

2012 Annual Report



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1. Market monitor

The 2012 Market Monitor offers an overview of the market trends in electronic communication and postal services. These trends are technological ones that take place on or off the markets, such as the rollout of optic fiber. In addition, user needs play a role, such as increased usage of services over mobile broadband networks. This creates a dynamic playing field in which OPTA acts as regulator. Based on these trends, OPTA gives an objective picture of the current state of play in the markets that OPTA regulates.

Structural Market Monitor

The Market Monitor is largely based on data that OPTA collects through its Structural Market Monitor and its Postal Services Monitor. For the Structural Market Monitor, the largest market participants provide data on their activities on a regular basis. OPTA checks these data. In addition, OPTA uses studies and media reports. This is how OPTA keeps an eye on trends in various markets. The figures form an important basis for OPTA's market analyses that are published every three years.

Digitization

With the rise of digital technologies in the telecommunications industry, the number of providers in the various markets has increased. Providers that previously offered a single service, now offer additional services as well. The majority of all television and phone subscriptions are now digital.

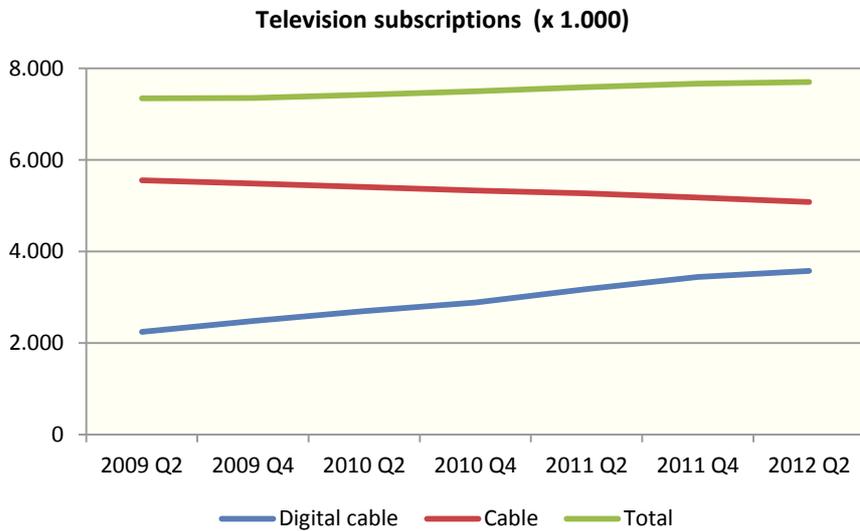
Digitization of television

Since late-2008, the majority of television subscriptions has been digital. The growth has continued since, and in the second quarter of 2012, four in five television subscriptions have digital television. In the past year, the share of digital television increased from 72 percent to 80 percent. In the same period, the total number of television subscriptions grew from 7.6 million to 7.7 million connections.

Digital and fiber optic

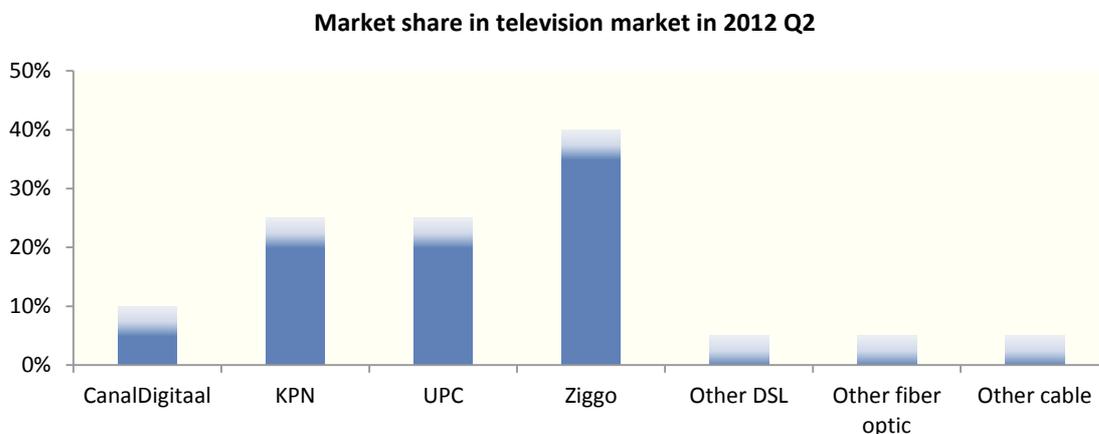
In recent years, the number of infrastructures with which customers are able to buy television services has increased. The selection was previously limited to cable, analog ether, and satellite. DVB-T (Digitenne) and television over DSL or fiber optic have joined that list. Analog ether disappeared in 2006. With regard to television, alternatives for cable are becoming more popular. Fewer than 70

percent of households with a cable connection still have a cable subscription. The use of DVB-T is declining after a growth period up until mid-2011. On the other hand, television over DSL and fiber optic is becoming more and more popular. At the end of the second quarter of 2012, 34 percent of television subscriptions are not taken out with a cable provider. Of all television subscriptions over cable, 70 percent was digital at that point in time, whereas, a year before that, it was 60 percent.



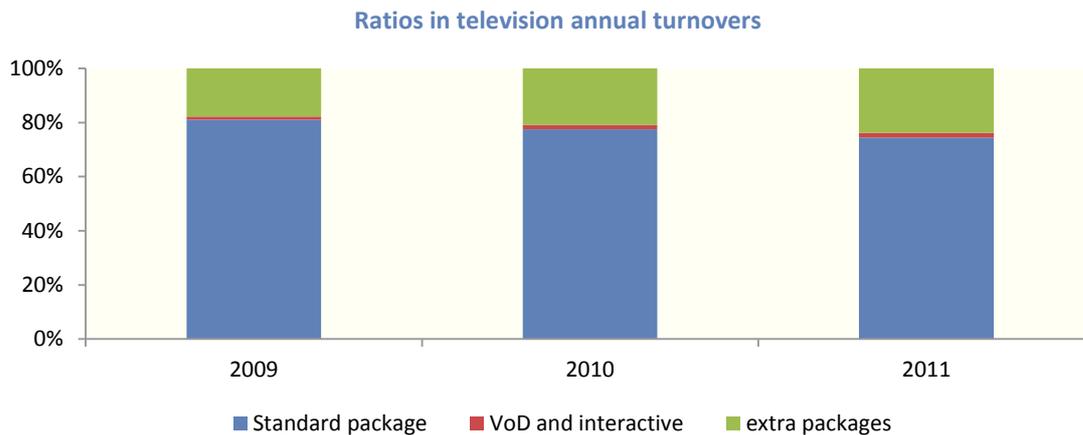
After a period in which the number of television services providers increased, 2012 saw a number of acquisitions. KPN acquired Reggeborgh's service providers, and CIF acquired several cable networks.

With digitization on the rise, the competitive positions in the television market are changing, too. Between mid-2011 and mid-2012, Ziggo's market share decreased from 40-45 percent to 35-40 percent, and KPN's market share increased from 15-20 percent to 20-25 percent.



Extra services

The advent of digital television has made it easier for providers to offer extra services. Examples include extra packages and video-on-demand (VoD) services, such as *Uitzending Gemist*, the VoD-service of the Dutch public broadcasting companies. Offering these services has led to an increase in usage of such services, and thus a higher annual turnover. The annual turnover in 2011 climbed by 8 percentage points to EUR 1.5 billion.

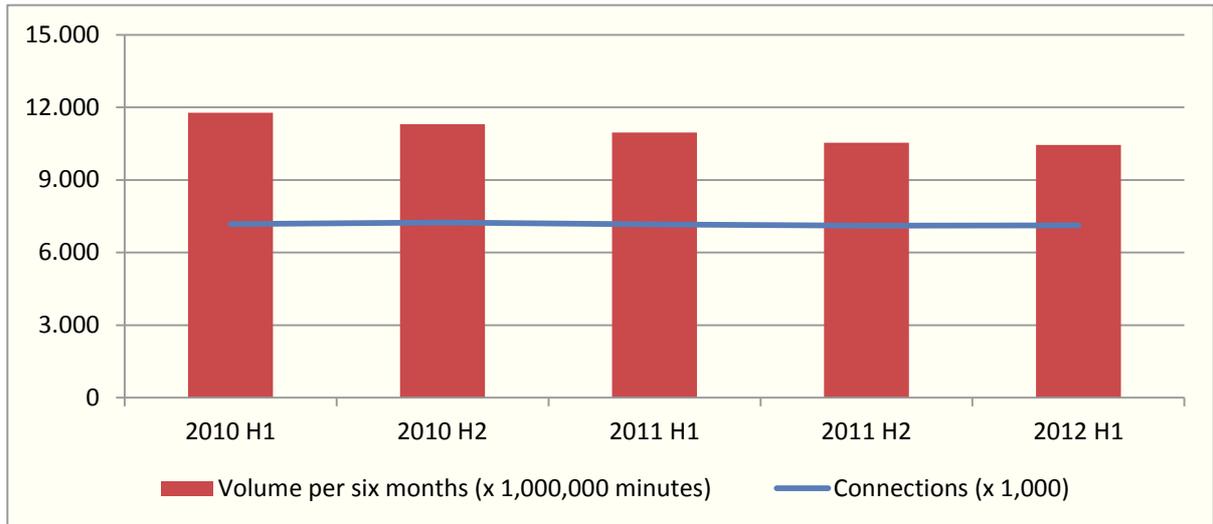


Digitization of fixed telephony

The majority of telephone connections have been digital since mid-2010. In the period of mid-2011 until mid-2012, the growth in digital fixed-telephony services was 6 percentage points. Because of this growth observed in digital telephony connections, 62 percent of all telephone connections at the end of the second quarter of 2012 were digital, 11 percent ISDN, and 27 percent analog.

The total number of connections dropped 0.6 percentage point in the past year from 7.2 million to 7.1 million at the end of the second quarter. While the number of connections has been relatively constant, consumers have been making fewer phone calls. In mid-2011, consumers called on average 255 minutes per month using a fixed line, compared with 244 minutes in mid-2012.

Volume and connections of fixed telephony



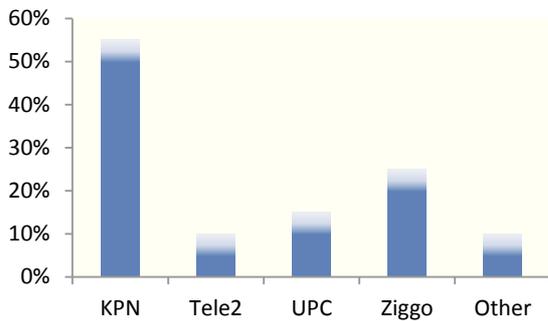
With the advent of mobile telephony and multiple services in a bundle, the use of the telephony product has changed. Providers respond to this shift by charging lower subscription tariffs if consumers also buy extra services, such as television or internet (triple play). This way, consumers can receive calls at home even though they might not feel the need to make calls themselves. On the other hand, business customers continue to use the fixed-telephony connection to make calls themselves.

Market shares

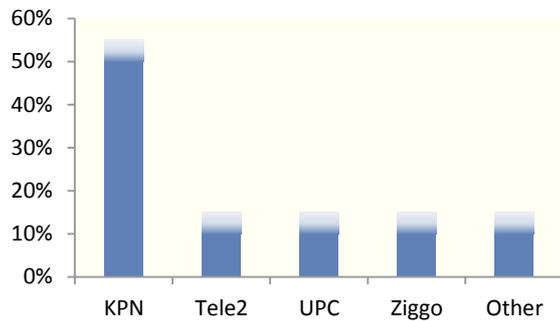
As a result, when looking at the competitive positions in the market, a difference can be observed between market shares based on the number of connections and those based on traffic. In both cases, KPN had a high market share of 50-55 percent in mid-2012, while UPC's market share was 10-15 percent. Ziggo primarily targets consumers, and its market share, based on the number of connections, is 20-25 percent. Based on traffic, its market share lies between 10 and 15 percent. When looking at Tele2 and the other providers, their market shares based on traffic is actually higher than those based on the number of connections.

Compared to mid-2011, KPN's market share based on connections dropped from 55-60 percent to 50-55 percent. Ziggo's market share based on number of connections, on the other hand, rose from 15-20 percent to 20-25 percent. When looking at market shares based on traffic, their relative positions remain somewhat the same.

Competitive positions in telephony in 2012 Q2
Based on number of connections



Competitive positions in telephony in 2012 Q2
Based on traffic



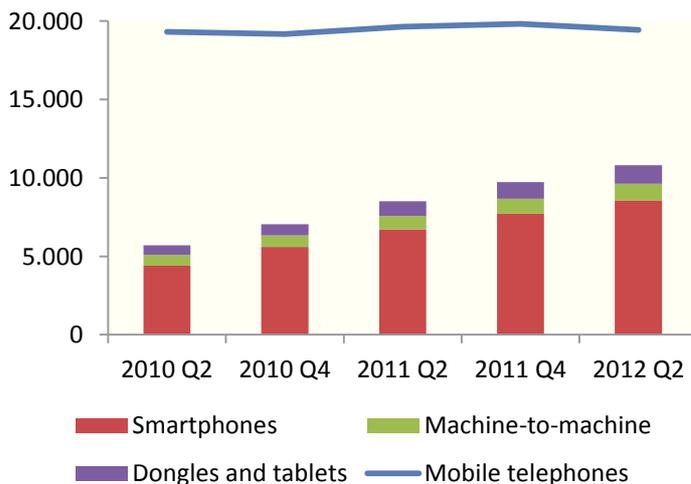
Mobile-broadband usage

Growth

Growth of mobile broadband continues

In the second quarter of 2012, 19.4 million mobile connections out of a total of 21.7 million were used. The total number of mobile telephones fluctuates between 19 and 20 million devices. More than 45 percent of the mobile-phone connections are also used for internet. The remaining 2.3 million connections are used for tablets, dongles, and machine-to-machine applications.

Number of mobile connections (x 1,000)

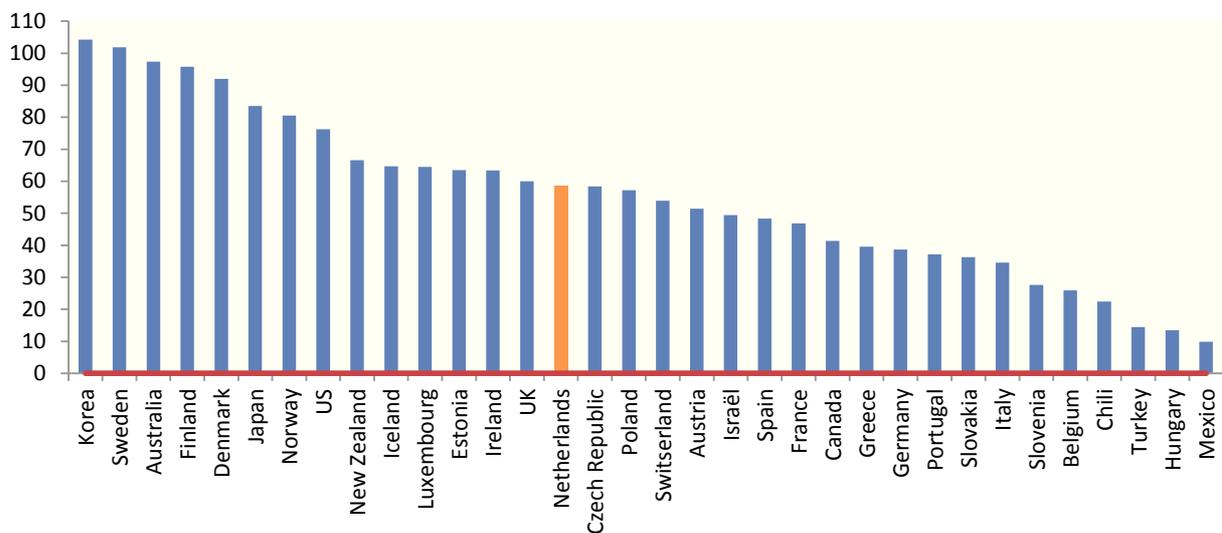


While the number of mobile telephony is roughly stable, the number of mobile-broadband connections is rising. At the end of the second quarter of 2012, there were 9.8 million of the latter. Compared to the previous year, that number has risen by 2.1 million, which is a growth of 28 percent.

Just like last year, approximately 12 percent of these connections are used for tablets or dongles, whereas the other 88 percent is used for mobile telephones.

The strong growth in the number of mobile-broadband connections can be observed in other countries as well. With 58 connections per 100 inhabitants in mid-2012, the Netherlands is slightly above the OECD average of 57 connections per 100 inhabitants.

