

REQUESTED INFORMATION BY EC TO OPTA WITH REGARDS TO

Case NL/2005/0246: Wholesale Broadcasting transmission services, to deliver broadcast content to end users.

Case NL/2005/0247: Retail market for the supply of free-to-air radio and television packages via cable transmission.

In the following OPTA presents the EC with the requested information. Each time, OPTA will start by repeating the questions asked, before presenting the reaction of OPTA.

1 Retail market

Question 1.1:

Having taken note of section 6.5.7 in the notification and paragraphs 6 to 13 of Annex 1, could you please further explain the Free TV - Pay TV distinction. In particular, what is the actual difference between the two services, if the customer must pay a subscription for both and both are provided by a package provider, not individual channels? Could you please elaborate on why you define a separate pay TV market if pay TV services cannot be purchased without the free TV package?

Answer OPTA:

The difference between the two services Free-TV and Pay-TV can be characterized in two ways. Firstly, from an end-user (retail) perspective and secondly from the program suppliers (wholesale) perspective.

Retail perspective

All cable operators in the Netherlands offer end-users a 'standard' package that gets automatically activated when subscribing to the cable network. If one considers the 'standard' program package governed by the Media Act that is supplied by cable companies, the package usually contains between 30 to 40 television channels and at least 25 radio channels. The (monthly) tariff that an end-user has to pay for this package is based upon the transmission costs mainly (estimate: in the range of 75% to 85%) and to a very much lesser extent upon the 'content' package. Therefore this package is referred to as Free-TV.

When looking at the other (premium) packages that are offered via cable networks it becomes clear that an additional tariff has to be paid on top of the tariff for the 'standard' package. This package is in no way an alternative for the 'standard' package as it offers premium content only (movies, soccer etc.). An end-user who is interested in purchasing a Pay-tv package needs to pay an additional monthly tariff.

Therefore, in the Netherlands the Free-TV package is considered to be the package that an end-user (automatically) gets when subscribing to the network. This is a consequence of the characteristics of cable networks, where radio and tv signals are broadcast to all end-users. For Pay-TV services to be purchased without the Free-TV package a cable operator would have to filter out the Free-TV signals to those customers that make use of Pay-TV. In this respect it might be useful to add that the Media Act in the Netherlands requires cable operators to provide all end-users with (at least) a basic Free-TV package. Also, OPTA is of the opinion that the fact that Pay-TV services cannot be purchased without

the Free-TV package does not necessarily mean that these two services belong to the same market. This can be illustrated via a substitution analysis. If the price for the Free-TV package would be increased by 5% to 10% an end-user would not be able to switch to a Pay-TV package only as the Free-TV package should always be purchased. The other way round, if the price of the Pay-TV package would be increased by 5% to 10% the end-user would not switch to Free-TV because that is no alternative as the end-user apparently was willing to pay an additional tariff for the Pay-TV package that contains 'premium' content which is not offered by the Free-TV package. Summarizing it can be said that the dynamic for Pay-TV services is somewhat different because an end user pays for the cable connection mainly (and a very small fee for the package, the *content*) while the revenues for Pay-TV services are mainly based upon *content*.

Wholesale perspective

The difference can also be illustrated from a wholesale perspective. The program suppliers that are part of the Free-TV package have a business model that is based upon advertising revenues¹ whereas the Pay-TV packages or channels have a business model that depends heavily upon direct revenues from end-user subscriptions.

This distinction between these two markets is in line with former decisions by the Dutch Competition Authority (NMa) (see also *UPC/Canal+*, 28 February 2005, case 4490, paragraph 23 www.nmanet.nl and *UPC/Primacom* case 2425 from 4 juli 2001, paragraph 101, 103) and by the following decisions: case IV/M.993 – *Bertelsmann/Kirch/Premiere*, paragraph 18 and *Newscorp/Telepiu* 2 april 2003, COMP/M.2876.

Question 1.2:

In order to get a clearer picture of the Dutch broadcasting market, we would appreciate if you could provide us with the following information:

Question

- a) the percentage of all subscribers of the respective (SMP) cable operators being subscribers to pay packages.

Answer OPTA:

See the table below

	Total Subscribers	Pay TV cable		Canal+²	
UPC	2.285.577	88.765	3,9%	82.447	3,6%
Essent³	1.672.276	28.429	1,7%	60.323	3,6%
Casema⁴	1.343.958	22.847	1,7%	48.480	3,6%
Total	5.301.811	140.041	2,6%	191.250	3,6%

¹ With the exception of a few thematic channels that have a business model that is based on advertising revenues and a (small) kick-back-fee per end-user.

² The Canal+ numbers are an estimate. Canal+ reports that it had 225,000 subscribers per 31 July 2004 (www.canalplus.nl). UPC, Essent and Casema have 85% market share, therefore we estimate that in total there are 191,250 Canal+ subscribers on their networks, divided according to their size.

