

2010 ANNUAL REPORT



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Reading Guide

OPTA is focused on the world of tomorrow. OPTA's perspective reaches beyond today. But once a year, in its annual report, this perspective is shifted. At those times, OPTA reviews the events of the year gone by. OPTA's annual report comprises two parts: the annual report with the financial statements and the Market Monitor. The Market Monitor provides an overview of developments in the electronic communications and postal markets.

OPTA reports on its 2010 operations and results in this annual report, on the basis of its most important activities and events. The report is structured in accordance with the Dutch 'From Budget to Balance Sheet' (VBTB) system: what did OPTA plan to accomplish in 2010, what was accomplished and what did OPTA do to accomplish this? The financial statements identify the costs associated with OPTA's tasks and provide insight into OPTA's financial affairs.

1. OPTA's Mission and Regulatory Vision

OPTA ensures there is sufficient competition in the communication markets in the interest of the consumer. OPTA does this by researching these markets and where necessary intervening ahead of time. OPTA intervenes as long as there is a market player with significant market power present within a certain market. Whenever there is sufficient competition and therefore no longer a question of significant market power, the measures that OPTA has imposed are dismantled. Through trends such as consolidation (the merger of companies) and convergence (the fusing of technologies), the markets are continuously changing and the regulating process therefore always consists of custom interventions. In addition, OPTA monitors the basic quality of postal delivery services in the Netherlands.

Protecting the Consumer and the Business User

OPTA protects the interests of the consumer and the business user. OPTA does this by ensuring that the consumer and the business user are aware of their rights, punishing abuse by providers and by making the internet more secure. Indeed, confidence in communication markets on the part of users promotes the demand for communication services. Furthermore, OPTA monitors the availability of a number of basic services, such as fixed telephone lines and postal delivery within 24 hours. Finally, OPTA creates the basic conditions required to ensure that communication markets can function properly, such as the availability of a sufficient number of new telephone numbers. All of these things are laid down in laws and regulations. OPTA's mission is leading in terms of the execution of its tasks.

Mission

OPTA ensures there is competition and confidence in the communication sector in the interest of the consumer.

Framework

OPTA is an independent administrative body and implements the laws and rules established by the lawgiver. This involves the Telecommunications Act (Tw), the Postal Act 2009 and the associated European and subordinate legislation. Political accountability for OPTA rests with the Minister of Economic Affairs, Agriculture and Innovation. However, OPTA is an independent body and takes its own decisions, independent of political or corporate interests. The Minister can provide general direction, but cannot intervene in individual files.

OPTA'S REGULATORY VISION

Market players can approach OPTA for general information concerning statutory obligations. In addition, OPTA supports market players in assuming their responsibility for complying with the law. For example, by advising market players about ways of structuring their organisation, so that compliance with rules is ensured through means of rules and procedures, thereby making compliance a natural outcome.

Preventing offences is better than after-the-fact punishment

Preventing offences is better than after-the-fact punishment. This also prevents competitors or consumers from incurring losses. OPTA regulates the market, where possible together with the market, for example, by striving for market-supported solutions, and self or co-regulation. A solution jointly formulated with the market in certain cases may be more effective than a measure imposed by OPTA. OPTA aims to involve all relevant players with due care and in appropriate ways. However, should a company knowingly commit an offence, OPTA will severely punish that offence. OPTA's actions are commensurate. This means that OPTA's interventions are appropriate in relation to the problem. For example, OPTA collaborated with Internet Service Providers (ISPs) and hosting providers to counter the spread of malware.

Furthermore, in the context of the Compliance Charter, OPTA, together with KPN, assessed KPN's 'Integral Reporting on the OPTA and KPN Charter, differentiated by performance indicators'. In this report, KPN reports the actions it undertakes itself to prevent OPTA from having to intervene. OPTA's assessment is that KPN's compliance programme is such that it is no longer necessary to subject KPN to intense supervision. Nonetheless, OPTA identified demonstrable areas for improvement for the compliance programme, such as the timeliness with which KPN identifies changes in laws and regulations and incorporates these into the organisation, and the transparency of the reporting provided by KPN in which it shares shortcomings in the operation of its compliance programme with OPTA. Furthermore, OPTA encouraged KPN to improve its business culture for the purpose of encouraging compliant behaviour on the part of its employees.

OPTA resolves disputes through mediation

In addition, OPTA also resolves problems through means of mediation. OPTA devoted a great deal of effort to informing and mediating between market players in 2010. In disputes concerning digging rights, OPTA in four instances mediated between parties involved in a dispute. In all instances, the mediation resulted in the parties settling their own disputes. In addition, OPTA in 2010 responded to forty inquiries concerning the laying and relocation of cables.

Publication policy part of education and supervision

The publication of decisions and/or fining decisions, including the name of the involved market player(s), is key for OPTA in terms of discharging its accountability to the public. In addition, it dissuades the involved companies from recommitting the same offence and deters potential offenders. Furthermore, the publication of the names of the offenders is important for the purpose of warning consumers and buyers. In short: the publication of company names in a fining decision serves the public interest. However, in 2010 OPTA was forced to temporarily suspend its publication policy. Due to a number of court proceedings, OPTA decided not to proceed with publications or only in anonymous form. The suspension was lifted on 10 November 2010: the Council of State in an appeal ruled that the OPTA could proceed with publication with mention of names. If parties wish to prevent publication, they can submit a request for a preliminary injunction. This request from now on must pertain to the legitimacy of the *entire* fining decision, and must include a request to prohibit publication. The ruling of the Council of State contributes to OPTA's aim of creating a transparent market for consumers and business users.

Update of fining policy rules: higher fines for serious offences

In 2010, OPTA updated its fining policy rules. The adjusted fining policy rules enable OPTA to impose higher fines on offenders of the Telecommunications Act.

The key changes in relation to the previous fining policy rules are as follows:

- In the event of extremely serious offences by a company with significant market power, OPTA can increase the basic fine by a maximum of 25% of the relevant revenues the company earned in the last year of the offence.
- The rule that applies to all offences is that the fine can be increased by 100% if an offender was already previously fined for a similar offence (recidivism), unless in view of the circumstances related to the case, this would be considered unreasonable; and
- The maximum of the seriousness factor was increased from 3 to 5. In the event of offences by a company with significant market power, OPTA also determines the amount of the fine on the basis of the seriousness factor. This could result in the basic fine being multiplied by a maximum factor of 5.

The updated fining policy rules apply to offences committed after 2 April 2010. Offences committed prior to this date are still subject to OPTA's previous fining policy rules.

2. Focus on 2010

OPTA published its Focus on 2010 at the beginning of 2010. The Focus describes OPTA's areas of regulatory emphasis for 2010. These areas were established on the basis of feedback from the outside world and internal considerations. In 2010, OPTA's focus was on preventing offences and promoting innovation. OPTA, in its annual report, describes the activities that were undertaken as a result of the Focus on 2010 and the corresponding results. This section contains a brief summary of the annual report. The areas for attention and the results achieved in 2010 are as follows.

Preventive and repressive supervision

One of the objectives OPTA set for itself for 2010 was fine tuning the fining policy rules and in this regard focused on prevention and having companies assume autonomous responsibility. Principles related to preventive and repressive supervision were documented by OPTA in 2010 in an updated vision on supervision, enforcement and fining policy rules. Serious or repeat offences will be punished more severely.

Results

- In 2010, OPTA formulated its vision on supervision and enforcement and submitted this vision to the marketplace for consultation at the beginning of 2011. The core of this vision is that OPTA in its enforcement policy puts the emphasis on preventing offences; encouraging spontaneous compliance plays a key role in this regard¹.
- In 2010, OPTA approached ISPs and hosting providers, among others, in terms of their own responsibility for making the internet more secure. As a result, malware is dealt with before consumers experience the attendant harmful effects. See page 26 for additional information.
- In 2010, OPTA updated its fining policy rules. In the event of very serious offences, OPTA can increase the basic fine. The rule that applies to all offences is that the fine can be increased by 100% if an offender was already previously fined for a similar offence (recidivism). See page 6 for additional information.
- OPTA evaluated the 'Integral Reporting on the OPTA and KPN Charter, differentiated by performance indicators' in the first half of 2010. OPTA's assessment is that KPN to a sufficient extent complies with the provisions of the charter, as a result of which it is no longer necessary for KPN to be subjected to intense supervision. See page 5 for additional information.

¹ Consultation document < <http://www.opta.nl/nl/actueel/alle-publicaties/publicatie/?id=3355>>.

Reducing abuse and consumer frustration

In its Focus on 2010, OPTA states that internet safety, unwanted telemarketing and the abuse of 0900 numbers will continue to be a priority. In 2010, OPTA investigated the reasons that motivate companies to engage in this kind of abuse. In addition, OPTA investigated online behaviour such as profiling and the 'abuse' of cookies. OPTA dealt with companies that do not clean up their call lists or that do not provide the possibility of opting out of such lists. Furthermore, OPTA ensured that telecommunication providers and providers of information services would properly inform consumers concerning the costs and waiting times associated with 0900 numbers. OPTA ensured that consumers with complaints about paid information numbers would indeed be able to exercise their rights in the dispute resolution committee and that consumers in cases where the maximum rate is exceeded can recover the overpaid amount.

Results

- OPTA conducted an investigation into the online abuse of personal information using cookies. The protection of the privacy of internet users plays a major role in this regard. See page 29 for additional information.
- In 2010, ConsuWijzer received many complaints about telemarketing and paid information numbers. OPTA provided information via ConsuWijzer and investigated the complaints. See page 33 for additional information.
- Pursuant to complaints about telemarketing, OPTA issued twenty warnings and initiated 48 investigations to ensure that companies clean up their call lists and provide opting out facilities. See page 35 for additional information.
- In 2010, OPTA maintained supervision of compliance with the maximum rate regulations. OPTA checked over four hundred 0900 numbers to confirm whether providers report the rate per minute and, if applicable, clearly identify the maximum rate. OPTA issued a warning in seventeen instances. See page 32 for additional information.

Market regulation

A key area of focus for OPTA in 2010 was completing the implementation of obligations arising from the 2008 market analyses to promote greater competition in the business market, in particular. In addition, OPTA took further steps to give alternative providers access to UPC's and Ziggo's networks in 2010 for the resale of analogue television services. In 2010, OPTA completed the new market analyses for fixed terminating access (FTA) and mobile terminating access (MTA) and initiated the remaining market analyses in 2011: fixed telephony, broadband access, television and leased lines.

Results

- In July 2010, OPTA published a new market analysis decision for MTA and FTA. As a result of this decision, the rates that providers charge each other for settling mobile and fixed calls will decline over the coming years. See page 11 for additional information.
- In March 2010, OPTA published follow-up decisions for opening up the analogue television market. On 18 August 2010, the Trade and Industry Appeals Tribunal (CBb) issued a ruling on the underlying broadcasting decision and has overturned this decision. See page 18 for additional information.
- In June 2010, OPTA established maximum rates that KPN is allowed to charge competing telecom companies for the purpose of enabling them to offer broadband services via KPN's network. The European Commission (EC) gave the green light for these rates in July 2010. See page 17 for additional information.
- OPTA decided that KPN, due to its dominant position, is required to provide access to its broadband network to other providers. See page 16 for additional information.

Promoting investments in high-speed networks

OPTA established the rates for access to business fibre optic networks as a means of promoting rollout, while maintaining a competitive environment. The business market and the fibre optic services delivered within this market will remain specific areas of attention.

Result

- On 4 June 2010, OPTA finalised the decision about the pricing regulation concerning unbundled access to KPN's fibre optic network for business use. Because fibre optics require significant investments, OPTA in particular took the balance between investment certainty and the development of competition into account. See page 17 for additional information. In addition, OPTA initiated an investigation to determine whether the current pricing methodology is appropriate for determining these rates.

Liberalisation of the postal market

OPTA focused additional attention on the liberalisation of the postal market in 2010. OPTA monitored whether the new Postal Act would lead to increased competition and benefits to (business) customers. OPTA evaluated TNT Post's obligation to provide access to its network and to advise the Ministry of Economic Affairs, Agriculture and Innovation. In addition, OPTA in 2010 investigated the availability of options and the price-quality ratio on the liberalised postal market. Finally, OPTA established the universal postal services rates for TNT Post in 2011.

Results

- In 2010, OPTA investigated TNT Post's obligation to provide access to its network to new postal companies. This study was commissioned by the Ministry of Economic Affairs. The study shows that new postal companies have limited need for access to TNT Post's network. See page 21 for additional information.
- In 2010, OPTA published the Postal Market Monitor: 'The Dutch Postal Market in 2008-2009.' In this research, OPTA established the indicators that can be used to measure competition in this market. See page 21 for additional information.
- In 2010, OPTA maintained supervision over the quality of the universal service (US) provided by TNT Post. OPTA's evaluation of this report shows that TNT Post meets the norm in terms of the number of postal branches. On the basis of the information provided by TNT Post, OPTA is not able to establish with certainty whether TNT Post also meets the norm in terms of letter delivery times. See page 22 for additional information.

3. Competition

Every three years OPTA analyses the electronic communication markets on the basis of European regulations and the Telecommunications Act. These markets are regulated by OPTA, unless the analysis shows that there is no significant market power. The objective of the regulation is to encourage competition and innovation, so that consumers and business users have a wider range of options at their disposal and can count on fair prices.

OPTA initiated new round of market analyses

In the second half of 2010, OPTA initiated the first phase of the new third round of market analyses. These market analyses concern fixed telephony, television, unbundled access, wholesale broadband access and leased lines. These analyses will lead to new decisions aimed at stimulating competition and innovation in the telecommunications market.