Mobile-broadband connections per 100 inhabitants (OECD, 2012 Q2)

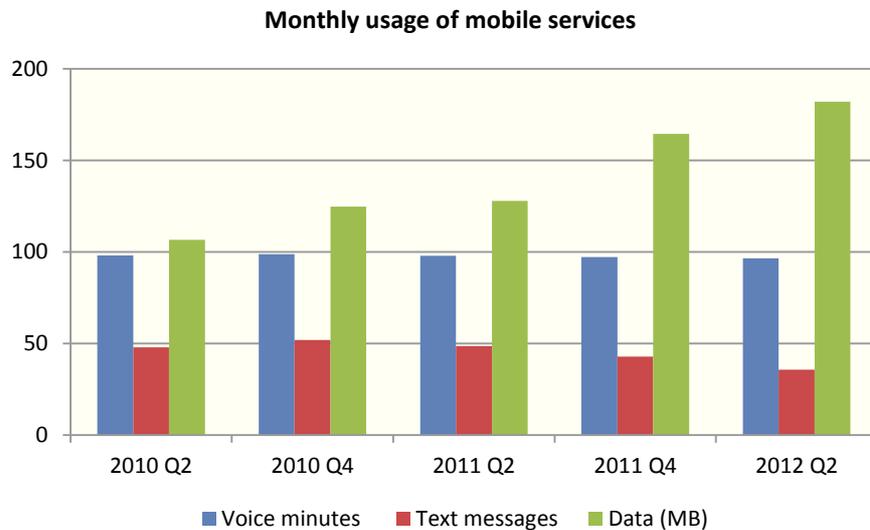


Usage

Shifts in usage and turnover

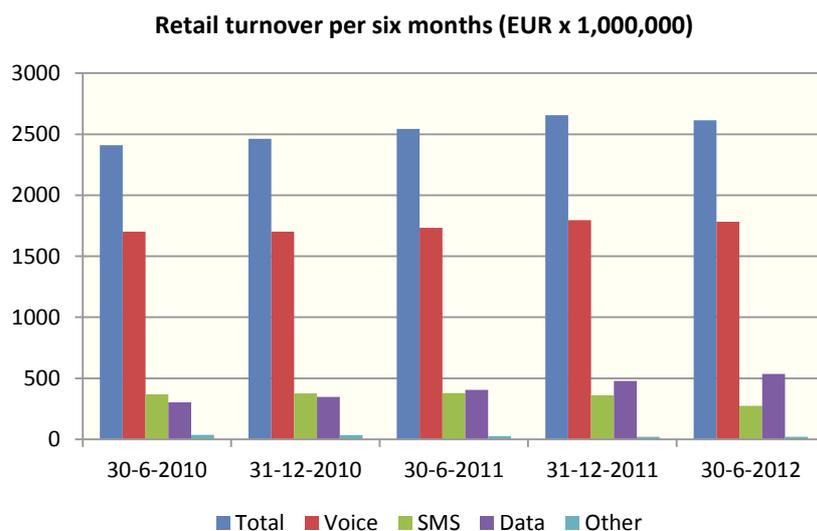
The advent of mobile broadband has affected the way consumers use their mobile connection. While data usage per month has risen to 182 MB per connection, the decline in text messaging and voice calls continues. The decline in text messaging and minutes started in 2011. This has led to an average volume of 97 minutes and 36 text messages per month per connection in the second quarter of 2012. Compared with mid-2011, the average amount of data used per month per connection rose by 42 percent, from 128 MB to 182 MB. The amount of minutes slightly decreased by one percent from 98 minutes to 97 minutes. The amount of text messages has dropped by 27 percent from 49 to

36 messages. The significant drop in text messaging volume can be explained by the rise of alternatives, such as Whatsapp.¹



Turnover

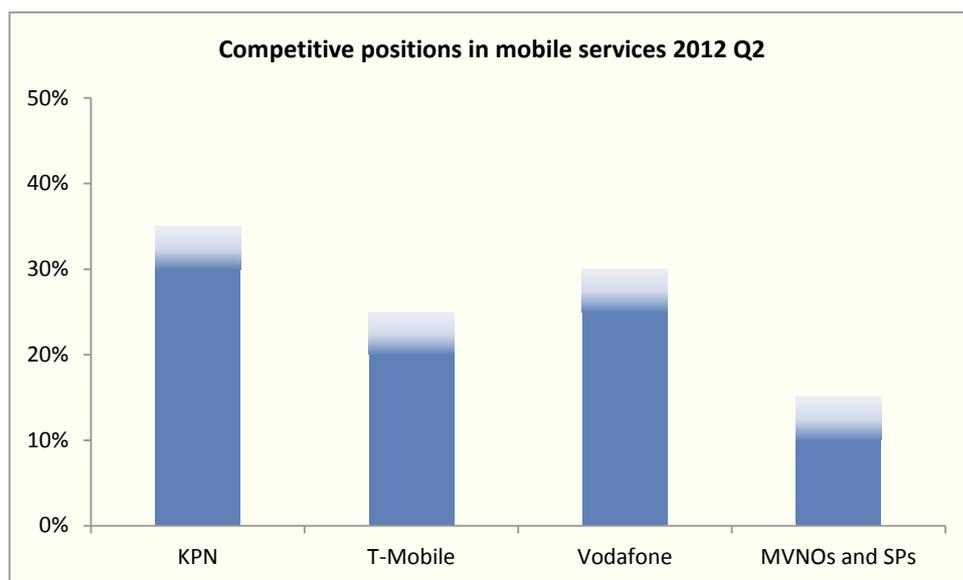
The shift in the usage of mobile services means that mobile providers earn money in other ways. Whereas 16 percent of the retail turnover in mobile communication in mid-2011 was generated by the provision of mobile-broadband services, this share has risen to 20 percent in 2012. The share of text messaging has dropped by 5 percentage points from 15 to 10 percent. For the first time ever, total retail turnover fell in the first half of 2012. Compared to the second half of 2011, retail turnover for mobile communication dropped by 2 percent or EUR 42 million.



¹ Source: OVUM, 'Ovum figures indicate that operators will lose \$54bn by 2016 due to smartphone messaging apps', 11 October 2012.

Market

Despite the shifts in usage of the different services, the competitive positions of market participants remained relatively the same. Based on the number of mobile-telephony connections, KPN's market share in the second quarter lies between 30 and 35 percent, while Vodafone's share lies between 25 and 30 percent. T-Mobile is next with a market share of 20 to 25 percent. Market participants without networks of their own, MVNOs and SPs, have a combined market share of 10 to 15 percent.



Bundles

Network digitization makes it easier for providers to offer multiple services on the same network. Providers have adjusted their marketing efforts accordingly by promoting, for example, triple play. This offers customers several advantages, such as getting a discount, receiving a single bill, and having to deal with just one provider. The advantage of triple play for providers is that customers are less likely to switch providers if they take out all their services with the same provider.

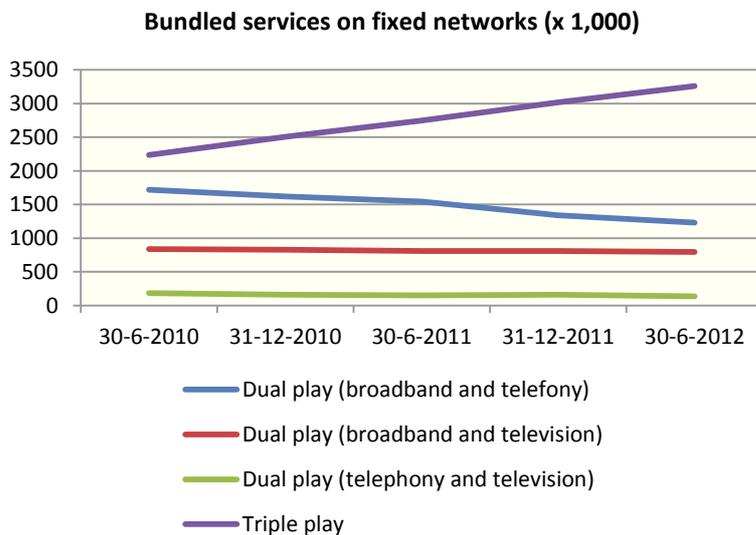
Growth

Growth of triple play continues

In mid-2012, 72 percent of households took out multiple services with the same provider. As a result, the number of subscriptions of bundled services rises from 5.2 million to 5.4 million between mid-2011 and the end of the second quarter of 2012. An increasing share of these subscriptions is triple play,

so subscriptions that combine broadband internet, television and telephony services. Compared to the previous year, the other types of bundles are taken out less often.

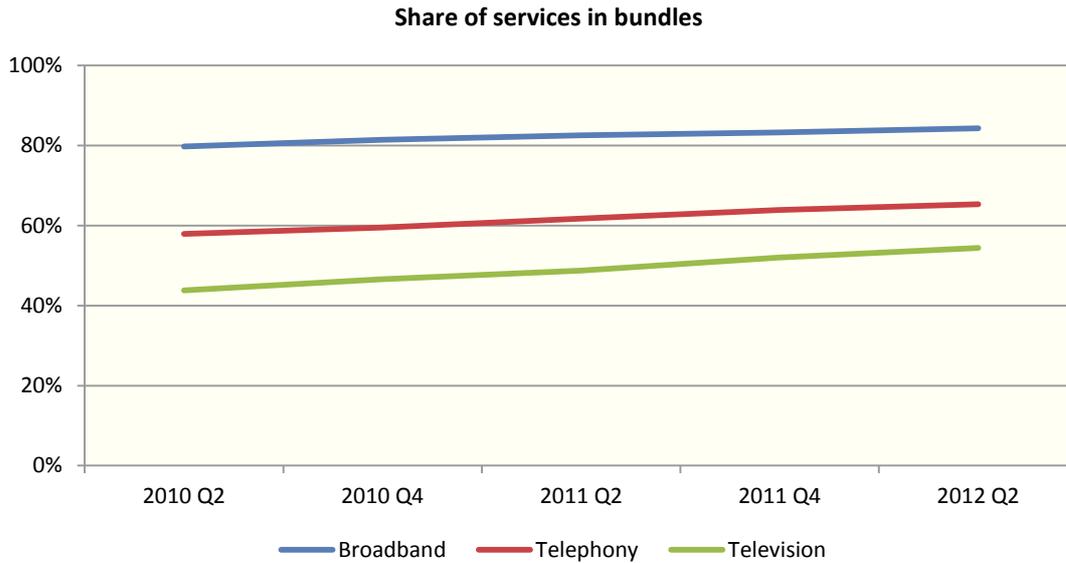
At the end of the first half of 2012, there are 3.3 million triple-play bundles. That is an increase of half a million since the previous year. The number of other bundles in that same period dropped by 341,000 from 2.5 million to 2.2 million subscriptions.



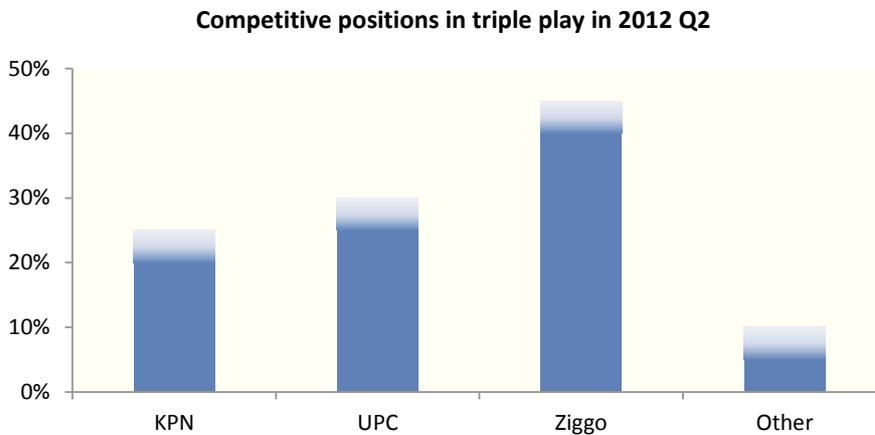
Composition of bundles

Since late-2011, consumers take out the majority of services on fixed networks in bundles. Broadband is taken out the most, as it is included in 84 percent of all connections, while telephony and television services are included in a bundle in 65 percent and 54 percent of all connections respectively. These individual services grew within the bundles as follows: Broadband by 2 percentage points, telephony by 4 percentage points, and television by 6 percentage points. The number of bundles with fixed and mobile telephony combined continues to be limited.

Broadband has traditionally been sold to existing customers of telephony and television services. In addition, broadband is also sold over cable in a bundle only. This explains the higher share of broadband in bundles. The more recent trend of television platforms for DSL and fiber optic networks has thus far resulted in a lower share of television services in bundles.



Most providers that target consumers are active in all three markets, and offer triple-play packages. When looking at their competitive positions, the providers that are traditionally the largest are also big players in the triple-play segment. Ziggo's market share lies between 40 and 45 percent, UPC's market share between 25 and 30 percent, and KPN's between 20 and 25 percent. The other providers have a combined market share of 5 to 10 percent.



Broadband and internet

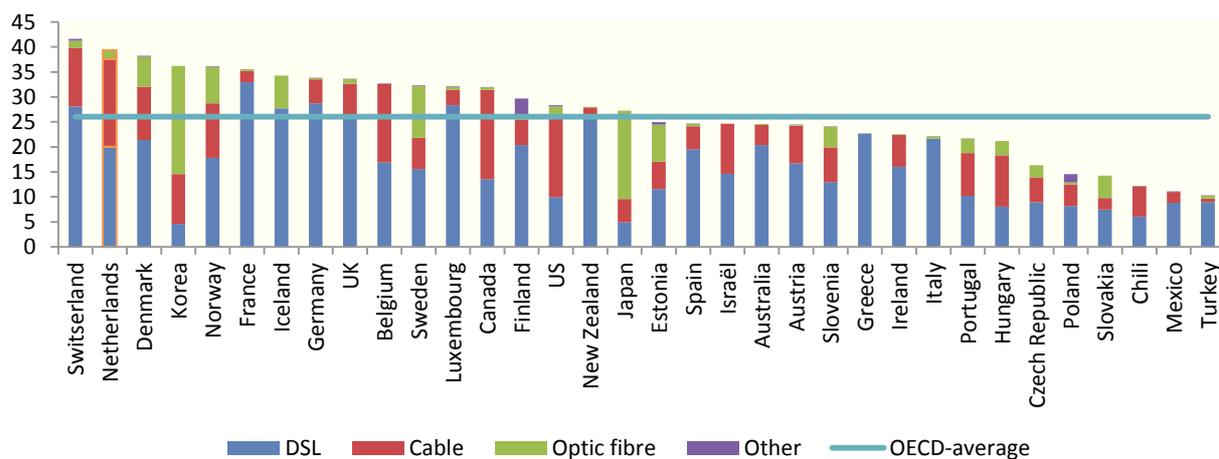
Growth

Investments in telecommunication networks have resulted in an increase in availability of broadband connections, and in higher speeds of internet subscriptions. In addition, innovation in mobile phones and internet continues to grow. This has enabled other parties than telecommunication providers to offer these services.

Broadband

For many years, the Netherlands has been one of the countries with the highest number of broadband connections (per hundred inhabitants). In previous years, the Netherlands had the highest number, but was overtaken by Switzerland in mid-2011. In mid-2012, slightly over 39 in 100 inhabitants in the Netherlands used a broadband connection, compared with almost 42 in Switzerland.

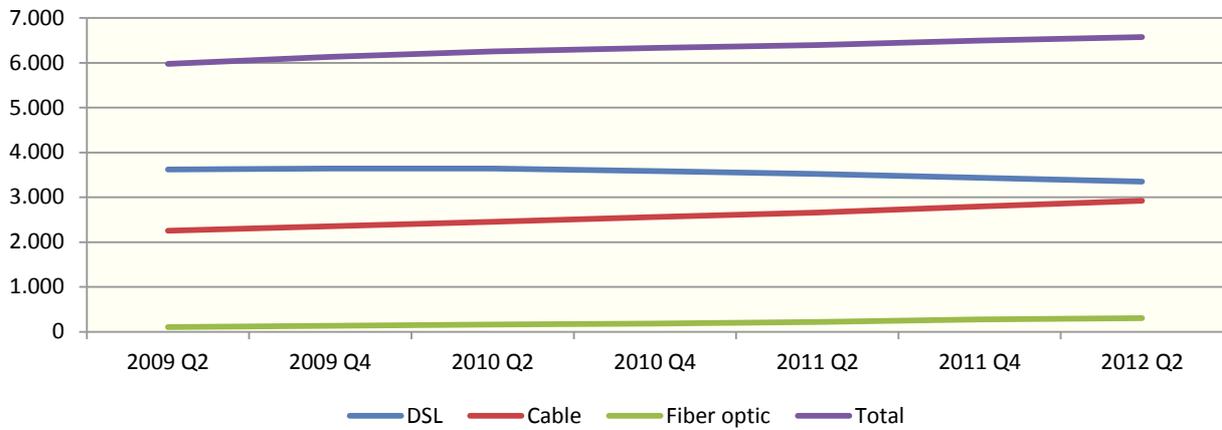
Broadband connections per 100 inhabitants (OECD, 2012 Q2)



The total number of broadband connections increased in 2012 as well. In mid-2012, there were 6.6 million connections, which is an increase of 180,000 compared with the previous year. The majority of subscriptions, 3.3 million connections, is based on DSL. This number decreased by 5 percent in the past year.

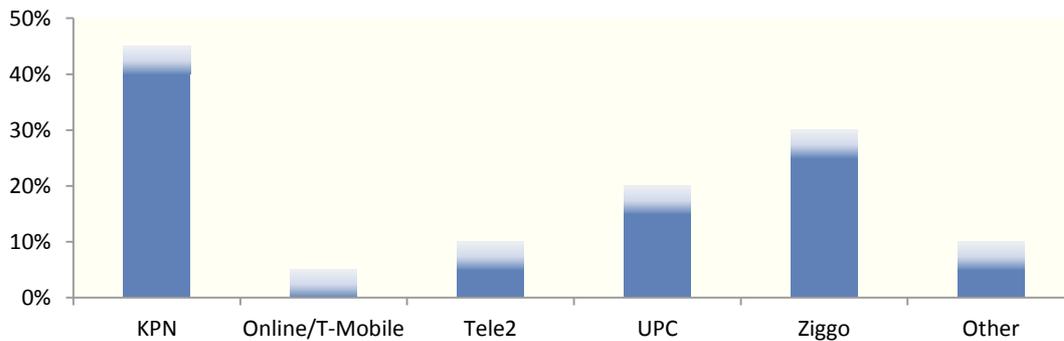
Since 2009, the number of active DSL connections has been decreasing, while the number of active connections of cable and fiber optic networks is rising. In mid-2012, more than 2.9 million cable connections and 302,000 fiber optic connections are in use. In the past year, the number of active cable connections grew by 10 percent, and the number of active fiber optic connections by no less than 41 percent.

Broadband connections per type (x 1,000)



The growth in the number of cable-based subscriptions is reflected in the market shares. UPC's market share has increased from 10-15 percent in mid-2011 to 15-20 percent in mid-2012. Ziggo too notes in its quarterly report that its number of internet subscriptions has increased. The market positions of the other participants have largely remained the same compared with the previous year. With a market share of 40-45 percent, KPN remains the biggest player.

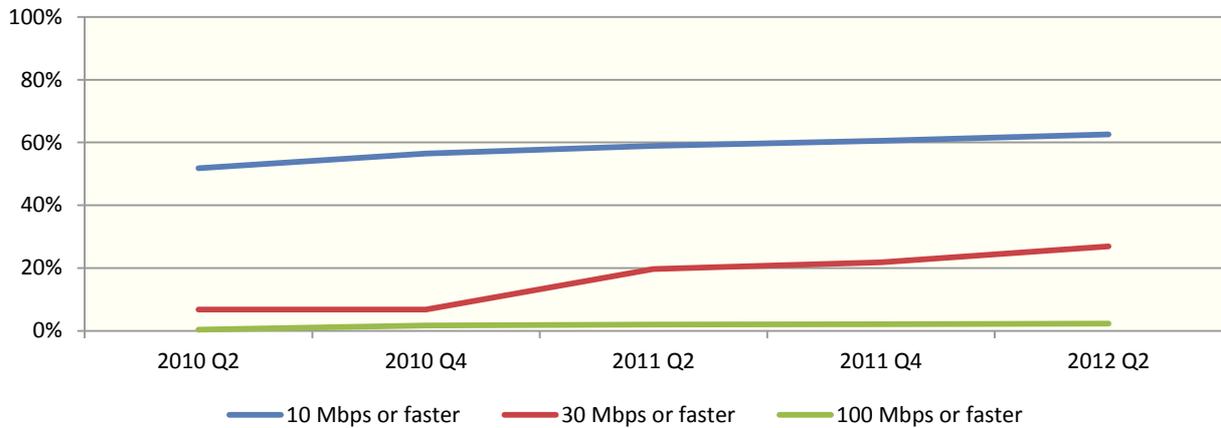
Competitive positions in broadband in 2012 Q2



Speed

In addition to the growing number of customers with an internet subscription, the average speed increases as well. In mid-2012, 63 percent of DSL and cable subscriptions have an advertised speed of 10 Mbps or higher, and in 27 percent even 30 Mbps or higher. Compared with mid-2011, these are increases of 4 and 7 percentage points respectively. The number of connections with speeds of 100 Mbps or higher has remained constant at 2 percent.

