with any call specifically made to 112. KPN complied with this by mid-September. This occurred by the deadline stipulated by OPTA, which meant that KPN had complied with the enforcement order. [🔗](#)

## 2 Markets

Every three years OPTA conducts an analysis of competition in the electronic communications markets. At the end of 2008 OPTA published market analysis decisions covering a large number of the markets which it regulates. This has given shape to the regulatory framework for the period ahead (2009- 2011). OPTA implemented those decisions in close collaboration with the market parties during 2009. The market analysis decisions for the broadcasting market were published at the beginning of 2009 and a start was made on implementing them during the year. A start was also made on a market analysis covering the fixed and mobile call termination market. In April 2009 the Dutch postal market was deregulated following the introduction of a new Postal Act.

### 2.1 Regulatory framework

The regulatory framework sets out the relationship between all other measures that OPTA adopts for the purposes of maintaining competition in the electronic communications markets. It depicts the links between the various decisions. The new regulatory framework that was established following the market analyses of 2008 has a number of specific features.

#### Less regulatory pressure in the consumer market

Strict tariff regulation still applied in the case of KPN's telephony services for consumers during the previous regulatory period (2006-2008). Thanks to growing competition, and actual and anticipated developments OPTA has been able to leave these markets to their own devices. No tariff regulation applies in those markets any longer as of 2009.

#### More remedies in the wholesale market

In order to make it possible to reduce regulatory pressure in the consumer market, KPN's obligations towards other providers have been made more stringent in a number of respects. Its wholesale obligations (in relation to unbundled and wholesale broadband access, and leased lines) will provide other providers with various forms of access to KPN's network. Consequently, they will be able to formulate their own services (retail or otherwise). The focus has also been shifted towards wholesale regulation in the broadcasting market. It has been decided that other providers will be allowed to use the cable networks belonging to UPC and Ziggo, so as to enable them to compete in the television market.

#### More remedies in the business wholesale markets

The regulatory framework devotes additional attention to the evolution of competition in the business sector. OPTA has noticed that there is a lack of dynamism in it, with the result that business customers are not benefiting sufficiently from competition in the market. It is for this reason that OPTA has adopted measures, so as to ensure that it is precisely in the business sector that other providers can compete more effectively with KPN. The business retail remedies that were imposed in relation to KPN in 2005 also continued to apply in 2009.

#### Promotion of infrastructure competition

An important aim of the regulatory framework is the promotion of infrastructure competition. OPTA has explicitly opted for a form of wholesale access to KPN's network which will encourage investments on the part of other providers as far as possible.

A man in a dark suit and white shirt stands behind a wooden desk in an office. He is looking towards the camera. On the desk in front of him is a laptop, a blue folder, and some papers. The background shows office cubicles with glass partitions.

## Astounding collaboration

Our sector has worked closely with OPTA for the purposes of enforcing the new regulations governing telemarketing and in relation to the provision of information to all of the parties concerned. This represents an astoundingly positive form of collaboration. The contact centre industry does not evoke positive feelings amongst everyone. This is not relevant in OPTA's case. OPTA promptly assimilated knowledge about our market, was aware of what it was dealing with and also looked out for our interests.

**Patrick Jordens**

member of the executive board, Dutch Dialogue Marketing Association

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This refers to so-called unbundled access (ULL). At the same time OPTA has refrained from regulating low quality wholesale broadband access through the same fibre optic connections. Such a measure would pose an obstacle to the further roll-out of services for end users by alternative providers.

## 2.2 Appeals

Various market parties have filed an appeal with the CbB against all of the market analysis decisions taken by OPTA. In 2009 OPTA presented its defence against the arguments advanced by those market parties. Court hearings were held to consider appeals against OPTA's broadband (unbundled access to the local loop and wholesale broadband access) and leased line decisions.

At the end of October 2009 the CbB pronounced a ruling in the proceedings directed against the decision concerning unbundled access to the local loop. The CbB quashed OPTA's decision of 19 December 2008 and ruled that OPTA had failed to cite adequate grounds to the effect that unbundled access to business fibre optic local loops constitutes part of the same relevant market as unbundled access to copper or residential fibre-optic local loops. The CbB ordered OPTA to make a new decision within six months. Nevertheless, the CbB allowed the remedy which OPTA had imposed in relation to unbundled access to KPN's copper local loop to remain in force for six months after the date of its ruling or until OPTA has taken a new decision if this occurs first.

The cases that are still before the courts will proceed in 2010.

## 2.3 Implementation processes

In 2009 OPTA started to implement the remedies following from the market analysis decisions. This implementation covered the following aspects:

- pricing remedies;
- the implementation of a wholesale pricing remedy for KPN, a wholesale price cap;
- the implementation of a wholesale rate for the resale of telephone connections;
- the preparation of reference offers for regulated access services; and
- the prevention of the erosion of margins.

### Pricing remedies

All of KPN's regulated wholesale services (services through which other providers gain access to KPN's network) are subject to a pricing remedy. Such a remedy usually entails that KPN may charge no more than a cost-oriented tariff for such a service (a tariff ceiling). This implementation of the pricing remedy is called the wholesale price cap (WPC).

In 2009 there were two parts to the implementation of the duty imposed on KPN to resell telephone connections: the implementation of the pricing remedy and KPN's operationalisation of a high-capacity ('business') variant of this.

The WPC and WLR tariff decisions stipulate the price cap applicable for the entire regulatory period (2009-2011).

### Wholesale price cap

The WPC decision consists of two parts. The first part sets the price cap for those services which were already regulated during the previous regulatory period (2006-2008). This part was implemented in 2009.

When assessing KPN's cost allocation system and tariff proposals OPTA involved an industry group as is customary. This refers to meetings organised by OPTA with market parties active in those markets that are regulated with the aid of a WPC. OPTA decided to share all of its correspondence with KPN with the members of this industry group as soon as possible and consequently already during the process. OPTA sought to enhance the transparency of the process and to give those market parties participating in the industry group an opportunity to provide a substantive response. OPTA has noted that this improved transparency was appreciated by the members of the industry group. A WPC-IIa implementation decision was presented to the market in draft form for the purposes of consultation over a period of six weeks, and has been approved by the European Commission.

This decision allows a decline in the case of a number of major wholesale services, such as the periodic charges for originating access (carrier preselection), unbundled access and wholesale leased lines. This is offset by the fact that one-off tariffs will remain the same and will even increase in some cases. Although the precise overall effect will differ in the case of each customer,<sup>5</sup> OPTA anticipates that the procurement costs of virtually all of KPN's competitors will drop even further thanks to the WPC-IIa decision.

The second part of the WPC decision will follow in 2010. It will stipulate the price caps for those services which are covered by a more onerous regulation of wholesale markets, such as fibre optic services.

#### **Wholesale line rental**

As part of the wholesale line rental decision OPTA has decided on tariff regulation covering KPN's resale of fixed telephone connections. This will make it possible

for other parties to resell KPN's telephone connections and will enable OPTA to promote competition in the consumer and business markets for fixed telephone services. A cost-oriented approach based on retail-minus must be adopted to arrive at tariffs for the resale of these telephone services. The decision setting out retail-minus and the WLR tariffs was published on 16 December 2009 following consultations with the market and the European Commission.

Since 1 January 2009 KPN has also had a duty – as a result of more onerous wholesale regulation – to sell high-capacity ('business') variants of its telephone connections to its competitors. The structure of the new service was discussed with interested market parties within an industry group. In July KPN commenced the actual implementation of the service, which was virtually completed by the end of 2009 following some delay.

#### **Pricing for unbundled access for fibre to the home**

In January 2009 OPTA presented a draft unbundled fibre optic access (fibre optic local loops) tariff decision to the European Commission and the market. By means of this decision OPTA will implement the specific fibre-to-the-home (FttH) tariff regulations formulated in the policy rules published in relation to this matter at the end of 2008. OPTA has made allowances for the fact that investments in large FttH networks are still to occur. As such, a proper balance is required between regulatory certainty for investors, on the one hand, and sufficient competition in relation to any new FttH networks, on the other.

After the draft decision was published, OPTA discussed the pricing of unbundled fibre optic access with the industry group. The members of the industry group let it be known which aspects of the draft decision they felt

<sup>5</sup> After all, that will depend on the services and volume which a customer purchases from KPN.

needed to be amended. The most important amendment that was implemented took the form of the further unbundling of several tariff components. On 25 June 2009 OPTA published the final unbundled fibre optic tariff decision.

Reggefiber, KPN, BBned, Online and Tele2 have filed an appeal with the CBb against that tariff decision. KPN and Reggefiber feel that OPTA will prejudice investors' interests as a result of the changes that it has made to the final tariff decision, while BBned, Online and Tele2 are of the opinion that OPTA has set the charges too high. The appeal proceedings will continue in 2010.

### Reference offers

KPN has a duty to reveal the range of regulated wholesale services that it offers by means of reference offers. OPTA has decided to play a proactive role in the production of such reference offers.<sup>6</sup> This means that OPTA has organised industry groups for the purposes of the various reference offers, which discussed the proposals put forward by KPN. Based on those discussions OPTA has ordered KPN to amend its reference offers on a number of occasions. Each of these directives was presented to the market parties in draft form.

### Unbundled access

The reference offers submitted by KPN and Reggefiber for unbundled access to both copper and fibre optic networks were also discussed in an industry group.

One working party within that industry group considered the amendment of the existing reference offer for access to KPN's copper local loop. Facilitated by OPTA, the parties reached agreement on a large number of points. With regard to those points in respect of which no agree-

ment had been reached, on 23 November 2009 OPTA published a proposed directive ordering KPN to amend its reference offer. A final decision will follow in 2010.