In this first phase, OPTA conducted a broad survey among consumers, companies and telecommunication providers. The subject areas of the survey among other things include:

- Purchase of services, switching behaviour and consumer and company preferences;
- Prospective development of the markets over the period 2012-2014; and
- Offer of services, price trends, investments and future plans of telecommunication providers.

OPTA expects to have draft decisions ready by the second half of 2011 that will subsequently be submitted to market players for consultation. In addition, OPTA will submit the decisions to the EC. A new European directive concerning market analysis decisions will be transformed into Dutch legislation in 2011. A key rule is that OPTA is required to check the market analysis obligations that are imposed with the EC. In relation to the definition of markets and the analysis of dominance this is already the case. The Commission may make recommendations concerning the imposed obligations. In addition, the Body of European Regulators for Electronic Communications (BEREC) is given a role in the validation process. If the EC has any doubts about a market analysis decision, the BEREC will form an expert group. Based on the findings of the expert group, the BEREC will then issue a recommendation that the EC is required to take into account to the extent possible.

FIXED AND MOBILE TELEPHONY

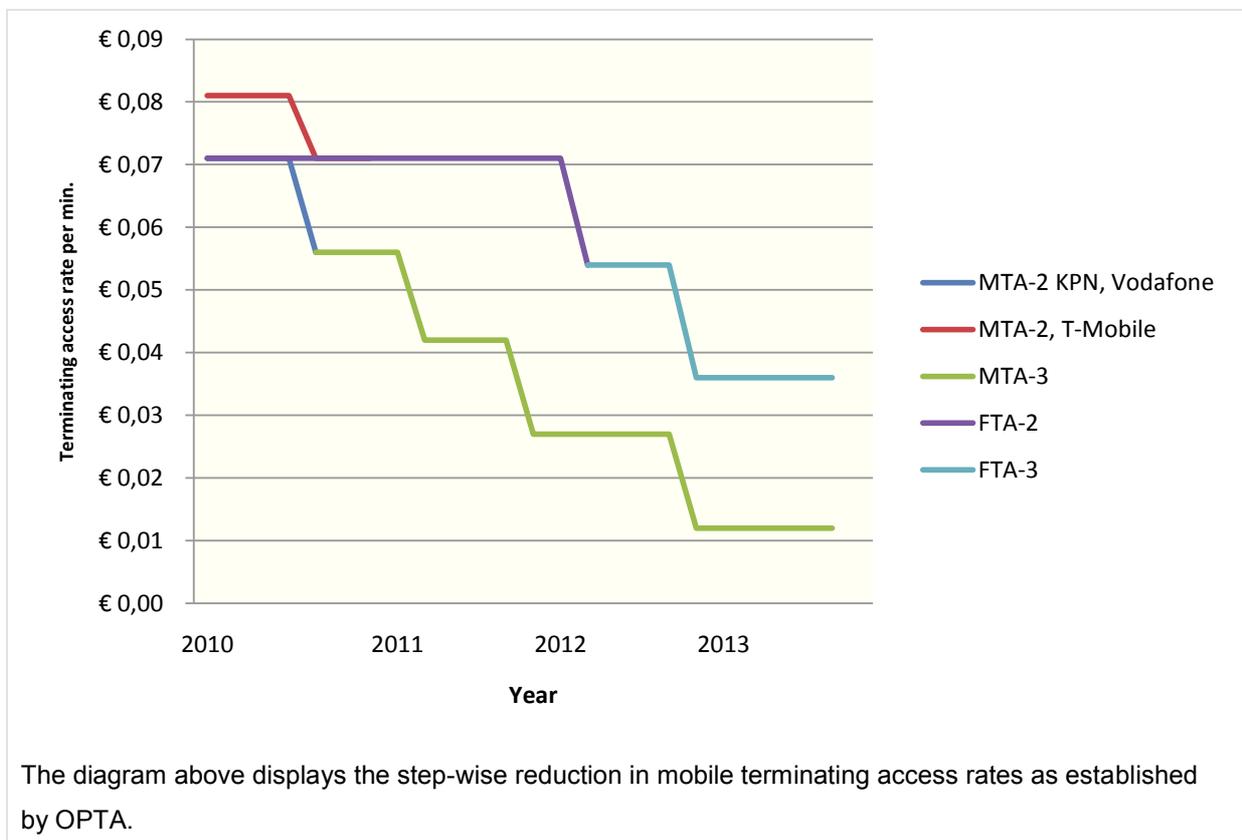
OPTA sets maximum rate for terminating access

In July 2010, OPTA published a new three-year market analysis decision for fixed and mobile terminating access. The terminating access rate is the rate that providers charge each other for the use of one another's network. The telephone provider of the person receiving a call requires compensation for the use of his network from the provider of the person placing the call. This is referred to as the terminating

access fee. The caller has no choice in terms of the network used to route his call. Without regulation, these rates could consequently become too high. This is why OPTA has established terminating access rates for fixed as well as mobile providers. OPTA in recent years gradually reduced these rates.

Mobile terminating access rate to drop from 7 to 1.2 cents

As a result of OPTA's decision, the rates that providers charge each other to handle mobile calls will decline over the coming years from around 7 cents to 1.2 cents per minute by 2013. At the beginning of 2011, KPN and Tele2 already lowered their terminating access rates from fixed to mobile from approximately 17 cents to 9 and 8 cents per minute respectively. Prior to this rate decision, the rates charged among the vested providers (such as KPN and Vodafone) and providers who entered the market subsequently (such as T-Mobile) differed. This OPTA decision equalises the rates used by the various providers.



Regulation of fixed and mobile in accordance with equivalent methodology

More and more services are being offered on fixed as well as mobile networks. A varying approach to regulating FTA and MTA could disrupt competition. To prevent this, OPTA has decided to increasingly establish cohesive FTA and MTA regulations and to use a comparable pricing methodology in the regulations.

Telephony legal proceedings

Litigation against the mobile and fixed telephony terminating access decision

Pursuant to OPTA's FTA and MTA decision, T-mobile, Vodafone, KPN and Lycamobile applied for a preliminary injunction from the Trade and Industrial Appeals Tribunal (CBb). The CBb in November 2010 rejected the application for a preliminary injunction. Ten fixed, as well as mobile providers have initiated substantive proceedings. The ruling in this case is expected in 2011.

Administration and issue of telephone numbers

One of OPTA's tasks is to ensure that the market has access to sufficient telephone numbers. OPTA assigns numbers, monitors their use and signals when numbers become scarce.

On 31 December 2010, a total of 113 million numbers were in issue. This represents an increase of approximately 4% compared to 2009. In addition to the authority to issue numbers, OPTA also has the authority to withdraw numbers. There are a number of legal grounds on which OPTA can withdraw a number, for example in the event of abuse, or when the number is not used for the purpose for which it was issued. The table below shows how many numbers were assigned and withdrawn by OPTA in 2010.

Number Series	Assigned	Withdrawn
0800	1,205	1,152
0900	1,593	2,291
0906	474	1,258
0909	583	679
Business numbers	383,300	63,000
Other numbers	4,071,118	646,089
Total	4,458,273	714,469

Number of telephone numbers assigned and withdrawn in 2010.

Number Series	% Available Numbers
0900 short	53%
0800/0906/0909 short	86%
0800/0900/0906/0909 long	99%
Mobile numbers	16%

Geographic numbers	21%
Carrier select (4 digits)	86%
Business numbers	80%
Subscriber information numbers (18xy)	59%

Percentage of numbers still available as at 31 December 2010.

OPTA makes mobile number assignment policy more efficient

To ensure that a sufficient number of mobile telephone numbers continues to be available for assignment to telecommunication companies, OPTA changed its policy in 2010. OPTA moved away from the policy under which it reserved a block of one million consecutive mobile telephone numbers for a single provider. In the past, a provider was provided a block with 100,000 telephone numbers and the other numbers in the block were blocked to prevent problems with international calls. The results of an analysis, however, demonstrate that this is no longer necessary. This is why OPTA can now assign a block of 100,000 numbers to different providers within a block containing a million consecutive numbers, without any problem. This releases 3.8 million blocked numbers for assignment. OPTA consequently also no longer perceives any problems in assigning mobile numbers to (smaller) providers who do not have their own network. This assignment policy allows OPTA to increase its efficiency in dealing with the number supply and reduces the scarcity of mobile numbers.

Reduced administrative burden for information number holders

To reduce the administrative burden for number holders, OPTA abolished the calling requirements for short information numbers at the end of 2010. Number holders are no longer required to demonstrate each year that they meet the calling requirements for the use of short information numbers (0800-0900-0906-0909-numbers that are eight digits long). OPTA replaced these calling requirements with supervision of the actual use of these telephone numbers.

ANALYSIS OF MOBILE COMMUNICATION MARKETS

Potential market entry keeps competition sharp

In 2010, OPTA conducted research into competition on the mobile communications markets. OPTA's analysis was prepared in support of the Strategic Policy Document on Mobile Communications of the Ministry of Economic Affairs, Agriculture and Innovation. This policy document identifies how government should handle the allocation of the frequency range up until 2017. This insight is important for providing market players with investment certainty so as to promote competition on the mobile markets. Following consultation with market players, OPTA concluded that the mobile markets in 2010 are in principle sufficiently competitive. At this point in time there are no providers with significant market power on the

mobile markets. There is, however, a risk that significant (collective) market power may emerge. This could in the future work to the detriment of users and consumers, for example through higher prices or a lack of innovation within the marketplace. OPTA for the time being is not imposing any competition promoting obligations on mobile providers. To ensure this stays that way, OPTA has advised the Ministry of Economic Affairs, Agriculture and Innovation to design the frequency policy such that it encourages the entry of (new) providers of sufficient size and with sufficient competitive capacity.

Disputes among providers of mobile telephony

OPTA is empowered to arbitrate disputes among telecommunication providers. Many of these disputes concern access to a (provider's) network and the conditions under which such access must be provided, for example the applicable rate. The parties involved can ask OPTA to take a decision in such a dispute. The decision can be a judgement related to whether a party acted in conflict with the law or in conflict with an OPTA decision. The OPTA can also issue guidelines that the parties are required to adhere to.

Three disputes

OPTA arbitrated three disputes related to the mobile market. Lycamobile, a mobile provider without its own network, asked OPTA to take a decision in a dispute with KPN. KPN stipulated that the rate charged by Lycamobile for passing on calls coming from another network, could not be higher than Vodafone's rate, the telephone network used by Lycamobile to provide its services. In the dispute decision, OPTA ruled that Lycamobile's maximum rate may not be higher than the maximum rate used by Vodafone. Lycamobile has appealed this decision.

In the second dispute, OPTA ruled on the application of the obligation that ensures that subscribers of different providers can contact each other, the interoperability requirement. T-Mobile wanted to halt service provision to Lycamobile due to the latter's payment arrears. Lycamobile asked whether this was permitted in relation to the legal interoperability requirement. In the dispute decision, OPTA ruled that halting the provision of services by T-Mobile is not in conflict with this requirement, provided that T-Mobile has provided Lycamobile with sufficient opportunity to properly inform its customers.

The third dispute also concerned interoperability. CoolWave asked OPTA to take a decision in a dispute with Vodafone. CoolWave is a platform provider that provides a range of services, including the connection of 0900 providers. Vodafone halted the ability to dial three numbers allocated to one of CoolWave's customers, SMScity, because fraudulent calls were made to one of these numbers. If a provider suffers losses due to fraudulent calls, this can, by exception, provide grounds for halting the ability to dial this number. In this case, however, there are no grounds for making such an exception according to OPTA. OPTA obliged Vodafone to reinstate the numbers.

BROADBAND

OPTA decided that KPN, due to its dominant position, is required to provide access to its broadband network to other providers. This on the one hand concerns the 'last mile', the network segment from the street or local exchange to the consumer's or business user's front door (Unbundled Local Loop (ULL)). Tele2, for example, offers internet on KPN's network via this form of access. One issue that was addressed as part of this decision was whether this included access to copper *and* fibre. This decision provides a decisive answer to this question. First, OPTA decided that in terms of fibre optic connections there should be no distinction between the business and consumer (Fibre-to-the Home (FtH)) markets. Second, OPTA decided that access to KPN's copper network is part of the same relevant market as access to its fibre optic network. Thus, OPTA has determined that there is but a single relevant market for unbundled access, and that access to both copper and fibre optics is part of this market. This is why OPTA stipulates that fibre optic networks largely are subject to the same regulations and pricing provisions as copper networks.

On the other hand, KPN provides service access to network segments to other providers (Wholesale Broadband Access (WBA)), such as BT and Verizon. If another provider wants to make use of access to KPN's network, OPTA obliges KPN to issue a 'reference proposal'. In the reference proposal KPN explains how the new provider can obtain technical access. The proposal includes a description of various elements, such as the conditions, rates and service level agreements.

OPTA orders fair use policy and market-wide reporting

In March and April 2010, OPTA took two designation decisions about KPN's reference proposals concerning ULL and WBA. OPTA takes designation decisions when parties are unable to agree among themselves. KPN is obliged to adhere to these designation orders and modify its reference proposal accordingly. In its designation order, OPTA decided that a fair use policy is required for KPN's information products. A fair use policy is a policy that allows competing consumers of the KPN service to indeed use the service in the same way as KPN. Through the use of these information products, competing providers who acquire ULL or WBA from KPN, can verify information, including address information, in KPN's administration systems of customers wanting to switch over. The use of these information products was constrained by KPN on the basis of quotas. This entails a risk that buyers of these services will be unnecessarily hindered. The introduction of a fair use policy removes this constraint.