³ The Essent and Casema figures are an estimate. The Dialogic Quick scan (p.22) reports that in 2004 on average 1,7% of cable subscribers also subscribed to digital TV. In 2004 this meant Pay TV packages.

⁴ The Essent and Casema figures are an estimate. The Dialogic Quick scan (p.22) reports that in 2004 on average 1,7% of cable subscribers also subscribed to digital TV. In 2004 this meant Pay TV packages.

Question:

- b) The percentage of households having two or more television sets with a cable connection for both TV sets.

Answer OPTA:

There are no studies available providing the exact percentage. However, the percentage can be derived taking into account the following. 48% of the households have two or more television sets (source: www.spot.nl, 'televisierapport 2004'). As the majority of the households (> 90%) in The Netherlands watch television via the cable *and* there are no additional costs to watch (analogue) television on the 2nd (and 3rd) TV via the cable it is to be expected that about 45% of the households have a cable connection for two or more television sets.

Question:

- c) The percentage and volume of households/customers having access to cable, satellite, DVB-T and IP TV and a combination of any of these platforms in the last four years.

Answer OPTA:

Platform	2001	2002	2003	2004
Cable (analog & digital)	~ 6.7 (95%)	~ 6.7M (95%)	~ 6.7M (95%)	~ 6.7M (95%)
Digital Terrestrial TV (DTT) ⁵	negligible	negligible	~ 1.3M (19%)	~ 2.8M (40%)
Digital satellite	~100%	~100%	~100%	~100%
IPTV via ADSL	negligible	negligible	negligible	negligible

Table: Availability of distribution platforms as a percentage of households, source Dialogic

Note: the numbers represent the potential and not the actual number of end-users

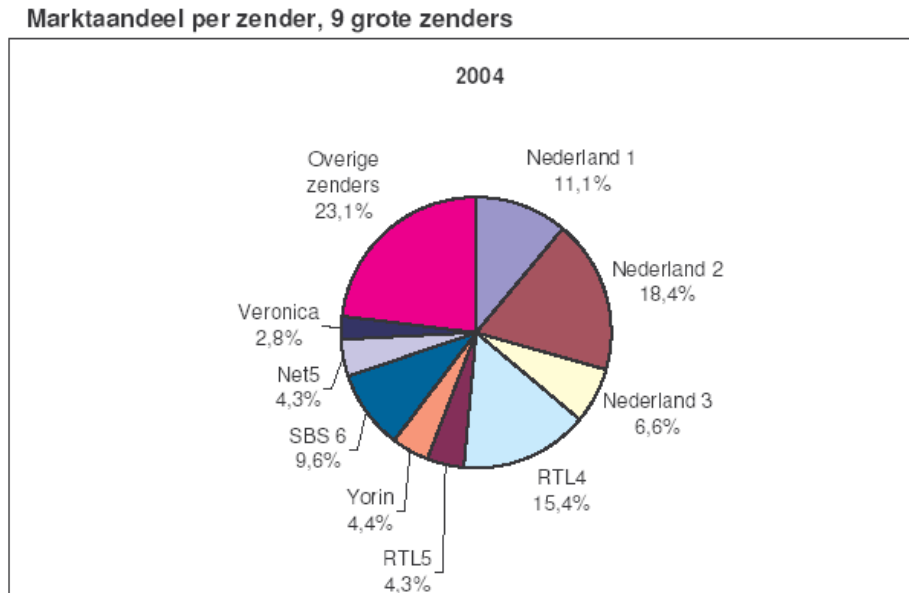
⁵ Source: <http://www.televisiedigitaal.nl/aanbieders/digitennecar.php>

Question:

- d) The retail market share of the top 10 channels, and are these top 10 channels available for DVB-T services (§167)?

Answer OPTA:

See pie chart below: all these channels are available via DVB-T as well (source:



Question:

- e) The percentage of households that is to be affected by the lower quality of DVB-T (§168)?

Answer OPTA:

Without going into detail about the lay-out of network planning and the relation to roads, tramlines, mopeds etcetera, that might disturb the signal, it can be said that virtually all households in the Netherlands (perhaps apart from those on campsites) run the risk of some interference as almost always one of the identified problems might occur. This can also be concluded from the low expectation of success of DVB-T in the Netherlands. Whether the quality will improve in the coming years is uncertain.

Dialogic adds the following: It is likely that problems with regard to receiving the signal will particularly occur in situations with unfavourable propagation characteristics, for instance indoor use in reinforce steel buildings (e.g. many apartment flats). A more dense transmission network and network optimizing may help to solve these problems (some interviewees have noted that average DVB reception quality in the UK is better than it is here) but this can be a costly and time-consuming process.

Question:

- f) The percentage of households concerned by problems of setting up a satellite dish for the reasons you mention (§181 and section 5.5 in Dialogic report)?