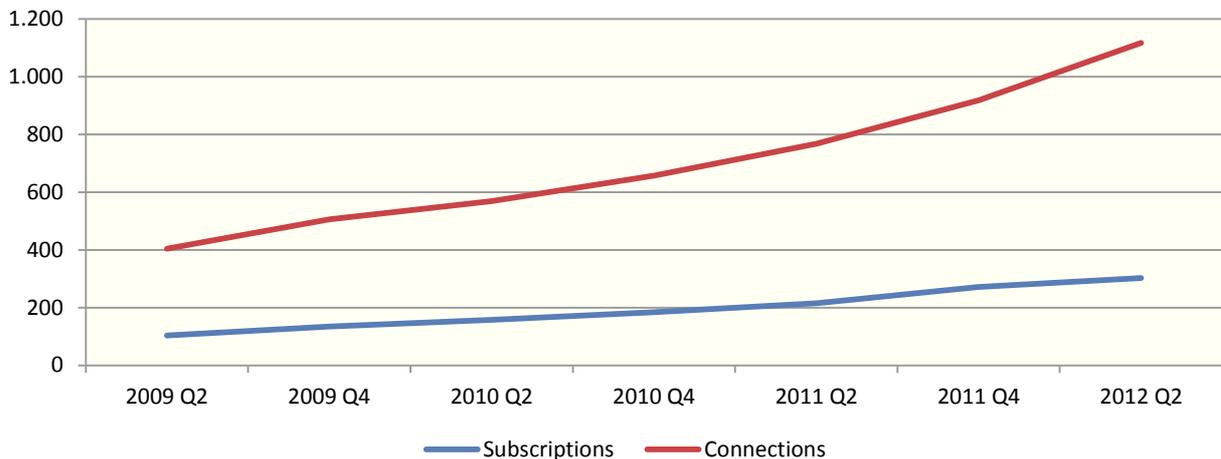
Broadband speeds (excluding fiber optic)



In mid-2012, KPN launched a field test for higher speeds of up to 80 Mbps on the DSL network. On cable networks, speeds of up to 120 Mbps are offered, while, on fiber optic networks, speeds of up to 1 Gbps are offered. The roll-out of fiber optic connections is picking up speed, and in mid-2012, more than 1.1 million households had a fiber optic connection.

Because of the increasing capacities on their networks, UPC and Ziggo each announced they would study the possibilities of setting up WiFi networks, which would provide all of their customers access to wireless internet in their catchment areas.

Usage and availability of fiber optic (x 1,000)



Impact

The impact of the Internet

Higher speeds of mobile networks, and trends in mobile telephony have spawned services such as

Whatsapp, Viber and Skype. Consumers replace existing services of telecommunication providers, such as text messaging, with internet-based alternatives, such as Whatsapp. Innovations in fixed networks make similar services also possible on those networks. For example, in the USA and the UK, services such as Hulu, Netflix and LoveFilm are growing. So far, these services have not become available to Dutch consumers yet, but alternatives such as Ximon and Pathé Thuis have.

Because of the rise of these services, telecommunication providers are observing falling revenues, and are facing louder calls to invest more in their networks. In order to prevent telecommunication providers from blocking services that affect their business model, it has been officially laid down that, for new subscriptions, starting in 2013, these services cannot be blocked.

Business network services

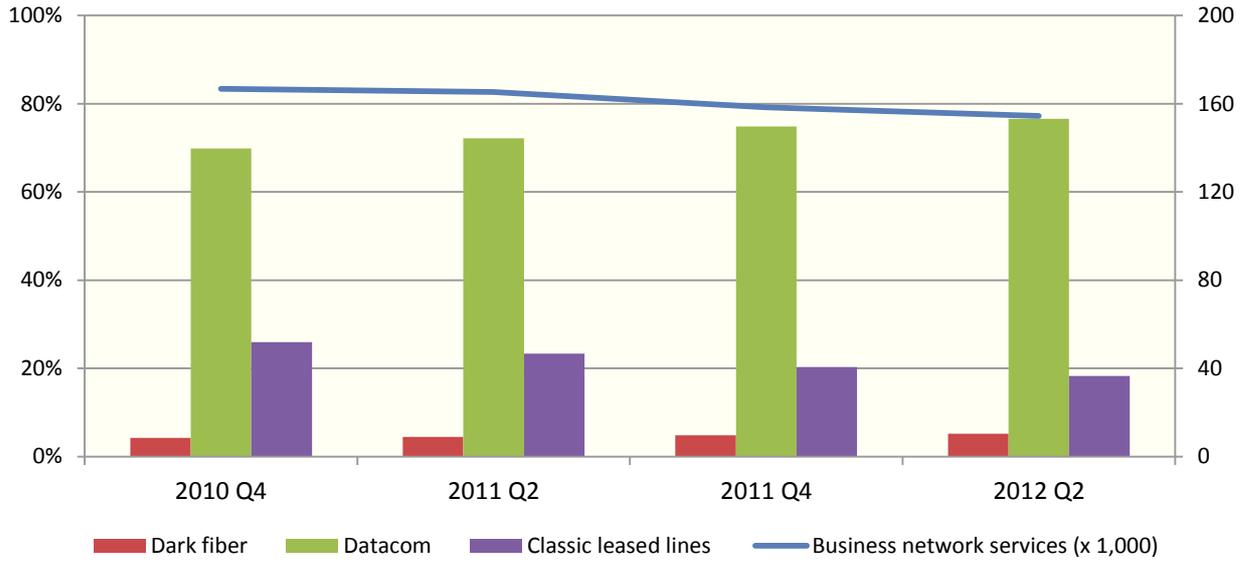
For secure, internal data and telephone communication between different locations, companies use business network services, such as leased lines, virtual private networks (VPNs) and dark fiber. In the past, companies primarily relied on leased lines. However, providers nowadays hardly sell leased lines anymore, and are gradually phasing out this service.

Usage of business network services

Companies these days often choose VPNs. These services are cheaper than leased lines because of, among other reasons, the use of cheaper IP and Ethernet technologies. An added benefit is that network management comes with the VPN service, resulting in lower IT expenses for companies. All locations can have access to the VPN service. This also applies to home offices.

Larger companies sometimes choose to manage their networks themselves, which gives them more control over the quality thereof. In that case, they take out a 'bare' fiber optic connection (dark fiber), and install their own network service themselves.

Usage of business network services

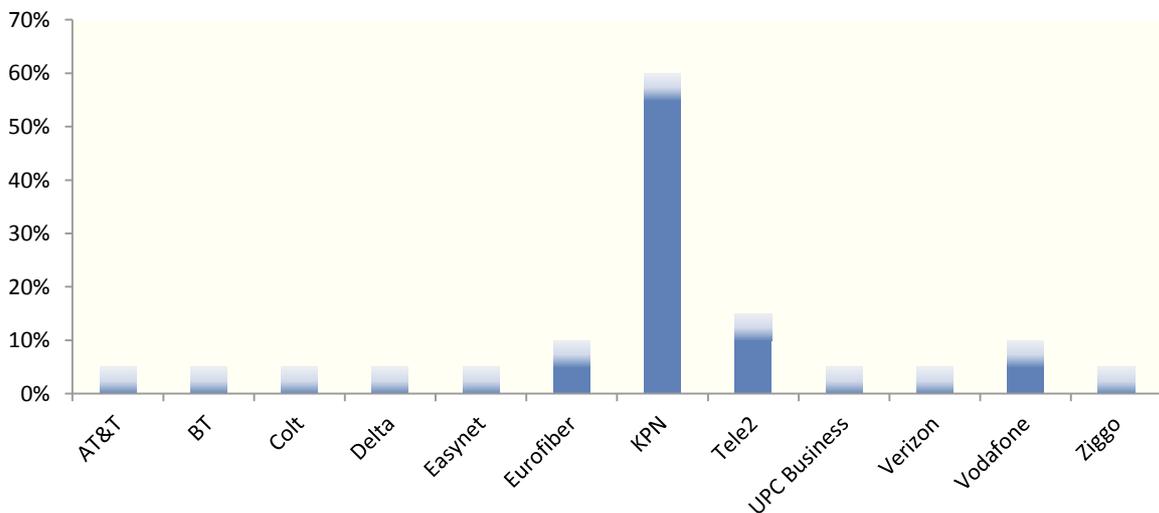


Market

Competitive trends

In 2012, KPN had the highest market share on the market for business network services, between 55 and 60 percent. KPN's market share has dropped in recent years because, among other reasons, there is more competition in VPN services than in leased lines. Next to KPN, there are a large number of competitors with relatively small market shares. Tele2 and Vodafone are the largest of that group. It should be noted that these players use, to a considerable degree, the regulated access to KPN's network in order to be able to offer business network services.

Competitive positions in business network services in 2012 Q2



Fiber optic

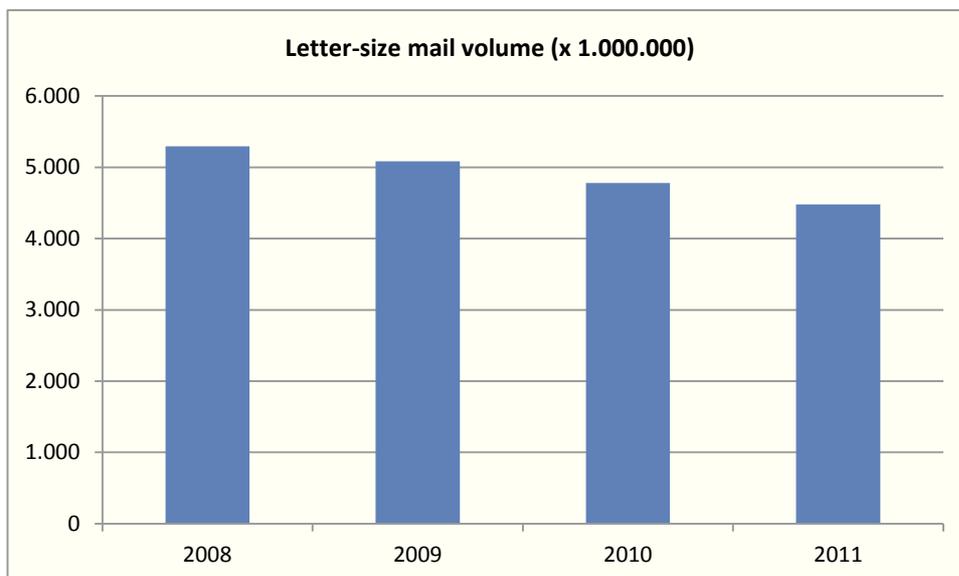
Business network services are offered on various infrastructures. For example, a relatively large office building or a data center could opt for a fiber optic connection, whereas smaller locations with more modest broadband needs can still be connected to copper networks. In late 2010, approximately a third of all business network services were based on fiber optic. This number increased further in 2012. Companies often take out internet access and, increasingly, fixed-telephony services over their connection next to business network services.

Unlike the copper segment, where KPN is the only player with its own connection network, the fiber optic segment has a larger number of providers with their own network. If a provider's network is close to a company, it can connect to the provider's fiber optic network at relatively low costs. Sometimes multiple companies are connected simultaneously. At business parks for example, demand is often combined. If there are enough applicants, a provider will install fiber optic connections to those companies. In the second quarter of 2012, approximately half of all fiber optic connections to businesses was provided by KPN. Providers such as Eurofiber, BT, Ziggo and Tele2 made up the other half.

Postal services

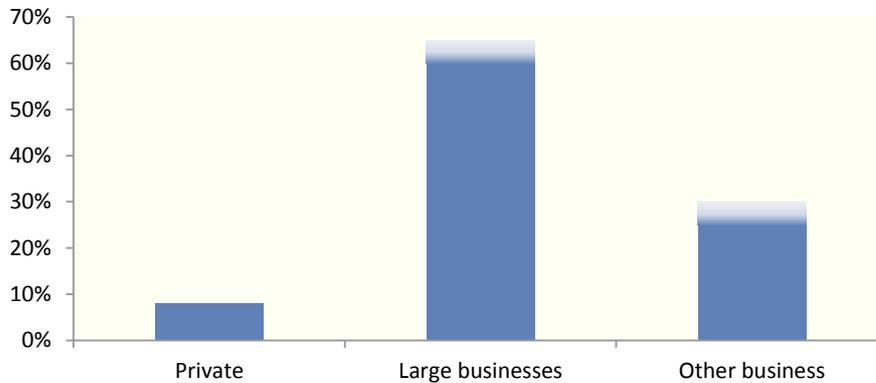
Letter-size mail

In 2011, approximately 4.5 billion addressed mailpieces were delivered in the Netherlands. In 2010, that number was approximately 4.8 billion. Turnover in the postal services market was roughly EUR 1.5 billion in 2011. In 2010, it was about EUR 1.6 billion. The market has thus seen a roughly similar decrease as in previous years. At the time of writing, OPTA does not have the 2012 public figures yet.



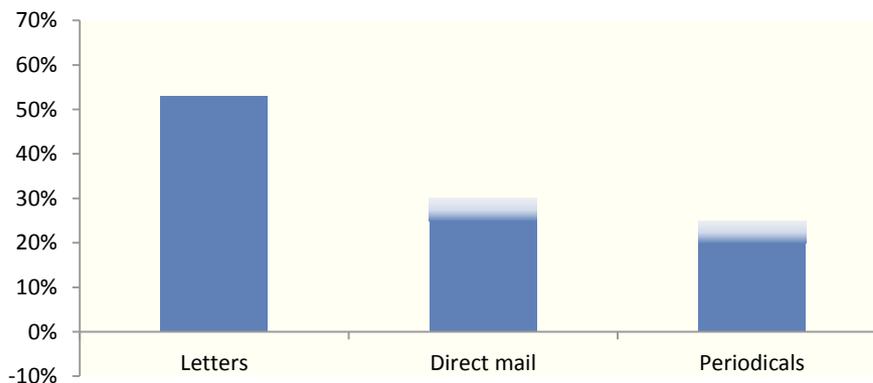
Approximately 8 percent of all letter-size mail is sent by consumers. Roughly 60 to 65 percent is sent by large-business customers. These are businesses that send at least 1 million parcels per year. The remaining 25 to 30 percent is sent by other business customers.

Segments based on customer type in 2011



53 percent of the letter-size mail that business customers send are letters. About 25 to 30 percent is direct mail, addressed promotional mail, and 20 to 25 percent are periodicals, such as magazines and papers.

Business segment based on content in 2011

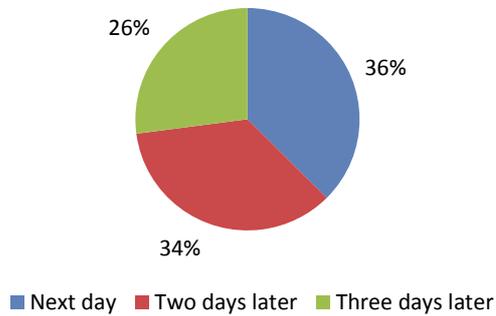


Business mail

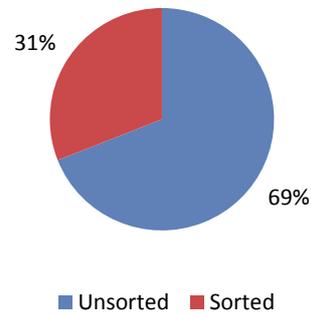
Approximately 36 percent of all business mail in 2011 was offered to be delivered the next day. About 34 percent was offered to be delivered two days later, and 29 percent was offered to be delivered three days later. The share of mail with third-day delivery increased substantially compared with 2010.

The majority of business mail, approximately 69 percent, is offered unsorted by the sender. The remaining 31 percent is offered pre-sorted. The share of pre-sorted mail that is offered has slightly increased in recent years.

Business segment based on delivery in 2011



Business segment based on sorting in 2011

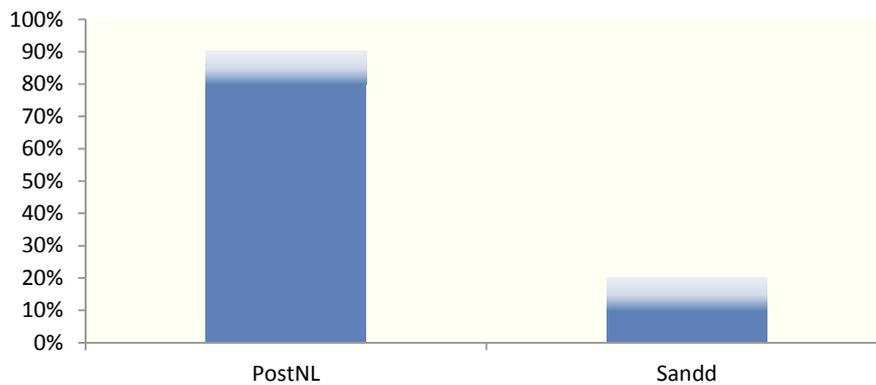


Market

Competitive trends

Sandd acquired Selekt Mail's activities in 2011. PostNL pulled its subsidiary Network VSP Geadresseerd off the market. Two mail companies remain active nationally on the Dutch market for addressed letter-size mail. With a market share of 80 to 90 percent, PostNL continues to be the largest mail company in 2011. With a market share of 10 to 20 percent, Sandd is its largest competitor.

Competitive positions in mail as of 2011



Like in previous years, competition can be mainly observed in the direct mail and periodical markets.

2. Competition

The Netherlands Independent Post and Telecommunications Authority (OPTA) promotes competition and confidence in the communication industry in the interest of consumers. To that end, OPTA regulates the electronic communication markets wherever and whenever necessary. The objective of its regulatory actions is to stimulate competition and innovation for the benefit of consumers and business customers. As part of its regulatory actions, OPTA analyzes the markets every three years, and decides on what regulatory measures are needed. 2012 was marked by market analyses. In addition, OPTA spent considerable attention to monitoring the postal services industry, dispute settlement, and oversight and enforcement.

Market analyses

Every three years, OPTA analyzes the Dutch telecommunication markets. The European Commission determines which markets OPTA is to analyze. OPTA can also decide for itself to analyze other markets.

In its market analyses, OPTA establishes whether a certain market has enough competition, or whether certain firms are dominant. If such is the case, OPTA can impose remedies on these dominant firms. Examples of remedies are:

- A dominant firm must offer other firms access to its network. The other firms are then able to offer customers services using that network;
- OPTA sets the tariffs for services of the dominant firm (tariff regulation);
- A dominant firm must treat itself and other firms equally (non-discrimination).

The European Commission evaluates OPTA's market analyses.

In 2012, OPTA completed six market analyses: fixed telephony (two market analyses), call termination, broadband services for consumers, broadband services for business customers, and unbundled access to fiber-optic networks for businesses.

Fixed telephony

In 2012, OPTA issued two decisions regarding fixed telephony.

Additional decision on the 2008 fixed-telephony market analysis

The 2008 fixed-telephony market analysis applies to the period of 2009 until 2012. Several firms filed

appeals against this decision with the Dutch Trade and Industry Appeals Tribunal (CBB). The CBB in 2011 ruled that OPTA had to re-evaluate whether the remedies on the business retail market should be continued.

In an [additional market analysis](#), OPTA established that KPN was dominant on the business retail market. KPN was imposed a remedy aimed at tariff regulation. It means that KPN must charge its business customers a minimum tariff for fixed telephony services. That way, KPN cannot push competitors out of the market by charging its retail customers too low rates. In late 2012, OPTA reduced the minimum tariffs.