In addition, OPTA instructed KPN to supply market-wide reports to market players on a quarterly basis. Finally, KPN was ordered to implement measures within its organisation in the event that connection or service agreements are not met. KPN informed OPTA that it does not intend to implement these

designation orders. OPTA consequently imposed two orders subject to a conditional penalty to enforce compliance on the part of KPN. KPN in August 2010 complied with these orders.

Rate and reinstatement decision concerning unbundled fibre optic access

On 4 June 2010, OPTA took the final decision concerning the pricing regulation of ULL to KPN's fibre optic network for business use (Fibre-to-the-Office (FtO)). This decision concerns the rate that KPN may charge for leasing (parts of) its fibre optic lines to other parties. OPTA ensures that KPN does this correctly, so as to promote competition for fibre optic services. In terms of price setting, OPTA used the same methodology that is used for copper, the EDC/WPC (Embedded Direct Cost/Wholesale Price Cap) methodology. In setting the rates it became clear that the rate ceilings in many cases exceeded the rates that KPN actually offers on the market. This is why OPTA has decided not to incorporate these rates into an implementation decision for the time being. In addition, OPTA has initiated an investigation to determine whether the EDC/WPC methodology is suitable for the purpose of determining these rates. Because fibre optics require significant investments and OPTA wants to encourage innovation, OPTA will especially consider the balance between investment certainty and the development of competition in establishing pricing.

The EC has no objection to KPN's maximum broadband rate for the business market

KPN has a monopoly position related to copper line connections in the Netherlands. This is why OPTA sets maximum rates for companies wanting to purchase telecommunication services via access to KPN's network. The basis for this maximum rate is the costs that KPN incurs or has incurred for various elements, such as the construction and maintenance of the infrastructure. A cost allocation system is used for this purpose, i.e. EDC. OPTA evaluates the system and confirms the rates that KPN proposes on the basis of this system. In June 2010, OPTA set the maximum rates for KPN in a draft decision for the purchase of broadband for the business market. This draft decision is known as the wholesale price cap (WPC-2b decision) and sets the price ceiling for KPN over the period 2009-2011. OPTA has submitted this draft pricing decision for consultation to the marketplace and has notified the EC. The EC gave its green light to the proposed rates in July. OPTA has incorporated the comments from market players as well as the EC into the decision and the decision was finalised in January 2011.

Audit of public providers of electronic communication services

OPTA each year reviews the registration of companies that provide public electronic communication services or networks. It is mandatory for these parties to report to OPTA. OPTA maintains a public register of providers. This register enables OPTA to determine whether all providers adhere to the rules specified in the Telecommunications Act. In 2010, a specific case concerning an investigation of fifteen companies in the hospitality industry providing internet services received news coverage. The fifteen parties included six hotels and conference centres. OPTA determined that these hotels and conference

centres are not required to register with the OPTA, because they only provide internet access to their own guests. Since 2003 OPTA has adhered to the basic premise that companies in the hospitality industry who only provide internet access to their own guests, in principle are not required to register with OPTA. The conclusion in relation to the other six companies audited is that they do not need to register. The other three parties offer internet services to hotels and other institutions. In 2011, OPTA will investigate whether these parties should be subject to the registration requirement.

Leased lines legal proceedings

Legal proceedings against leased lines decision

On 13 April 2010, the CBb issued a ruling in the appeal filed by market players against OPTA's leased lines market analysis decision dated 19 December 2008². The CBb ruled that OPTA did not properly substantiate why there is a separate market for low and high capacity leased lines. The CBb ruled the appeal founded and overturned the decision. The OPTA consequently withdrew the associated designation decision. OPTA has since initiated a new market analysis.

TELEVISION AND RADIO TRANSMISSION

Television

Cable competition

In 2008, OPTA published its analysis of the broadcasting market. Based on this analysis, OPTA in March 2009 took a number of decisions, including a decision requiring Ziggo and UPC to resell their analogue television lines to other providers, such as Tele2 and YouCa, so that these providers can also provide analogue television to consumers. In 2009, OPTA involved market players in the implementation of this requirement through means of industry groups. In meetings, OPTA refined the operational details and conditions with the market players. OPTA subsequently published its implementation decisions for opening up the analogue television connections, in March 2010.

An element in the implementation is the pricing decision. In this decision, OPTA specified the rates that Ziggo and UPC are permitted to charge competitors for leasing analogue connections. OPTA evaluated proposals prepared by these market players and submitted the results of its assessment to market players for consultation. The final pricing decision was published in March 2010. The implementation was completed at the beginning of June 2010, and in July 2010, Tele2 initiated a campaign designed to acquire consumers for its offer of analogue television services.

² Decision dated 19 December 2008 bearing reference number: OPTA/AM/2008/202714

Digital television implementation decision

OPTA in 2010 also involved market players in the digital retransmission implementation decision. This decision obliges Ziggo, UPC, Delta and CAIW to supply the digital TV signals of alternative providers to consumers over their cable networks.

Broadcasting legal proceedings

Legal proceedings against broadcasting decisions

On 18 August 2010, the CBB ruled on the appeals that the cable companies lodged against the decision requiring them to open up their cable networks. The legal proceedings caused the OPTA decision to be nullified. As a result of the nullification of the market analysis decisions, the legal foundation for other decisions based on this analysis was also nullified. On 1 October 2010, OPTA withdrew the underlying decisions. The only opportunity open to OPTA for tackling any competition-related problems on the television market, is to carry out a new market analysis. OPTA consequently immediately initiated a new market analysis for the purpose of investigating whether intervention is still needed.

Seven disputes concerning broadcasting decisions

Seven disputes concerning broadcasting decisions were submitted to OPTA in 2010. All decisions related to disputes that were already dealt with have been withdrawn. With the nullification of the broadcasting decisions, OPTA no longer has any grounds for arbitrating the disputes that were still ongoing. OPTA therefore declared itself as lacking authorisation. Two parties applied for a preliminary injunction against this. The CBB decided in OPTA's favour and confirmed that OPTA lacks the authorisation required to render decisions in this matter.

Radio Transmission

Radio transmission disputes

In its market analysis decision of 21 January 2009, OPTA determined that there is no reason for further regulating the radio transmission market. OPTA does have a number of authorities, however, and is authorised to set rates for the joint use of antenna sites and antenna systems. Five disputes were submitted to OPTA in this domain in 2010. OPTA established the conditions related to joint use, including the associated rates, so as to enable newcomers to enter the market.

OPTA created these conditions to enable newcomers to enter the market. Broadcast Newco Two, KPN, NOVEC and Alticom filed an appeal with the CBB against these dispute decisions. The rulings are expected in mid-2011.

APPEALS AGAINST MARKET ANALYSIS DECISIONS

OPTA involves the market in its decision-making processes. OPTA uses consultation processes and industry groups for this purpose. OPTA's objective is to take well-considered and market-supported decisions this way. In view of the financial interests, players, however, frequently file appeals against OPTA's decisions³. In most instances these appeals are heard by the CBb. The large number of appeals can contribute to the fact that the CBb sometimes can only provide OPTA with legal certainty a few years after an OPTA decision.

Of all of the rulings issued in 2010, there was in particular a great deal of attention to the rulings concerning the three market analysis decisions (ULL, leased lines and broadcasting/television). The core and the background of the nullification by CBb are divergent in each one of these three cases. To the extent that OPTA can influence further improvement in the quality and meticulousness of the process, OPTA has undertaken a number of actions with an eye on the next market analysis rounds. One of these actions, for example, is to even more explicitly organise internal opposing views for the purpose of subjecting OPTA's own draft decision documents to critical review.

Ongoing proceedings against market analysis decisions

The following market analysis decisions are still with the CBb for review:

- Unbundled access (ULL);
- Wholesale broadband access (WBA);
- Terminating access;
- Fixed telephony;
- Mobile and fixed terminating access (MTA/FTA) dating from 2010;
- Fixed telephony terminating access (FTA) dating from 2008; and
- Radio transmission.

³ Indeed, a ruling, in contrast to criminal law, can only produce more favourable results for the party filing the appeal.

POSTAL SERVICES

Impact of the obligation to provide access to competition is limited

The postal market has been completely liberalised since April 2009. TNT Post no longer has the exclusive right of delivering postal items up to 50 grams. However, it may be difficult for new postal delivery companies to develop their own postal delivery network with national coverage. For this reason the Postal Act 2009 contains an access obligation provision that allows customers of competitors to make use of TNT Post's delivery network under the same conditions and rates as TNT Post itself. In conformity with article 9 of the Postal Act, in 2010 OPTA investigated whether this obligation to provide access promotes competition in the postal market. OPTA concluded that the obligation to provide access has little impact on the aimed for increase in competition. New postal companies appear to have a limited need for access to TNT Post's network, because they already have their own network, for example. Furthermore, OPTA observed that there are other factors that can hinder competition and that cannot be addressed under the Postal Act 2009. OPTA will investigate this further, and expects to release the results of this study in 2011.

OPTA issued recommendations concerning improved guidelines for cost allocation under the Postal Regulation

OPTA checked out the feasibility of implementing a change to the Postal Regulation 2009. The results were submitted to the State Secretary of Economic Affairs in November 2010. In carrying out its assessment, the OPTA observed that the regulation does not contain any clear guidelines concerning the allocation of costs by TNT Post to the various postal services. The Postal Regulation is based on the premise that costs should be allocated to two postal service categories. OPTA is however of the opinion that cost allocation should take place at the individual service level, as prescribed by the Postal Act 2009 and the European Postal Directive as well. The use of only two categories gives the provider of universal service (US), TNT Post, greater room for defining its own cost allocation. This can result in undesired cross-subsidisation and the disruption of competition. This is because this would allow TNT Post to allocate higher costs to services for which there is no competition, such as consumer post, and lower costs to services where there is competition, namely the business market. Furthermore, OPTA advised the Ministry of Economic Affairs to give it additional authorities for enabling it to evaluate TNT Post's cost allocation system more effectively and more quickly, so as to provide certainty that consumers are not paying too much for their postage.

Study of the postal market after liberalisation

OPTA in 2010 published its study of the operation of the postal market. 'The Dutch Postal Market in 2008-2009' represents the first study of the postal market since its complete liberalisation in 2009. In its study,

the OPTA analysed the sub-markets and market relationships within the postal market. Starting in 2011, OPTA will be conducting a similar study each year. That would make it possible to draw conclusions from observed trends. The results of the 2010 study will appear during the course of 2011.

Postal delivery investigation: privacy of correspondence at issue

OPTA in 2010 initiated an investigation of postal delivery by TNT Post. OPTA assessed various areas, including the use of collection points for the post to be delivered (support points). The investigation showed that the support points are vulnerable to theft or misappropriation. For example, postal bags located at some support points were clearly visible from public roads, in some instances the post was left unattended for extended periods of time, and in a few instances measures to prevent the theft or misappropriation of post or postal bags were non-existent. This can place the constitutional guarantee of privacy of correspondence at issue.

OPTA issued a warning to TNT Post in this regard. OPTA also instituted a study of the quality of TNT Post's postal delivery. The results of this study are expected during the course of 2011.

Assessment of the quality of Universal Service (US)

OPTA in 2010 conducted an assessment of the quality of the US provided by TNT Post. TNT Post is the provider of the universal postal service and is therefore obliged to adhere to statutory requirements. For example, TNT Post must deliver separate postal items at the rate of a single item, six days per week. The number and the distribution of postal branches are also specified. TNT Post reports to OPTA about this on an annual basis. From OPTA's assessment of the report it is evident that TNT Post in terms of the number of postal branches meets the norm, but that the delivery time of letters constitutes an area for attention. TNT Post on average is required to deliver 95% of letters posted at the single item rate, the next business day. The percentage stated in TNT Post's report is 95.2% for 2009. However, OPTA did not receive all of the information it requires from TNT Post to be able to determine how TNT Post arrived at this figure. In spite of requests to this effect, TNT Post did not provide sufficient insight into its calculation methodology. OPTA was consequently unable to determine whether TNT Post meets the specified norm. OPTA furthermore noted that the percentage measured for the end-to-end routing times exhibits a declining trend in recent years. TNT Post's 2010 report should provide an indication as to whether this trend has reversed itself. This report is expected in mid-2011.

OPTA requests transparency about TNT Post's financial figures

At the end of 2010, OPTA also asked TNT Post to provide financial reports concerning the universal postal service in 2009. OPTA requires these reports in support of its supervision tasks and is of the opinion that TNT Post is obliged to report on this. TNT Post does not share this opinion. OPTA is still considering whether enforcement would be appropriate or not.

Supervision of Postal employment contract

The Temporary Postal Employment Contract Decree went into effect on 1 January 2010. OPTA exercises supervision over the requirement that postal delivery companies must employ 100% of their postal carriers on the basis of an employment contract. This requirement does not apply if a collective labour agreement (CAO) applies that meets the provisions of this decree. As of 2010, OPTA has not yet had to exercise supervision in this matter. The activities budgeted for this purpose in 2010 were therefore not carried out.