Answer OPTA:

Often architects, building corporations and landlords forbid the use of satellite dishes. There are no detailed numbers available, but as 30% to 40% of the Dutch live in apartment complexes the affected number seems to be significant.

Question:

- g) The cost of connecting a second TV set to a cable connection for the purpose of providing (1) analogue transmission and content services, (2) digital transmission and content services compared to the cost of connecting it to a satellite.

Answer OPTA:

- (1) There are no costs of connecting a second TV set to a cable connection for the provision of analogue services.
- (2) The costs of connecting a second cable connection to digital transmission are the costs of a decoder only. Most of the time the second (and third) decoder will be cheaper as the advanced decoder is only to be used in the living room. A much more simplified decoder (costs approximately € 50), or no decoder at all (as analogue signals will be available) for the second (and third) TV will be sufficient.
- (3) The cost of connecting a TV set to a satellite is approximately €300, including installation of the dish. The cost of connecting a second TV to the satellite dish is substantially higher (varying from €150 to €700) then connecting a second TV to digital transmission via cable. The tariffs for decoders suitable for digital television via cable currently tend to decrease significantly the moment and are in some instances free of charge.

Question:

- h) The percentage of retail cable TV customers who currently have a broadband connection.

Answer OPTA:

From OPTA's market analysis of the broadcast markets it appears that currently 40% of the broadband connections in The Netherlands are cable connections whereas 60% is delivered over ADSL-networks.

Question:

- i) The geographic distribution of the 60% of households where ADSL2+ will be available in the next two years (§134).

Answer OPTA:

ADSL2+ is being made available by installing the appropriate equipment (DSLAM) in the local exchanges. These local exchanges are the locations where the individual twisted pair subscriber lines come together. To cope with demographical differences within areas of the country, the average size

of these local exchanges varies considerably. As a result, the distance between the subscriber and the exchange also varies considerably. (In addition to that, there are large international differences in operator's strategies when it comes to the size of local exchanges). Currently, KPN has approximately 1350 local exchanges. Their size varies from less than 500 subscribers to more than 10,000 subscribers.

The actual distribution of the availability (and non-availability) of ADSL2+ depends on two aspects:

1. The local exchange upgrade strategy of the operator. For various reasons (logistics, needed manpower, equipment procuring, financial reasons) such an upgrading takes place in a phased manner. The order in which exchanges are upgraded is subject to a number of strategic choices (the size of the exchange, expectation of paying consumers in that area, income, presence of competing service providers). The degree to which exchanges will be upgraded is a strategic choice too, though many observers now expect that KPN will eventually (in 2 or 3 years time) upgrade all its local exchanges.
2. Technical limitation, which determine whether ADSL-2 (or better: whether the high ADSL-2 speeds) can be offered to an individual subscriber. Is this distance 300 meter or less, more than 20 Mbps can be achieved. At around 2 km this speed drops to 10 Mbps. At 5 km, for instance, no more than 3 Mbps can be achieved. Apart from the distance, the maximum data speed may be limited by the quality of the line (e.g. number of joints), interference and other factors. It is estimated that, because of these distance limitation, some 60% of the households can achieve speeds that are high enough for IPTV offerings (assuming that all exchanges are upgraded). The remaining part lives too far from the exchange. Though people that live in a more remote area are somehow more likely to live far from a switch, it is impossible to make general claims as to which areas are exactly served and which are not on the local level. However, the remaining 40% are expected to be scattered all over the country, with some more emphasis on the rural areas.

It must be noted that there is some uncertainty to the speed that is necessary for a IP-TV offering. This depends, among other things, on the quality levels that the operator wants to guarantee, the exact service offering (e.g. more simultaneous channels per household), the development in codecs and so on. All these factors could cause the 60% to grow or shrink.

Question 1.3:

In your description of the Dutch broadcasting market (appendix 1), you indicate (§8) that a number of the larger operators are trying to achieve a harmonisation of tariffs in their service areas. Could you please further substantiate to what extent this tendency illustrates (or not) a common pricing constraint?

Answer OPTA:

Most cable operators are trying to achieve a harmonization of tariffs *within* their service area, because that will save them costs (e.g. the billing process will be the same in the service area). The coverage areas of the cable operators are comprised of originally state owned networks that were sold by local authorities. These local networks have gradually been bought by cable operators which explains that originally the retail tariffs might have been different between cities or regions. In the past years these tariffs have gradually been harmonized.

So, the harmonization cable companies aim for is based on efficiency reasons and has nothing to do with a common pricing constraint.