Another working party discussed KPN's offer for migration of unbundled access from its copper to its fibre optic local loops. In view of the fact that the phase-out will now occur later than KPN envisaged in its All-IP plans, OPTA has settled for a test of the main points for the time being. KPN, the other market parties and OPTA will continue to work on this in the years ahead.

### Wholesale broadband and leased lines

The reference offers for wholesale broadband access (WBA) and leased lines were raised in the industry group organised for that purpose. Because it appeared in this respect that the parties could not reach agreement on all aspects, OPTA stated its position in December 2009 in the form of a directive concerning a WEAS<sup>7</sup> reference offer.

Following a similar process OPTA presented the market parties with a proposed directive for WBA in December 2009. Finally, in the same month those aspects of the reference offers for a number of types of leased lines were identified which OPTA will assess and which may also be the subject of a directive at the beginning of 2010.

### Fibre optics

OPTA also considered the preparation of new reference offers for access to fibre optic local loops. This refers to the reference offers for Reggefiber's consumer fibre optic networks and KPN's business fibre optic networks (fibre-to-the-office – FttO). At the end of 2009 consultations in the relevant industry group produced an amended reference offer for Reggefiber's FttH, which was to be published at the start of 2010.

<sup>6</sup> The fixed terminating call wholesale service represents an exception to this.

<sup>7</sup> Wholesale Ethernet Access Service.

KPN also published a reference offer for FttO in 2009. The discussions concerning this in the industry group were halted following a ruling handed down by the Trade and Industry Appeals Tribunal (Cbb) on 28 October 2009. The Cbb overturned the remedies pertaining to unbundled access for FttO.

### Prevention of the erosion of margins

KPN is prohibited from discriminating in those wholesale markets in which it has a dominant position. This means that KPN must sell services to itself and its competitors subject to identical conditions. OPTA has extended this non-discrimination obligation to include five rules of conduct. The first four set out the conditions subject to which KPN may provide discounts. The fifth rule of conduct has been imposed to avoid the erosion of margins.

The fifth rule of conduct ensures that KPN may not charge retail rates which amount to less than its wholesale tariffs. If KPN was to do this, those of its competitors who procure services from it at wholesale rates would no longer be able to compete sustainably with KPN's retail charges.

In February 2009 KPN submitted an application for provisional relief to the Cbb. This application sought to have the fifth rule of conduct suspended until the Cbb had handed down a final judgment on the legality of the rule in substantive proceedings. According to KPN, this was because the fifth rule of conduct was confusing, impossible to implement and not proportionate. In May 2009 the Cbb dismissed KPN's application and OPTA published policy rules setting out a number of practical guidelines which have simplified KPN's implementation of the fifth rule of conduct.

Since May 2009 OPTA has been receiving periodic reports from KPN, in which the latter reports on the current progress of its implementation of the fifth rule of

conduct. Its implementation has turned out to be more complex for KPN than envisaged. It was only in October 2009 that KPN could guarantee that any new quotations would accord with this rule of conduct ('compliance guarantee').

A concrete example of the effects of the fifth rule of conduct may be found in the prohibition of KPN's offer of free internet access to schools. KPN offered free internet access to 8,000 schools, which is not permitted under the fifth rule of conduct. Through this offer KPN was seriously undermining competition in the internet market. Given the importance of a transitional arrangement for the schools, OPTA set a transitional deadline of 1 September 2010.

## 2.4 Broadcasting

### Completion of a broadcasting market analysis decision

In January 2009 OPTA presented draft decisions concerning the broadcasting market to the European Commission. Because the broadcasting market did not feature in the European list of markets that were to be studied, OPTA would only have been able to impose remedies in this case, if the European Commission had concurred with its market analysis. In response to the draft market analysis decisions, the European Commission endorsed OPTA's observation that there were problems in the Dutch broadcasting market. The Commission consequently gave OPTA the green light to impose remedies. OPTA published its final market analysis decisions in March 2009.

### Conclusions of market analysis decisions

The most important conclusions set out in these decisions are that there will still be insufficient competition in the broadcasting market in the years ahead, and that the cable companies hold significant market power. This was

the reason why OPTA made it mandatory for Ziggo and UPC, the largest cable companies, to sell analogue cable connections (wholesale line rental cable – WLR-C) to any business that wished to compete in the broadcasting market, such as Tele2 and YouCa. It would then be possible for consumers to switch to another provider to obtain an analogue cable subscription. In addition, Ziggo and UPC are required to enable other providers to offer digital packages through their cable networks. OPTA has imposed less far-reaching remedies on the cable companies, CAIW and Delta. They need not sell analogue cable connections, because their coverage is much more confined. The implementation costs would also be excessive for these smaller cable companies. The four cable companies, KPN, Tele2, Online and YouCa, have filed an appeal with the CBb. They feel that OPTA's market analysis decision is either too strict or that it does not go far enough. A hearing before the CBb is scheduled for 18 March 2010.

#### **WLR-C pricing remedy**

A pricing remedy applies to the resale of analogue cable connections. In July 2009 UPC and Ziggo submitted details of a cost allocation system and a tariff proposal based on it to OPTA. The latter involved an industry group in the assessment of these proposals. In November 2009 OPTA published a draft tariff decision setting out the relevant wholesale tariffs.

As in the case of the resale of telephony services, the tariffs applicable to the resale of analogue cable connections have been determined in accordance with the retail-minus method. OPTA has amended the tariff proposals submitted by UPC and Ziggo. These amendments concern the calculation of the cost of digital RTV services, retail costs and a reasonable retail profit. The national consultations concerning the draft tariff decision were due to end in January 2010. Following this OPTA was to make a final tariff decision in March 2010.

#### **Implementation of the broadcasting decisions**

The reference offer and the proposal submitted by UPC and Ziggo as to how they wish to implement the resale of cable connections within their respective organisations, were discussed within the industry group organised by OPTA. Draft implementation decisions were published at the end of October. OPTA expects UPC and Ziggo to grant other businesses access to their cable networks in stages. As such, an initial version of WLR-C will become available in the first half of 2010. The relevant consultations and European notification of the draft implementation decisions were rounded off in mid-December. OPTA anticipates publishing the final decisions in March 2010.

#### **Transmission remedy**

OPTA has given priority to the implementation of the WLR-C decision, because the resale of analogue standard packages can serve as a springboard for new providers allowing them to offer their own digital packages. In November 2009 consultations commenced within the industry group about the proposals made by UPC and Ziggo concerning a digital transmission remedy. It is anticipated that much of 2010 will be taken up with the implementation of a transmission remedy.

## **2.5 Analysis of the terminating call markets**

In September 2009 OPTA commenced work on a new, combined market analysis covering fixed and mobile terminating calls. The reason for this was that the three-year regulatory period of the applicable market analysis decision covering mobile terminating calls expires on 1 July 2010.

An important reason to conduct a combined market analysis lies in the fact that the European Commission issued a new recommendation concerning the regulation of terminating call tariffs in May 2009. In it the European

A woman with short brown hair, wearing a dark blue long-sleeved cardigan over a white top and white trousers, stands on a modern staircase with wooden handrails and glass railings. She is smiling at the camera. The background shows a multi-story office building with large windows.

## We keep each other on our toes

We supply information for the market monitor twice a year. This is important, because it is on the basis of this information that OPTA adopts market analysis decisions which can have a major impact on T-Mobile's business operations. It is for this reason that we adopt a critical approach and enter into dialogue in relation to differences of interpretation.

**Miriam van Deursen**  
senior regulatory counsel, T-Mobile

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Commission recommended a costing method that is solely based on the additional costs involved in providing terminating calls. The recommendation also attaches considerable value to a similar form of regulation for fixed and mobile terminating calls, which is supported by fixed telephony service providers in the Netherlands.

Given this new recommendation OPTA has decided to conduct a new analysis of fixed terminating calls at the same time as the analysis of mobile terminating calls. After all, simultaneous implementation can best guarantee the identical regulation of fixed and mobile telephony services. The development of costing models for the purposes of determining the cost price of fixed and mobile terminating calls constitutes part of the market analysis of such calls. This market analysis will be completed in 2010.

## 2.6 Electronic communication registration and turnover

Amongst other things, the Telecommunications Act arranges for OPTA to regulate the electronic communications markets. In order to determine who is active in which market or whether specific rights and duties apply in respect of a specific provider, OPTA needs to be aware of the providers and their operations. A public register of these records may be consulted on our website.

At the end of 2009 466 providers of public electronic communications and postal services were registered with OPTA. The latter charges a fee for its regulatory work, which can vary from year to year. This fee is based on the relevant turnover of electronic communications service providers in the Netherlands. Registered parties therefore have a duty to notify OPTA of their turnover every year. In 2009 OPTA adopted a tougher approach to ensure that providers submitted their turnover statement on time.

In three cases OPTA imposed a provisional enforcement order, following which the relevant turnover statements were submitted. In addition, OPTA adopted a tougher approach to ensure that those providers constituting part of a group of businesses submit a joint turnover statement. As a result the number of providers in the top turnover category fell from 30 in 2008 to 23 in 2009.

## 2.7 Post

Following the promulgation of the new Postal Act, the postal market was fully deregulated on 1 April 2009. The complete liberalisation of the postal market is important for the ongoing development of competition. Deregulation will result in lower prices and greater choice for consumers and the business market. The entire postal market in Europe is to be deregulated by no later than 31 December 2010.