Basic rates for the universal service

OPTA was required to set the basic rates for the universal postal service for 2010, by 1 October 2009. However, OPTA and TNT Post since June 2009 have been unable to agree on the information that OPTA requires to set these rates. TNT Post has only provided OPTA with information about the total cost of the universal postal service. OPTA has requested TNT Post to provide information about the actual costs of separate postal delivery services within the universal postal service. OPTA twice imposed an order subject to a conditional penalty for the purpose of gaining access to the actual costs of the separate postal delivery services. TNT Post applied to the court for a preliminary injunction against both penalties. In both cases the court concluded that TNT Post had supplied insufficient information to OPTA and for that reason rejected both TNT Post's applications. TNT Post subsequently initiated substantive proceedings. The court on 1 July 2010 ruled that OPTA was nevertheless required to set the rates on the basis of the total costs of the universal postal service already supplied by TNT Post. OPTA has filed an appeal against this ruling, but at the end of July nevertheless set the basic rates for the universal postal service. OPTA therefore did not carry out any further activities for the purpose of setting these rates, in the second half of 2010.

SUPERVISION AND ENFORCEMENT

OPTA in 2010 carried out a large number of supervision and enforcement actions. In total, OPTA fined 32 companies or natural persons one or more times. OPTA always publishes these fines on its website, including the company name of the offenders. However, in 2010 OPTA was forced to temporarily suspend its publication policy. The suspension was lifted on 10 November 2010: the Council of State in an appeal ruled that the OPTA could in principle publish sanctions with mention of names. Also see page 6.

KPN fined over € 500K due to unlawful discounts

OPTA in January 2010 fined KPN for selectively providing business customers with additional discounts on international calls from 2006 to the beginning of 2008. The amount of the fine was € 523,264. The fine

was imposed for the discount scheme *Actiekorting Internationaal* (International Discount Promotion) offered to specific customers in combination with the discount scheme *Belzakelijk* (Business Calls), *Belzakelijk Company* or Worldline XL. The latter discount schemes, in contrast to *Actiekorting Internationaal*, were reported to OPTA by KPN. Due to its position of power, OPTA prohibited KPN from supplying the same services under different conditions and rates to the same type of customers. Customers were selectively approached for this additional discount in the context of the 'Back to KPN' promotion. KPN succeeded in recovering 46 customers from competitors this way. Because this involved a repeat offence (recidivism), this resulted in a higher fine in accordance with OPTA's fining policy. KPN has appealed this decision.

KPN fined € 780,000 for prohibited customer bonding practices

OPTA in 2010 fined KPN in the amount of € 780,000 for prohibited customer bonding via Customer-Partner Programmes. Following an investigation, OPTA discovered prohibited agreements with business customers in three programmes. First, there was an agreement that KPN would always be invited to participate in tenders and that in the event of an equal bid, the customer would always select KPN. Second, there was an agreement granting KPN the right, in the event that a competitor offered a lower price, to be informed of this so that KPN could match this price. The customer was then obliged to accept KPN's proposal. The fact that KPN has repeatedly committed an offence with selective (discount) schemes for business customers was included as an aggravating factor in determining the fine. OPTA considers these offences on the part of KPN as 'serious'. Furthermore, KPN neglected to report these schemes to OPTA. KPN and competing parties, each separately, submitted objections to the fines to OPTA. OPTA in June ruled the objections as unfounded. The parties subsequently filed an appeal with the District Court of Rotterdam.

OPTA intervenes in tender for fixed telephony for government

OT2010 this year looked after a number of invitations to tender in the area of telecommunications for government. In relation to one of these invitations to tender, for fixed telephony, Tele2 on 14 September 2010 submitted a request for enforcement to OPTA. Tele2 suspected that KPN's bid contravened the rules. The invitation to tender represented a total revenue stream of approximately € 15-20 million per year. OPTA subsequently initiated an investigation into KPN's bid. OPTA discovered that KPN's wholesale department on 27 July 2010 informed the company's retail branch of a discount promotion on certain purchase rates. KPN informed its competitors of this promotion on 30 July 2010 at 11:00 a.m. The complete information about the associated conditions was only provided to external customers on 24 September 2010. The deadline for telecom companies to submit their bid to OT2010 was 30 July 2010, at 12:00 p.m. By providing this information at the last minute, KPN deprived competitors of the opportunity of using the lower purchase rates in their bid to OT2010. OPTA noted that KPN violated its statutory obligation to inform its internal and external customers at the same time. KPN through its actions

disrupted competition. Due to the fact that this violation ended on 24 September 2010, OPTA rejected this part of the request for enforcement. OPTA informed KPN, Tele2 and OT2010 on 13 October 2010 of this decision. OT2010 subsequently withdrew the invitation to tender for the fixed telephony cluster, which had provisionally been awarded to KPN, on 15 October 2010. KPN, as well as Tele2 filed an objection with OPTA against this decision. Furthermore, KPN applied for a preliminary injunction against this decision with the CBb. The CBb has rejected KPN's request for a preliminary injunction. OPTA is currently still investigating other elements of the request for enforcement, including the legitimacy of KPN's bid.

4. Consumers

One of OPTA's tasks is to protect the consumer. OPTA ensures that market players comply with the law and intervenes when this is not the case. In addition, OPTA informs consumers via ConsuWijzer so that consumers can exercise their rights themselves.

INTERNET SECURITY

It is no longer possible to imagine a world without internet. Spam, spyware and botnets, however, all constitute threats to a secure internet. OPTA's focus on security and reliability consequently remained unabatedly high in 2010. A key instrument at OPTA's disposal to maintain internet security is to invoke the duty of care on the part of ISPs. ISPs are legally obliged to maintain security in order and to inform subscribers about internet risks. This information is important for ensuring that internet users do not fall victim to computer criminality.

Malware and Botnets

Malware is software that is stored on a computer without the user's permission and puts harmful data on the computer or retrieves sensitive personal data from it. Where possible, OPTA takes preventive measures against distributors of malware. In other cases, OPTA can impose fines on offenders who violate the prohibition of placing unsolicited software on computers.

No fines due to successful prevention by ISPs and hosting providers

In 2010, OPTA further developed its approach to malware and botnet distributors. OPTA's approach focused on providing information, prevention and public-private partnerships with ISPs and hosting providers.

OPTA held dozens of meetings with ISPs and hosting providers with the objective of reminding them of their responsibility for the activities of their customers. The result is that in many cases the spread of malware is now discovered and cut off at a much earlier stage, before large groups of consumers are affected. In addition, OPTA has developed dashboards that enable part of the spread of spam and malware in the Netherlands to be identified. OPTA uses the information in this dashboard to encourage ISPs and hosting providers to locate and terminate these activities within their own network. Various parties have since used this information to successfully shut down distributors of malware and botnets.

Collaboration and analysis of botnets as the basis for (preventive) enforcement

OPTA has been a member of the Botnet Workgroup within the Internet Security Platform of the Electronic Commerce Platform Nederland (ECP-EPN) since 2010. The objective of this workgroup is to make a structural contribution to combating botnets and countering their negative effects. The Platform

accomplishes this by improving the information position of all involved parties, nationally as well as throughout Europe, and globally. Collaboration is also sought by putting government, software developers, banks, regulating bodies and scientists into contact with each other. OPTA guides and evaluates the various actions.

Spam

The Telecommunications Act prescribes that companies can only send advertisements by e-mail or SMS if the recipient has asked for this information himself. Approximately 80% of e-mail traffic is however sent without such permission: spam. Spam does not only cause frustration among consumers and companies. The removal and filtering of unwanted messages also entails costs and furthermore damages the confidence that citizens and companies have in the internet. OPTA monitors the spam prohibition and focuses on the parties causing most of the complaints received at www.spamklacht.nl.

Spamklacht.nl in 2010: 27,251 reports

In 2010, OPTA received 27,251 complaints about spam via spamklacht.nl. OPTA initiated 98 investigations into alleged violations of the spam prohibition. Of these investigations, 39 cases were settled with a warning. One of these cases involved the investigation of an automated call-up system of the "Swiss Consumers' Union". OPTA visited the company, after which the large stream of complaints stopped. In six cases the investigation was completed and an investigation report was prepared. An investigation into 23 cases was initiated; however, OPTA did not observe any violations. The remaining investigations are still ongoing and are expected to be completed in 2011.

Unlawful collection of e-mail addresses

In its spam investigations in 2010, OPTA focused on affiliate marketing; the unlawful commercial use of e-mail addresses often indirectly obtained (for example, through surveys and contests). OPTA initiated 10 investigations at the end of 2010. These cases are to be completed in 2011.

International collaboration in fighting spam

Two major spam cases were reported to OPTA, which, after investigation, turned out to originate from an e-mail service provider and a botnet located in Belgium. These cases were transferred to the Computer Crime Unit of the Federal Judicial Police in Belgium. OPTA also collaborated closely with regulatory authorities in other European countries in various cases, in view of the fact that the suspected offenders also engaged in activities abroad or via other countries.

Spam and e-mail marketing enforcement

Backsound fined after receiving spam warning

In July 2010, OPTA fined a person and his one-man business Backsound for a total of € 22,500 for sending unsolicited e-mail messages. Backsound had previously been issued a warning by OPTA for violating the spam prohibition. Backsound submitted an objection to the fine. OPTA declared the objection unfounded. Backsound consequently filed an appeal with the courts.

Special T spam fine

In October 2010, OPTA imposed fines totalling € 25,000 on a company that sent unsolicited advertising via e-mail and fax for commercial purposes, without obtaining prior permission from recipients. In addition, many cases lacked a valid opting out feature. Special T objected to these fines. OPTA declared the objection unfounded. Special T has since filed an appeal with the courts.

Legal proceedings

CBb in 2010 issued three judicial rulings concerning fines imposed in relation to the internet, spam and e-mail marketing.

- **ID2001 fine legitimate**

The District Court of Rotterdam on 26 January 2010 ruled that OPTA acted lawfully in 2007 when it imposed a fine of € 55,000 on ID2001. ID2001 sent out e-mail messages about secondment services via the unsecured wireless networks of third parties without these parties being aware of this. ID2001 has appealed this ruling.

- **Thuiswerkcentrale fine**

On 26 January 2010, the District Court of Rotterdam ruled on two companies in the Thuiswerkcentrale (Working at Home Centre) case. Thuiswerkcentrale was sending out unsolicited e-mail messages containing vacancies for at home work. To qualify, potential candidates were required to call a 0900 number and pay significant calling costs. OPTA fined the Thuiswerkcentrale a total of € 510,000 for sending out spam. The Court ruled that one company was legitimately fined € 270,000, but that the other involved parties cannot be considered as senders of unsolicited e-mail messages. The Court therefore overturned that part of the decision. OPTA has filed an appeal.

- **Speko and Van Leerdam fine confirmed by the highest court**

In July 2010, the CBb issued a final ruling in the Speko and Van Leerdam case. The CBb found for OPTA in the 2004 case in which OPTA imposed a fine on Speko and Van Leerdam. The ruling also confirmed that OPTA's method of investigation is legitimate and provided clarity concerning the information OPTA is required to provide to enable a violation of the spam prohibition to be

established. The ruling furthermore established the degree to which OPTA is required to provide insight into its evidentiary proof to offenders.

Cookies

Cookies are small files that store information on a computer about surfing behaviour. They 'remember' certain settings or login information, thus eliminating the need for repeatedly entering this information. However, this information can also be used by online advertisers to direct their advertising. However, consumer searching and surfing behaviour cannot simply be used to direct advertising. At the end of 2009, the EC issued new directives⁴ concerning cookies. A new article will be incorporated into the Telecommunications Act in 2011 on the basis of these directives. To prepare for enforcement of the new legislation, OPTA in 2010 started to develop methods to counter the abuse of cookies. OPTA held meetings for this purpose with the market players and the other parties involved.

Balancing privacy and user friendliness

In preparation for the new legislation, OPTA also conducted research into the perception of internet users and the use of cookies. The protection of the privacy of internet users plays a major role in this regard. It must be possible to practically comply with the new rules without creating overregulation. OPTA is expected to publish policy rules in 2011 concerning the enforcement of the cookie provisions.

MOBILE TELEPHONY AND SMS

Mobile Telephony

Charging for mobile telephony by the minute

Vodafone and KPN in 2010 switched over from charging by the second to charging by the minute. A consumer calling for just a single second of a full minute is charged for the full minute under this scheme. OPTA informed consumers via ConsuWijzer that if this negative change took place while their contract is still in effect, the consumer is entitled to cancel the contract without incurring any costs while retaining the 'free' mobile telephone. Kassa, a consumer programme of public broadcaster VARA, received 357 complaints about Vodafone's and KPN's charging by the minute approach. OPTA investigated these complaints and noted that their new method of charging currently is not in conflict with the law. OPTA reminded Vodafone and KPN of their obligation to inform, however. This obligation is designed to provide

⁴ Directives 2009/136/EC and 2009/140/EC of the European Parliament and Council, both dated 25 November 2009.

clarity to consumers. Vodafone, KPN and T-Mobile have since promised that they will also offer per second charging subscriptions.

Transmission of location when making mobile 112 calls

Since 1 April 2009, mobile telephony providers have been providing information about the caller's location to emergency services, when the caller places a call to the 112 emergency number. At the end of 2009, the police informed OPTA that this information was not always being received by the emergency services. OPTA consequently analysed the location information transmitted by KPN, Vodafone and T-Mobile and compared it with the information received by the emergency services. OPTA discussed the results of this supervisory action with the mobile telephony providers and the police. Each party has made improvements in its processes and systems. In addition, steps were taken to ensure that in the event of a change to the network (e.g., such as the placement of a new antenna), the supply of location information is not interrupted. This has improved the availability of location information for emergency services. The analysis also pointed out that KPN was unable to transmit location information for people with a foreign SIM card. OPTA has brought this up with KPN, which has initiated steps to modify its network. Starting at the beginning of 2011, it will also be possible to more rapidly localise people with a foreign SIM card when they call 112.