2012 fixed-telephony market analysis decision

The [fixed-telephony market analysis decision](#) applies to the period of 2012 until 2014. The analysis has revealed that KPN is dominant on a number of markets:

- the wholesale markets for single, dual and multiple call services;
- the retail markets for dual and multiple call services.

That is why OPTA imposed a number of remedies on KPN. On the wholesale markets, KPN must, among other remedies, offer call origination and wholesale-line rental (WLR) services to competitors. Other companies can buy these services, and offer fixed-telephony services to consumers and business customers. On the retail markets, KPN must comply with the tariff-regulation remedies, and thus charge consumers a minimum tariff for fixed telephony.

Call termination

When end users make calls, telecommunication companies pass on calls to one another (call transit) and deliver these to the customer (call termination). Telecommunication companies charge each other fees for these services. OPTA analyzes the markets for call termination and call transit, and imposes remedies, if necessary.

Different calculation model for terminating access costs (MTA-FTA)

Ruling

In the call terminating access market-analysis decision, OPTA sets the maximum tariff for call termination (tariff ceiling). The costs have been calculated using the 'pure BULRIC' costing method. It leaves out the fixed costs of companies. The European Commission recommends this costing method. However, the CBB ruled that OPTA should use the 'plus-BULRIC' costing method instead. This method does include the fixed costs. Maximum tariffs are thus higher.

Additional decision

OPTA has used the new costing method in the additional [call terminating access market-analysis decision](#) (FTA-MTA 3b). This draft decision has been submitted to the European Commission (notification). The European Commission argues that the new 'plus-BULRIC' costing method, as put forward by the CBb, does not dovetail with its recommendation. The European telecommunication regulators (BEREC) agree with the European Commission, but, considering the CBb's ruling, see no alternative for OPTA.

Reduced maximum tariff

OPTA has set the decision based on the 'plus BULRIC' method. That means that, as of August 1, the maximum tariff for fixed call termination access was reduced from 0.72 to 0.37 euro cents per minute. It had already been previously decided that mobile call termination tariffs would be lowered to 2.4 euro cents per minute, starting September 1. Several companies filed appeals against the call termination decision.

New call termination market analysis

In 2012, a new market analysis for fixed terminating access and mobile terminating access (FTA-MTA-4) was launched. This decision will come into effect starting July 2013. The BULRIC costing method has been updated as well.

Market analysis decision regarding passing on calls (call transit)

Several companies filed an [appeal](#) against the call transit market analysis decision. The CBb ruled in OPTA's favor. In its market analysis decision, OPTA argued that there is enough competition on the call transit market. The remedies that had been imposed in previous market analysis decisions are thus no longer necessary.

Broadband

Broadband access for internet, television, fixed telephony or business network services is offered over copper, coax and fiber optic. Companies that do not have their own networks can choose from the following:

- Renting a connection on the copper telephony network of KPN (unbundled access copper);
- Renting a connection on a fiber optic network, such as Fiber to the Home (FtH) or Fiber to the Office (FtO)) (unbundled access fiber optic);

- Buying capacity on a network with a connection of high quality (guaranteed capacity), high-quality wholesale broadband access and leased lines, HQ WBA/LL. This service is primarily used for business network services; or
- Buying capacity on a network with a connection of low capacity, low-quality wholesale broadband access, LQ WBA. This service is primarily used for internet and telephony for consumers.

In 2012, OPTA carried out two new market analyses of unbundled access to business optic fiber (FtO) and of broadband access of high and low quality and leased lines (WBA/LL).

Draft decisions on unbundled access to business fiber topic and broadband

In February 2012, OPTA submitted two draft decisions to the European Commission:

- Draft decision on market analysis of unbundled access to FttO networks (business fiber optic networks). When buying these access services, telecommunication companies throughout the Netherlands are able to offer business customers telecommunication services.
- Draft decision on market analysis of low and high quality wholesale broadband access and leased lines (WBA/LL). With this type of access, telecommunication companies are able to offer business customers and other telecommunication companies network services.

Having conducted an investigation, OPTA established that KPN is not dominant on the FttO market. That is one of the reasons why it is not necessary to impose a remedy on KPN to allow access to its fiber optic network on the market for wholesale broadband access and leased lines WBA/LL. However, the European Commission has 'serious doubts' about this view. OPTA is to reassess whether KPN is dominant, and, if so, whether it must be regulated. In their recommendation, the European telecommunication regulators (that sit on the cooperative network BEREC) largely agree with the European Commission.

As a result, OPTA retracted the two abovementioned draft decisions. OPTA will carry out an additional investigation into the market for unbundled access to FttO networks and the wholesale market for high quality broadband access and leased lines (HQ WBA/LL). The part of the decision about the market for [low quality broadband access \(LQ WBA\)](#) has already been completed. The European Commission did not have any comments thereon.

Market analysis decision regarding low quality wholesale broadband access (LQ WBA)

OPTA's market analysis has revealed that the wholesale market for low-quality broadband access is sufficiently competitive. This broadband access is primarily used for internet and telephony services

for consumers. In 2008, KPN was imposed remedies because it was a dominant player. This market has now become competitive. The remedies are no longer needed, and will thus be retracted.

Market analysis decision regarding unbundled access to business fiber optic and high quality wholesale broadband access (HQ WBA)

Following the 'serious doubts' expressed by the European Commission, OPTA presented two new draft decisions to the market in September:

- Draft market analysis decision regarding unbundled access to FttO networks (business fiber optic networks);
- Draft market analysis decision high quality wholesale broadband access and leased lines (HQ WBA/LL).

Remedies

Further investigation by OPTA has revealed that KPN is dominant on both markets. That is why KPN is imposed several remedies on both markets. KPN must do the following:

- Give other companies access to the business fiber optic network (ODF-access FttO);
- Give other companies wholesale access to the copper network and the business fiber optic network with high-quality connections (HQ WBA/LL);
- Treat all companies (and itself) equally (non-discrimination); and
- Give access under clear conditions (transparency) and cost-based tariffs (tariff regulation).

These remedies make it possible for other companies to compete better on the business retail markets. OPTA resubmitted these draft decisions to the European Commission. After the European Commission had made several comments, the decisions were published on December 28. The [ODF-access FttO](#) and [HQ WBA/LL](#) decisions become effective January 1, 2013.

2011 market analysis decision regarding unbundled access

Several telecommunication companies appealed the [2011 market analysis decision regarding unbundled access](#). This decision concerned the unbundled access to the copper network and fiber optic network (FttH) of KPN. The Dutch Trade and Industry Appeals Tribunal (CBb) is expected to rule in early 2013.

Television and radio

The television and radio markets are not on the European list of markets that must be analyzed. However, OPTA is allowed to assess competition on these markets, and determine whether rules are needed. Such rules are only allowed if the market passes the 'three-criteria test':

- Competitors face high and structural barriers to enter the market;
- There is no prospect of real competition in the long run;
- The competition problems cannot be solved by the Dutch Competition Act.

Having conducted an investigation, OPTA in 2009 decided that the radio broadcasting market did not need any rules. In 2011, OPTA issued [an opinion on the television market](#). Companies filed appeals against the [market analysis decision regarding radio broadcasting](#) and the opinion on the television market. The Dutch Trade and Industry Appeals Tribunal (CBb) ruled in both cases in 2012.

2009 market analysis decision regarding radio broadcasting

In the [2009 market analysis decision regarding radio broadcasting](#), it turned out that the radio market did not pass the three-criteria test. Since access to the radio towers has already been statutorily regulated, no rules were drafted for the radio broadcasting market. Broadcast Newco Two filed an [appeal](#) against this decision. The CBb agreed with OPTA that no rules were needed for the radio broadcasting market.

Opinion on television market

Tele2, T-Mobile, KPN and YouCa in 2011 asked OPTA to carry out a market analysis of the television market. OPTA had previously concluded that the television market was becoming more and more competitive. The television market therefore did not need any rules. That is why OPTA turned down the requests for a market analysis.

CBb ruling

The companies have [appealed](#) OPTA's opinion. In November 2012, the CBb ruled in OPTA's favor. The television market does not need any rules because it is becoming more and more competitive. OPTA had defined the television market properly, and had applied the 'three-criteria test' correctly.

Remedies

In its market analyses, OPTA assesses whether there is enough competition in certain parts of an electronic-communication market. If one or more companies in such markets are dominant, OPTA imposes remedies on them. In 2012, OPTA detailed several access remedies.

Selling access services against the same wholesale tariffs (non-discrimination rule 5)

KPN offers itself and other companies access services over the KPN network. With regard to unbundled access and fixed telephony, KPN is not allowed to differentiate on price. KPN must charge the same price for services it provides itself as for services it provides other companies. Otherwise the other companies would earn less with reselling these services than KPN does (margin squeeze). And that is considered unfair competition.

OPTA invited the telecommunication companies to [flesh out](#) a margin squeeze ban together (ND-5). Several tests have been created to check the profit margins in unbundled access and fixed telephony (ND-5 test).

Same services against the same price (prohibition on tariff differentiation)

KPN is not allowed to offer the same services against different tariffs. OPTA has imposed this prohibition on tariff differentiation with regard to unbundled access and fixed telephony. However, exceptions are possible. KPN is allowed to charge different tariffs, but only if this will not negatively impact competition (tariff differentiation). KPN submits its tariffs to OPTA, and OPTA approves the tariffs. In 2012, OPTA approved different tariffs for [WLR number blocks](#) (special tariffs for reselling telephone lines) and for a special offer ([SDF welcome offer](#)).

Fiber optic tariffs (FttH)

New rules regarding tariffs for access to fiber optic networks will be issued again. With this access, companies are able to offer broadband services over fiber optic to customers (FttH). In the [draft decision on tariff regulation FTTH](#), it is specified what companies will be paying at the most per month for existing services and new services. A new element is that companies that buy access will be charged a national tariff, too. The final decision will be issued in 2013.

Calculation of call termination costs (BULRIC)

When end users make calls, telecommunication companies pass on calls to each other's networks (call termination, MTA/FTA). Telecommunication companies charge each other fees for these services. In order to assess whether these costs are reasonable, OPTA uses a special calculation model: 'BULRIC'. Together with the telecommunication companies ([Industry Group](#)) and consulting firm Analysys Mason, OPTA in 2012 updated the 'BULRIC' method. In mid-2013, the market analysis decision regarding fixed terminating access and mobile terminating access (MTA/FTA) will be completed. It will contain the maximum tariffs for terminating access.

Connection to KPN's network (MDF reference offer)

Telecommunication companies that wish to have access to KPN's network must know about the applicable conditions. KPN is required to publish its range of access services and conditions. This is the reference offer. Together with the telecommunication companies, OPTA in 2012 in an [Industry Group](#) looked into the problems associated with this offer. Companies can solve these problems themselves, or OPTA can impose an instruction on KPN.

Higher speed by using second copper line (pair bonding)

The traditional telephone network uses copper. In many homes, only one copper line is used, whereas, most of the time, two lines are available. That second line is often not used. KPN wants to use that second copper line as well (pair bonding). Doing so would double the connection speed, thereby making higher data speeds or HD TV possible. A KPN engineer must physically work on the connection.

KPN is statutorily required to offer new services to other telecommunication companies as well. The KPN engineers were able to connect everything at the same with KPN customers, but they did not with non-KPN customers. These customers had to call in another engineer. This put competitors at a disadvantage. After further enquiries from OPTA, KPN on January 4, 2012, ended the [violation](#). KPN and other telecommunication companies are now able to install pair bonding using a single engineer. In 2012, the telecommunication companies sat down with KPN discussing these new services. In 2013, OPTA will complete its decision on the tariffs for these services.

Obligations regarding reselling telephony connections (WLR)

Appeals concerning reselling telephony connections (WLR)

In 2008, OPTA analyzed the fixed-telephony market. As a result of this analysis, OPTA imposed an obligation on KPN to make telephony connections available for competitors (wholesale line rental, WLR). This would enable other telecommunication companies to compete on telephony services through KPN's network. This obligation has been fleshed out into several implementation decisions: the implementation amendment decision, the tariff amendment decision (both in 2008), the tariff decision (2009) and the tariff amendment decision (2010).

Several parties appealed these decisions. In 2012, the Dutch Trade and Industry Appeals Tribunal (CBb) ruled about these decisions.

First ruling concerning reselling telephony connections (WLR)

The CBb has ruled in the appeal proceedings against the implementation amendment decision 2008 and the tariff amendment decision 2008. In the case concerning the tariff amendment decision 2008, the CBb largely agrees with OPTA. OPTA just did not make clear enough that the tariffs applied retroactively. The CBb changed the tariff amendment decision accordingly. With regard to the [implementation amendment decision](#), the CBb agreed with OPTA regarding some parts, and regarding other parts, there was no basis for appeal. This decision was therefore completely upheld.

Second ruling concerning reselling telephony connections (WLR)

The CBb [ruled](#) in the appeal proceedings against the tariff decisions (2009) and the tariff amendment decision (2010). Maximum prices (tariff ceilings) have been laid down in the tariff decisions, which KPN is allowed to charge between 2009 and 2011 for WLR. A change in these tariffs has been established in the tariff amendment decision. The CBb ruled in OPTA's favor on most counts, but OPTA must amend the decision on two counts. OPTA must reassess the switching tariff and must reconsider the commencement date of the amendment.

Number administration and issuance

Number administration

New rules concerning media numbers

There are special phone numbers for services where a lot of phone calls are made in a short amount of time: mass-calling numbers and media numbers. These numbers are used for tele-voting. By using such numbers, telephone networks will not be overloaded quickly if a considerable number of people call simultaneously.

No mass-calling numbers anymore

The only firm that provided mass-calling services has discontinued these services. At the request of the industry, OPTA changed the mass-calling numbers into media numbers and regular information numbers. After consultation with the industry, the classification of 'mass-calling' was abolished. The policy rules on 'Mass-calling and media numbers' and 'Issuance and administration of eight-digit 0909 media numbers' have been repealed. The new policy rules are ['Issuance and administration of media numbers'](#).

New rules for area codes

With regard to fixed telephony, OPTA distributes area codes among telephone companies, for example the area code 070 for The Hague. The telephone numbers are listed in a number plan, which is drafted by the ministry of Economic Affairs.

New developments in the industry and in network technology have resulted in the still available numbers being better utilized. That is why OPTA has changed the rules. From now on, area codes are issued in blocks of at least 1,000 numbers. The [new rules](#) were presented to the industry in 2012, and will be introduced in 2013.

Enforcement regarding phone numbers

Enforcement requests

Bergman Clinics versus MCXess

For the phone number 0900-8099, Bergman Clinics commissioned the telecommunication company MCXess for delivering telecommunication services. Bergman Clinics wanted to switch providers halfway through the contract, but MCXess refused to hand over the number. Bergman then filed an enforcement request with OPTA to enable them to retain the number while switching providers.

OPTA believes that number holders are allowed to determine themselves to which provider they wish to switch, together with their number. This can be done at any moment in time, apart from any disputes regarding the contract. By not handing over the number, MCXess acted in violation of the Dutch Telecommunication Act. OPTA forced MCXess to hand over the number using an [order subject to periodic penalty payments](#). Subsequently, MCXess did so.

Other requests

Four number holders filed enforcement requests against their telecommunication company. They wished to switch providers, but were unable to retain to their numbers. After mediation by OPTA, the telecommunication company eventually released the numbers. The number holders subsequently retracted their enforcement requests.

Applying for numbers digitally

Digital forms for number application process

Since November 2012, the forms for applying or modifying telephone numbers have been available in digital format as well. This reduces the administrative burden on both applicants and OPTA. The applications can be signed using *eHerkenning*, which is the electronic 'signature' for firms doing business with the government. This is somewhat similar to *DigiD*, the digital identity system already used in the Netherlands for citizens. Businesses are no longer required to enclose documents from the Chamber of Commerce with their applications. OPTA expects increasingly more applicants will use eHerkenning. The digital forms can be found on OPTA's website:

<http://www.opta.nl/nl/nummers/nummers-aanvragen/>.

Enforcement on markets

OPTA enforces compliance with the Dutch Telecommunication Act, the Dutch Postal Act and the thereto-related rules. When businesses do not comply with the rules, OPTA takes action. This is called enforcement. In order to make those businesses comply with the rules, OPTA can, for example, issue oral or written warnings or it can impose fines. OPTA publishes its decisions on its website. OPTA believes it is important that decisions are published, so that it is clear how OPTA rules in certain cases.

If OPTA imposes a fine on a firm, it can file with the courts a request for a provisional injunction suspending the publication of the fining decision. Publication of such decisions could result in reputational damage. As long as a request for a provisional injunction is processed, OPTA does not publish the fining decision. This means that there are decisions that OPTA would like to publish, but about which it cannot disclose any substantive information. In that sense, the overview in this annual report is not complete.

KPN under stricter supervision

Throughout 2012, KPN was placed under stricter supervision by OPTA. KPN had repeatedly violated the rules. OPTA believed there was an elevated risk of new violations committed by KPN. This would harm both consumers and competition. Even though OPTA in 2012 took enforcement actions against KPN's violations, there is not enough reason to lift the stricter supervision regime.

Telephony contract for the entire Dutch government (OT 2010)

Under the name OT2010, the Dutch government holds tenders for telecommunication services. OT2010 has invited companies to submit offers for the provision of fixed-telephony services. Multiple companies, including KPN and Tele2, submitted offers to OT2010. Tele2 filed a complaint with OPTA about KPN. KPN allegedly did not stick to the rules. OPTA did not establish any violations of the code of conduct provisions ND1 (ban on selective price cuts), ND3 (ban on tariff differentiation) and ND5 (ban on margin squeeze).

Order subject to periodic penalty payments

On December 16, 2011, OPTA ruled that KPN had announced a discount deal incorrectly, which meant KPN violated the transparency requirement. In addition, OPTA established that KPN violated the requirement of non-discrimination, because it did not announce the discount deal to its customers, including Tele2.

In an order subject to periodic penalty payments, OPTA on that same day ruled that KPN had to withdraw its contract for the government's telecommunication services. KPN requested the Dutch Trade and Industry Appeals Tribunal (CBB) to have the order rendered inoperative. The [CBB](#) on February 6, 2012, turned down KPN's request. KPN thus had to withdraw its offer. Eventually, Tele2 was granted the contract.

Fine for TCO contracts

Appeal concerning TCO contracts by KPN turned down by court

KPN enjoys a certain level of market power, and, as such, is bound by strict rules when offering discounts and other forms of customer retention incentives. A few years ago, KPN violated the rules by offering so-called Total Cost of Ownership contracts (TCO). The six largest telecommunication users in the Netherlands were offered discounts selectively. In addition, these customers were faced with unreasonable switching barriers. This means they could not easily switch telecommunication providers.

Pressed by OPTA, KPN ended the TCO contracts between January 2008 and April 2009. After an extensive investigation, OPTA imposed a fine of more than EUR 10 million on KPN on February 8, 2010. The fact that KPN had already been fined on previous occasions for similar violations, was considered an aggravating factor by OPTA.

Ruling

KPN filed an objection against this fine. On June 8, 2011, OPTA turned down these objections. KPN subsequently filed an appeal. The District Court of Rotterdam on June 19, 2012 dismissed KPN's appeal on all counts. KPN then turned to the Dutch Trade and Industry Appeals Tribunal (CBb).