Under the terms of the Postal Act OPTA regulates the remedies applicable in respect of all of the postal operators. All of them are required to register with OPTA. The latter regulates those remedies which are supposed to contribute to the proper operation of the market. OPTA is able to do this by resolving disputes between the various postal operators concerning compliance with the remedies in relation to their respective services. These remedies entail that all providers have access to the delivery network of Koninklijke TNT Post B.V. (TNT Post), to the postcode systems used for the delivery of mail, to post office boxes, and to various returned mail services. OPTA collects information about the postal market and monitors the extent of competition and the operation of the national postal market. This can be used to ascertain whether the potential choice and price-quality relationship has improved for users following full deregulation. In 2010 OPTA will be reporting on this to the State

Secretary for Economic Affairs. OPTA also regulates the implementation of the universal service by TNT Post. The Postal Act stipulates that universal postal services with a basic level of quality must remain available to customers at an affordable price. No postal disputes were brought before OPTA in 2009.

#### Registration of postal operators

OPTA has begun to register postal operators since the new Postal Act came into effect on 1 April 2009. Even before this legislation came into force OPTA had sent an information pack to those businesses which it suspected had a duty to register. OPTA sent those parties registration forms when the legislation came into effect. It appeared that a number of parties whom OPTA suspected had a duty to register, did not. During the year OPTA identified another group of registered businesses and wrote to them during the year. By the end of 2009 69 parties had been registered.

#### Determination of universal postal service tariffs

Under the terms of the new Postal Act OPTA is required to set the universal postal service tariffs for 2010 based on the actual costs involved and a reasonable profit. An initial determination is made by setting tariffs by way of a transitional arrangement based on the costs of the universal postal services and the previous year's profit. TNT Post has not yet supplied all of the information required for this purpose. For this reason OPTA served an enforcement order on TNT Post twice in 2009. The latter applied to the court for provisional relief in the case of both orders. On both occasions the court held OPTA to be in the right and ruled that TNT Post was required to supply OPTA with the information that it had requested. TNT Post had still not done that completely by the end of 2009 and as a result OPTA is unable to determine the universal postal service tariffs for 2010. OPTA has therefore decided that TNT Post is required to pay the conditional penalties amounting

to EUR 1 million and EUR 5 million. TNT Post has filed an appeal against both enforcement orders and the collection of the penalty of EUR 1 million. Objection proceedings are still current in respect of the collection of the second conditional penalty (of EUR 5 million).

#### Postal delivery officers' terms of employment

The postal operators (new or otherwise) usually arrange for the post to be delivered by assistants who are paid on the basis of a piece rate. The legislature felt that this was an undesirable situation and stipulated requirements in this respect as part of the postal legislation. This means that postal operators are required to enter into a collective labour agreement which satisfies the requirements stipulated in the postal legislation. OPTA assesses whether a postal operator has done this. In June 2009 OPTA sent a copy of an implementation test involving this legislation to the State Secretary for Economic Affairs. Because OPTA does not have any expertise in relation to labour law, it entered into a collaboration agreement with the Labour Inspectorate in December 2009. The requirements stipulated in the legislation were supposed to apply as of 1 January 2010. However, on 31 December 2009 a court acting in summary proceedings prohibited the State from implementing and applying the postal legislation. It is not yet clear what implications this will have for OPTA's tasks. The State will be filing an appeal against the court's judgment.

#### TNT Post quality reports

In 2009 TNT Post reported on the number of its post offices in 2008, their geographical distribution, their range of products and the time required to deliver letters. It is required to deliver an average of 95% of letters by the following day. OPTA has concluded that TNT Post satisfied the legal requirements in 2008. In that year TNT Post had 2116 post offices, which exceeded the normative figure of 2102. TNT Post delivered 96.2% of letters on time in 2008.

**Inappropriate use of OPTA's name**

In a sales presentation TNT Post gave its customers the impression that a study was carried out at OPTA's behest into the distribution quality of the postal operators. That study was said to reveal that TNT Post's distribution quality was better than that of its competitors. OPTA has not conducted a study into the distribution quality of postal operators and in August 2009 it demanded that TNT Post cease disseminating this incorrect information in its sales consultations. TNT Post apologised to OPTA and indicated that it would do all in its power to avoid a repeat in the future. Any customers who had been approached in this inappropriate manner have since received a rectification notice, according to TNT Post. Because OPTA found it necessary to inform TNT Post's business customers and competitors of the fact that the information that had been disseminated was untrue, it released a press release concerning this matter. [●](#)



## An attentive ear and a helping hand

When I moved to my new home, I was shocked to see a cable visibly pass through my living room to my upstairs neighbours. The cable company was rather unhelpful when we spoke and did not understand my problem. I felt helpless. All of my frustration evaporated when I called ConsuWijzer. They really listened. I received tailored 'legal advice' from OPTA within a week.

**Rob van Strien**  
ConsuWijzer caller

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## 3 OPTA's operations

The bulk of OPTA's work is paid for by those market parties which it regulates. Transparency, efficiency and the close assessment of the benefits of any spending are paramount in the OPTA Commission's executive outlook. OPTA always performs its duties as flexibly and economically as possible with a minimal authorised staffing complement. It seeks to achieve as favourable as possible a ratio of direct to indirect expenditure. This ratio serves as an indicator of the degree to which OPTA succeeds in utilising its resources to work towards the achievement of its mission.

### 3.1 Transparency

In order to ensure that communications markets function properly OPTA acts as transparently as possible. After all, such transparency is conducive to the general prevention of offences and alerts consumers to potential abuse. The website, [www.opta.nl](http://www.opta.nl), serves as an important means in this respect. In 2009 OPTA's website was visited 350,000 times and the organisation has published more than 200 documents. OPTA constantly works on its website to improve the provision of information. At the beginning of 2009 OPTA upgraded its website to make it more accessible. In addition to a new layout, the text has been made easier to read and the search engine has been improved. In order to provide the outside world with better information about the legal aspects of its work, OPTA has been publishing court judgments involving its decisions on its website since that year. In addition, OPTA has added an RSS function, thereby enabling interested parties to be notified immediately of any new publication.

### 3.2 Probity

OPTA's policy on probity was updated and extended in 2009. A new code of conduct was finalised. It covers specific aspects of OPTA, such as shareholdings in businesses that are active in the telecommunications sector, for example. OPTA published this code of conduct on its website in March 2009. Through its updated probity policy OPTA wishes to emphasise that it considers this to be an essential part of its performance and that of its staff. This new policy has been brought to the attention of all of its employees through a large number of dilemma workshops. Two OPTA staff members act as probity advisers. In 2009 two new employees were appointed and initiated. Their advice has provided staff and management with guidelines on how to act with integrity when faced with a dilemma. One contravention of the probity code was recorded on the initiative of the security officer. Managers consider aspects of probity with their staff at least once a year. All relevant information has been published for staff on the OPTA intranet.

Procedures have been tightened for the purposes of recruiting and selecting new staff. New employees have been taking an oath or making a solemn declaration before the Commission chairman since 2009. Those members of staff who were already employed in 2009 have signed the oath or solemn declaration. Any ancillary work is assessed and recorded. A certificate of good conduct is periodically requested for personnel holding specific positions.

### 3.3 Personnel

Since 2005 OPTA has exercised considerable restraint when filling vacancies in order to comply with obligations applicable to all government departments. Within these confines it has ensured that its capacity is and will remain appropriate, thereby making it possible for it to work efficiently.

#### Recruitment and selection

Two academic get-togethers were organised in 2009. There students (of Law and Economics) were given the opportunity to acquaint themselves with the work performed by OPTA and with the latter as an employer. In addition, in 2009 OPTA participated in a business day organised by the economics students association of the University of Utrecht and one of the law students association at the same university.

In 2009 a great deal of attention was devoted to a special recruitment website called 'Working for OPTA'. This website had already been launched at the end of 2008 but was only really put into service in its entirety in 2009. It contains a great deal of well-presented information concerning OPTA's work utilising personal stories of current OPTA members of staff, amongst other things. Anyone who is interested can present those OPTA staff members with questions online, following which they will receive an answer within one week. It is possible to apply for any available position online at [www.werkenbijopta.nl](http://www.werkenbijopta.nl). Because a large proportion of job applications are now routed through this website, it is possible to deal with them more effectively.

#### Absenteeism

The years of effort on the part of the entire organisation to reduce absenteeism had a noticeable effect in 2009. Absenteeism fell from 4% in 2008 to 3.1% in 2009. As such, OPTA's absenteeism rate has dropped below the

level of similar public bodies. OPTA continues to devote attention to absenteeism in a general sense, especially its frequency. The range of measures which had already been adopted in previous years, was supplemented with an informational meeting devoted to being and remaining healthy, an amended health policy to be optimally prepared for swine flu, and the offer of a flu vaccination.

#### Evaluation of restructuring

The restructuring which commenced in 2008 was evaluated in 2009. This evaluation resulted in the introduction of a new organisational structure on 1 October 2009, which seeks to boost managerial efficiency. With a view to its economising duties in 2011 OPTA would like to continue its operations with its current number of managers. After all, the figure had been reduced from 17 to nine in 2008.

### 3.4 Sustainability

Sustainable procurement by public authorities has been a key concept since the Koopmans and De Krom resolution was passed.<sup>8</sup> This resolution requests the national government to include sustainability as a heavily weighted criterion in 2010.

On 5 June 2009 OPTA signed a sustainable procurement statement at the request of the Ministry of Economic Affairs. In it OPTA declared that its target is to achieve sustainable procurement equivalent to 50% in 2009 ultimately rising to 90% in 2011.