European regulations in the mobile market

A number of new European rules went into effect for mobile providers in 2010.

- **Protection against high charges due to use of mobile internet in Europe** Effective 1 March 2010, mobile providers must offer their customers the possibility of setting a consumption limit for the use of mobile internet in Europe. The limit has been set at € 50 (excl. VAT). This protection was automatically applied by mid-2010, unless consumers themselves specifically indicated that they did not want to make use of this limit. Effective 1 November 2010, providers are required to process a request for turning this protection feature on or off within one working day. On 12 March 2010, OPTA imposed a conditional penalty in the amount of € 450,000 on T-Mobile to force the company to offer its customers the statutory mobile internet use protection feature. T-Mobile discharged its obligation under this order within the required time limit.
- **Cheaper calls within the EU** Since 1 July 2010, OPTA has provided the supervision required to ensure that mobile providers no longer charge consumers and business users for receiving voice mail messages while travelling in the EU. Mobile providers may not charge more than the standard (national) rate for listening to these messages. This means that picking up voice mail messages elsewhere in Europe is charged at the same rate as in the Netherlands. The maximum rate that mobile providers are permitted to charge for calls within the EU were further reduced on

1 July 2010 down to 46 cents per minute for placing a call and 18 cents per minute for receiving a call.

Mobile telephony enforcement

Warnings in the context of the right of termination

OPTA received complaints concerning the application of the right of termination. All of these complaints were investigated. In a large number of cases, the provider had applied the law correctly or did so after receiving a warning. In one instance, OPTA's investigation led to an official warning. T-Mobile's prepaid customers were only given eleven days, rather than four weeks, to make use of their right of termination. In this instance it was impossible to rectify the infraction. This warning will nevertheless be taken into consideration should T-Mobile commit a similar infraction in the future.

SMS

SMS regulation provides consumers with better protection against misrepresentation

In 2009, the Ministry of Economic Affairs, Agriculture and Innovation came to the conclusion that the current code of conduct applied by SMS providers affords consumers insufficient protection. For example, the code of conduct contains agreements concerning confirmation of registration and how SMS providers may advertise to SMS subscribers. In addition to the current code of conduct, the Ministry prepared new regulations. In 2010, OPTA checked out the Ministry's proposal and issued a positive recommendation. The new rules put consumers in a stronger position if in the future they submit a complaint to their mobile provider about an SMS service. The provider is no longer permitted to simply shut down a consumer's mobile telephone, but must first investigate the consumer's complaint. The regulations also strengthen OPTA's ability to enforce in the SMS sector and to consequently assist consumers with their complaints about SMS services. The regulations are expected to become effective in April 2011.

SMS enforcement

SD&P Interactive B.V. fined for SMS spam

In April 2001 OPTA fined SD&P Interactive B.V. in the amount of € 550,000 for sending out SMS spam. This SMS provider enticed the message recipient with the prospect of an attractive prize, such as an iPhone or a laptop. However, after sending an SMS, it turned out it involved a paid subscription service. These consumers were unwittingly committed to an SMS service requiring them to pay € 1.50 for each message they received. In addition, the SMS messages lacked a valid opting out feature. This represents multiple infractions of the spam prohibition. Indeed, sending out commercial SMS messages without

explicit approval of the recipient is prohibited. In addition, it is mandatory for the provider to include a valid opting out feature as part of its SMS messages. SD&P submitted an objection to the fine. OPTA in January 2011 declared the objection unfounded. SD&P consequently lodged an appeal.

FIXED TELEPHONY

Fixed Telephony

Supervision of maximum rates: OPTA positive about compliance

Number users and telephony providers are obliged to use a maximum rate per call for 0900 numbers costing more than € 0.15 per minute⁵. Furthermore, consumers must be informed in advance of the maximum they could be charged for a call to a 0900 number.

In 2010 OPTA maintained supervision of compliance with the maximum rate regulations. OPTA checked over four hundred 0900 numbers to confirm whether providers report the minute rate and, if applicable, clearly identify the maximum rate per call. OPTA issued a warning in seventeen instances. Following the warning, these number users modified their messages. In addition, OPTA involved number holders for the purpose of informing number users about the maximum rate.

Maximum rates for helpdesks

In 2010, the Ministry of Economic Affairs, Agriculture and Innovation presented OPTA with new maximum rate regulations specifically aimed at 0900 customer service numbers. To prevent frustration in the event of waiting queues, the Ministry proposed a maximum rate of € 0.15 per minute for calls made to helpdesks. In its implementation assessment, OPTA expressed concerns about the effectiveness of this regulation, because it does not necessarily shorten the waiting queue, but only makes it cheaper. This would not reduce frustration on the part of consumers if companies, as a possible consequence of this low maximum rate, would expressly keep callers waiting for longer periods of time.

Combating the abuse of paid information numbers

Most complaints about the abuse of paid information numbers end up with OPTA via ConsuWijzer. Examples of abuse include unexpectedly long waiting times or the interruption of a connection without provision of service. In the event of suspected abuse, OPTA is empowered to temporarily have the number disconnected or to suspend payments related to that number. In addition, OPTA is empowered to withdraw the assignment of a number or to refuse a new application on the part of a suspected number abuser. The Telecommunications Act contains provisions in the event of abuse force telephony providers to reimburse consumers within two months for amounts that have already been collected.

⁵ A number user is a party that offers a service via, for example, a 0900 number. A number user could also be the owner of that number. The owner is the number holder.

- On 20 April 2010, OPTA placed a notice in the Government Gazette about the fact that during the period from 15 October 2008 to 19 March 2009, inclusive, there was evident abuse of the information numbers used by the Makelaarsfoon (*an Estate Agent's Helpdesk*) and the Juristenfoon (*a Legal Assistance Helpdesk*). This means that consumers are entitled to be reimbursed via their telephony providers for the costs of the telephone calls placed to these numbers.
- OPTA initiated an investigation into the potential abuse of a 0900 number used by 'Caterplan'. OPTA temporarily withdrew the assignment of this number during the investigation. The investigation showed that Caterplan did indeed abuse the number. OPTA consequently withdrew the number permanently.

CONSUWIJZER

OPTA informs consumers about postal and telecommunication matters via ConsuWijzer. ConsuWijzer is the collective consumer point of contact for three regulatory authorities: the Consumer Authority (CA), the Netherlands Competition Authority (NMa) and OPTA. OPTA's back-office provides legal advice to consumers about postal and telecommunication matters. In addition, based on complaints received by ConsuWijzer, reports identifying potential problem areas are prepared. OPTA uses these reports in support of its investigations into possible infractions. ConsuWijzer enables OPTA to provide consumers with information in easily accessible ways. The consuwijzer.nl website plays a major role in this regard. At the end of 2010, this website was selected as the best government website of the year.

ConsuWijzer in 2010: many complaints about telemarketing

ConsuWijzer received about 100,000 questions and complaints from consumers throughout 2010. Over 31,000 of these complaints were concerned with OPTA-related matters. ConsuWijzer's website received over 2.3 million visits. This represents an increase of 15% over 2009. The use of sample letters provided on the website rose by 60% to over half a million. Most of the complaints received in 2010 related to OPTA's areas of responsibility were concerned with telemarketing (12,385). Telemarketing clearly became the major source of irritation in 2010. By way of comparison, the total number of OPTA-related complaints received in 2009 was almost the same, namely 31,863. The volume of complaints about telemarketing that year numbered over 6,000. Aside from dealing with complaints, OPTA carried out a number of actions via ConsuWijzer, among which are the following:

- Explained developments concerning consumer freedom of choice on the television market and provided clarification concerning the implications of the ruling issued by the courts that has blocked the television cable market from being opened up;

- Warned consumers against the risk of providing personal information via the internet, SIM locks on used mobile telephones and the calls made by the calling computer of the “Swiss Consumers’ Union”;
- Explained the change introduced by KPN and Vodafone to start charging for calls by the minute rather than by the second as in the past. OPTA in this respect collaborated with VARA’s consumer programme Kassa. This generated over 350 responses which were answered by ConsuWijzer.

In 2010, ConsuWijzer launched an advertising campaign to increase name recognition. This campaign, primarily consisting of radio spots and advertisements, will continue through into 2011.

TRANSPARENCY AND CONTRACT CONDITIONS

Supervision of contract termination at no cost

Since 1 July 2009, consumers are entitled to cancel their contract at any time at no cost, after the expiry of the initial contract period. The term of notice may not exceed one month. OPTA received indications via ConsuWijzer that two providers were charging a termination fee when consumers wanted to terminate their contract. OPTA contacted these providers and pointed out their infraction. The providers consequently adjusted their conditions, so that their subscribers can also terminate their contracts without incurring additional costs. In relation to all other providers, OPTA concluded that they properly met this obligation in 2010.

Clarity about telephone rates for consumers

In 2010, OPTA maintained supervision to ensure compliance on the part of telephony providers concerning their obligation to provide clarity about rates. As a result, telephony providers published clear telephone rates on their websites in May 2010. In addition, a new regulation went into effect on 1 October 2010 that obliges telephony providers to display their basic rate information during the online ordering process. OPTA conducted a random test in the autumn to verify whether telephony providers adhere to these statutory rules on their websites. Most providers comply with the rules. A single provider is still in the process of making the necessary adjustments. A new test will be conducted in the spring of 2011. During this process OPTA will assess whether providers have properly actioned the necessary areas for improvement.

Clarity about consumer rights in the event of detrimental changes to contract conditions

If contract conditions are changed to the detriment of the consumer or business end-user, they are entitled to terminate the contract at no cost. In January, OPTA published a revised assessment framework about the right of termination. This framework, for example, specifies that a consumer when

invoking the right to terminate a contract without cost is also entitled to keep any 'free' mobile telephones. OPTA also requires the consumer to be informed in a clear manner.

Right of termination: request for enforcement

In 2010, the Consumers' Union asked OPTA to enforce the applicable regulations with the internet provider Telfort. Telfort was alleged to have failed to properly inform subscribers about a rate change when it took over CompuServe and in addition did not offer the right of termination. OPTA has initiated an investigation that it expects to complete in 2011.

The Consumers' Union also submitted a request for enforcement to OPTA involving Tringg. Following a change that was detrimental to its subscribers, Tringg provided its subscribers less than four weeks to terminate their contracts at no cost. After OPTA contacted Tringg, the mobile provider terminated the infraction and compensated its customers. OPTA did not impose any sanctions.

DO NOT CALL REGISTRY

The new legislated Do Not Call Registry went into effect on 1 October 2009. By the end of 2010, the Do Not Call Registry contained over 5.6 million telephone numbers.

Highest level of complaints concern telephony, television and energy companies

In this first year, OPTA received many complaints via ConsuWijzer about unwanted sales calls. Topping the list of complaints in 2010 are telephony, television and energy companies.

Company Category	%
Telephony & Television	12%
Energy	12%
Lotteries	11%
Newspapers & Magazines	8%
Charitable Organisations	7%

Percentage complaints by sector

Companies are only entitled to contact consumers who are registered in the Do Not Call Registry, if there is, or was, a customer relationship. However, there are a number of companies who are attempting to circumvent this rule. For example, by using information obtained via online contests or surveys for telemarketing purposes. However, this is solely permitted when a consumer specifically and unambiguously requests such contact to be made. In this context, the OPTA issued over twenty warnings in 2010. In addition, OPTA initiated 48 investigations into suspected infractions of the telemarketing rules.

These companies account for approximately 80% of the complaints about unsolicited telemarketing contacts. OPTA has since fined two companies. Due to ongoing legal proceedings, OPTA is not at liberty to publish the names of the fined companies or the amount of the fines at this stage.

DISPUTE RESOLUTION COMMITTEES

The consumer can involve a dispute resolution committee in the event of a dispute with a provider. This enables consumers to obtain their rights in a convenient way. OPTA oversees compliance with the statutory obligation requiring telephony providers and number users to register with such committees. Telephony providers must register with a disputes committee, such as the Telecommunications Disputes Committee or the Electronic Communications Disputes Committee of the Foundation for Consumer Complaints Committees in The Hague. Number users must register with the Information Services Providers Disputes Committee.

Disputes Resolution Committee mandatory registration: 48 warnings

OPTA oversees the obligation of number users of 090x and 18xy numbers to register with the Information Services Providers Disputes Committee. The obligation to register went into effect on 1 July 2009. Consumers have the right to suspend payment of the disputed segment of the telephone bill until the complaint or the dispute is settled. The objective of the obligation to register is to better protect the consumer against the abuse of paid information numbers. Further to the notifications received via ConsuWijzer, OPTA in 2010 verified the registration of 206 numbers used by number users. Forty eight (48) warnings were subsequently issued to number users who had not registered with the Information Services Providers Disputes Committee. The parties consequently registered with the dispute resolution committee, or registration is in progress. In addition to sending out warnings, OPTA also sent a letter to 372 number users reminding them of their obligation to inform.