The CBb on January 9, 2013 ruled the fining decision was unlawful on one [count](#). It concerned the aspect of recidivism (repeat offences). The CBb notes that four of the six contracts had been signed prior to KPN's other fine by OPTA in a previous case for a similar violation. The CBb thus argues there is no recidivism in these four cases. These four cases could therefore not be considered an aggravating circumstance. The CBb lowered the fine to EUR 8,520,000.

The courts – other fines

Ruling on fine in connection with calls when abroad (roaming)

In late-2010, OPTA imposed a fine of EUR 64,5000 on Tele2. Tele2 had violated the European Roaming Regulation. This regulation contains European rules on making and receiving calls abroad. Customers of Tele2 were paying too much for making and receiving calls within the European Union.

From July 1 through November 30, 2009, Tele2 charged 55 eurocent per minute. In that period, that tariff was capped at 51 eurocent per minute. Tele2 filed an objection with OPTA. OPTA subsequently lowered the fine to EUR 43,040. Tele2 then filed an appeal, but the [court](#) ruled in OPTA's favor on May 24, 2012. Tele2 then took its case to the Dutch Trade and Industry Appeals Tribunal (CBb). The CBb is expected to rule in this case in 2013.

Court reverses fine for incorrect entry of discounts

OPTA on May 20, 2010, imposed a fine on KPN of EUR 720,000 for offering, on balance, too high discounts to certain business customers because of errors in the invoices. The errors resulted in KPN charging similar customers different tariffs for the same services. KPN cannot offer selective discounts due to its market power in the business market (non-discrimination requirement).

Ruling

KPN filed an objection with OPTA, and subsequently filed an appeal with the District Court of Rotterdam. The court agreed with OPTA that, for the question whether or not a certain action must be considered a violation, it is irrelevant to know whether that action was performed knowingly and deliberately. Yet, in its contracts with its customers, KPN must comply with the tariffs and conditions approved by OPTA.

The incorrect invoicing has not only led to too high discounts, but also to too low discounts. In addition, the court took into account the fact that KPN, once it had discovered the errors, took action to correct these mistakes by demanding back the excess discounts. According to the court, no violation of the non-discrimination requirement had thus occurred in this case. The [court](#) on March 1, 2012, allowed KPN's appeal, and reversed OPTA's ruling on objection. OPTA did not appeal the court's ruling.

Postal Services

Universal postal service

Universal postal service

The minister of Economic Affairs has appointed PostNL as the provider of the universal postal service (UPS). This means that PostNL is required to provide at least those services that fall under the UPS.

The UPS consists of at least the following:

- Delivery of mailpieces, at least six days a week;
- Creating locations where customers can drop off and pick up mail (mail locations).

OPTA checks whether PostNL provides the UPS in accordance with the rules. Every year, PostNL reports about the execution of the UPS. OPTA evaluates those reports.

Assessment of reports on the universal postal service

Assessment of 2011 [report](#)

PostNL in 2011 met the shipping duration requirement for individual letters. This requirement means that at least 95 percent of individual letters must be delivered the next day. In addition, PostNL met the mail location requirements.

Assessment of 2010 [report](#)

OPTA in 2012 also published the 2010 report of PostNL. PostNL in 2010 met the mail location requirements, but it did not meet the mail delivery requirements. In the report on individual-letter delivery, PostNL left out a period of six weeks. There were strikes in that period, but strikes are no reason to leave out certain days. This means that PostNL was able to deliver 92.9 percent of all individual letters the next day, and it thus failed to meet the delivery requirement of 95 percent.

Assessment of 2009 report

With regard to 2009, PostNL took OPTA to court. PostNL opined that OPTA had acted improperly (unlawfully). The case concerned, among other aspects, the publication of OPTA's opinion about the 2009 report, as well as media reports on ongoing OPTA investigations into the mail delivery. The [court](#) ruled in OPTA's favor on all counts. PostNL did not appeal this ruling.

Tariffs and compensation for universal postal service

Compensation for universal postal service

PostNL noted that, in 2011, the costs of the universal postal service exceeded its revenues. In 2012, PostNL filed a request with OPTA for compensation of these net costs. OPTA in 2012 started the [assessment](#) of this request, which will continue in 2013. Should PostNL be granted a compensation, other postal service providers must chip in. If so, the minister of Economic Affairs will decide at that point how this should be organized.

Tariffs of the universal postal service

PostNL in 2012 announced it wished to change the tariffs for the universal postal service on January 1, 2013. PostNL must first submit the new tariffs to OPTA. OPTA has [established](#) that the new tariffs do not violate the law.

Investigations

Investigation into complaints about universal postal service

In 2012, the Dutch House of Representatives discussed the problems surrounding mail delivery by PostNL because of the reorganization. The Dutch state secretary of Economic Affairs requested

OPTA to pay closer attention to complaints about the universal postal service. OPTA carried out an [investigation](#) and came to the conclusion that the existing rules do not give OPTA any reason nor any resources to step in. However, OPTA will continue to keep an eye on the quality of mail delivery.

Study into mail delivery on Mondays

PostNL is required to deliver mail at least six days a week. The then state secretary of Economic Affairs has proposed to change the six-day requirement into a five-day requirement. The Dutch House of Representatives wished to have an independent study be carried out into figures about mail delivery on Mondays. The state secretary has requested OPTA to carry out this [study](#).

OPTA has established there are no reasons to assume that PostNL is keeping the amount of mail on Mondays artificially low by deliberately holding back mail on those days. In addition, OPTA was unable to establish that PostNL is keeping the quality of mail delivery on Mondays artificially low.

Opinion on support locations of PostNL

OPTA has carried out a [study](#) into mail delivery by PostNL. The study looked into the way mail is kept at support locations and storage locations (including mobile ones). These are locations where mailpieces can be stored temporarily until mail carriers deliver them. OPTA in July 2012 found that PostNL must improve security with respect to the mail that is stored at those locations. OPTA has set out a number of requirements. Furthermore, OPTA will carry out additional studies into mail delivery.

Postal Act

Advice with respect to amendments to the Dutch Postal Act

The minister of Economic Affairs in 2012 submitted a bill proposing amendments to the Dutch Postal Act. The bill includes additional resources for OPTA to regulate the postal market. One of the reasons behind this bill was a previous OPTA study: '[Competition in the postal market](#)'.

OPTA gave the ministry of Economic Affairs its advice about the bill (the feasibility test). In [it](#), OPTA argued that the bill would help it better anticipate developments in the postal market. But there is a risk as well, since OPTA cannot impose on the provider of the universal postal service any obligations regarding elements of the universal postal service.

2012 Postal Market Monitor

For the third time, OPTA in 2012 drew up the [Postal Market Monitor](#) for the minister of Economic Affairs. Its findings reveal that approximately 4.5 billion mailpieces were transported in 2011. Revenues from mailpieces for the postal companies were EUR 1.5 billion. This was a decrease of 6

percent compared with 2010. The number of mailpieces decreases every year by a similar percentage.

The largest mail company was PostNL, which transported 80 to 90 percent of the total mail volume. Sandd transported 10 to 20 percent, which is more than in 2010. This increase is primarily explained by its acquisition of Selekt Mail. Competition only exists in the business market. Competition is the strongest in presorted mail and needs to be delivered after three days. OPTA believes that, if market conditions remain the same, no competition will emerge in the other segments of the market.

Dispute settlement

Telecommunication companies can ask OPTA to arbitrate in disputes. OPTA will then do so. In 2012, OPTA received ten requests, and issued rulings in five disputes, which is fewer than in previous years. All requests concerned the Dutch Telecommunication Act.

Signed contract or not

In case of disputes under Section 12.2 of the Dutch Telecommunication Act, it is critical to know if a contract has been signed between the parties involved. If so, OPTA assesses whether it is in violation of the Dutch Telecommunication Act or the thereto-related rules. If not, OPTA then assesses how parties can comply with the law or rules.

Dispute, and a contract

Tele2 and KPN had a dispute regarding tariffs. OPTA tested the contract that parties had signed against the tariff decision regarding the wholesale price cap 2009-2011 (WPC-IIa).

In two other disputes, OPTA assessed whether the contracts violated the interconnection obligation. Telecommunication companies are required to ensure that callers can reach each other:

- Tele2 and BT had a [dispute](#) with KPN regarding tariffs for 084/087 phone numbers;
- CM had a [dispute](#) with KPN regarding tariffs for transiting text messages.

It appeared that the contracts did not violate the Dutch Telecommunication Act, the thereto-related rules or the market analysis decisions.

Dispute, but no contract

In two disputes, parties had not signed contracts (not complete ones). In these disputes, OPTA assessed whether the companies complied with the law and underlying rules. If not, OPTA determined what contracts between the parties are valid.

Dispute CM and KPN about text messages

In the [dispute](#) between CM and KPN, OPTA set a tariff based on Section 6.2 of the Dutch Telecommunication Act. Otherwise the interconnection obligation was not met.

Dispute Tele2 and KPN about service agreements

In the [dispute](#) between Tele2 and KPN, OPTA established that KPN did not meet the obligations laid down in the 2011 decision on unbundled access. OPTA instructed KPN to adjust the service (the Service Level Agreement).

3. Consumers

ConsuWijzer

[ConsuWijzer](#) is the consumer information desk of the Netherlands Consumer Authority, the Netherlands Competition Authority (NMa), and the Netherlands Independent Post and Telecommunications Authority (OPTA). Consumers can find unbiased and reliable information about their rights on ConsuWijzer's website. Its representatives offer consumers free, practical advice about their questions over the phone. In the case of OPTA, they can help with questions on postal and telecommunication issues. Consumers can also file complaints with ConsuWijzer. All complaints that ConsuWijzer receives, will be used as indications for investigations into possible violations.

Through ConsuWijzer, OPTA offers consumers useful information and practical tools to take action themselves. In 2012, OPTA offered extensive information about the following topics, among other ones, through ConsuWijzer:

- Changing conditions of mobile subscriptions;
- Switching providers;
- The Do-Not-Call register, and the right to object;
- What to do in case of premium-rate numbers;
- Tethering (using a mobile phone as a router);
- What are cookies, and how do they work; the new cookie legislation;
- Awareness campaign on roaming when abroad.

In October 2012, consumers voted [ConsuWijzer.nl](#) best government website of the year for the third successive year.

Complaints

In 2012, ConsuWijzer had contact with consumers 80,000 times. In 2011, that number was 85,000. Of those 80,000 queries, approximately 23,000 questions and complaints concerned OPTA-related topics. ConsuWijzer's website had more than 2.2 million visits in 2012. Of the OPTA-related topics, the most complaints in 2012 concerned telemarketing (8,332). This was a slight decrease compared with 2011.

Warnings to consumers

OPTA in 2012 imposed fines on several companies for violation of telemarketing regulations. Objections were filed against publication of these fines. The court has yet to rule on whether OPTA is allowed to disclose the names of the companies and their violations. Furthermore, OPTA warned consumers about:

- Telephone fraud: this involved criminals that call individuals attempting to get their personal details. ConsuWijzer gave examples of the different types of phone calls these criminals make, and explained what consumers should do when they get such calls;
- Text-message spam 'Daily Winner': this involved text messages saying that the individual receiving the text message was selected as the Daily Winner, which came with a link to a website where the prize could be collected. OPTA's advice was: do not reply, and do not click on the hyperlink. Since the text messages had been sent by non-Dutch numbers, OPTA was unable to take any action.

Telemarketing

In late-2012, more than 7.7 million consumer telephone numbers were registered in the Do-No-Call Register. Companies are only allowed to call these consumers if they have or had a customer relationship with that individual, or if these consumers have explicitly and very clearly requested to be contacted. However, a number of companies attempted to get around these rules. For example, they used data obtained through online competitions or surveys. In 2012, OPTA received 8,332 complaints about unwanted telemarketing calls through ConsuWijzer. This is a slight decrease compared with 2011.

Companies are statutorily required to ask consumers at the end of every call whether they are allowed to call that consumer again in the future. This is called the 'right to object.' In addition, companies must always ask whether that consumer wishes to be registered in the Do-Not-Call Register. If he indicates he wishes to be not called anymore, the company must remove his phone number from their files. If that consumer wishes to be registered in the Do-Not-Call Register, the company is required to facilitate this at no charge. In 2012, OPTA particularly focused on compliance with the right to object.

Complaints

Most telemarketing complaints in 2012 concerned telemarketing activities from lotteries, and telephony and television providers. The percentages per industry are:

Lotteries	26%
Telephony/Television	17%
Papers/Magazines	12%
Energy	10%
Financial services	8%
Charities	6%

Enforcement

In 2012, OPTA handled objections companies had filed against fines that had been imposed. In addition, the District Court of Rotterdam largely upheld a number of OPTA's rulings, and upheld the fine on *Goede Doelen Loterijen* in full. The following rulings and decisions were published in 2012:

Objection filed by Sell-it against fine for telemarketing was dismissed

On June 30, 2011, Sell-it was fined EUR 15,000 for violation of the telemarketing rules. When selling the Hotel gold card, Sell-it had calls made to more than 1,500 consumers that were registered in the Do-Not-Call Register. Furthermore, with regard to 281 consumers who had indicated during those sales calls they wished to be registered in the Do-Not-Call Register, Sell-It either did so too late, or failed to do so at all. The company filed an objection against the fine, but this was dismissed on January 5, 2012. Sell-it did not appeal this decision by OPTA.

Court largely upholds telemarketing fine on NLEnergie

Nederlandse Energie Maatschappij (NLEnergie) filed an appeal with the District Court of Rotterdam against a fine that totaled EUR 395,000. OPTA had imposed this fine for violation of the telemarketing rules. NLEnergie called consumers who had indicated in previous telemarketing calls they wished not to be called anymore. In addition, during these calls, NLEnergie failed to actively ask consumers whether they wished to be called again. On February 16, 2012, the Court largely upheld the fine (LJN: BV6137). OPTA argued there were two aggravating circumstances. The Court did not follow one of them, which was about staging telemarketing calls. As a result, the fine was reduced by EUR 12,500. NLEnergie filed an appeal with the Dutch Trade and Industry Appeals Tribunal.

Court upholds telemarketing fines on Goede Doelen Loterijen

Three lottery organizations (two lotteries, BankGiro Loterij, Nationale Postcode Loterij, and their holding Nationale Goede Doelen Loterijen), had filed an appeal against a fine, totaling EUR 262,500 for violation of the telemarketing rules. These lotteries had made unsolicited phone calls to consumers that were registered in the Do-Not-Call Register. In addition, these lotteries did not actively ask consumers during the customer-recruitment calls whether they wished to be called again in the future.

Finally, consumers were not informed clearly that they had the option of registering with the Do-Not-Call Register. On December 6, 2012, the District Court of Rotterdam issued its ruling (LJN: BY5391). The Court upheld OPTA's conclusions, as well as the level of the fine completely. The lotteries filed an appeal against this ruling with the Dutch Trade and Industry Appeals Tribunal.

Information

OPTA's Telemarketing Opinion was slightly adjusted in February 2012. In early-2012, OPTA together with trade organization DDMA (Dutch Dialogue Marketing Association) held an informational meeting for market participants about the 2011 Telemarketing Opinion. Minor adjustments were implemented in February 2012 following the input from the industry. OPTA released an information leaflet in which the statutory rules are explained in a succinct and clear manner. This leaflet is a summary of the Opinion.

Fixed telephony

Premium-rate information numbers

OPTA keeps a close watch on providers of services through premium-rate information numbers. Such providers are number users. When allocating such numbers, OPTA takes a close look at the individuals or organizations that apply for such numbers, and at the services that will be offered through that number. If it suspects a number is abused, OPTA can have that number temporarily closed, or have payment to that provider postponed. In addition, OPTA can retract number allocations or turn down applications if abuse is suspected. Examples of abuse are: unexpectedly long waiting times, or lost connections without delivery of the service.

Public Administration Probity Screening Act (Bibob)

Under the Public Administration Probity Screening Act (Bibob), when OPTA finds indications that numbers may be abused, it can ask the National Agency Bibob to launch an in-depth investigation into the integrity of the number holder and/or number user. National Agency Bibob will then find out, among other things, whether the individuals in question committed criminal offences in the past as well, and, if so, what these were.

Maximum tariff per call to premium-rate numbers

Number users and telephony providers are required to adhere to a maximum tariff per call if premium-rate numbers exceed EUR 0.15 per minute. In addition, consumers must be informed in advance what the costs are when calling a premium-rate number. In 2012, OPTA checked among 140 premium-rate numbers whether callers were properly informed of the minute tariff per call, and, wherever it was statutorily required, whether callers were informed of a maximum tariff per call. In one case, OPTA issued a warning, and in three cases did it issue an 'intention to impose an order subject to periodic penalty payments.' The number users subsequently adjusted their automated notifications.

Obligation to join a complaints board

OPTA checks whether number users of certain premium-rate numbers join the Complaints Board on Information Service Providers. In 2012, OPTA found out that 42 parties had failed to join said board. These providers were issued an 'intention to impose an order subject to periodic penalty payments,' after which they joined the complaints board after all. Consumers are able to claim their rights in a relatively easy way through the Complaints Board on Information Service Providers. They can contact the board, for example, when they have a complaint about the service of a number user, and they are unable come to an understanding with the number user. On ConsuWijzer's website, OPTA gives information about the Complaints Board, and about what consumers must do in order to claim their rights through them.

Mobile telephony

New regulations

New regulations concerning paid text messaging services came into effect April 1, 2011. Since that date, OPTA is able to take action against mobile-telephony providers that threaten to disconnect consumers that refuse to pay the costs of unwanted text-messaging services. Starting January 1, 2012, mobile-telephony providers must offer subscriptions that cannot receive paid text-messaging services. Mobile-telephony providers must offer consumers with existing subscriptions, too, the option to exclude paid text-messaging services.

Paid text-messaging services

In early 2012, OPTA sat down with mobile-telephony providers about the implementation of the new rules concerning paid text-messaging services. OPTA is of the opinion that mobile-telephony providers must offer consumers the option to block paid text-messaging services with all subscriptions. In case of new subscriptions, such services must be blocked from the start of the subscription.

Furthermore, OPTA sat down with gateways in the second half of 2012. These are parties that signed an agreement with mobile-telephony providers about forwarding text-messaging services to consumers. OPTA reminded them of their responsibility regarding paid text-messaging services.

Complaints

Since the tightened rules concerning text-messaging services came into effect, the number of complaints that OPTA has received had dropped by approximately 80 percent. However, OPTA continues to receive a relatively considerable amount of complaints about text-messaging services. Furthermore, the number of complaints decreased compared with previous years. A significant share of these complaints concern chat services through text or advertisement messages (spam) from outside the Netherlands. In 2012, OPTA launched several investigations into companies that may have violated the prohibition on spam when sending their text messages. These investigations are continued in 2013.

Cooperation

When dealing with paid text-messaging services that do not comply with the regulations, OPTA cooperates as much as possible with the Netherlands Consumer Authority. Next to OPTA, the mobile-telephony providers and the Foundation on Codes of Conduct regarding Mobile Services are committed to go after companies that do not stick to the rules.