OPTA's goal was to achieve a sustainable procurement target of 50% in 2009. It achieved this target comfortably, for example, in relation to cleaning, catering, office requisites, document shredding, hardware and energy. The remaining 40% is in a preparatory stage and will continue to be implemented in 2010.

<sup>8</sup> Parliamentary Papers, TK nr. 130 (29800-x1)

### 3.5 Data security

The Civil Service Information Security (Classified Information) Order [*Voorschrift Informatiebeveiliging Rijksdienst*] (VIR) represents a method of introducing data security. In 2007 OPTA initiated a project to obtain a VIR certificate. With the aid of such a certificate OPTA will be able to show that its data is properly secured and that, as such, OPTA complies with Section 14 of the Independent Post and Telecommunications Authority Act and the VIR.

In 2008 OPTA took all of the steps that are required to comply with these regulations. Amongst other things, these steps consisted in restructuring parts of the network and the preparation of various procedures and guidelines for upgrading software, for example. OPTA has ensured that its technical documentation is in order and its user and systems administration manuals have been supplemented and have been made more widely known within the organisation. A procedure has also been devised to ensure that OPTA can continue to comply with the VIR without too much effort. On 1 March 2010 BDO Audit & Assurance B.V. issued a VIR statement in respect of 2009.

### 3.6 Effectiveness

Every year the European Competitive Telecommunications Association (ECTA), the association of alternative operators in Europe, draws up a list ranking the member states on the basis of the effectiveness with which they have implemented and enforced the telecommunications directives. As in 2008, the Netherlands ended up in second place in 2009 as part of a field that included 17 other European countries. ECTA has sung the Netherlands' praises especially with regard to OPTA's proactive approach and excellent fibre optic policy, citing it as an example to other countries.

### 3.7 Duty to economise

In order to comply with the government-wide duty to economise OPTA is required to achieve an economisation rate of 20% compared with its 2007 budget. Overall expenditure amounted to EUR 17.2 million in 2009 as opposed to a budget of EUR 18.5 million. As such, OPTA also complied with its duty to economise in 2009. It is through this duty to economise that the government is seeking to achieve major reduction targets in the case of the national government departments and independent administrative bodies.

In 2009 the legally stipulated evaluation of OPTA's performance was carried out at the behest of the Ministry of Economic Affairs.<sup>9</sup> As part of that legally stipulated evaluation Bureau Berenschot has acknowledged, that OPTA's work has increased in the field of consumer protection and that it carried out its work with fewer people and a smaller budget. As such, OPTA has started to work more efficiently and effectively.

### 3.8 Works Council

OPTA's Works Council (WC) consists of an official secretary and seven members who were elected for a term of two years in 2008. Regular consultations are held between the WC, the Commission chairman and the head of operations.

In 2009 the WC was predominantly concerned with the evaluation of the restructuring which commenced in 2008. This evaluation was reason enough for the OPTA Commission to adopt a number of measures. They were presented to the WC for its advice. At the end of July 2009 the WC initially presented unfavourable advice in response to that request and recommended that the

<sup>9</sup> Berenschot, Kwink Group and TNO, *Evaluation of OPTA*.

proposed measures not be adopted. Once the director had amended the original proposal, the WC presented favourable advice in respect of the amended proposal in September 2009.

In March 2009 the WC presented favourable advice subject to a number of reservations concerning a proposal to alter OPTA's authorised staffing complement. In addition, during the reporting year the WC consented, amongst other things, to the working conditions annual plan and the amended health policy which OPTA pursued during the swine flu pandemic.

The WC has also been involved in the periodic review of manuals for various schemes (staffing and otherwise), such as IKAP, parental leave, training, BHV, fitness, life course, salary savings, PAS and business trips. Other matters with which the WC has been involved include a Plan van Aanpak Risico Inventarisatie & Evaluatie [Risk Identification and Evaluation Action Plan], grief counselling, payroll system monitoring (minor rewards and gifts), project sustainability and the proposed introduction of Office 2007. ●

# abbreviated annual accounts 2009

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## Obtaining information from the market

Technological developments are occurring fast and market conditions are changing at a rapid pace. I attended the industry group meetings dealing with the broadcasting market decisions. I felt that it was a splendid, low-threshold way of enabling both small and large market parties to consider the future. This encourages innovation as a result of which it is no longer the large organisations that are beating the small ones but the fast organisations that are outstripping their slow competitors.

**Gijs Davelaar**  
founder, YOUR.TV

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To: the OPTA Commission

## Auditor's report

### Introduction

We have audited whether the abbreviated annual accounts of OPTA, The Hague, for the year 2009 as set out on pages 52 to 61 have been derived consistently from the audited annual accounts of OPTA, for the year 2009. In our auditors' report dated 26 March 2010 we expressed an unqualified opinion on these annual accounts. The OPTA commission is responsible for the preparation of the abbreviated annual accounts in accordance with the accounting policies as applied in the 2009 annual accounts of OPTA. Our responsibility is to express an opinion on these abbreviated annual accounts.

### Scope

We have conducted our audit in accordance with the Dutch law. This law requires that we plan and perform the audit to obtain reasonable assurance that the abbreviated annual accounts have been derived consistently from the annual accounts.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### Opinion

In our opinion, these abbreviated annual accounts have been derived consistently, in all material respects, from the annual accounts.

### Emphasis of matter

For a better understanding of OPTA's financial position and results and the scope of our audit, we emphasize that the abbreviated annual accounts should be read in conjunction with the unabridged annual accounts, from which the abbreviated annual accounts were derived and our unqualified auditors' report thereon dated 26 March 2010. Our opinion is not qualified in respect of this matter.

The Hague, 28 April 2010

BDO Audit & Assurance B.V.

J.J. Herst RA

## Balance Sheet

	31 December 2009 (in EUR thousands)	31 December 2008 (in EUR thousands)
<b>Assets</b>		
<b>Fixed assets</b>		
Tangible fixed assets:		
Tenant's property	790	893
Furniture and fixtures	237	232
Computer hardware and software	1,570	1,955
	<b>2,597</b>	<b>3,080</b>
<b>Current assets</b>		
Accounts receivable	412	235
Fines and conditional penalties receivable	7,234	1,889
Receivable from the market	118	-
Other receivables	1,869	545
Cash and bank balances	1,668	5,167
	<b>11,301</b>	<b>7,836</b>
<b>Totaal assets</b>	<b>13,898</b>	<b>10,916</b>

	31 December 2009 (in EUR thousands)	31 December 2008 (in EUR thousands)
<b>Liabilities</b>		
<b>Net assets</b>		
General reserve	817	432
	<b>817</b>	<b>432</b>
<b>Provisions</b>		
Provision for objections and appeals	27	20
Provision for future remuneration	323	479
Provision for anniversary bonuses	44	44
	<b>394</b>	<b>543</b>
<b>Current liabilities</b>		
Payable to the market	-	530
Payable to suppliers	1,854	655
Debt to Ministry of Economic Affairs	14	182
Taxes and social security charges	290	339
Fines and conditional penalties	8,884	7,447
Other liabilities	1,645	788
	<b>12,687</b>	<b>9,941</b>
<b>Totaal liabilities</b>	<b>13,898</b>	<b>10,916</b>

## Statement of Income and Expenditure

	Actual 2009 (in EUR thousands)	Budgeted 2009 (in EUR thousands)	Actual 2008 (in EUR thousands)
<b>Income</b>			
Revenues from market categories	14,173	14,126	13,860
Other income	2,308	3,123	1,413
Extraordinary income	435 <sup>10</sup>	-	23
<b>Total income</b>	<b>16,916</b>	<b>17,249</b>	<b>15,296</b>
<b>Expenditure</b>			
<b>Personnel costs</b>			
Salaries and social security charges	8,721	9,835	8,138
Other personnel costs	874	1,084	1,415
	<b>9,595</b>	<b>10,919</b>	<b>9,553</b>
Third-party assignments	2,593	2,172	1,596
Cost of goods purchased	3,541	4,080	3,842
Depreciation	1,441	1,318	1,248
Extraordinary expenditure	-	-	13
<b>Total operating expenses</b>	<b>17,170</b>	<b>18,489</b>	<b>16,252</b>
<b>Operating result</b>	<b>- 254</b>	<b>- 1,240</b>	<b>- 956</b>
Interest income	21	-	145
<b>Result</b>	<b>- 233</b>	<b>-1,240</b>	<b>- 811</b>

### Proposed appropriation of result

The Commission has decided to allocate the loss of EUR 233,000.00 suffered in 2009 as follows:

- 1 EUR 385,000.00 is to be allocated to the general reserve;
- 2 EUR 618,000.00 is to be deducted from 'Payable to the market'.

This decision has already been accounted for in the annual accounts.

<sup>10</sup> This pertains to a fire which occurred on 8 August 2008.

## Notes to the abbreviated annual accounts for 2009

### 1 Current liabilities

#### Payable to the market

This item is used to account for the result of the various market categories for the purposes of incorporating it into future tariffs.

On balance EUR 648,000.00 has been deducted from the item, Payable to the market. Of this amount, EUR 618,000.00 reflects the appropriation of the 2009 result and EUR 30,000.00 is a deduction pertaining to the postal concession.

The amount of EUR 618,000.00 reflecting the appropriation of the 2009 result may be broken down as follows:

- a deduction of EUR 668,000.00 in connection with the loss excluding extraordinary income and expenditure (a loss of EUR 689,000.00 on market categories plus interest income of EUR 21,000.00);
- an allocation of EUR 50,000.00 (EUR 435,000.00 less EUR 385,000.00) – that part of the extraordinary income which cannot be added to the general reserve, because it has already reached the maximum amount.