Enforcement of obligation to register

Conditional penalties for obligation to register with disputes committee

The telecommunications provider Dailycom was non-compliant with the obligation to register in 2010. Dailycom in 2010 was threatened to be expelled by the Telecommunications Disputes Committee. OPTA regularly received complaints about Dailycom via ConsuWijzer. Complainants often indicated that there was an unreasonable accumulation of call time that subscribers could not control themselves. In addition, there were reports that Dailycom could not be reached, either by telephone or in writing. Because of the risk that Dailycom subscribers could no longer avail themselves of the services of the disputes committee, OPTA imposed a preventive conditional penalty on Dailycom in May 2010. Dailycom complied with the requirements of the conditional penalty, remained a member of the disputes committee and complied with the binding rulings of the disputes committee. Another provider had not as yet registered with the disputes

committee. In 2010, OPTA contacted this telephony provider in writing to inform it that it was in violation of the law. To force this provider to register, OPTA sent the provider an advance notification of the conditional penalty. The provider subsequently registered with the disputes committee. OPTA generally does not publish the names of parties who act appropriately pursuant to an advance notification.

5. Financial Statements

AUDITOR'S REPORT

INDEPENDENT AUDITOR'S REPORT

To: The OPTA Commission

The accompanying abbreviated annual accounts as set out on pages 39 to 50, which comprise the abbreviated balance sheet as at 31 December 2010, the abbreviated statement of income and expenditures and changes in the general reserve for the year then ended, and related notes, are derived from the audited annual accounts of OPTA for the year ended 31 December 2010. We expressed an unqualified audit opinion on those annual accounts in our report dated 14 March 2011. The annual accounts, and the abbreviated annual accounts, do not reflect the effects of events that occurred subsequent to the date of our report on those annual accounts.

The abbreviated annual accounts do not contain all the disclosures in accordance with main applicable accounting standards for annual accounts in The Netherlands. Reading the abbreviated annual accounts, therefore, is not a substitute for reading the audited annual accounts of OPTA.

Management's responsibility

Management is responsible for the preparation of a summary of the audited annual accounts on the accounting policies described on page 42.

Auditor's responsibility

Our responsibility is to express an opinion on the abbreviated annual accounts based on our procedures, which were conducted in accordance with Dutch Law, including the Dutch Standard on Auditing 810 "Engagements to report on summary financial statements".

Opinion

In our opinion, the abbreviated annual accounts as set out on pages 39 to 50 derived from the audited annual accounts of OPTA for the year ended 31 December 2010 are consistent, in all material respects, with those annual accounts, in accordance with the bases described on page 42.

The Hague, 18 April 2011

BDO Audit & Assurance B.V.

On its behalf,

Sgd.

J.J. Herst RA

Balance Sheet		
	31 December 2010	31 December 2009
	(€ 000's)	(€ 000's)
ASSETS		
Fixed Assets		
Tangible fixed assets		
Tenant's property	735	790
Furniture and fixtures	205	237
Computer hardware and software	1,370	1,570
	2,310	2,597
Current assets		
Accounts receivable	492	412
Fines and conditional penalties receivable	15,302	7,234
Receivable from the Ministry of Economic Affairs	6	-
Receivable from the market	-	118
Other receivables	464	1,869
Cash and bank balances	795	1,668
	17,059	11,301
TOTAL ASSETS	19,369	13,898

LIABILITIES		
	31 December 2010	31 December 2009
	(€ 000's)	(€ 000's)
Capital and reserves		
General reserve	817	817
	817	817
Provisions		
Provision for objections and appeals	35	27
Provision for future remuneration	220	323
Provision for anniversary bonuses	44	44
	299	394
Current liabilities		
Payable to the market	594	-
Accounts payable	1,332	1,854
Debt to the Ministry of Economic Affairs	-	14
Taxes and social security contributions	369	290
Fines and conditional penalties	15,357	8,884
Other liabilities	601	1,645
	18,253	12,687
TOTAL LIABILITIES	19,369	13,898

Statement of Income and Expenditure			
	Actual	Budget	Actual
	2010	2010	2009
	(€ 000's)	(€ 000's)	(€ 000's)
INCOME			
Revenues from market categories	15,170	15,472	14,173
Other income	2,156	2,893	2,308
Extraordinary income	-	-	435
TOTAL INCOME	17,326	18,365	16,916
EXPENDITURE			
Personnel costs			
Salaries and social contributions	9,092	10,095	8,721
Other personnel costs	917	1,080	874
	10,009	11,175	9,595
Third party assignments	1,889	1,944	2,593
Costs of goods purchased	3,574	3,955	3,541
Depreciation	1,160	1,250	1,441
Extraordinary expenditure	-	-	-
TOTAL OPERATING EXPENSES	16,632	18,324	17,170
OPERATING RESULT	694	41	- 254
Interest income	18	-	21
RESULT	712	41	- 233

Proposed appropriation of the result

The Commission has decided to appropriate the positive result for 2010 in the amount of € 712,000 entirely to the item 'Payable to the market'. This decision has already been accounted for in the financial statements.

Accounting principles

General

The amounts from the balance sheet at 31 December 2009 have been included on the balance sheet at 31 December 2010 for the purpose of comparison. The statement of income and expenditure also includes the budget figures for 2010 and the actual figures for 2009. Assets and liabilities, unless stated otherwise, are carried at face value.

Tangible fixed assets

The tangible fixed assets are recognised on the balance sheet at purchase cost less depreciation up to the end of December 2010. The straight-line method of depreciation is used based on the estimated useful economic life, which ranges from 3 to 10 years. The depreciation terms are fixed as follows:

Tenant's property (= property)	10 years
Furniture and fixtures (= furniture and office equipment)	5 years
Computer hardware and software	3 years

Receivables

Receivables are recognised at face value, less a provision for bad debts as deemed necessary.

Provisions

The provision for future remuneration is recognised at the face value of the future liabilities, taking into account expected future wage increases.

The provision for anniversary bonuses is recognised at the present value of the future remunerations in the context of anniversaries, taking into account the expected future staff turnover and expected future

wage increases. The present value is calculated here using a discount rate determined on the basis of the market interest rate of high quality company bonds. The provision for objections and appeals is recognised at the face value of contested invoices for annual oversight, registration and number assignments and reservation. OPTA has set up a pension scheme for its employees which qualifies as a defined benefit scheme, where the promised pension payments are based on average wage. This pension scheme is administered by ABP and is included in the financial statements as a defined contribution scheme. This means that the premiums owed for the financial year are recognised as expenses.

Accounting policies for determining the result

The income and expenditure is recognised in accordance with the accrual accounting system. The integral expenses are charged on to the market parties in the rates, with the exception of the costs of objection and appeal, the costs of implementation assessments and the extraordinary expenditure.

Accounting policies for the cash flow statement

The cash flow statement is prepared using the indirect method. The first part describes the net cash flow from operational activities. This starts with the result reported on the statement of income and expenditure and corrects this amount on a number of points. The second part describes the net cash flow from investment activities.

Income and expenses for market categories

The basis for charging rates to market parties can be found in the Telecommunications Act, the Telecommunications Act Payments Decree, the Postal Act as well as the Independent Post and Telecommunications Authority Act. The cost-effective rates charged to the market parties are approved by the Minister of Economic Affairs annually and published in the Government Gazette as the "OPTA Fee Regulations" The direct benefit principle is the starting point in setting the rates. The costs of objection and appeal and the costs of implementation assessments are borne by the Ministry of Economic Affairs on the basis of subsequent calculation.

Notes to the abbreviated financial statements for 2010

Current liabilities

Payable to the market

This item is used to account for the result of the various market categories for the purpose of including it in future rates.

The entire result in the amount of € 712,000 is allocated to the item 'Payable to the market'. The following table presents the breakdown of the 'Payable to the market' item over the various market categories (€ 000's).

	31 December 2010	31 December 2009
Electronic communications	- 2	407
TTP – certification service providers	- 46	- 46
Numbers	- 791	- 484
Post Universal Service (US)	311	5
Post non-US	1,122	-
	594	- 118

Fines and conditional penalties

The fines and conditional penalties are broken down as follows (€ 000's):

Party	31 December 2010	31 December 2009
Various companies (anonymous)*	11,210	-
Koninklijke KPN N.V.	1,303	583
SD&P	550	-
WorldToStart B.V. / Media Highway International B.V.	300	300
Private individual	300	300
Private individual	285	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
Private individual	75	75
Private individual	66	66
Tele2 Netherlands B.V.	65	120
Private individual	55	55
Private individual	43	43
T-Mobile Netherlands B.V.	30	30
Special T Workwear	25	-
Company / Private individual	22	-
Stichting Yellow Monday, trading under the name of Purple Friday	20	20
Dailycom B.V.	20	-
C3 Europe Ltd	20	-
Speko B.V.	18	18
Private individual	16	16
Private individual	10	10
Pidplates Performances B.V.	10	10
World Teleconnect Telecom B.V.	2	2
Private individual	2	2

Koninklijke TNT Post B.V.	-	6,000
Van Leerdam's Verkoopmaatschappij B.V.	-	27
Private individual	-	12
	15,357	8,884

* This is the total amount in fines that OPTA imposed in 2010 on various companies for various infractions. Due to ongoing legal proceedings, OPTA is not at liberty to publish the names of these companies and the amount of the fines at this stage.

The abovementioned amounts may consist of fines and conditional penalties imposed in prior years. Any objections and/or appeals have a suspensive effect in relation to the collection of fines. When fines or conditional penalties are fully collected and there are no ongoing proceedings, they are remitted to the Ministry of Economic Affairs, Agriculture and Innovation.

The balance of fines and conditional penalties imposed in 2010 is on balance € 6,473,000 higher than at year-end 2009. The balance breaks down as follows:

- + € 12,692,000: total amount fined in 2010;
- - € 6,000,000: total amount of two conditional penalties recalled in 2010 as a result of a judicial ruling;
- - € 219,000: total amount in fines remitted to the Ministry of Economic Affairs, Agriculture and Innovation in 2010, namely Tele 2 Netherlands B.V. (€ 120,000), Koninklijke KPN N.V. (€ 60,000), Van Leerdam's Verkoopmaatschappij B.V. (€ 27,000) and a private individual (€ 12,000).

Pidplates Performances B.V., World Teleconnect Telecom B.V. and two private individuals remitted a portion of their fines (€ 1,000, € 4,000 and € 20,000) as at 31 December 2010.

Salaries and social security contributions

Salaries, pension contributions and social contributions

Salaries, pension contributions and social security contributions are as follows (€ 000's):

	2010	2009
Salaries	7,380	7,089
Pension contributions	982	930
Social contributions	730	702
	9,092	8,721

Average number of employees

The average number of employees in 2010 was 139 (2009: 138).

Remuneration of Commission members

The costs incurred by OPTA for the purpose of remunerating the members of the Commission in 2010 are as follows (€ 000's):

	Salaries	Fixed Expense Allowance	Business Representation Allowance	Pension Contributions	Social Security Contributions	Remuneration Payable in Future	Total
C.A. Fonteijn	132	44	6	27	6	-	215
M.W. de Jong	34	-	2	-	-	-	36
A.P. Aris	34	-	2	-	-	-	36
L.Y. Gonçalves-Ho Kang You	-	-	-	-	-	- 88	- 88
Total	200	44	10	27	6	- 88	199

Mr C.A. Fonteijn is Chairman of the Commission. Mr M.W. de Jong and Ms. A.P. Aris both are non-executive (part-time) members. The remuneration of permanent members is set out in the OPTA Permanent Members (Legal Position) Regulation⁶.

⁶ Government Gazette, 31 July 2009, no. 11535.

The costs incurred by OPTA for the purpose of remunerating the members of the Commission in 2009 are as follows (€ 000's):

	Salaries	Fixed Expense Allowance	Business Representation Allowance	Pension Contributions	Social Security Contributions	Remuneration Payable in 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

WOPT

In accordance with the provisions of Article 6 of the Executives' Pay Financed from Public Funds (Disclosure) Act (WOPT)⁷, the table below summarises which executives earned more than the average ministers' taxable income. The standard amount was exceeded in the case of Mr C.A. Fonteijn, whose legal position was set out by the Minister of Economic Affairs, Agriculture and Innovation in the OPTA Permanent Members (Legal Position) Regulations.

In 2010, the WOPT amounts were as follows (€ 000's):

	Taxable Income	Pension Contributions	Other Amounts Payable in the Future	Severance Payments	Total
C.A. Fonteijn	171	41	-	-	212

In 2009, the WOPT amounts were as follows (€ 000's):

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

⁷ Bulletin of Acts and Decrees 2006, 95.

Income and expenditure of market and other categories

OPTA derives its income from its statutory obligation to charge market parties for its annual supervision, registrations/permits, number assignments and reservations, amendments and urgent transactions. The market parties were charged these fees on the basis of the 2010 OPTA Fee Regulations⁸. The Fee Regulations were subject to amendment on a single occasion in 2010⁹.

OPTA implements an enforcement policy for the purpose of determining whether and to what extent the relevant market parties complied with their statutory obligations. The annual report provides insight into how OPTA performs its regulatory activities and hence also concerning the way in which OPTA obtains certainty related to its receipts from market parties. The actual figures are accounted for in arrears.

Unlike the market categories, the costs involved in objections, appeals and implementation assessments are settled with the Ministry of Economic Affairs on annual basis on the basis of calculations in arrears.

Income and expenditure by market category are broken down as follows (€ 000's):

	Actual 2010	Budget 2010	Actual 2009
INCOME			
<u>Income from market categories:</u>			
Electronic communications	10,864	10,796	11,555
TTP – certification service providers incl. Ministry of Economic Affairs' contribution	35	72	25
Numbers	2,021	2,364	1,645
Post concession	-	-	102
Post Universal Service (US)	799	799	418
Post non-US	1,451	1,441	428
Subtotal market categories	15,170	15,472	14,173
<u>Other income:</u>			
Objections and appeals	1,938	2,779	2,254
Implementation assessments	218	114	36
Other income	-	-	18
Subtotal other income	2,156	2,893	2,308

⁸ Government Gazette, 22 December 2009, no. 19826.