This can also be shown by the following. The coverage areas do not overlap, but at the same, the coverage areas are patched (see figure 3). This means that for example part of the UPC coverage area borders on part of the Essent area. Other parts of the UPC coverage area don't. The aim to harmonized tariffs in all of the coverage area is an indication that there is no such thing as a common pricing constraint. Otherwise, UPC would have felt competitive pressure in one part, which could have led to a whole array of retail prices. In the Netherlands the fact that cable operators aim at harmonization of the retail tariffs illustrates, as a result of the fact that the coverage areas do not necessarily consist of adjoining networks, lack of competitive pressure from other infrastructures and the lack of a common pricing constraint. The lack of a common pricing constraint is also the reason that there are significant differences between the tariffs for the same service (Free-TV) in the different service areas of some of the cable operators.

2. Wholesale market

Question 2.1

Could you please provide an indication of the balance of payments between each operator you intend to designate with SMP on the wholesale market and the individual content providers (channels) from whom it buys content? How many content providers are paying to these individual cable operators for transmission? What is the retail market share of these operators in the "viewers' market"?

Reaction OPTA:

OPTA has recently requested cable operators to provide the (latest) contracts between them and individual content providers, that are part of the Free-TV package of the cable operators. In general it can be stated that, contrary to some years ago, it is no longer common that the content providers that are part of this Free-TV package have to pay for transmission. For most of the (top 10) content providers in this package no fee has to be paid nor is received. Some of the thematic channels do receive a fee by the cable operators.

However, content providers that do request for access outside the Free-TV package to deliver a channel, or channels that do compete on the Free-TV or Pay-TV market do have to pay a fee for access. In the former Telecommunication Act there was a (general) obligation for cable operators to grant access to content providers. This access obligation was aiming for both content providers requiring access to the Free-TV package of the cable operator as well as access to the infrastructure of the cable operator to deliver an own package to end-users. An example of the latter is Canal+.

Question 2.2

- 1) Could you please provide evidence, for each operator you intend to designate with SMP on the wholesale market, of demand on the part of program package providers to get access to the cable networks of these individual operators?
- 2) Could you please provide examples, for each operator you intend to designate with SMP, where such demand was not satisfied?
- 3) Could you elaborate on the rationale of imposing an access obligation on the wholesale market, if, as you argue in paragraph 432, it seems unlikely that two different providers of similar analogue packages will be active on the same network?

Reaction OPTA:

- 1) In the draft decision is indicated in paragraph 162, paragraph 262 and paragraph 342 that the commission of OPTA has dealt with a number of disputes between cable operators UPC, and Casema and program (package) providers. These disputes concern access as well as tariffs related to access. These disputes are listed in the table below, indicating both the cable operator and the program (package) provider concerned.
- 2) See the table below. It is important to note that these decisions of the commission of OPTA may have affected (other) cable operators, in their decision to grant access to (other) program (package) providers.

Parties	Date decision	Reference
MTV vs. Casema	12-01-2000	OPTA/IBT/200120
Betaco vs. UPC	06-09-2000	OPTA/IBT/2000/201693
HANM/MGW vs. UPC	17-11-2000	OPTA/IBT/2000/203144
The Box vs. UPC	17-11-2000	OPTA/IBT/2000/203142
Canal+ vs. UPC	21-12-2000	OPTA/IBT/2000/203522
Canal+ vs. Casema	21-12-2000	OPTA/IBT/2000/203336
IJmond TV CV vs. NV Casema	16-03-2001	OPTA/IBT/2000/200517
Canal+ vs. UPC	19-03-2002	OPTA/IBT/2000/200696
Canal+ vs. Multikabel	13-07-2004	OPTA/IBT/2004/202346
KPN Telecom vs. UPC	30-12-2004	OPTA/IBT/2004/204506

see: www.opta.nl

- 3) Although OPTA states in paragraph 432 that it is unlikely that an alternative packager for analogue packages will be active on the same network (a.o. because of the scarce capacity), this does not necessarily mean that (some) competition on Free-TV packages will be possible via these networks in the foreseeable future. Because there is a strong tendency by (most) cable operators to deliver more digital services and to 'migrate' to digital Free-TV services only instead of a combination of analogue and digital channels, the scarcity issue diminishes and offers the possibility for content providers or packagers to offer their own (Free or Pay-) TV packages.

In this respect it should be noted that on December 30, 2004 OPTA decided in a dispute between KPN and UPC. KPN requested access to the network of UPC to be able to provide *inter alia* (parts of) the standard free-TV package. This indicates that it is feasible that program (package) providers request access to the cable operator's network. In this respect the commission of OPTA emphasized that the access obligation imposed in paragraph 374 is not restricted to access to the cable operator's network for the provision of free-TV packages. The access obligation imposed in par. 374 does also not distinguish between analogue or digital signals. The request by KPN was denied by OPTA on the basis of the former Telecommunications Act.

If the European Commission should have any questions regarding the above or anything else related to the Draft decisions, please do not hesitate to contact Mr. R. Stil or Mr. J. Keetelaar.