The following table presents the breakdown of the item, Payable to market, over the various market categories (in EUR thousands).

	31 December 2009	31 December 2008
Electronic communications	- 407	51
TTP – certification service providers	46	46
Numbers	484	- 597
Postal concession	-	- 30
Universal postal service	- 5	-
	<b>118</b>	<b>- 530</b>

**Fines and conditional penalties**

Fines and conditional penalties may be broken down as follows (in EUR thousands).

Party	31 December 2009	31 December 2008
Koninklijke TNT Post B.V.	6,000	-
Koninklijke KPN N.V.	583	3,808
WorldToStart B.V. / Media Highway International B.V.	300	300
Private individual	300	300
Private individual	285	-
Private individual	270	270
Abodata V.O.F. / H.P.T. Development B.V. / Private individual	240	240
E.C.S. International B.V.	200	200
Private individual	200	200
Tele2 Netherlands B.V.	120	200
Private individual	75	75
Private individual	66	88
Private individual	55	55
Private individual	43	43
T-Mobile Netherlands B.V.	30	-
Van Leerdam's Verkoopmaatschappij B.V.	27	27
Stichting Yellow Monday, h.o.d.n. Purple Friday	20	20
Speko B.V.	18	23
Private individual	16	16
Private individual	12	-
Private individual	10	10
Pidplates Performances B.V.	10	10
World Teleconnect Telecom BV	2	-
Private individual	2	2
KPN Corporate Legal & Regulatory	-	1,550
Zmart B.V.	-	10
	<b>8,884</b>	<b>7,447</b>

The mentioned amounts may consist of fines or conditional penalties imposed in previous years. Lodging an objection, or initial or higher appeal has the effect of suspending the collection of fines. Once fines or conditional penalties are collected, they are remitted to the Ministry of Economic Affairs.

The sum of fines and conditional penalties amounts to EUR 1,437,000.00 more than at the end of 2008 on balance. This amount may be broken down as follows:

- + EUR 6,912,000.00 – the total amount of fines and conditional penalties imposed in 2009;
- - EUR 5,363,000.00 – the total amount of fines remitted to the Ministry of Economic Affairs in 2009: Koninklijke KPN N.V. (EUR 3,808,000.00), KPN Corporate Legal & Regulatory (EUR 1,550,000.00) en Speko B.V. (EUR 5,000.00);
- - EUR 102,000.00 – the total amount by which fines were reduced in 2009 – this involved Tele2 (a reduction from EUR 200,000.00 to EUR 120,000.00) and a private individual (a reduction from EUR 88,000.00 to EUR 66,000.00);
- - EUR 10,000.00 – the write-off of a fine imposed on Zmart.

## 2 Salaries and social security charges

### Salaries, pension contributions and social security charges

Salaries, pension contributions and social security charges may be broken down as follows (in EUR thousands).

	2009	2008
Salaries	7,089	6,764
Pension contributions	930	826
Social security charges	702	548
	<b>8,721</b>	<b>8,138</b>

### Average number of employees

The average number of employees amounted to 138 in 2009 (2008: 133).

### Remuneration of Commission members

The costs incurred by OPTA for the purposes of remunerating the members of the Commission in 2009 may be broken down as follows (in EUR thousands).

	Salaries	Fixed Expense Allowance	Business Representation Allowance	Pension Contributions	Social Insurance Charges	Remuneration Payable in the Future	Total
C.A. Fonteijn	126	41	6	25	6	33	237
M.W. de Jong	40	-	2	-	-	-	42
A.P. Aris	34	-	2	-	-	-	36
L.Y. Gonçalves-Ho Kang You	-	-	-	-	-	- 125	- 125
Total	200	41	10	25	6	- 92	190

Mr C.A. Fonteijn is the Chairman of the OPTA Commission and both Mr M.W. de Jong and Ms A.P. Aris are non-executive (part-time) members. The remuneration of permanent members is set out in the OPTA Permanent

Members (Legal Position) Regulations [*Regeling rechtspositie vaste leden van OPTA*].<sup>11</sup>

You are referred to pp. 5 and 6 of the annual report for a more detailed explanation of the Commission's membership.

The costs incurred by OPTA for the purposes of remunerating the members of the Commission in 2008 may be broken down as follows (in EUR thousands).

	Salaries	Fixed Expense Allowance	Business Representation Allowance	Pension Contributions	Social Insurance Charges	Remuneration Payable in the Future	Total
C.A. Fonteijn	123	39	6	24	5	50	247
M.W. de Jong	34	-	2	-	-	-	36
A.P. Aris 15 Mar. - 31 Dec.	27	-	1	-	-	-	28
Totaal	184	39	9	24	5	50	311

<sup>11</sup> *Staatscourant*, 31 Juli 2009, No. 11535.

## WOPT

In accordance with the provisions of Section 6 of the Disclosure (Publicly Funded Top Incomes) Act [*Wet openbaarmaking uit publieke middelen gefinancierde topinkomens*]<sup>12</sup> (WOPT) a breakdown is provided covering those members of the Commission who earned more than the equivalent of the average minister's taxable income.

The standard amount was exceeded in the case of a former departmental head and Mr C.A. Fonteijn, whose legal position the Minister of Economic Affairs has set out in the OPTA Permanent Members (Legal Position) Regulations referred to on the previous page.

The breakdown of the WOPT amounts for 2009 is as follows (in EUR thousands).

	Taxable Income	Pension Contributions	Other Amounts Payable in the Future	Severance Pay	Total
C.A. Fonteijn	161	38	33	-	232

The breakdown of the WOPT amounts for 2008 is as follows (in EUR thousands).

	Taxable Income	Pension Contributions	Other Amounts Payable in the Future	Severance Pay	Total
C.A. Fonteijn	159	36	50	-	245
Departmental head	45	8	-	184	237

<sup>12</sup> Staatsblad [*Bulletin of Acts and Decrees*] 2006, 95.

### 3 Market category income and expenditure, and other categories

OPTA derives its income from its legally stipulated duty to charge market parties fees for its annual regulatory work, registrations, licences, allocations, reservations, amendments and urgent dealings. The market parties were charged these fees on the basis of the OPTA Fee Regulations [*Regeling vergoedingen OPTA*] 2009'.<sup>13</sup> A one-off amendment was made to the fee regulations in 2008.<sup>14</sup>

OPTA implements enforcement policy in order to determine to what extent the relevant market parties have complied with their legally stipulated duties. The annual report reveals how OPTA performs its regulatory work and hence also the degree of certainty that is achieved with regard to the lawful nature of its receipts from market parties. Actual figures are accounted for in arrears.

Income and expenditure may be broken down by market category as follows (in EUR thousands).

	Actual 2009	Budgeted 2009	Actual 2008
<b>Income</b>			
<b>Income from market categories:</b>			
Electronic communications	11,555	11,272	11,722
TTP – certification of service providers (including a contribution to the Ministry of Economic Affairs)	25	72	33
Numbers	1,645	1,896	1,542
Postal concession	102	886	563
Universal postal service	418	-	-
Other postal services	428	-	-
<b>Market categories subtotal</b>	<b>14,173</b>	<b>14,126</b>	<b>13,860</b>
<b>Other income:</b>			
Objections and appeals	2,254	3,042	1,242
Implementation assessments	36	81	170
Other income	18	-	1
<b>Other income subtotal</b>	<b>2,308</b>	<b>3,123</b>	<b>1,413</b>
Extraordinary income	435	-	23
<b>Total income</b>	<b>16,916</b>	<b>17,249</b>	<b>15,296</b>

<sup>13</sup> *Staatscourant*, 29 December 2008, No. 251.

<sup>14</sup> *Staatscourant*, 29 Juli 2009, No. 117.

As a result of the deregulation of the postal market on 1 April 2009 the postal concession has terminated and there are two new allocation categories for post: the universal service and other services.

Unlike the market categories, the costs involved in objections, appeals and implementation assessments are settled with the Ministry of Economic Affairs on the basis of subsequent costing each year. ●

	Actual 2009	Budgeted 2009	Actual 2008
<b>Expenditure</b>			
<b>Expenditure of market categories:</b>			
Electronic communications	11,044	11,272	11,908
TTP – certification of service providers	25	72	33
Numbers	2,851	3,136	2,387
Postal concession	102	886	499
Universal postal service	412	-	-
Other postal services	428	-	-
<b>Market categories subtotal</b>	<b>14,862</b>	<b>15,366</b>	<b>14,827</b>
<b>Other expenditure:</b>			
Objections and appeals	2,254	3,042	1,242
Implementation assessments	36	81	170
Extraordinary expenditure	-	-	13
Other expenses	18	-	-
<b>Other expenditure subtotal</b>	<b>2,308</b>	<b>3,123</b>	<b>1,425</b>
<b>Total expenditure</b>	<b>17,170</b>	<b>18,489</b>	<b>16,252</b>
<b>Operating result</b>	<b>- 254</b>	<b>- 1.240</b>	<b>- 956</b>



# key figures

2009

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## Avoiding disputes

In my capacity as a lawyer I act on behalf of market parties in proceedings before OPTA. Given the nature of my profession, my contact with OPTA is usually of a formal nature. However, it would be possible to avoid some proceedings, if OPTA was to be more open to informal consultations (preliminary or otherwise) concerning specific legal issues. Another way in which to avoid disputes is through OPTA's mediation. I have had a favourable experience of this in the past year.