⁹ Government Gazette, 18 June 2010, no. 9342.

Extraordinary income			435
TOTAL INCOME	17,326	18,365	16,916
EXPENDITURE			
<u>Market categories liabilities:</u>			
Electronic communications	11,264	10,414	11,044
TTP – certification service providers	35	72	25
Numbers	2,320	2,705	2,851
Post concession	-	-	102
Post Universal Service (US)	500	799	412
Post non-US	357	1,441	428
Subtotal market categories	14,476	15,431	14,862
<u>Other expenditure:</u>			
Objections and appeals	1,938	2,779	2,254
Implementation assessments	218	114	36
Subtotal other expenditure	2,156	2,893	2,308
TOTAL EXPENDITURE	16,632	18,324	17,170
OPERATING RESULT	694	41	- 254

Other information

Auditor's report: See page 38 of the financial statements for the auditor's report.

Proposal for the appropriation of the result

The Commission has decided to appropriate the positive result for 2010 in the amount of € 712,000 entirely to the item 'Payable to the market'. This decision has already been accounted for in the financial statements.

6. Key Figures

Enforcement

Preventive actions initiated as part of enforcement disputes (obligation to tolerate)

Questions answered by telephone/e-mail	40
Successful mediation to prevent/withdraw dispute	4
Mediation (resulting in the parties restarting negotiations)	4

Enforcement in support of end-user interests and promoting competition

Number of fining decisions in 2010	15
Percentage of founded objections and appeals against fining decisions	27%
Number of conditional penalties	9
Percentage of (partially) founded objections and appeals against conditional penalties*	50%

* A total of four objections and appeals against conditional penalties were settled in 2010. Two of these were ruled as founded by the Courts. OPTA has appealed these rulings.

Preventive actions initiated in support of enforcement of electronic communications/consumer protection

Advance notification of preventive conditional penalty concerning registration with the Telecommunications Disputes Committee	1
Advance notification of conditional penalty concerning registration with the Telecommunications Disputes Committee	1
Standard setting letter concerning registration with the Telecommunications Disputes Committee	2
Standard setting e-mail concerning maximum period of notice, termination and tacit extension of agreements (Article 7.2a Telecommunications Act)	2
Standard setting contact (letter/e-mail/telephone call/discussion) concerning right of termination in the event of a contract change (Article 7.2 Telecommunications Act)	28
Standard setting contact (letter/e-mail/telephone call/discussion) concerning rate transparency	164
Request for enforcement of right of termination in the event of a contract change (Article 7.2 Telecommunications Act)	4
Publication of assessment framework concerning right of termination in the event of a contract change (Article 7.2 Telecommunications Act)	1
Warning concerning right of termination in the event of a contract change (Article 7.2 Telecommunications Act)	1
Request for information concerning unsolicited telemarketing	15

Warning concerning unsolicited telemarketing	20
Warnings, spam and telemarketing rules (Article 11.7 Telecommunications Act)	69
Fining report, spam and telemarketing rules (Article 11.7 Telecommunications Act)	6

Disputes

Number of disputes

Received	8
In progress	7
Completed in 2010	20

Disputes by category

Broadcasting	7
Access to Services	5
Post	0
Mobile	1
Cable Relocations (tolerated) (through means of Mediation)	4
Interoperability	2
Total	19

One dispute case is in progress in relation to access to services.

Objections and Appeals

Received in 2010

Objections	76
Applications for review	14
Appeals	77
Provisional relief	20

Status as at 31 December 2010 (Current Work)

Current objections	38
Current applications for review	17
Current appeals	113
Current provisional relief	5

Completed in 2010

Objections	64
Applications for review	8
Appeals	62
Provisional relief	18

Outcome of resolved objections

	Number	%
Withdrawn	22	34
Founded	6	9
Unfounded	19	30
Inadmissible	12	19
Partly founded, partly unfounded	0	0
Partly unfounded, partly inadmissible	0	0
Not actioned	0	0
Founded on the basis of new information	2	3
Apparently inadmissible	0	0
Other	3	5
Total	64	100

Outcome of resolved applications for review

	Number	%
Withdrawn	0	0
Founded	7	88
Unfounded	0	0
Inadmissible	0	0
Partly founded, partly unfounded	1	12
Other	0	0
Total	8	100

Outcome of resolved appeals

	Number	%
Withdrawn	27	44
Founded	26	42
Unfounded	5	8
Inadmissible	4	6

Other	0	0
Total	62	100

Outcome of resolved provisional relief

	Number	%
Request granted	4	22
Request rejected	7	39
Withdrawn	6	33
Other	1	6
Total	18	100

Market Analyses

Market analyses completed in 2010

	Number
Market analysis decisions (draft):	
- Pricing regulation decision concerning unbundled access (FttO)	
- Market analysis decision concerning fixed and mobile terminating access (telephony)	
- Rejection of reintroduction of retail regulation concerning fixed telephony	
- Rejection of request to adjust market analysis decision concerning wholesale broadband access	
- Market analysis decision concerning unbundled access at the wholesale level	
Subtotal	5
Implementation decisions (decision orders):	
- Decision order concerning reference proposal for wholesale broadband access	
- Decision order concerning KPN's reference proposal for wholesale leased lines	
- Decision order concerning reference proposal for unbundled access	
Subtotal	3
Total	8

Appeals against analyses

	Number
Received	1
In progress	18
Completed	43

Number of market analyses

Number of market analyses	8
Percentage of founded appeals against market analyses	49%

Numbers and registrations

Registration of market parties

Category	Status as at 01-01-2010	New Registrations	Termination of Registration	Status as at 31-12-2010
Provider of a public electronic communications network	414	60	47	427
Provider of a public electronic communications service	443	99	58	484
Provider of related facilities	10	1	1	10
Provider of qualified certificates	6	0	0	6

Number of registrations (including terminations)	266
Percentage of registration within established term	99.2%
Number of number-related decisions	5,254
Percentage of number-related decisions within established term	99.9%

Registration of postal providers

Category	Status as at 01-01-2010	New Registrations	Termination of Registration	Status as at 31-12-2010
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Provider of a postal delivery service	69	65	0	134
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Number of providers per revenue category

	2007	2008	2009	2010
Category 1: Net revenue > € 20 million	32	30	23	25
Category 2: € 2 million ≤ net revenue ≤ € 20 million	107	121	144	100
Category 3: Net revenue < € 2 million	291	314	299	388
Total	430	465	466	513

Number of assigned and withdrawn numbers

	Assigned	Withdrawn
0800	1,205	1,152
0900	1,593	2,291
0906	474	1,258
0909	583	679
Business numbers	383,300	63,000
Other numbers	4,071,118	646,089
Total	4,458,273	714,469

Number of number-related decisions

Information numbers	3,346
Business numbers	1,417
Other numbers	169
Change of name	322
Total	5,254

Number of number-related decisions broken down by decision type

Assigned	2,731
Withdrawn	1,630
Request withdrawn	84
Rejected	213
Change of name	321
Decommissioned	275
Total	5,254

Number lotteries and urgent applications

Number of lotteries	0
Number of urgent applications	70

Scarcity of relevant number series

Number Series	% Available Numbers
Short 0900 numbers	53%
Short 0800/0906/0909 numbers	86%
Long 0800/0900/0906/0909 numbers	99%
Mobile numbers	16%
Carrier selection (4-digit) numbers	86%
Business numbers	80%
18xy – subscriber information service numbers	59%

Preventive actions initiated for number enforcement

Warning concerning ability to dial numbers	2
112 obligations	4
Information related to number portability	6
Warnings related to number portability	3
Information concerning erroneous use of numbers	21
Warnings concerning erroneous use of numbers	1
Warning concerning subscriber information services	19
Advance notification of conditional penalty concerning subscriber information services	1
Information concerning obligation to identify maximum rate	4,6 12
Verification of identification of maximum rate	416
Warning concerning identification of maximum rate	17
Verification of obligation to register with Information Service Providers Disputes Committee	206
Warning concerning obligation to register with Information Service Providers Disputes Committee	48
Information concerning obligation to register with Information Service Providers Disputes Committee	372
Various actions concerning the abuse of numbers	89

Preventive actions initiated for enforcement of registration and electronic communications and postal revenues

Advance notification of conditional penalty concerning registration	1
Notice in the context of supervision of requirement to report electronic activities	50
Advance notification of conditional penalty concerning requirement to provide statement of electronic communications revenues	32
Warning concerning requirement to provide statement of revenues in support of registration of electronic communications	160
Companies notified in relation to supervision of requirement to report electronic communications	6
Advance notification of conditional penalty concerning postal registration and revenues	2

Budget

Costs by area of responsibility

Area of Responsibility	2010 Budget Estimate (€ 000's)	2010 Actual (€ 000's)
Promoting competition in communication markets	3,916	2,832
End-user interests related to communication markets	2,441	3,041
Market analyses	1,888	3,526
Monitoring	267	239
End-user interests related to numbers	1,111	716
Issue of numbers	1,287	1,362
Post	1,969	697
TTP – certification service providers	63	31
Policy interactions	1,449	1,085
Information	1,041	947
Objections and appeals	2,779	1,938
Implementation assessments	114	218
Total	18,324	16,632

Personnel

Dismissals

Dismissals	1
Total net severance pay	€ 0.00

Personnel costs

	2009 (€ 000's)	2010 (€ 000's)
Total salaries (incl. remittances, excl. allowances and Commission)	8,317	8,702
Average wage	48	50
Other personnel costs	254	279

Workforce

Date	Workforce (FTEs)	Staff		
		Men	Women	Total
1 January 2010	143	66	75	141 ¹⁰
31 December 2010	143	63	74	137
Average 2010	143	64	75	139

Age structure as at 31 December 2010

Age Group	Number of Staff
25 years and younger	3
25 to 34 years	34
35 to 44 years	58
45 to 54 years	28
55 years and older	14

Absenteeism rate

OPTA's absenteeism rate was 3.0% in 2010. The absenteeism rate in 2009 was 3.1%. For more information about absenteeism see the 'OPTA in Operation' section.

¹⁰ The number of staff at 31 December 2010 was 139. Three employees were hired on 1 January 2010 and one employee departed. In total OPTA had 141 staff in its employ on 1 January 2011.

Classification of staff as at 31 December 2010

Job Grade 3-16	Number of Staff
3	0
4	3
5	4
6	5
7	15
8	12
9	8
10	7
11	27
12	21
13	19
14	9
15	1
16	3

Ratio of direct to indirect expenditure

The ratio of direct to indirect expenditure in 2010 was 74:26. This represents an improvement over 2009 (72:28).

Complaints about OPTA

One complaint was submitted to the National Ombudsman about OPTA in 2010 pursuant to the provisions of Part 9 of the General Administrative Law Act (Awb). The complaint concerned a formulation about 0900 numbers on OPTA's website. The National Ombudsman rejected this complaint.

ConsuWijzer

Complaints received by ConsuWijzer broken down by category

Type of Complaint	Number
Telemarketing	12,385
Mobile Telephony	6,457
SMS Services	3,329
Fixed Telephony	3,212
Internet	1,676
Triple/Dual Play	1,540
Television	1,319
Post	1,124
Information Numbers	386
Total	31,428

- ConsuWijzer's key figures no longer include the Spam category. These complaints are limited in number in comparison to the number of spam-related complaints received by spamklacht.nl and are consequently disproportionate (approx 1,162 via ConsuWijzer compared to more than 25,000 via Spamklacht). Furthermore, ConsuWijzer advises consumers to submit their spam complaints via spamklacht.nl. This could result in duplication.
- The category Mobile Telephony in 2009 still included complaints about SMS services. SMS Services became a separate category in 2010. The Mobile Telephony category also includes complaints related to mobile internet.
- The category Triple/Dual Play was added this year to the categories Fixed Telephony, Internet and Television. This category includes complaints about combined packages. The 2009 'Broadcasting' category was renamed 'Television' effective from 2010.

Spamklacht (spam complaints)

Over the period 1 January 2010 to 31 December 2010 inclusive, 27,251 complaints were submitted about unsolicited electronic messages via spamklacht.nl. The table below displays the number of complaints by category.

	2004	2005	2006	2007	2008	2009	2010
Other	195	152	189	131	208	307	432
E-mail	3,969	4,654	9,911	16,477	9,369	21,580	22,630
SMS	319	436	600	1,079	2,260	1,986	1,400
Fax	154	260	319	287	405	812	1,742
Telephone	39	299	51	57	72	148	1,047
Total	4,676	5,801	11,070	18,031	12,314	24,833	27,251

7. OPTA in Operation

In 2010, OPTA was financed for over 85% from the fees paid by market players for OPTA's supervision. The remaining portion was financed from government funds. Due to a continuous focus on costs, OPTA in recent years has managed to carry out a larger number of tasks with a declining budget. The efficiency gains are evident from the improved relationship between direct and indirect costs.

Cost reductions

In 2010, for the third year in a row, OPTA performed more tasks with less money. This is why OPTA will be able to meet the government-wide target set in 2006 by the then cabinet. OPTA achieved a € 2.4 million savings and an almost 25 FTE reduction compared to 2007. OPTA achieved further cost reductions in 2010. Total costs in 2010 amounted to € 16.6 million compared to € 17.2 million in 2009. These cost reductions have forced OPTA to make choices. OPTA, in consultation with the Ministry of Economic Affairs, Agriculture and Innovation, in 2010 identified the tasks it will be executing in 2011. Over a period of four years OPTA achieved a 20% reduction in costs. Further cost reductions will lead to limitations in the execution of tasks and entail a risk of reduced quality.