Net neutrality

On May 8, 2012, the Dutch Senate passed the new Telecommunications Act, which contains important provisions on net neutrality. OPTA enforces compliance with the net neutrality provisions, and, in 2012, prepared itself for the new Telecommunications Act that came into effect January 1, 2013.

New provisions on net neutrality

In the revised act, free internet access is guaranteed, and it has become illegal to block or reduce data speeds for services such as Whatsapp or Skype. Furthermore, providers are not allowed to charge additional fees for the use of such services. With this revision, the Netherlands is one of the first countries in the world to statutorily guarantee net neutrality, and thus goes further than European

rules. The EU does not prohibit speed reductions or blocking, as long as providers are clear about such measures towards consumers.

In addition to the article that guarantees free internet access, the so-called transparency provisions are also part of the new rules regarding net neutrality. This means that providers must communicate openly and clearly about how they will deal with peaks on the Internet. However, when it is really busy, they are allowed, only rarely, to reduce speeds or block certain services. It is important that consumers know what their provider will do in such situations. It has now been laid down in law that providers indicate whether they will do so, and, if so, what they will do.

The European point of view

In 2012, the Body of European Regulators for Electronic Communications (BEREC) together with the European Commission investigated extensively whether and how services such as Whatsapp are blocked in Europe. The findings reveal that it does happen in practice, but that, in most cases, consumers are able to choose a different provider that does not block such services. In early 2013, the principle of net neutrality will be laid down in law in Slovenia as well, like in the Netherlands. The Belgian legislature, too, is currently discussing possible net-neutrality legislation. The European Commission has launched a study to find out how net neutrality can be guaranteed in the best possible way in Europe. The ministry of Economic Affairs filled out the questionnaire that was sent in that context. OPTA provided the ministry with advice.

Transparency and contractual conditions

Billing per second

On October 24, 2012, OPTA posted a [letter](#) on its website commenting on a new, statutory requirement regarding phone subscriptions. On January 1, 2013, the revised Section 7.2a of the Dutch Telecommunications Act came into effect. It says that consumers must have the option of choosing a subscription with which they only need to pay for the seconds they have actually called. In other words, it is about a subscription (fixed or mobile) with billing per second, and without any start fees.

Obligation to join a complaints board

Providers of fixed and mobile telephony services are required to join the Complaints Board on Telecommunication or the Complaints Board on Electronic Communication Services. Consumers are

able to claim their rights in a relatively easy way through the Complaints Board, for example, when they have a complaint about the service of a number user, and when they are unable come to an understanding with the number user. OPTA checks whether telephony services providers join the Complaints Board. Based on indications and complaints submitted to ConsuWijzer, OPTA will take enforcement actions if so needed. In 2012, OPTA contacted three providers. Two of these eventually did join the Complaints Board. The third provider has not yet done so. OPTA in December sent this provider a pre-announcement of an order subject to periodic penalty payments in a forceful attempt to make it join the Complaints Board after all.

Internet security

Spam

New forms of spam

A spam message is an unsolicited message you receive. The message's contents determine whether it can actually be considered spam: the message's contents must be either commercial, idealistic or charitable. Under the Dutch Telecommunications Act, sending spam messages is illegal in the Netherlands. OPTA has a special website for complaints about spam: www.spamklacht.nl.

Spam via [social media](#)

Spam messages are not just sent over mobile phones (text messages), email or fax, but also over social media such as Facebook, Twitter or Hyves. Facebook or Twitter messages with a purely commercial purpose may fall under the spam ban. Spam can be hard to recognize. It may come from individuals, organizations or companies you follow, but not necessarily. It may also be a message that has been forwarded or retweeted, for example something like: [#trade](#) [#luxury](#) [#weekend](#) at the most luxury [#hotel](#) in [#amsterdam](#) ? Check in at [#xxx](#) Hotel <http://bit.ly/blabla> [#www](#).

It is difficult to exactly define social spam. If a message looks like an ad, and it is unsolicited, a complaint can be filed with www.spamklacht.nl, for example if the sender never had asked for permission to send this message. In 2012, www.spamklacht.nl was updated, so that consumers could also file complaints about spam sent over social media.

Information about email marketing

OPTA has received 175 questions from businesses about sending emails (email marketing). These businesses wanted to know how to ask individuals for their permission to send them a message. Their messages have a commercial, idealistic or charitable purpose.

Complaints about spam

On Spamklacht.nl, OPTA has received 24,536 complaints:

- 22,720 complaints about email messages;
- 1,006 complaints about text or MMS messages;
- 91 complaints about [fax messages](#);
- 26 complaints about social media;
- 339 complaints about messages sent over an automated calling system;
- 354 other complaints.

Several investigations into spam are currently underway. OPTA will rule on these in 2013.

Administration of justice by OPTA

Fine imposed on Thuiswerkcentrale for spam

OPTA in 2008 imposed fines totaling EUR 510,000 on two companies and two individuals for sending unsolicited emails under the name of Thuiswerkcentrale.

Appeal against fine

One individual with two companies filed an appeal with the court, after OPTA had dismissed the objections. The court reversed the EUR 240,000 fine from 2010. It argued that OPTA failed to adequately prove that it were indeed these two companies that had violated the spam ban. OPTA then took the case to the highest court.

Appeal against fine with CBb

On June 14, 2012, the Dutch Trade and Industry Appeals Tribunal (CBb) reversed [the fine](#) of EUR 240,000. The individual in question and the two companies had indeed been involved with Thuiswerkcentrale and did know about the messages that had been sent. In addition, they benefited from these messages, but that does not mean that they are the senders. The CBb thus argued that OPTA should not have imposed a fine for this violation. The remaining fine of EUR 270,000 had been imposed on another individual. That fine was not under discussion, so it had to be paid. Appeals cannot be filed anymore.

Ruling on spam over fax

Spam is usually associated with unsolicited emails, but spam can also include unsolicited text messages or fax messages.

OPTA carried out an investigation into unsolicited fax messages by Swiss Money Report. According to OPTA, a German firm had sent a share of the fax messages. The Dutch owner of the German firm claims a customer of the German firm sent the fax messages.

The owner refused to give OPTA information on the identity of said customer. OPTA subsequently imposed an [order subject to periodic penalty payments](#). If the owner did not give information, he would have to pay the penalty payments. The owner requested the Dutch Trade and Industry Appeals Tribunal (CBb) to issue an interim injunction postponing the order. The CBb turned down this request. The owner subsequently gave the information.

Fine on Companeo for spam

OPTA in 2012 fined Companeo a [fine](#) of EUR 100,000 for sending spam to mostly firms. From late-2009 until early-2011, Companeo sent almost 15 million commercial emails. The recipients of those emails had not given permission to be contacted. Other recipients were not asked carefully enough for permission by Companeo.

Spamklacht.nl

OPTA was able to track down this case thanks to complaints that had been submitted to www.spamklacht.nl. Individuals complained they received Companeo's newsletter, as well as emails from vraaguwofferte.com, yet they had not signed up for either of them. In addition, it was not clear that Companeo was the sender of the emails. Companeo filed an objection against the fine.

Mobile threats

Mobile devices such as tablets and smartphones have become increasingly popular in recent years. That is why OPTA carried out a study into mobile threats. A lot of personal data is stored on telephones and computers. Users often do not know there are risks involved. That makes it all the more interesting for criminals to exploit that. OPTA identified the risks, such as installing malware, and criminals reading personal and financial information. OPTA can raise awareness of the risks among consumers, but it can also take enforcement actions.

Devices come with more and more functionalities for various uses, such as payments and social networks. That is why it is important to work together with other organizations.

Cookies

New rules on cookies

What is a cookie?

Cookies are small text files that are stored on computers after visiting a website. Using cookies, information can be collected and used. Websites become easier to navigate, because cookies can remember passwords, preferences, and shopping baskets. Virtually all websites use cookies.

Following users on the Internet

Most cookies are used to track the surfing behavior of visitors. With this information, advertisers are able to tailor their ads to each individual visitor of the website. In most cases, ads are necessary to finance the website in question (often free). Cookies can be useful, but visitors may feel uncomfortable about personalized ads, because they might feel like they are being followed without knowing.

The cookie provision

A European directive has been tightened to better protect online privacy. Cookies fall under this directive, too. Since June 5, 2012, rules on cookies have been included in the Dutch Telecommunications Act, the [cookie provision](#). Websites must inform visitors, and must have received permission before they store or read a cookie or any other data on a computer, mobile phone or console. It is not concretely specified in the cookie provision how websites should do so. In addition, no distinction is made as to the purpose of the cookies that are used. Only functional cookies are exempted. Many websites believed that the new rules had been introduced rather fast. They were not fully aware of them, and were not ready to comply with them.

Information about information requirement

OPTA has taken active steps regarding information about the information requirement so that websites comply with it, and visitors know what cookies are used and for what purpose. A [meeting](#) with trade organizations DDMA and IAB was held discussing the first experiences with compliance with the cookie provision. In addition, an FAQ on cookies was published. Also, OPTA helped create a standard disclaimer that websites could use in order to meet the information requirement. The Ministry of General Affairs created texts, as well as software for websites for obtaining permission: the Central Government Cookie Opt-in.

Enforcement actions regarding cookies

Cookies on government websites

In September, OPTA sent a [letter](#) to 121 government and government-related websites. The government must obviously set the right example when it comes to cookies.

- 96 of these websites stored cookies on visitors' computers without asking these visitors for permission to do so, or informing them. These websites had to demonstrate to OPTA how they intended to comply with the law.
- 10 of these websites stored functional cookies only;
- 15 of these websites stored no cookies at all. In order to make sure they will continue to meet the cookie provision in the future, they were informed by letter about the new rules.

Many websites have informed OPTA about their plans on how to comply with the rules. OPTA actively contacted websites that have not responded or have submitted plans that were not clear enough.

Malware also falls under cookie rules

The cookie provision is about more than just cookies. Malware is malevolent software that finds its way on the user's computer without his permission. Such software extracts personal information from computers, or it places something in the computers, for example a virus. Malware therefore also falls under the cookie rules.

Cookies for website analyses (first-party analytics)

The cookie rules do not apply to functional cookies (needed for logging in or shopping baskets), but they do to analytical cookies. Using analytical cookies, the website is able to see how visitors surf their site. A lively public debate is taking place about analytical cookies. Many of these cookies hardly invade the privacy of individuals. The Dutch House of Representatives has asked the minister of Economic Affairs whether analytical cookies should fall under the rules. Together with the ministry and the Dutch Data Protection Authority, OPTA will determine under what conditions analytical cookies can be permitted. This would make it easier for website owners to comply with the cookie provision, and it would increase user-friendliness for visitors.

Enforcement of the law

In its [enforcement efforts](#), OPTA wishes to focus on tackling the very serious cases, such as cookies that are difficult to remove from computers, or websites that secretly use other technologies that basically have the same effect, thereby invading the privacy of visitors.

Action against malware

Malware is malevolent software that finds its way on the computer of a website's visitor without his permission, for example, through a cookie. This software extracts personal information from

computers, or it places something in the computers, for example a virus. Malware also falls under the cookie rules. When Dutch parties are suspected of active involvement in the development and distribution of malware, OPTA may launch an investigation and impose fines.

Wherever possible, OPTA [responds](#) to indications of distribution (small-scale and large-scale) of malware in the Netherlands. OPTA will then try to locate the malware's source as soon as possible, and contain its spread. OPTA does not actively monitor possible malware distribution, and, in its efforts to combat malware distribution, thus relies on indications that public and private partners have.

Dutch websites

In 2012, government agencies and businesses reported to OPTA about malware distribution by a number of Dutch websites. OPTA verified these reports, and helped these organizations find the malware's source. In most cases, the culprit was the software for ads.

Malware infection

Visitors may become infected with malware without even knowing (the so-called 'drive by downloads'). Sometimes visitors do not even have to click on anything to become infected with malware. The most well-known malware is aimed at online banking ('banking trojans') and is called Zeus or Citadel. These try to collect usernames and passwords. Virus scanners struggle with finding malware. Malware distributors are hard to track down and often operate from outside the Netherlands. OPTA can only come into action after the incident has already happened. OPTA and the companies that were hit exchanged experiences, and OPTA gave these companies tips in order to track down malware even better in the future, and to prevent malware.

Notification requirement and protection requirement

Notification requirement in case of privacy-related incidents

Since June 5, 2012, providers of telephony and internet services are statutorily [required](#) to notify OPTA of certain security incidents. These are incidents that carried a risk of others potentially having accessed personal data of customers. Sometimes, these firms must also inform the individuals about to whom the data belongs. This notification requirement is connected to the protection requirement: companies must properly protect the personal data of their customers.

Information about notification requirement

OPTA and the Radiocommunications Agency Netherlands created a joint [desk](#) which companies can notify of any incidents. The Radiocommunications Agency Netherlands operates this desk. OPTA and

Radiocommunications Agency Netherlands on April 10, 2012, held an information meeting on this notification desk. All companies that are registered with OPTA were invited to this meeting. OPTA explained what information-security incidents should be notified of, and how it monitors compliance with this requirement. OPTA sat down with major companies discussing the introduction of this notification requirement, before and after June 5. The companies were thus given the opportunity to share their experiences with incidents and with the notification desk. In these discussions, OPTA also gave tips, making it easier to submit notifications.

Notification of incidents

OPTA in 2012 received a total of 143 notifications. These included many smaller incidents that were of little influence to customers, for example, a phone number that someone had found or a bill that had been sent to the wrong address.

- In 60 percent of all notifications, the incident did not affect the privacy of customers. These concerned, for example, stolen laptops, on which information about customers was stored in such a way that it could not be read;
- In 39 notifications, firms informed their customers;
- In 7 notifications, a computer virus or hacker had gained access to the companies' computers.

Enforcement of the rules

In all cases, OPTA assessed whether companies had made the right choice if they did not inform their customers. And in all cases, the companies involved acted in accordance with the rules. However, in some cases, OPTA did ask questions about what those companies had done to take away the incident's cause.

OPTA sent twelve companies a letter about incidents OPTA had not been notified of. These companies eventually did notify OPTA of these incidents, or they explained why they believed they did not have to notify OPTA thereof.

Oversight on providers of qualified certificates

OPTA oversees companies that issues qualified certificates. These are certificates that are primarily used for legally valid electronic signatures. These companies, also known as certificate service providers or CSPs, are required to register with OPTA. CSPs often also issue other certificates in addition to these qualified certificates, for example, for secure connections to government agencies, banks and websites. These latter, non-qualified certificates do not fall under OPTA's oversight duties.

More oversight

There are four for-profit and three non-profit providers that issue qualified certificates. The CSPs vary considerably in terms of size. In 2011, approximately 145,000 were issued.

In late-2011, OPTA intensified its oversight efforts. The main reason for the intensification was the security incident at CSP DigiNotar, which became public in August 2011. OPTA did not wait until the investigations into the oversight on DigiNotar were completed. Together with the ministry of Economic Affairs, OPTA immediately decided to intensify its oversight on DigiNotar.

Oversight in two stages

Oversight on the companies that issue qualified certificates takes place in two stages. A CSP has itself audited voluntarily by an auditor. The auditor then accredits the CSP. Oversight by OPTA complements the system of voluntary accreditation. OPTA in 2012 reviewed the auditors' reports, and then paid visits to all CSPs. In those visits, the trustworthiness and security of the CSP were discussed. Where necessary, OPTA asked the CSPs for additional information to assess whether they complied with the rules.

Identifying the risks

For each CSP, OPTA analyses the risks. This makes clear what risks each CSP faces, and where OPTA must increase its oversight. Security incidents can always happen, no matter how well a CSP has set up its organization and systems. That is why it is important that CSPs immediately notify OPTA of any incidents when issuing qualified certificates. This minimizes any effects an incident might have. CSPs can be forced to stop issuing certificates until it is certain that the incident has no consequences to the certificates' trustworthiness. Buyers of certificates must also take measures to minimize service outages in such situations.

Issues that need attention

The visits to the CSPs have not revealed any direct threats to the secure issuance of certificates. However, there are a number of issues that need attention. OPTA ordered the CSPs to take appropriate measures where needed. OPTA checks whether these measures have indeed been implemented. If not, OPTA can take enforcement actions. Another point of concern is that many CSPs use the same subcontractors. OPTA sees no reason to question the trustworthiness of these subcontractors. But there is a certain dependency on these subcontractors, which leaves the system vulnerable.

Cooperation

With an intensification of oversight efforts also comes increased collaboration with other organizations that play a role in oversight on CSPs, such as Logius. Under the Dutch Telecommunications Act, OPTA oversees the providers of qualified certificates. Logius is part of the ministry of the Interior and Kingdom Relations, and, as Policy Authority, is charged with oversight on the providers of PKIoverheid certificates. Both qualified and non-qualified certificates fall under PKIoverheid. Logius and OPTA have already been working together for a long time, and drew up a [cooperation protocol](#). The protocol stipulates, among other things, that the organizations carry out checks and investigations at the CSPs together as much as possible.

4 Abbreviated financial statements

Independent Auditor's Report

Balance sheet

<i>Balance sheet</i>		
	31 December 2012	31 December 2011
	x €1,000	x €1,000
ASSETS		
Fixed assets		
Tangible fixed assets:		
Tenant's property	503	674
Furniture and fixtures	123	136
Computer hardware and software	1,409	1,552
	2,035	2,362
Current assets		
Accounts receivable	158	132
Fines and orders subject to periodic penalty payments receivable	49,671	52,037
Fines still to be levied	1,120	-
Receivable from the Ministry of Economic Affairs	116	-
Other receivables	913	646
Cash and bank balances	3,570	2,098
	55,548	54,913
TOTAL ASSETS	57,583	57,275

LIABILITIES		
Capital and reserves		
General reserve	856	826
	856	826
Provisions		
Provision for objections and appeals	5	35
Provision for future remuneration	200	200
Provision for anniversary bonuses	44	44
	249	279
Current liabilities		
Payable to the market	3,503	1,624
Accounts payable	1,019	596
Debt to the Ministry of Economic Affairs	-	180
Taxes and social security contributions	418	370
Fines and orders subject to periodic penalty payments	50,860	52,212
Other liabilities	678	1,188
	56,478	56,170
TOTAL LIABILITIES	57,583	57,275

Statement of Income and Expenditure

Statement of income and expenditure			
	Actual	Budget	Actual
	2012	2012	2011
	x €1,000	X €1,000	x €1,000
INCOME			
Revenues from market categories	15,304	15,336	15,492
Other income	2,256	2,390	1,611
TOTAL INCOME	17,560	17,726²	17,103
EXPENDITURE			
Personnel costs			
Salaries and social security contributions	8,976	10,307	9,272
Other personnel costs	1,113	1,234	1,193
	10,089	11,541	10,465
Assignments to third parties	1,413	1,769	1,313
Costs of goods purchased	3,130	3,689	3,167
Depreciation	1,039	1,150	1,161
TOTAL OPERATING EXPENSES	15,671	18,149³	16,106
OPERATING RESULT	1,889	- 423	997

² Because of additional tasks related to TTP, the original budgeted *income* for 2012 has been raised by €339,000.

³ Because of additional tasks related to TTP, the original budgeted *income* for 2012 has been raised by €339,000.