**Patrick Burger**  
lawyer, Brinkhof

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# Key figures

## Enforcement

### Enforcement for the purposes of safeguarding end users' interests and promoting competition

Number of decisions to impose fines <sup>15</sup>	5
Proportion of well-founded objections and appeals against decisions to impose fines	20%
Number of enforcement orders <sup>16</sup>	22
Proportion of well-founded objections and appeals against enforcement orders	0%

### Preventive action taken for the purposes of enforcement in relation to electronic communications and consumer protection

Prior notice of enforcement order – affiliation to Stichting Geschillencommissie	15
Letter setting out the norm in relation to affiliation to Stichting Geschillencommissie	12
Letter setting out the norm in relation to cancellation rights	15
Consultations in relation to cancellation rights	220
Information concerning the maximum term of notice	226
Letter setting out the norm in relation to the maximum term of notice	2
Demand for information in relation to the maximum term of notice	1
Warning concerning compliance with the maximum term of notice	10
Letter to businesses setting out the norm in relation to telemarketing	38
Information concerning telemarketing	108
Demand for information concerning telemarketing	10
Warning in relation to telemarketing	7
Consultations concerning tariff transparency	160
Prior notice of enforcement order in relation to unsolicited e-mail	2
Warning in relation to the prohibition of spam	49
Letter setting out the norm in relation to the prohibition of spam	36
Letter setting out the norm in relation to the duty of care in respect of wireless routers	12
Warning in relation to internet service providers' duty of care	14
Information about spam sent to businesses	100

<sup>15</sup> The appendix contains an overview of all of the fines imposed in 2009.

<sup>16</sup> The appendix contains an overview of all of the enforcement orders served in 2009.

## Disputes

### Number of disputes

Received	18
Under consideration	9
Resolved in 2009	17

### Disputes by market

Cable	10
Access to services	2
Post	-
Mobile	2
Cable laying (right of way)	3
Interoperability	1
<b>Total</b>	<b>18</b>

### Preventive action undertaken for the purposes of enforcement in relation to disputes (Ch. 5 of the Telecommunications Act)

Answers to questions by phone or e-mail	64
Successful mediation preventing or resolving a dispute	2
Mediation (involving the reopening of negotiations)	1
Informational meeting to avoid a dispute	1

## Objections and appeals

### Lodged in 2009

Objections	69
Appeals	9
Appeals to a higher tribunal	69
Provisional relief	11

**Situation as at 31 December 2009** *(work in progress)*

Current objections	32
Current appeals	11
Current appeals to a higher tribunal	100
Current provisional relief	7

**Resolved in 2009**

Objections	63 <sup>17</sup>
Appeals	13
Appeals to a higher tribunal	17
Provisional relief	7
Decisions to impose a fine	5

**Outcome of resolved objections**

	Number	Percentage
Withdrawn	28 <sup>18</sup>	45
Well-founded	4	6
Without grounds	14	23
Inadmissible	5	8
Partly well-founded, partly without grounds	4	6
Partly without grounds, partly inadmissible	-	-
Not considered	-	-
Well-founded on the basis of new information	2	3
Apparently inadmissible	2	3
Other	4	6
<b>Total</b>	<b>63</b>	<b>100</b>

<sup>17</sup> Of which two were unlawful.

<sup>18</sup> Of which two were unlawful, representing 3% of the total number of objections dealt with.

**Outcome of resolved appeals**

	Number	Percentage
Withdrawn	4	31
Well-founded	5	39
Without grounds	2	15
Inadmissible	2	15
Other	-	-
<b>Total</b>	<b>13</b>	<b>100</b>

**Outcome of cases on appeal to a higher tribunal**

	Number	Percentage
Withdrawn	13	76
Well-founded	1	6
Without grounds	1	6
Inadmissible	2	12
Other	-	-
<b>Total</b>	<b>17</b>	<b>100</b>

**Outcome of provisional relief cases**

	Number	Percentage
Application allowed	2	29
Application dismissed	1	13
Withdrawn	2	29
Other	2	29
<b>Total</b>	<b>7</b>	<b>100</b>

## Market analyses

### Market analysis decisions finalised in 2009

Broadcasting market analysis decision – UPC	1
Broadcasting market analysis decision – Ziggo	1
Broadcasting market analysis decision – CAIW	1
Broadcasting market analysis decision – Delta	1
Radio transmission market analysis decision	1
<b>Total</b>	<b>5</b>

### Implementation decisions finalised in 2009

Wholesale price cap on co-location accommodation 2006-2008	1
ULL reference offer: ODF access	1
WBA/HL reference offer: Wholesale Ethernet Access (WEAS)	1
WBA reference offer: fibre optic connections	1
Reference offer VT/Implementatie WLR HC	1
Unbundled fibre optic tariff decision (FttH)	1
Unbundled fibre optic tariff decision (non-FttH)	1
WLR II tariff decision	1
Wholesale price cap decision 2009-2011 (IIa)	1
ND-5 policy rules – fifth rule of conduct	1
<b>Total</b>	<b>10</b>

### Number of market analyses

Number of market analyses	15
Proportion of well-founded appeals against market analyses	0

### Appeals against analyses

Lodged	48
Under consideration	19
Resolved	9

## Numbers and registration

### Market parties registered

Category	Situation as at 1 Jan. 2009	Registration	Termination of Registration	Situation as at 31 Dec. 2009
Provider of a public electronic communications network	385	60	31	414
Provider of a public electronic communications network	407	65	29	443
Provider of related facilities	10	1	1	10
Provider of qualified certificates	6	0	0	6

Number of registration entries (including termination)	187
Proportion registered by stipulated deadline	99.47%
Number of number assignment decisions	5,267
Proportion of number assignment decisions by stipulated deadline	99.34%

### Number of providers by turnover category

	2007	2008	2009
<b>Category 1</b> – net turnover > EUR 20 million	32	30	23
<b>Category 2</b> – EUR 2 million ≤ net turnover ≤ EUR 20 million	107	121	144
<b>Category 3</b> – net turnover < EUR 2 million	291	314	299
<b>Total</b>	<b>430</b>	<b>465</b>	<b>466</b>

**Number of numbers assigned and withdrawn**

	Assigned	Withdrawn
0800	733	674
0900	1,326	1,192
0906	549	400
0909	411	250
Business numbers	252,500	16,500
Other numbers	6,072,109	322,574
<b>Total</b>	<b>6,327,628</b>	<b>341,590</b>

**Number of number assignment decisions**

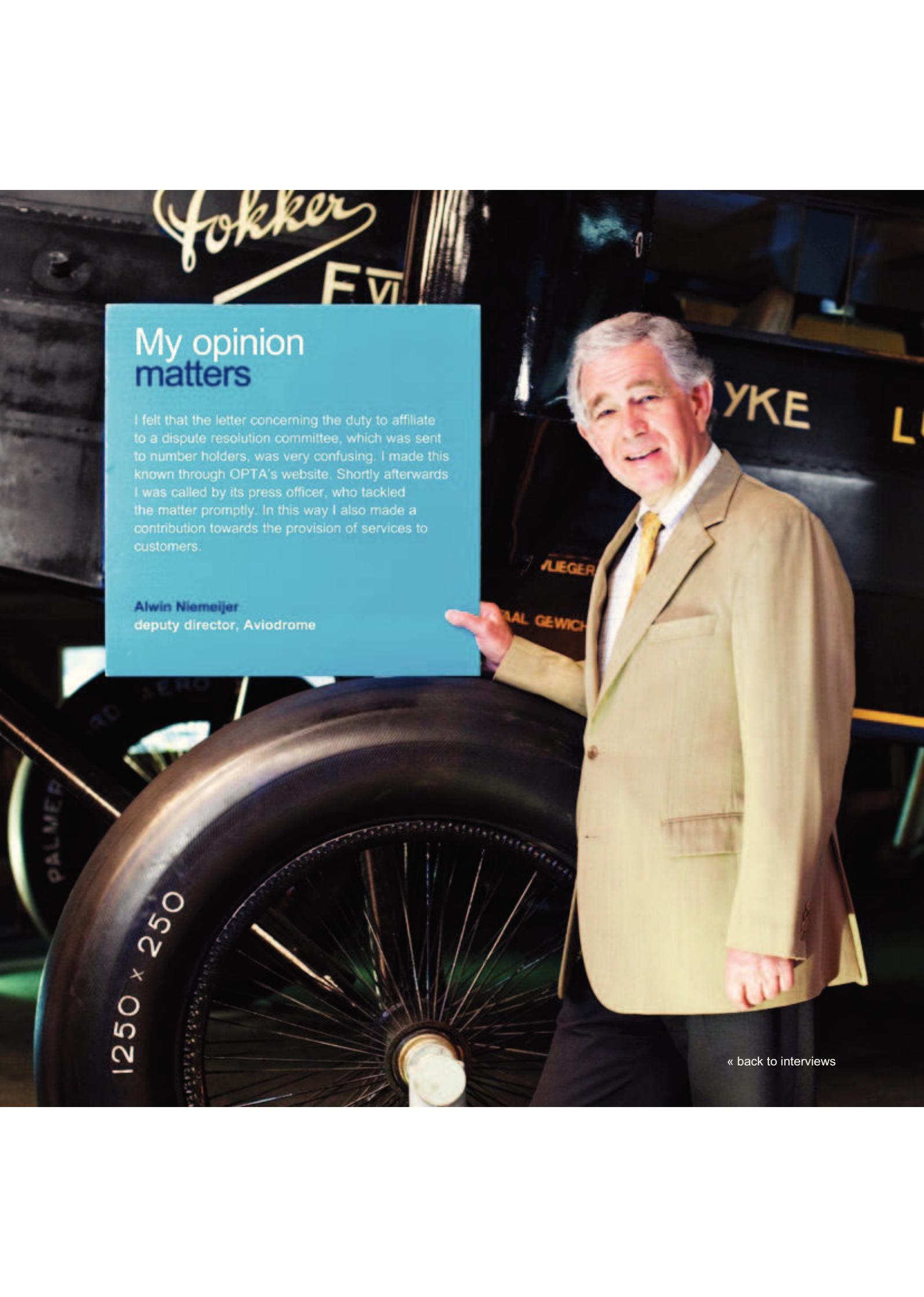
Information numbers	3,588
Business numbers	1,100
Other numbers	278
Name changes	301
<b>Total</b>	<b>5,267</b>

**Number of number assignment decisions by type**

Assigned	2,799
Rescission of decision	1,677
Withdrawal of application	124
Rejection	207
Name change	301
Decommissioned	159
<b>Total</b>	<b>5,267</b>

**Number of lotteries and urgent applications**

Number of lotteries	0
Number of urgent applications	52



## My opinion matters

I felt that the letter concerning the duty to affiliate to a dispute resolution committee, which was sent to number holders, was very confusing. I made this known through OPTA's website. Shortly afterwards I was called by its press officer, who tackled the matter promptly. In this way I also made a contribution towards the provision of services to customers.