Personnel and Organisation

Since 2005 OPTA has pursued a conservative policy in terms of filling vacancies. OPTA conducts a critical review whenever a vacancy arises to determine the need for this position. In addition, OPTA has created increased management efficiency by implementing a new organisation structure. The number of managers in recent years was reduced from seventeen to nine. OPTA also simplified and streamlined its organisational processes and procedures. This was a contributing factor in the organisation's ability to achieve the targeted cost reductions.

Integrity

OPTA attaches a great deal of value to the integrity of its staff. OPTA's staff has access to confidential business documents and data. They are expected to treat this information ethically, for example, during contacts with market parties. New employees therefore take an oath or make a solemn affirmation before the Chairman of the Commission. In addition, a certificate of good conduct is always requested. Ancillary activities of OPTA staff are reviewed and recorded. In addition, managers meet at least once a year with each of their employees to review the integrity aspect. Furthermore, OPTA has two staff members in the role of integrity advisors. These advisors counsel staff and managers to enable them to continue to act with integrity in situations involving a dilemma. No integrity-related incidents cropped up in 2010.

Sustainability: 90% of target achieved

OPTA in 2010 achieved its sustainability objective. Due to effective measures in areas such as purchasing, catering and green energy, OPTA has since reached 90% of its potential sustainability target.

For example, OPTA has largely digitised its archives, resulting in paper savings as well as savings in storage space. In addition, OPTA has sharply reduced its power consumption. Furthermore, OPTA participated in tendering projects with the Ministry of Economic Affairs that included sustainability criteria. OPTA encourages its staff to act in sustainable ways, for example, by drawing their attention to paper consumption through the use of sustainable coffee cups and wastepaper bins. Staff is also encouraged to make use of environmentally friendly commuting options. In 2011, OPTA will review which additional measures can be implemented to even further increase sustainability.

Reduction in absenteeism

OPTA's absenteeism rate in 2010 was 3.0%. As such the organisation achieved its objective of reducing absenteeism to below 3.5%. OPTA actively focused attention on preventive absenteeism, aimed at reducing absenteeism and its frequency as much as possible. OPTA's policy consists of a series of preventive and corrective measures and focuses on both long term and short term absenteeism.

The Works Council

OPTA's Works Council consists of seven employees elected in April 2010 for a two-year term, and an administrative secretary. OPTA held discussions on the following subjects in 2010:

- The evaluation of the 2009 reorganisation;
- Accommodation-related matters;
- Approach to absenteeism reduction measures;
- Sustainability in business operations; and
- Health policy and the abolishment of the smoking area, which had the consent of the Works Council.

The Works Council made use of staff consultations for the performance assessment procedure and the evaluation of the reorganisation.

Recruitment and Selection

In 2010, OPTA carried out a series of activities focused on recruiting future employees. The activities were designed to demonstrate that OPTA is an attractive employer for employees with a legal, economics or technical background. In addition, OPTA staff gave guest lectures at universities within the Netherlands and abroad. Work on improving its website www.werkenbijopta.nl was completed in 2010. Elements of the recruitment and selection process are automatically processed via the website. In addition to attracting new colleagues, retaining existing employees is also of key importance. In the first instance, whenever there is a vacancy, OPTA provides the maximum possible opportunities to internal candidates as a means of promoting advancement within the organisation. In 2010, eight employees were transferred to another position. In total, twenty vacancies were staffed.

Civil Service Data Security Regulations

In 2010, OPTA developed an improved risk matrix as an instrument designed to raise and keep information security at a demonstrably high level. OPTA's risk matrix now contains a clear overview of all measures implemented in the area of information security in relation to the risks identified for OPTA. The improvement was primarily obtained by simplifying the matrix. As a result it is possible to reduce personnel and audit costs. OPTA complies with the Civil Service Data Security Regulations (VIR). OPTA's VIR compliance is audited by BDO Audit & Assurance B.V. throughout the year on the basis of the risk matrix. On 17 February 2011, BDO Audit & Assurance B.V. provided OPTA with a VIR certificate for 2010.

8. Collaboration and Evaluation

NATIONAL COLLABORATION AND CONSULTING

OPTA has a number of collaborative partners, such as the Infilter Foundation, the Dutch Media Authority, the Radiocommunications Agency (AT), the National Police Services Agency (KLPD), the Consumer Authority (CA), the Netherlands Competition Authority (NMa) and the Ministry of Economic Affairs, Agriculture and Innovation. OPTA regularly and intensively seeks coordination with these organisations and provides or obtains advice where necessary. OPTA has concluded a collaboration protocol with a number of regulatory authorities. The protocols specify which regulatory authority takes action in the event of overlapping authorities. This prevents duplication of actions and reduces administrative charges to the business community. Several projects carried out in 2010 include:

- OPTA was commissioned by the Ministry of Economic Affairs to assess whether the access obligation provision of the Postal Act 2009¹¹ promotes competition on the postal market. OPTA collaborated with the NMa in carrying out this assessment.
- OPTA issued a recommendation to the NMa concerning the planned takeover of BBned by Tele2.
- The Ca and OPTA collaborated in combating the unexpectedly high telephone bills due to misleading SMS messages. The CA and OPTA conducted an investigation into SMS providers who sent expensive SMS messages to consumers without permission. In addition, OPTA together with the CA issued a recommendation to the Ministry of Economic Affairs concerning the effectiveness of new rules designed to counteract misleading SMS practices; and
- OPTA participated in the Taurus Botnet Monitoring project. This project involved collaboration with the KLPD. The project's objective was disabling the largest botnets. The best-known success achieved by this project is the termination of the Bredolab botnet.

EUROPEAN COLLABORATION

OPTA chairs BEREC

During the founding meeting of the Body of European Regulators for Electronic Communications (BEREC) in January 2010, OPTA Chairman Chris Fonteijn was elected Vice-chairman for 2010 and Chairman for 2011. One of BEREC's key tasks is to provide solicited and unsolicited advice to the EC about electronic telecommunication issues. The European Parliament and the EU Council can also ask BEREC for advice. OPTA with its partners in BEREC provided advice on the following topics in 2010:

- **Next Generation Access networks (NGA): regulations at the national level.** BEREC advised the EC concerning the regulation of NGAs. NGAs are the next generation broadband networks. In

¹¹ <<http://www.opta.nl/nl/actueel/alle-publicaties/publicatie/?id=3162>>.

many countries this consists of an upgrade from copper networks to fibre optic networks. BEREC shares the EC's objective of providing market players with certainty concerning future regulations. BEREC in this regard asked for flexibility for national regulatory bodies in order to be able to anticipate national conditions. To achieve this flexibility requires that the European directives are not too detailed for the national regulator. The Commission incorporated this advice into the preparation of the final recommendation concerning NGA. This recommendation was published in September 2010.

- **Broadband as a universal service (US).** In 2010, the EC held consultations concerning the scope of the US obligation. A key question in the BEREC context was whether broadband services should become part of this US obligation. In response to the consultation, BEREC noted that it considers it important for broadband to be rolled out throughout Europe. Whether a US obligation is necessary to effect this depends on the competitive situation in a country. For this reason, BEREC believes that member states should be able to decide for themselves whether broadband services should be recognised as a US obligation.
- **Net neutrality.** The EC organised a consultation on the theme net neutrality in 2010. Net neutrality is concerned with the issue to which degree providers of internet access should be permitted to handle different types of traffic (for example, video, e-mail, telephony or traffic to and from websites) in different ways. ISPs have the ability of giving priority to certain services through means of network management. However, they can also throttle and even block certain services. Pursuant to new European directives, providers must inform their customers of how they manage their network and regulatory bodies can impose minimum quality requirements. In many countries these directives still remain to be implemented in legislation. BEREC expects that transparency measures combined with effective competition in principle are sufficient to prevent undesirable infringements on net neutrality. In part because the number of noteworthy infringements on the principles of net neutrality is limited, BEREC at this point in time does not consider it necessary to implement additional regulations in this domain.
- **Maximum roaming rates for Europe.** The current European Roaming Regulation will be evaluated in 2011. Roaming concerns the automatic switchover of a mobile telephone to the network of a foreign provider, as a result of which consumers can make and receive calls in other countries as well. In 2010, the EC established maximum rates for the roaming rates that network operators charge each other. BEREC in 2010 investigated whether this approach works well or whether there are alternatives. Based on its investigation, BEREC concluded that there are no alternatives that are better suited for exacting a favourable price for consumers.
- **Settlement of international terminating access.** OPTA was co-chair of the BEREC Workgroup responsible for investigating how telephony companies bill each other for the costs of international terminating access. BEREC published the results of this investigation. In this document, BEREC concludes that over the long term, the 'bill and keep' methodology is more

promising that the current CPNP (Calling Party Network Pays) methodology. With the CPNP methodology, providers bill each other for the use of one another's network, whereby the provider used to make the call, pays the invoice. With the 'bill and keep' methodology, the providers do not invoice one another for the costs of international terminating access.

OPTA member of European Postal Market cooperative arrangement

In 2010, OPTA became a member of the European Regulators Group for Postal Services (ERGP) organisation. The ERGP was established by the EC on 10 August 2010 and advises and supports the Commission in matters related to the European postal market and the application of European postal regulations.

ERGP work programme

OPTA within the ERGP shapes the European postal directives through collaboration among the national regulators and the EC. During the first meeting on 1 December 2010, a long term work programme was developed. The work programme addresses things such as the allocation of common costs by the US provider. The calculation of the net US costs is also a subject of discussion in the ERGP, with special attention to the effect of a VAT exemption. In addition, OPTA collaborates on a customer satisfaction survey concerning the quality of postal services and on monitoring (border transcending) market developments, among other things.

Netherlands telecommunications supervision best in Europe

In 2010 the European Competitive Telecommunications Association (ECTA) announced that it selected the Netherlands telecom supervision as the best in Europe in 2009. ECTA is the European sector association of competing telecommunication companies. Each year it publishes a Regulatory Scorecard that compares telecom supervision in all EU countries. The Netherlands received its high rating due to OPTA's policy designed to encourage competition on telecom markets, particularly in relation to fibre optic networks. After placing second in 2007 and 2008, the Netherlands in 2009 was judged as the best among the 22 European countries.

Supervision in the Dutch Caribbean

The Netherlands Antilles was dissolved on 10 October 2010 and the islands Bonaire, St- Eustatius and Saba (hereinafter: Dutch Caribbean) became special municipalities of the Netherlands. The Ministry of Economic Affairs became responsible for postal and telecommunication policy in the Dutch Caribbean effective on 10 October 2010. The plan called for the supervision of postal services and telecommunications to be assigned to OPTA and the Radiocommunications Agency (AT) effective 10 October 2010. The regulations required to assign these tasks and authorities to OPTA were not completed on time, however. OPTA, in consultation with the Ministry of Economic Affairs, therefore

decided to ask AT to temporarily provide supervision of postal services and telecommunications in the Dutch Caribbean.

OPTA EVALUATION

OPTA's effectiveness and efficiency was evaluated in 2009. This is a statutory obligation that recurs every four years. OPTA generally improved in terms of effectiveness as well as efficiency in comparison to the 2005 evaluation. Nevertheless, a number of recommendations were made that should allow OPTA to make even further improvements. In 2010, OPTA made an effort to tackle the five main areas. Specifically, this includes the following recommendations:

- **Intensification of efforts to involve market players in the decision-making process.** In 2010, OPTA in this context devoted even greater attention to explicitly involving market players in the market analysis decision-making process. Various forms of consultation were held, at the administrative, as well as substantive level. Furthermore, OPTA is investing even more energy in providing feedback to market players about how their contributions are used.
- **Reduction in administrative burden imposed on market players.** OPTA does not want to unnecessarily burden market players and is continuously looking for the most effective practices. In this context OPTA, for example, significantly simplified the information number application procedure in 2010. See page 14. In addition, number holders since 2010 can make use of direct debit as a means of reducing their administrative burden.
- **Actively maintaining discussions about regulatory strategies, high trust, effectiveness and practical implementation for market players.** In 2010, OPTA closely involved its market players in its supervision. In the field of internet security, OPTA in collaboration with ISPs and hosting providers made significant progress in counteracting the spread of malware. OPTA used a strategy focused on having these parties assume their own responsibility. See page 26.
- **Keep focused on frequency of absenteeism.** OPTA's absenteeism rate in 2010 was 3.0%. As such the organisation achieved its objective of reducing absenteeism to below 3.5%. OPTA actively focuses attention on preventive absenteeism, aimed at reducing absenteeism and its frequency as much as possible. A proposal for additional measures was submitted to the Works Council.
- **Cost of accommodations.** In the context of the planned merger of the OPTA with the NMa and the CA, the recommendations concerning accommodation and ICT will become areas of focus.

9. 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. In 2011, he is Chairman of BEREC.

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

Mark de Jong has been a non-executive member of the Commission and its deputy chairman since 1 February 2006. He completed his doctorate 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.

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.

10. 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 (FtH) 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.
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.
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.
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.
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.
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).
Transparency obligation	an obligation to provide all of the information which customers require in order to obtain access.

Telecommunications Act	The Dutch <i>Telecommunicatiewet</i> .
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 [<i>Postwet</i>]. 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.

Colophon

Coordination, copy and editing

OPTA

OPTA

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About spam: www.spamklacht.nl

For vacancies: www.werkenbijopta.nl

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