Interest income	20	-	42
RESULT	1,909	- 423	1,039

Proposed allocation of the result

The Commission has decided to appropriate the positive result over 2012 of €1,909,000 as follows:

1. €30,000 to be allocated to the general reserve;
2. €1,879,000 to be allocated to the item 'Payable to the market.'

This decision has already been accounted for in the financial statements.

Notes to the abbreviated financial statements for 2012

General

The financial statements have been drawn up in accordance with Title 9 Book 2 of the Dutch Civil Code, insofar it is applicable based on OPTA's Information Statute.

In the balance sheet of 31 December 2012, the corresponding figures from the balance sheet of 31 December 2011 have been included. In addition, the statement of income and expenditure includes the 2012 budget figures and the actual figures over 2011. Assets and liabilities have been valued at nominal value, unless stated otherwise. The upcoming merger of OPTA and the Netherlands Competition Authority and the Netherlands Consumer Authority into the ACM, and the thereto-related financial arrangements do not require the accounting principles to be adjusted.

Tangible fixed assets

The tangible fixed assets included in the balance sheet at their purchase price after depreciation up until December 2012. Depreciation is linear based on the estimated economic life, which varies between 3 to 10 years. The depreciation periods have been set as follows:

Tenant's property (= real estate)	10 years
Furniture and fixtures (= furniture, fixtures and office appliances)	5 years
Computer hardware and software	3-10 years

Accounts payable

The accounts payable have been valued at nominal value minus an allowance for uncollectibility.

Provisions

The provision for future remuneration is valued at the nominal value of future provisions, taking into account expected future wage increases.

The provision for anniversary bonuses is valued at the present value of future bonuses as part of an anniversary, taking into account expected future turnover of staff, and expected future wage increases. The present value is calculated with a discount rate that is based on the market interest rate of high-grade corporate bonds.

The provision for objections and appeals is valued at the nominal value of disputed invoices for annual oversight, registration and granting or reserving.

For its employees, OPTA has set up a pension plan that can be considered a defined benefit pension plan, with the defined benefits being based on average pay. This pension plan is managed by pension firm ABP, and is included in the annual accounts as defined contribution plan. This means that the premiums due over the financial year are accounted for as costs.

Accounting principles of the result

Income and expenditures are accounted for in accordance with the system of income and expenditures. The integral costs in the tariffs are passed on to market participants, except for the costs of objections and appeals, the costs of feasibility tests and the special expenditures.

Income and expenditure of market categories

The legal basis for charging market participants certain tariffs can be found in the Dutch Telecommunications Act, the Decision on fees under the Dutch Telecommunications Act, the Dutch Post Act, and the Decision on fees under the Dutch Post Act, as well as the Independent Post and Telecommunications Authority Act.

Every year, the minister of Economic Affairs approves the cost-covering tariffs that market participants can be charged, and publishes these in the Dutch Government Gazette as 'OPTA Fee Regulations.' The user-pays-principle is used when setting the tariffs. The costs for objections and appeals, and the costs for feasibility tests are borne by the ministry of Economic Affairs based on subsequent calculation.

Payable to the market

This item is to process the result of the different market categories for the purpose of settlement with future tariffs. Of the 2012 result of €1,909,000, €30,000 is allocated to the general reserve (see part 4), the remaining €1,879,000 is to be appropriated to the “Payable to the market” item.

The table below is a specification of the “Payable to the market” item for the different market categories (x €1,000):

	31 December 2012	31 December 2011
Electronic communications	3,034	858
TTP – certification service providers	- 46	- 46
Numbers	- 492	- 720
Post Universal Service	271	326
Post Non-Universal Service	736	1,206
	3,503	1,624

Salaries, pension contributions and social security contributions

The salaries, pension contributions and social security costs are as follows (x €1,000):

	2012	2011
Salaries	7,072	7,422
Pension contributions	1,092	1,007
Social security contributions	812	843
	8,976	9,272

Average number of employees

The average number of employees over 2012 is 126 (2011: 131).

Remuneration of members of the Commission

The costs incurred by OPTA in connection with the remuneration of members of the Commission in 2012 are (x € 1.000):

	Salaries	Fixed Expense Allowance	Business Representation Allowance	Pension Contributions	Social Security Contributions	Remuneration on Payable in Future	Total
C.A. Fonteijn	27	10	1	7	1	-	46
M.W. de Jong 1 Jan - 31 Aug	105	-	4	17	5	-	131
A.T. Ottow	35	-	1	-	-	-	36
Total	167	10	6	24	6	-	213

Mr. Chris A. Fonteijn is Chairman of the OPTA Commission, and on 1 July 2011 was also appointed Chairman of the Board of the Netherlands Competition Authority (NMa).

Mr. Fonteijn's remuneration is processed by OPTA. The NMa has compensated OPTA pro rata. The amount listed in the table of €46,000 is the sum of the total costs of €230,000 minus the compensation received by the NMa of €184,000. The one-off, so-called pseudo final contribution on high wages 2012⁴ is not part of the reported remunerations.

Mr. Mark W. de Jong had been acting Chairman of the OPTA Commission until 1 September.

Until 1 September, Ms. Annetje T. Ottow had been a non-executive (part-time) member of the OPTA Commission, and has been the acting Chairman of the OPTA Commission since Mr. De Jong left.

The remuneration of permanent members is set out in the OPTA Permanent Members (Legal Position) Regulation.⁵ For additional information on the composition of the Commission, please refer to chapter 6 of the annual report.

⁴ As part of the government's 2013 budget agreement, a one-off employer tax of 16 percent was levied on incomes of EUR 150,000 and higher in 2012.

⁵ Government Gazette 2009, no. 11535.

The costs incurred by OPTA for the purpose of remunerating the members of the Commission in 2011 are as follows (€1,000):

	Salaries	Fixed Expense Allowance	Business Representation Allowance	Pension Contributions	Social Security Contributions	Remuneration Payable in Future	Total
C.A. Fonteijn	92	29	4	17	4	-	146
M.W. de Jong	113	-	4	12	6	-	135
A.T. Ottow 1 Sep - 31 Dec	11	-	1	-	-	-	12
A.P. Aris 1 Jan - 31 Aug	11	-	1	-	-	-	12
L.Y. Gonçalves-Ho Kang You	-	-	-	-	-	33	33
Total	227	29	10	29	10	33	338

Executives' Pay Financed from Public Funds (Disclosure) Act (WOPT)

In accordance with the provisions of Article 6 of the Executives' Pay Financed from Public Funds (Disclosure) Act (WOPT),⁶ the table below shows the employees who earned more than the average minister's taxable income. The standard amount was exceeded in the case of Mr. Fonteijn, whose legal position was set out by the Minister of EL&I in the abovementioned OPTA Permanent Members (Legal Position) Regulations.

The one-off, so-called pseudo final contribution on high wages 2012 is not part of the reported remunerations.

Since Mr. Fonteijn's salary is processed by OPTA, it is OPTA that gives the WOPT statement.

⁶ Government Gazette 2006, 95.

The WOPT amounts in 2012 were as follows (€1,000):

	Taxable Income	Pension Contributions	Other Amounts Payable in Future	Severance Payments	Total
C.A. Fonteijn	172	53	-	-	225

The WOPT amounts in 2011 were as follows (€1,000):

	Taxable Income	Pension Contributions	Other Amounts Payable in Future	Severance Payments	Total
C.A. Fonteijn	192	43	-	-	235

Income and expenditure of market and other categories

OPTA's income is generated by its statutory obligation to charge market participants a fee for its oversight, registrations/permits, number assignments, amendments and emergency transactions. Market participants were charged these fees on the basis of the '2011 OPTA Fee Regulations'.⁷

OPTA implements an enforcement policy to determine whether and to what extent the relevant market participants complied with their statutory requirements. The annual report explains how OPTA performs its regulatory activities, and, hence, also the way in which OPTA obtains certainty related to the legitimacy of the income of market participants. The actual figures are based on subsequent calculation.

⁷ Government Gazette 2010, no. 20895.

Income and expenditure by market category are broken down as follows (x €1,000):

	Actual	Budget	Actual
	2012	2012	2011
INCOME			
<u>Income from market categories:</u>			
Electronic communications	12,168	12,055	12,235
TTP – certification service providers including contribution from Ministry of Economic Affairs	323	412 (8)	139
Numbers	2,414	2,470	2,273
Post Universal Service (US)	350	350	350
Post non-US	49	49	495
Subtotal market categories	15,304	15,336	15,492
<u>Other income:</u>			
Objections and appeals	2,233	2,353	1,523
Feasibility tests	23	37	84
Other income	-	-	4
Subtotal other income	2,256	2,390	1,611
TOTAL INCOME	17,560	17,726	17,103
EXPENDITURE			
<u>Market categories liabilities:</u>			
Electronic communications	9,982	12,115	11,406
TTP – certification service providers	323	412 (9)	139
Numbers	2,184	2,280	2,204
Post Universal Service (US)	405	490	336
Post non-US	521	462	414

8 Because of additional tasks related to TTP, the original budgeted *income* for 2012 has been raised by €339,000.

9 Because of additional tasks related to TTP, the original budgeted *income* for 2012 has been raised by €339,000.

Subtotal market categories	13,415	15,759	14,499
<u>Other expenditure:</u>			
Objections and appeals	2,233	2,353	1,523
Feasibility tests	23	37	84
Subtotal other expenditure	2,256	2,390	1,607
TOTAL EXPENDITURE	15,671	18,149	16,106
OPERATING RESULT	1,889	-423	997

In contrast to the market categories, the costs for objections, appeals and feasibility tests are settled every year with the ministry of Economic Affairs based on subsequent calculation.

Other information

See page 55 of the financial statement for the auditor's report.

5 Key figures

By releasing these key figures, OPTA accounts for its actions in 2012 in a transparent and quantifiable way.

Enforcement

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

Questions answered by telephone/email	40
Mediation	1

Enforcement for the purpose of consumer protection and promoting competition

Number of fining decisions	5
Percentage of allowed (complete and partial) objections and appeals against fining decisions	22%
Number of orders subject to periodic penalty payments	1
Percentage of allowed objections and appeals against orders subject to periodic penalty payments	0%

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

Warnings and other preventive actions concerning telemarketing (telephone/email)	81
Preventive actions directed at ISPs and hosting providers concerning malware and botnets	35
Preventive actions directed at gateways and foundation text message code of conduct	19
Warnings concerning internet security	11
Warnings concerning telemarketing	9
Contact (letter/email/phone call/discussion) concerning the right of termination	6
Contact (letter/email/telephone call/discussion) concerning rate transparency	3
Demand for information concerning the right of termination	3
Contact (discussion) concerning text messaging regulations	1
Demand for information concerning text messaging spam	1
Information about telemarketing	1

Total number of preventive actions	170
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Objections and appeals

Received in 2012

Objections	39
Applications for review	5
Appeals	42
Provisional injunctions	15

Status as of 31 December 2012 (Current Work)

Current objections	16
Current applications for review	8
Current appeals	107
Current provisional injunctions	15

Completed in 2012

Objections	49
Applications for review	9
Appeals	23
Provisional injunctions	2

Outcome of resolved objections

	Number	Percentage
Withdrawn	28	57
Founded	2	4
Unfounded	9	19
Inadmissible	3	6
Partly allowed, partly dismissed	1	2
Partly dismissed, partly inadmissible	4	8

Not actioned	-	-
Allowed on the basis of new information	-	-
Apparently inadmissible	1	2
Other	1	2
Total	49	100

Outcome of resolved applications for review

	Number	Percentage
Withdrawn	3	33
Allowed	1	11
Dismissed	3	33
Inadmissible	-	-
Partly allowed, partly dismissed	-	-
Other	2	23
Total	9	100

Outcome of resolved appeals

	Number	Percentage
Withdrawn	8	35
Allowed	1	4
Dismissed	12	53
Inadmissible	1	4
Other	1	4
Total	23	100

Outcome of resolved provisional injunctions

	Number	Percentage
Request granted	-	-
Request rejected	1	50

Withdrawn	1	50
Other	-	-
Total	2	100

Disputes

Number of disputes

Received	10
In progress	6
Completed in 2012	5

Resolved disputes by market

Cable	0
Access to services	0
Post	0
Mobile	0
Interoperability	3
Cable relocations (tolerated)	1
Text message services	1
Total	5

Market analyses

(product market analyses and market analysis decisions)

Number of market analyses (including draft decisions)	6
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Market analyses completed in 2012	
Market analyses decisions	6

<ul style="list-style-type: none"> • Additional decision on 2008 fixed-telephony market analysis • Fixed-telephony market analysis 2012-2014 • Low quality wholesale broadband access market analysis • FTA/MTA decision 3b • Unbundled access to business fiber optic networks market analysis (ODF-access (FttO)) • High quality wholesale broadband access and wholesale leased lines market analysis 	
Total	6

Appeals against market analyses	
Received	35
In progress	32
Completed	14

Numbers and registrations

Registrations of market parties

Electronic communication category	Status on	New Registrations	Termination of Registration	Status on
	01-01-2012			31-12-2012
Provider of a public electronic communications network	459	51	30	480
Provider of a public electronic communications service	503	105	43	565
Provider of related facilities	13	8	2	19
Provider of qualified certificates	6	1	0	7

Number of registrations

Number of registrations (including terminations)	240
Percentage of registrations within established term	99.6%
Reports not actioned	14

Registration of postal providers

Category	Status on 1-1-2012	New Registrations	Termination of Registration	Status on 31-12-2012
Provider of postal delivery services	138	2	3	137

Number of providers per turnover category

	2009	2010	2011	2012
Category 1: net turnover > €20 million	23	25	29	33
Category 2: €2 million ≤ net turnover ≤ €20 million	144	100	106	102
Category 3: net turnover < €2 million	299	388	449	511
Total	466	513	584	646

Number of assigned and withdrawn numbers

	Assigned	Withdrawn
0800	765	644
0900	808	1,434
0906	137	546
0909	216	661
Business numbers	303,800	67,900
Other numbers	10,199,159	3,363,241
Total	10,504,885	3,434,426

Number of number-related decisions

Information Numbers	2,983
Business numbers	1,860
Other numbers	205
Change of name	304
Total	5,352

Number of number-related decisions broken down by decision type

Assigned	2,779
Withdrawn	1,182
Request withdrawn	141
Rejected	468
Change of name	303
Decommissioned	479
Total	5,352

Number lotteries and urgent applications

Number of lotteries	0
Number of emergency applications	58

Scarcity of relevant number series

Number Series	% Available Numbers
Short 0900-numbers	53%
Short 0800/0906/0909-numbers	83%
Long 0800/0900/0906/0909-numbers	99.8%
Mobile numbers	11%
Area codes	78%
Business numbers	75%
18xy – subscriber information service numbers	64%

Preventive actions initiated for number enforcement

Preventive actions in connection with number issuance and number abuse	377
Preventive actions in connection with registration and revenue-related contribution of market parties	431

ConsuWijzer and OPTA

ConsuWijzer indications in 2012 per type

Type	Number
Telemarketing	8,330
Mobile Telephony	6,130
Fixed Telephony	2,670
Triple/Dual Play	1,630
Spam (excluding Form)	1,250
Post and express services	1,190
Television	550
Internet – fixed	470
Fiber optic	310
Text messaging services	190
Other	250
Total	22,970

Spamklacht (*Spam complaints*)

Between January, 2012 and December 31, 2012, OPTA received 24,539 complaints about unsolicited electronic messages via www.spamklacht.nl. The table below shows the number of complaints by category.

	2004	2005	2006	2007	2008	2009	2010	2011	2012	Total
Other	195	152	189	131	208	307	432	350	354	2,318
Email	3,969	4,654	9,911	16,477	9,369	21,580	22,630	24,337	22,720	135,647
Text messages	319	436	600	1,079	2,260	1,986	1,400	1,144	1,009	10,233
Fax	154	260	319	287	405	812	1,742	1,205	91	5,275
Phone	39	299	51	57	72	148	1,047	335	339	2,387
Social Media	-	-	-	-	-	-	-	-	26	26
Total	4,676	5,801	11,070	18,031	12,314	24,833	27,251	27,371	24,539	155,886

Budget

Costs per task category

	2012 budget (x €1,000)	2012 Actual (x €1,000)
Promoting competition on communication markets	3,907	2,420
End-user interests related to communication markets	3,676	3,204
Market analyses	2,664	3,215
Objections and appeals	2,353	2,233
Number issuance	1,405	1,708
Information	955	508
Policy interactions	920	831
End-user interests related to numbers	651	316
Post US (Universal Service)	419	303
TTP	405	299
Post non-US	392	389
Monitoring	365	222
Feasibility tests	37	23
Total	18,149	15,671

Ratio of direct/indirect expenditure

The ratio of direct to indirect expenditure in 2012 was 63/37 (budget was 74/26). Reasons for the altered ratio are understaffing in the key positions (compared with the budget) and the merger.

HR

Personnel costs

	2011 (x €1,000)	2012 (x €1,000)
Total salaries (incl. remittances, excl. allowances and Commission)	8,678	8,590
Average wage	51	52
Other personnel costs	394	334

Workforce

Date	Size (fte)	Staff		
		Men	Women	Total
1 January 2012	143	60	65	125
31 December 2012	143	59	67	126
2012 average	143	59	67	126

Dismissals

Dismissals	1
Total net severance pay	€8,120

Age structure on 31 December 2012

Age category	Number
24 years and younger	2
Ages 25 through 34 years	30
Ages 35 through 44 years	54
Ages 45 through 54 years	26
55 years and older	14

Absenteeism

	2010	2011	2012
Absence due to illness (%)	3.0%	3.4%	4.8%
Absence reporting frequency	1.3	1	1.1

For more information on absence due to illness, refer to About OPTA.

Staff pay scale structure on 31 December 2012

Pay scale	Number of employees
3	
4	2
5	1
6	4
7	14
8	10
9	9
10	9
11	27
12	18
13	19
14	9
15	2
16	2

6. About OPTA

OPTA makes sure that, in the interests of consumers, there is enough competition in the communication markets. OPTA does so by analyzing these markets and by stepping in, if necessary. If companies enjoy dominant market power, OPTA imposes obligations on these companies. In markets where there is enough competition, and thus none of the firms enjoy dominant positions, any measures that OPTA had imposed, can be cut back. Markets constantly change, which means regulation will always be a matter of finding tailor-made solutions. In addition, OPTA safeguards the basic quality level of mail delivery in the Netherlands.

Protecting consumers and business customers

OPTA protects the interests of consumers and business customers. OPTA does so by making sure that consumers and business customers are aware of their rights, by penalizing abuses by providers, and by making the Internet more secure. After all, increased user confidence in the communication markets stimulates demand for communication services. Additionally, OPTA safeguards the availability of a number of basic services such as landlines and mail delivery within 24 hours. Finally, OPTA creates the necessary conditions for well-functioning communication markets, like the availability of new telephone numbers. All of these aspects have been laid down in legislation and regulations. OPTA's mission acts as the guiding principle in the performance of its duties.

Mission

OPTA promotes competition and confidence in the communication industry in the interests of consumers.