**Alwin Niemeijer**  
deputy director, Aviodrome

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### Scarcity of relevant series of numbers

Number Series	Percentage of Available Numbers
Short 0900 numbers	55%
Short 0800,0906 and 0909 numbers	84%
Long 0800, 0900, 0906 and 0909 numbers	99%
Mobile phone numbers	18%
Carrier selection (4-digit) numbers	43%
Subscriber information service 18xy numbers	59%

### Preventive action taken for the purposes of enforcement

Warnings in relation to the selectability of numbers	15
Warnings in relation to 112 obligations	4
Warnings in relation to number portability	29
Warnings in relation to the inappropriate use of numbers	22
Information concerning maximum tariffs	12,530
Inspections of maximum tariff announcements	1,000
Warnings in relation to maximum tariff announcement	231
Advance notices of enforcement order in relation to maximum tariff announcement	3
Various actions undertaken in relation to the apparent misuse of numbers	171
Warnings in relation to call charge transparency	20
Warnings in relation to subscriber information services (designated purpose, tariff transparency and the apparent misuse of numbers)	27

### Preventive action undertaken for the purposes of enforcement in relation to registration, electronic communications turnover and postal matters

Advance notices of enforcement orders in relation to electronic communications turnover statements	3
Warnings in relation to the presentation of turnover figures for the purposes of electronic communications registration	152
The provision of information concerning registration with OPTA under the terms of the Postal Act	311
Demands for information from postal operators for the purposes of registration and in connection with turnover	198
Advance notices of enforcement order to postal operators for the purposes of registration and in connection with turnover	66

## Budget

### Expenditure by area of operations

Area of Operations	Budgeted 2009 (in EUR thousands)	Actual 2009 (in EUR thousands)
Promotion of competition in communications markets	5,913	3,822
End users' interests in communication markets	2,421	2,621
Market analyses	1,168	2,726
Monitoring	183	144
Promotion of competition in relation to numbers	387	301
End users' interests in relation to numbers	899	987
Issuing numbers	1,381	1,164
Post	853	815
TTP	70	22
Policy interaction	1,211	1,363
Provision of information	880	914
Objections and appeals	3,042	2,255
Implementation assessments	81	36
Total	18,489	17,170

## Personnel

### Termination of employment

Employment terminated	1
Total net severance pay	EUR 8,845

### Personnel costs

	2008 (in EUR thousands)	2009 (in EUR thousands)
Total salaries (including remittances and bonuses but excluding the Commission)	7,542	8,317
Average salary	47	48
Other personnel costs	337	254

## Workforce

Date	Authorised Staffing Complement (FTEs)	Staff		
		Men	Women	Total
1 January 2009	152	67	70	137
31 December 2009	143	65	74	139
<b>Average in 2009</b>	<b>147,5</b>	<b>66</b>	<b>72</b>	<b>138</b>

## Breakdown by age as at 31 December 2009

Age Group	Number of Staff
25 years and younger	4
25 to 34 years	37
35 to 44 years	58
45 to 54 years	30
55 years and older	10

## Absenteeism rate

The absenteeism rate for all of OPTA was 3.1%.  
See Section 3 of Chapter 3 for information about absenteeism.

## Breakdown of staff by scale as at 31 December 2009

Scales 3-16	Number of Staff
3	0
4	3
5	3
6	7
7	14
8	12
9	8

Scales 3-16	Number of Staff
10	7
11	31
12	18
13	18
14	10
15	2
16	3

## Ratio of direct to indirect expenditure

The ratio of direct to indirect expenditure was 72:28. This is an improvement compared with 2008 (69:31).

## Complaints about OPTA

OPTA received four complaints under the terms of Chapter 9 of the Administrative Law Act [*Algemene wet bestuursrecht*] (Awb) in 2009. Three of these complaints were dealt with by phone (informally) and one complaint was dealt with by means of a decision (formally).

## ConsuWijzer

### ConsuWijzer reports in 2009 broken down by subject

Fixed telephony	6,196
Internet	4,513
Mobile telephony	9,510
Spam	2,421
Telemarketing	6,023
Broadcasting	1,524
Telephone numbers	803
Post	781
Information numbers	873
Total	31,863

## Spam complaints

Number of reports submitted through <a href="http://www.spamklacht.nl">www.spamklacht.nl</a>	24,833
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# Appendix

## Fines imposed in 2009

Date	Name
27/07/09	Decision to impose a fine for the contravention of the spam prohibition ( <a href="http://adverterenisgratis.nl">adverterenisgratis.nl</a> )
09/12/09	Fine in relation to prepaid tariff transparency
09/12/09	Fine in relation to prepaid tariff transparency
10/12/09	Decision to impose a fine for a contravention of the spam prohibition by sending Hyves 'scraps'
30/12/09	Decision to impose a fine for international discount campaign

## Enforcement orders issued 2009

Date	Name
18/03/09	Enforcement order in connection with universal service obligations
20/04/09	Enforcement order to secure the timely payment of Corporate Voice discounts
26/05/09	Enforcement order in relation to 112 calls without a SIM card
11/06/09	Enforcement order in relation to the provision of information concerning telemarketing consultations
11/06/09	Enforcement order in relation to SMS unsubscribe options
24/06/09	Enforcement order in relation to the presentation of expenditure figures
15/07/09	Enforcement orders in relation to affiliation to a dispute resolution committee
24/07/09	Enforcement order in relation to the contravention of the spam prohibition
28/10/09	Second enforcement order in relation to the presentation of expenditure figures
06/11/09	Enforcement order in relation to WLR-C tariffs
09/11/09	Enforcement order in relation to number retention
13/11/09	Enforcement order in relation to arrangements with Lycamobile concerning number retention
20/11/09	Enforcement order in relation to cancellation rights
10/12/09	Enforcement order in relation to 1850 (weather and traffic)

<sup>19</sup> Providers: 123Telecom, Easytel, Hilf Telecom, Nine Telecom, Optimum Research, Pritell, Quantum Telecom, Solcon - Internetdiensten and World Teleconnect Telecom.

Offender	Amount
Private individual	EUR 150,000.00 – first offence EUR 100,000.00 – second offence
KPN	EUR 60,000.00
T-Mobile	EUR 30,000.00
Private individual	EUR 12,000.00
KPN	EUR 523,264.00

Offender	Amount
KPN	EUR 10,000.00 per day subject to a maximum of EUR 300,000.00
KPN	EUR 2,500.00 per dag in the case of each customer subject to a maximum of EUR 100,000.00 per customer
KPN	EUR 4,000.00 per day subject to a maximum of EUR 200,000.00
Pretium	EUR 5,000.00 per day subject to a maximum of EUR 75,000.00
SD&P Interactive BV	EUR 30,000.00 per day subject to a maximum of EUR 900,000.00
TNT Post	EUR 100,000.00 per day subject to a maximum of EUR 1,000,000,000.00
OPTA versus 9 providers <sup>19</sup>	EUR 2,500.00 per day subject to a maximum of EUR 50,000.00 (7) EUR 1,250.00 per day subject to a maximum of EUR 25,000.00 (1) EUR 5,000.00 per day subject to a maximum of EUR 100,000.00 (1)
Private individual	EUR 5,000.00 per day subject to a maximum of EUR 100,000.00
TNT Post	EUR 5,000,000.00
UPC	EUR 500,000.00
Ericsson	EUR 1,000.00 per day subject to a maximum of EUR 25,000.00
T-Mobile	EUR 15,000.00 per day subject to a maximum of EUR 500,000.00
Telfort	EUR 5,000.00 per day subject to a maximum of 150,000.00
1850 BV	EUR 1,000.00 per day subject to a maximum of EUR 20,000.00









# Glossary

## **Significant market power (SMP)**

The economic position of power held by a market party giving it, alone or in combination with other companies, the power to act independently of its competitors and customers, and ultimately consumers to a significant degree. A large market share may be indicative of the existence of SMP. An SMP designation may lead to the imposition of remedies. See also Market Analysis and Draft Decision.

## **ADSL (Asymmetric Digital Subscriber Line)**

A technology allowing rapid Internet traffic over telephone lines with downloading and uploading occurring at different speeds (asymmetry). A user can download data faster than he can upload it. See also DSL.

## **Broadband (Internet access)**

Access to the Internet via broadband infrastructures, for example cable, xDSL and fibre optic cable. With a minimum download speed of 128 kb per second, broadband is faster than traditional Internet access via a normal analogue telephone line. It provides a permanent Internet connection and is charged at a fixed rate per period irrespective of the number of minutes used.

## **Botnet**

A network of hacked computers which cyber criminals can operate remotely.

## **Bundling**

Offering multiple products or services as a single product: the bundle. Examples of this are dual play (Internet and telephony or television services, or television and

telephony services), triple play (Internet, television and telephony services) or quadruple play (Internet, television, and fixed and mobile telephony services).

## **Carrier selection/pre-selection (CS/CPS)**

By dialling four or more digits, a telephone subscriber can direct his call through an alternative telecommunications provider. This occurs automatically in the case of carrier pre-selection. Companies that offer carrier selection or pre-selection use KPN's fixed network for their telephone services.

## **Contact Network of Spam Authorities (CNSA)**

A contact network of European spam authorities (CNSA) whose task is to combat spam. The European Commission is responsible for its secretariat.

## **Convergence**

Different services, such as those involving television, telephony and the Internet, are increasingly utilising the same technology, for instance, voice over IP (VoIP) or telephone services via the Internet, as it is also known.

## **Compliance programme**

An internal code of conduct and activities involving probity and responsibility, which is designed to ensure that companies and their employees act in accordance with the law.

## **Penetration rate**

The proportion of active connections per inhabitant.

**Digital terrestrial RTV**

The transmission of digital radio and television signals from transmission masts.

**Digital Subscriber Line (DSL)**

There are many types of DSL, the most important for the consumer market being ADSL at present. See also ADSL .

**Digital Video Broadcasting (DVB)**

An open standard for digital television.

**Digital Video Broadcasting Handheld (DVB-H)**

DVB-handheld is similar to DVB-T but has been optimised for mobile usage and reception on handheld devices, such as mobile phones and personal digital assistants (PDAs).

**Digital Video Broadcasting Terrestrial (DVB-T)**

DVB-terrestrial services are transmitted from transmission towers located on the earth.

**European Competitive Telecommunications Association (ECTA)**

An association of new entrants into the electronic communications markets.

**End user**

A consumer or any other retail procurer (business or otherwise) of services.

**Fibre to the Home (FttH) Fibre to the Office (FtO)**

A fibre optic network which extends to end users. See also Fibre Optic Network.

**Fibre optic network**

This type of network transmits information as light rather than electronic pulses. Fibre optic connections provide enormous data capacity and have a greater bandwidth

than coaxial or copper networks, which means that more information can be transmitted within a short period of time.

**Wholesale tariffs** See Wholesale.

**GSM (Global System for Mobile Communications)**

A European and North American mobile telephony network standard.

**GSM 900**

GSM at a frequency of approximately 900 MHz.

**GSM 1800**

GSM at a frequency of approximately 1800 MHz.

**HDTV (High Definition Television)**

Television technology which supports a higher resolution display.

**High trust**

Trust in a company which is subject to regulation. The company itself adopts those measures that are required to ensure compliance with the regulations. This addresses a desire to reduce regulatory costs.

**High capacity connection**

A high capacity connection (with a minimum of three connections) which is predominantly used for business purposes.

**Leased line or WLR**

A transparent communication connection between two points. A leased line can be used by companies to connect separate sites or offices. In the case of telephone lines which are used rather intensively (for example payment terminals) it can be worthwhile to use a leased line rather than a normal switched telephone connection.

**Internet service provider (ISP)**

A provider who provides Internet services to consumers and other end users.

**Cost-oriented tariff**

A tariff which is based on the actual costs involved plus a reasonable profit margin.

**London Action Plan (LAP)**

A global collaborative network of spam enforcement agencies, governments, industry, international organisations and interest groups. LAP was established to promote collaboration between its members and to share knowledge.

**Malware**

A collective term for malicious and/or harmful software.

**Market analysis**

The definition of relevant markets in accordance with the principles of general competition law. If one or more parties in a defined market are so strong that they can act independently of their competitors, OPTA may impose appropriate remedies in order to stimulate competition in that market. See also SMP and Draft Decision.

**Mobile terminating access (MTA)**

Routing inbound calls to a mobile network.

**Next generation network**

A packet-based network which encompasses all telecommunication services.

**Non-discrimination obligation**

An obligation to grant customers in the same situation access subject to identical conditions.

**Numbering plan**

A general purpose decision taken by the Ministry of Economic Affairs which sets out how numbers (for telephone and other services) are categorised, their designated use (geographical numbers, for example) and which series of numbers are available. OPTA administers this plan.

**Number portability**

The ability to take one's number when switching from one provider to another.

**Unbundled access**

The way in which KPN enables other providers to offer telephony and broadband services through its local loop network. Unbundled access means that the local loop (the copper wires from a home to the local exchange) is operated by one of KPN's competitors. In the case of comprehensive unbundling its competitors take over the entire connection. In the case of shared access (line sharing) KPN's competitors share the local loop with it and it continues to offer its telephone services.

**Draft decision**

A provisional market analysis decision of which notice is given. See also Market Analysis and SMP.

**Price cap or ceiling**

A regulatory measure which stipulates an annual rise or fall in the price paid for a particular service over a longer period of time.

**PSTN**

A public switched telephony network (PSTN), the technical term for the ordinary telephone line with which we have been familiar for decades. It is possible to use such a telephone line to achieve a connection to make a telephone call, send a fax or access the Internet but only one of these activities can occur at a time.

**Radio transmission service**

The wireless broadcast of radio signals (for example, FM).

**Retail**

An end-user market, for example, for the sale of services by market parties to consumers.

**Retail-minus system**

This involves setting a minus value (a percentage). This minus value consists of the relevant retail costs including a reasonable profit for a dominant market party expressed as a percentage of the overall retail price of the service concerned. This percentage is then deducted from those retail services in respect of which a pricing remedy applies, so as to determine the wholesale price payable for those services. In doing so a distinction is drawn between residential (consumer) and business services.

**Roaming**

Making mobile phone calls in another country from a foreign to a Dutch network. The various providers charge a fee (a large one) for using the different networks.

**Slamming**

Acquiring a subscription for telephony services without the consent of the subscriber in question.

**Short Message Service (SMS)**

A service which makes it possible to send text messages from one mobile phone to another.

**Spam**

Unsolicited messages via e-mail, a mobile phone or fax, usually advertising materials or messages for a charity or some other good cause.

**Spyware**

Spying software which makes information accessible to other parties or sends data through the Internet without the user's knowledge. It can also record detailed user information without permission.

**Traffic light model**

KPN is no longer required to seek OPTA's approval in advance for all tariff proposals or discounts, but can determine itself which tariff proposals are acceptable based on criteria. In accordance with this system, certain tariff proposals on the part of KPN are absolutely unacceptable (red), some will always be allowed (green), and other proposals may only be implemented after OPTA gives its approval (amber).

**Transmission capacity**

The amount of data which can be transmitted through a connection each second.

**Transparency obligation**

An obligation to provide all of the information which customers require in order to obtain access.

**Telecommunications Act**

The Dutch *Telecommunicatiewet*.

**Implementation assessment**

Draft legislation and regulations, and proposed policy which could have an impact on the powers and duties of OPTA are presented to the latter for the purposes of conducting an implementation assessment. As part of such an assessment OPTA presents advice to the Minister of Economic Affairs about the potential to implement and enforce any proposed regulations, amongst other things, and it provides advice on alternatives for making the proposed policy more functional and effective.

**Universal Mobile Telecommunications System (UMTS)**

A technology used to transmit digital signals which is faster than GSM.

**Unbundled local loop (ULL)**

Unbundled access. This sees one provider grant another physical access to a network in a fixed location. This means that a company receives consent from another provider to use the latter's local loop to end users. Apart from full unbundled access, this could also take the form of shared access, where a consumer wishes to procure broadband and traditional telephone services from different providers. A provider who procures unbundled access to a local loop network obtains consent to use the frequency spectrum (or part of it) of the relevant infrastructure.

**Universal service (US)**

The universal service is described in the Telecommunications Act and the Postal Act [Postwet]. It ensures that a basic package of postal services of a specific level of quality remains available and accessible to everyone based on uniform affordable tariffs. In addition to delivering letters from 1 g to 50 g (up to a maximum equivalent to two and a half times the standard tariff of EUR 0.44) TNT, the universal service provider, also has a duty to provide so-called 'other assigned services'. Competition is allowed in relation to these services.

**Upstream provider**

A provider from whom services are procured.

**Voice over IP/DSL (VoIP, VoB, Internet telephony)**

Calls made using the Internet protocol and forms of voice telephony routed through data networks, such as the Internet.

**Wholesale**

A wholesale market, for example, for the sale of services by one market party to others. KPN charges its customers wholesale tariffs for using its network for telephone calls, data transmission and leased lines.

**Wholesale broadband access (WBA)**

Wholesale broadband access makes it possible for companies to supply electronic communication services to their end users. Wholesale customers procure broadband transmission services without having direct physical access to end user connections.

**Wholesale line rental (WLR)** See Leased Lines.**WiFi**

A technology which makes it possible for end users to access the Internet through local access points.

**Wireless local loop (WLL)**

A collective term for wireless Internet access technologies.

**Independent administrative body (IAB)**

An external organisation which is not subordinate to a government minister and which performs a specific administrative task independently. To a certain extent the relevant minister still exercises authority.

**Duty of care**

The legal duty of Internet service providers to adopt technical and organisational measures to secure their services. They also have to provide their users with information about the risks involved and how they can protect themselves accordingly.

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About spam: [www.spamklacht.nl](http://www.spamklacht.nl)

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