Legal framework

OPTA is a so-called autonomous administrative authority under Dutch law, and, as such, enforces laws and rules that the legislature has passed. These are the Dutch Telecommunication Act, the Dutch Postal Act 2009, and the corresponding European and lower regulations. Political responsibility for OPTA ultimately lies with the minister of Economic Affairs. Yet, OPTA is independent, and makes its own decisions apart from political or business interests. The minister can issue general instructions, but he cannot interfere in individual cases.

OPTA as organization

General

Cutbacks

Like in previous years, OPTA managed to meet the government-wide cutback targets set by the previous administration, Rutte-I, in 2011. This means that OPTA in 2012 carried out more tasks with less funding and fewer employees. OPTA has made clear choices in its task prioritization. These choices have been made in close consultation with the Ministry of Economic Affairs. Since 2007, OPTA has already cut back EUR 2.5 million and 26 fte.

The Ministry of Economic Affairs granted OPTA permission to spend an additional EUR 339,000 on intensification of its oversight efforts on qualified certificates.

Sustainability

OPTA in 2012 succeeded in becoming a more sustainable organization. OPTA consumed less power, and the power it did consume was green power. In addition, OPTA used less paper and storage. OPTA compensated CO₂-emissions of its staff's business trips. Finally, OPTA met the target of 90 percent sustainable procurement.

Preparing for the merger

In addition to the regular activities, 2012 was, to a significant degree, dominated by the merger into the Netherlands Authority for Consumers and Markets (ACM). This is the new regulatory body created by the consolidation of the Netherlands Consumer Authority (CA), the Netherlands Competition Authority (NMa) and OPTA. In order to be able to function well as ACM, a considerable number of preparations was launched, including:

Personnel and organization

- Transition to the new ACM occupational health and safety service of the ministry of Economic Affairs;
- Transition to the government-wide staff administration system P-direkt;
- Organization of mutual exchanges between CA, NMa and OPTA staff.

Finance

- Preparations for the transition to the Central Fine Collection Agency (CJIB), which the ministry of Economic Affairs also works with. OPTA uses a private collection agency, for example, for collecting fines that have been imposed;
- Setting up a budget and financing structure for ACM. When it was announced that the merger would not go through on January 1, 2013, an OPTA budget for 2013 as well as a tariff proposal for 2013 were drafted in a short amount of time;
- Switching to the ERP system Oracle eBs for the ACM's financial administration.

IT

- Preparations for new IT systems for ACM and conversion of all IT systems of CA, NMa and OPTA. This has been an enormous and highly complex project. Parts of this project were:
 - Constructional and electronic facilities
 - Procurement, installation, configuration and testing of hardware and software
 - Adjustment of a primary-process system
 - Realization of information security facilities
 - Training of staff
 - Creation of documentation
 - Obtainment of domain names
 - Evaluation of the project by a third party

Other

A single reception for CA, NMa and OPTA since 2012.

Staff

Integrity

Being a regulatory body, it is absolutely imperative that OPTA employees are of high integrity. After all, OPTA employees have access to confidential documents and data, which must be treated carefully. OPTA has a code of integrity, and all employees must comply with it. No integrity-related incidents occurred in 2012. Together with the NMa and the CA, an ACM code of integrity was drafted in 2012. After a transitional period, this new code will apply to all ACM employees.

Absenteeism

The absentee rate in 2012 was 4.8 percent, which is higher than that in 2011. The goal of staying below the target rate of 3.1 percent has thus not been achieved. The higher absentee rate is caused by an increase in so-called uncontrollable long-term absenteeism. Absentee frequency in 2012 was 1.1. This means that employees not only called in sick for a longer period of time, but also more often.

The frequency is higher than the target rate of 1 time per year per employee. OPTA continues to put much effort in reducing absenteeism.

Other staff-related developments

- All of OPTA's official position titles have been converted to the central government's new job classification system (*Functiegebouw Rijk*). This made the placement of employees in ACM easier;
- In 2012, OPTA asked for authorization from the National Archives of the Netherlands for replacement. Such an authorization relieves OPTA from the requirement to keep paper copies of documents. Documents could then be kept in digital form. OPTA was not given authorization, but an amendment of the rules as of January 1, 2013 meant that a separate authorization is no longer required. The National Archives has made several recommendations, which OPTA has incorporated into its policy. In the future, OPTA will work 100 percent digitally.
- With the approval of the Works Council, OPTA in 2012 introduced a protocol on workplace aggression and violence.

The Works Council (OR)

In 2012, the OPTA Works Council (OR) consisted of seven employees. For the OR, 2012 was all about the preparatory work for the merger of OPTA with the NMa and the CA. The works councils of the NMa and OPTA, as well as the employee representatives of the CA constituted the joint representative body called Platform. Platform promotes collaboration and the exchange of information. Platform aims to speak with one voice when giving advice on joint topics. For example, Platform gave advice on the so-called Provisional Organization Decision (VOB) and on the appointments of the board members and the directors.

In addition, the OR in 2012 advised the Commission on topics involving OPTA interests such as HR-related topics and workplace rules. The OR in 2012 consulted the rest of the OPTA staff once, which was about the VOB.

Finally, the OR was involved in the introduction of the new government-wide staff administration system (*P-direct*), the new performance review system and the transition towards the new occupational health and safety service.

Information security

OPTA wishes to keep information-security risks as low as possible. To that end, a set of measures was adopted in 2012. The emergency power systems were tested in 2012.

An external auditor in 2012 assessed OPTA's compliance with the Regulations on Information Security for the Central Government (VIR) several times. The auditor evaluated the structure, the existence of and the functioning of the measures aimed at reducing the risks. His findings revealed that the risks were sufficiently covered. On February 25, 2013, audit firm BDO Audit & Assurance B.V. gave OPTA certificate, stating that OPTA complies with the VIR.

IT

In 2012, another set of IT components was upgraded. The primary process system, which, among other things, processes the number applications was one of them, thereby increasing reliability and functionality.

E-forms became available on OPTA's website with the necessary certificates from *PKI-overheid*. Applicants are thus given additional assurance that they are really dealing with OPTA.

Requests under Dutch Act on Public Access to Government Information (Wob)

In 2012, OPTA issued ten decisions under the Dutch Act on Public Access to Government Information (Wob). In addition, OPTA issued two decisions on objection that had been filed against previous Wob decisions.

Courts ruled in two Wob-cases.

The District Court of Assen on January 24, 2012, ruled that OPTA acted properly when it published documents of Alticom. Alticom claimed that those documents contained confidential information, but the court disagreed.

On June 6, 2012, the Administrative Jurisdiction Division of the Dutch Council of State ruled that OPTA acted properly when it published a certain tariff of KPN. KPN claimed that this 'average Carrier Pre Select' tariff was confidential. The Division disagreed and ruled in OPTA's favor.

Cooperation and advice

OPTA works together with several partners at a national and international level. These partners include Infilter Foundation (the organization behind the Dutch Do Not Call Me Register), the Dutch Media Authority (CvdM), the Dutch National Police Agency (KLPD), the Netherlands Consumer Authority (CA), the Netherlands Competition Authority (NMa), the Dutch Data Protection Authority (CBP), the Ministry of Economic Affairs (EZ), the National Cyber Security Centre (NCSC) and the London Action Plan (LAP).

Protocols on cooperation

OPTA consults with these partners on a regular basis. In addition, OPTA gives advice or is asked for advice, whenever necessary. OPTA has signed protocols on cooperation with several of these partners. In these protocols, it is specified which regulator takes the lead in situations where powers overlap. That way, duplicate enforcement efforts are avoided, and the administrative burden on businesses is reduced.

Joint complaints office

In 2012, OPTA signed a new protocol on cooperation with Logius. In addition, its protocol on cooperation with the Radiocommunications Agency Netherlands (AT) has been expanded. OPTA and the AT have launched a joint complaints office for providers of public electronic communication services and networks. This office is operated by the AT. Providers are required to notify this office of any outages and infringements of personal data protection.

Consultation Forum of Regulatory Bodies (MTB)

The Consultation Forum of Regulatory Bodies (MTB) is a collaboration of several regulators in the Netherlands that focus on the functioning of markets, and on market participant behavior. The regulators that participate in the MTB are: the Netherlands Authority for the Financial Markets (AFM), the Dutch Data Protection Authority (CBP), the Netherlands Consumer Authority (CA), the Dutch central bank (DNB), the Netherlands Competition Authority (NMa) and the Dutch Healthcare Authority (NZa). Thanks to the MTB, regulators engage in an ongoing dialog with each other, aimed at sharing knowledge and experiences of broader themes in an atmosphere of openness and mutual trust.

Oversight in the Caribbean Netherlands

In the Caribbean Netherlands, postal services and telecommunication activities are regulated through a concessionary system. In short, this means that no one is allowed to engage in postal services or telecommunication activities unless the Dutch government has given them permission to do so.

The Telecommunications and Postal Services Act for the Caribbean Netherlands

In the Telecommunications and Postal Services Act for the Caribbean Netherlands, it is explained how companies can get permission for these services and activities. This act additionally explains what conditions companies must comply with when providing postal and telecommunication services to, for example, consumers. It also details what the regulator can do in case of violations of the act.

Division of roles with regard to the Caribbean Netherlands: OPTA and the Radiocommunications Agency Netherlands (AT)

OPTA oversees the postal and telecommunication services in the Caribbean Netherlands. The Radiocommunications Agency Netherlands (AT) is responsible for the allocation of frequencies, and for oversight thereon. In 2012, close cooperation was sought with the AT, the Bureau for Telecommunication and Post (BT&P) and the Ministry of Economic Affairs to make sure that oversight efforts in the Caribbean Netherlands will continue to run smoothly in 2013 and onwards. For example, at the request of the Ministry of Economic Affairs, OPTA ran a feasibility test on the law that specified OPTA's powers. Furthermore, OPTA concluded cooperation agreements with the AT.

BEREC in 2012

OPTA is a member of the Body of European Regulators for Electronic Communications (BEREC). BEREC's objective is to promote equal application of regulations in member states, and, by doing so, help advance the internal market of the European Union with regard to electronic communication. BEREC seeks to come to common positions, and gives advice to the European Commission, the European Parliament and the European Council on harmonization of regulations and best practices. In a number of cases, BEREC is required to formulate its own position. For example, when it concerns recommendations of the European Commission or the market analysis decisions of national regulatory bodies (NRBs) about which the European Commission has expressed serious doubts. When formulating its positions, BEREC relies on the expertise of all national regulators.

Strategy

In February 2012, BEREC decided on its strategy for the next three to five years. BEREC named three main themes on which it will focus

- promoting the roll-out of next-generation networks;
 - consumer empowerment and protection;
 - strengthening the internal market by promoting service development.
- Activities BEREC undertook in 2012 included
- revising the common positions on broadband
 - completing various investigations into net neutrality

- advising on a considerable number of market analysis decisions of individual NRBs

And it continued working on the implementation of the Roaming Regulation.

BEREC organization

BEREC's decision-making body consists of the 27 heads of the regulators for electronic communications of the EU member states. The European Commission, the regulators of acceding member states (Iceland, Croatia, Montenegro, the former Yugoslav Republic of Macedonia, Turkey, and, since recently, Serbia), while the regulators from the so-called EFTA countries (Switzerland, Norway, and Liechtenstein) are observers. Plenary meetings are held once every quarter. Meetings are held across Europe. An information meeting for market participants, the media and other interested parties is held in Brussels after every meeting.

Chairman and Office

The Chairman of the Board of Regulators is an ancillary position that rotates every year. In 2012, Georg Serentschy, the head of RTR, the Austrian regulator, was Chairman. BEREC is supported by a bureau, called the BEREC Office, located in Riga, Latvia. The BEREC Office is headed by an Administrative Director, Ando Rehemaa, and is managed by a Management Committee (MC). This Committee consists of the heads of the regulators of the 27 member states and the European Commission.

Evaluation

In accordance with the Regulation that created BEREC, the European Commission in December sent the European Parliament and the Council of the European Union an evaluation of BEREC.

Commissioned by the European Commission, Price Waterhouse Coopers Luxembourg carried out an extensive evaluation over the course of 2012. The performances of BEREC and the BEREC Office have generally been evaluated positively. BEREC can be considered a success in terms of the platform's effectiveness in fulfilling its tasks. A number of recommendations have been made as well. After a possible discussion in the European Parliament and/or in the Council, BEREC will decide in 2013 how it will act on these recommendations.

Common positions on broadband and leased lines

BEREC's predecessor in 2007 drew up common positions on the imposition of obligations on the wholesale markets for broadband and leased lines. These were revised in 2012. The revised common

positions will take into account next-generation networks. Moreover, they have become stricter, because BEREC wishes to help harmonize obligations further. Finally, the principles of non-discrimination have been fleshed out substantially. The common positions should help NRBs impose effective obligations. NRBs are to take into account BEREC's common positions as much as possible.

Net neutrality

BEREC is committed to an open Internet. That is why it studies various topics that are related to net neutrality in order to contribute to the policy debate. In 2012, BEREC studied, among other topics, competition aspects of net neutrality, IP Interconnection and traffic management. The latter is used to keep traffic flows on networks manageable. If traffic management leads to blocking certain services or applications such as WhatsApp or Skype, it can have negative effects on consumers.

Study

BEREC in 2012 carried out an extensive study among ISPs into the practices in this area. It turns out that, in practice, at least 20 percent of mobile internet users experience some form of 'blocking.' However, this varies per country, and, in most cases, consumers are able to switch providers.

In 2012, BEREC fleshed out guidelines regarding the new power of NRBs to impose minimum quality requirements on internet providers. In addition, the European Commission drew up a procedural draft recommendation, which BEREC gave advice on.

Market analyses and Article 7 procedures

National regulators are required to submit market analysis decisions to the European Commission first before they can take a final decision. The European Commission has the power to express serious doubts about planned market analysis decisions and to initiate a second-phase investigation. In such situations, BEREC gives advice with regard to the serious doubts of the Commission. If a second-phase analysis is launched, BEREC creates a work group as quickly as possible, which comprises experts from different member states, who formulates advisory notices.

Advisory notices

In 2012, the European Commission expressed serious doubts regarding a surprisingly large number of market analysis decisions about the compatibility of the decisions with the internal market. In all cases, BEREC manages to issue its advice within the short deadlines. BEREC often shares the Commission's doubts. Serious doubts have been expressed about several of OPTA's market analysis decisions. In addition, OPTA experts sit on various BEREC work groups that give advice on other market analysis decisions.

Roaming

Roaming is regulated within the European Union. The tariffs that consumers pay for making phone calls and for receiving calls within the European Union are capped. In July 2012, the new Regulation came into effect. It also regulates the tariffs for surfing abroad (data roaming). In addition, a more structural form of regulation is imposed by means of resale obligations, direct access and unbundling. The Commission expects these measures can act as incentives for mobile providers to lower their tariffs. BEREC has advised the Commission on the creation of the new Regulation.

In response to this new Regulation, BEREC in September advised the European Commission on regulation of the unbundling obligation. After consultation BEREC in October published the final guidelines with regard to the resale obligations and direct access.

The Commission of OPTA

The Commission of OPTA consists of three independent experts appointed by the Minister of Economic Affairs. The Commission has final responsibility for all decisions taken by OPTA. All three members were reappointed in 2009 for a period of four years. The Commission's Chairman, Chris Fonteijn, represents the OPTA legal entity. From July 1, 2011 until September 1, 2012, the day-to-day management of OPTA was in the hands of the Commission's Vice-chairman, Mark de Jong. However, Mr. De Jong left OPTA on September 1, 2012. The Commission has consisted of two members since. As of September 1, 2012, Annetje Ottow, who had been a non-executive member of the Commission up until that day, has been acting Chairman of the Commission.

Chris A. Fonteijn, LL.M., Chairman of the Commission of OPTA

Chris Fonteijn earned his master's degree in law from Leiden University, and subsequently worked in the Military Intelligence Service. From 1980 until 2005, when he became the chairman of the Commission of OPTA, he was a lawyer at the Rotterdam-based law firm NautaDutilh, where he was promoted to partner in 1988. At NautaDutilh, he specialized in energy and corporate law, and held various positions. He has also worked for a number of years in the Middle East. In his final years at NautaDutilh, he directed the Energy & Utilities Group.

On July 1, 2011, he was also appointed Chairman of the Board of the Netherlands Competition Authority (NMa), and is the Chairman designate of the Board of the Netherlands Authority for Consumers and Markets (ACM). Furthermore, he was chairman of the board of BEREC (Body of European Regulators for Electronic Communications) in 2011.

Annetje T. Ottow, Ph.D, acting Chairman of the Commission of OPTA (as of September 1, 2012)

Since September 1, 2011, Annetje T. Ottow has been member of the Commission of OPTA, and was appointed acting Chairman of the Commission on September 1, 2012. She became an associate member of the Commission of OPTA on April 1, 2006. Ms. Ottow earned her law degree from Leiden University, and pursued a postgraduate program at Queen Mary College at the University of London. She obtained her doctorate from the University of Amsterdam in 2006.

Since August 2007, she has served as a senior lecturer in Public Economic Law at Utrecht University. Ms. 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 in private practice, and, from 1998, she was a partner in the Market Regulation & Competition department of law firm Houthoff Buruma, and later on as a legal consultant.

Mark W. de Jong, Ph.D., acting Chairman of the Commission of OPTA (until September 1, 2012)

Mark W. de Jong has been a non-executive member and Vice-chairman of the Commission of OPTA since February 1, 2006. In 1990, he also became an endowed professor of 'Management of Service Innovation' at the University of Amsterdam. Between 1993 and 2005, he worked at KPN, most recently as a member of the Executive Board of KPN Mobile. He had previously served, among other positions, as the Executive Director of the Corporate Strategy & Regulatory Affairs department. Furthermore, he served as the Managing Director at the Novay Institute of Technology in Enschede. He also worked for the OECD in Paris and for the Netherlands Organization for Applied Scientific Research (TNO) in Delft. Mark de Jong obtained his Ph.D. in Economics. He assumed day-to-day management of OPTA between July 1, 2011, and September 1, 2012, together with the heads of the departments. He left OPTA on September 1, 2012, and joined the Board of the Diaconessenhuis hospital in Leiden.

Towards ACM

In March 2011, the then Dutch administration decided to have OPTA, the Netherlands Consumer Authority, and the Netherlands Competition Authority (NMa) merge into a new regulator: the Netherlands Authority for Consumers and Markets (ACM). This move was part of the central government's plans towards a smaller, more efficient and effective government.

For the most part of 2012, OPTA's activities were primarily focused on the preparations for the upcoming merger. One of 2012's milestones was when the Minister of Economic Affairs approved the so-called Organization Decision on June 6, 2012. This decision detailed the most important aspects of the new organization, such as its organizational structure, its culture, what duties the different departments will have, and how ACM will be funded. Furthermore, preparations were made in 2012 for the integration of the IT and HR systems, as well as that of the corporate services departments.

The merger of the three authorities is realized through two separate bills: the earlier mentioned establishment bill and a substantive bill. The former bill concerns the creation of the new authority, while the substantive bill will simplify procedures, and streamline powers.

On February 26, 2013, the Dutch Senate passed the Establishment Act. This Act is the statutory foundation of the new regulator that is created on April 1, 2013.