“Integrale tariefregulering voor eindgebruikers- en interconnectiediensten”

Response by GTS Network (Ireland) Ltd.
to OPTA’s Consultation Document

January 2002

GTS Network (Ireland) Ltd. (hereafter Ebone) has studied the OPTA consultation document OPTA/EGM-IBT/2001/203548 concerning the future of tariff regulation in The Netherlands.

Please find our brief comments hereafter, and please note that Ebone formulates these comments from its perspective as an operator of a public telecommunications network who is not in the business of providing voice telephony.
This brings us immediately to our key comment: the underlying logic of OPTA’s proposals appears to be completely based upon the functioning of tariff regulation for voice telephony, but the proposed integration of retail tariff regulation and interconnection/special access tariff regulation may also apply to other areas, for example leased lines. In fact, OPTA does not state in its document whether or not it proposes to apply integrated tariff regulation also in the area of leased lines or other areas such as local loop unbundling/xDSL. Ebone considers it an absolute necessity for OPTA to consider this question, and for OPTA to communicate its analysis and intentions in this regard.

Only in paragraph 10 of the consultation document is there a reference to leased lines, and then only to KPN’s obligations in terms of separate financial reporting with regard to retail leased lines (since KPN does not currently have an interconnecting leased line (ILL) offer, there is no equivalent reporting for ILL, and no price squeeze test is conducted in the area of leased lines). In fact, the consultation document contains no mention of ILL, does not address the eventuality of price squeeze issues (Chapter 3) in the area of leased lines, does not cover network architecture issues (Chapter 4) for interconnecting leased lines, and in general it does not in any way seek to explain or foresee the consequences of possible integrated tariff regulation in the area of leased lines

Taking the OPTA consultation document point-by-point, please allow us to formulate the following additional remarks.

Q1: Other issues relating to (the causes of) price squeeze

Price squeeze can occur in areas other than voice telephony. Ebone is particularly concerned about the situation regarding local access leased lines in The Netherlands. Notwithstanding actions by the regulatory authority, and long-standing considerable efforts from our side, the Dutch market currently remains characterised by the absence of regulated leased line interconnection. It is to be feared that the pricing and architectural approach to the provision of interconnecting leased lines (ILL), or interim solutions, will raise price squeeze issues. OPTA must be aware of this, and have a set of instruments to address price squeeze issues in the area of leased lines.

More generally, other items can have effects that can be assimilated with anticompetitive price squeezing, for example:

Return on investment timeframe / up-front versus recurring payments

For retail leased lines, KPN applies a given formula to determine the up-front portion and the recurring portion of the price that is charged to the customer. Presumably this formula involves items such as the network/equipment depreciation schedule, building connection cost (when applicable), minimum contract duration, risk assessment, and a number of other items.

For interconnecting leased lines, KPN has not yet published definite prices, but one might expect that the pricing formula and return on investment approach could be different, resulting in different up-front and recurring portions of the price.

There is a genuine risk that KPN could manipulate these parameters, on the retail side as well as on the interconnection side, in order to unduly discriminate in favour of its own retail leased lines business. Such a phenomenon could occur on an enduring basis, or more punctually.

Ebone is strongly of the opinion that an integrated regulatory approach is necessary, and that OPTA must therefore be in a position to effectively control the way in which KPN approaches return on investment, and the contents/balance of up-front costs and recurring costs, so as to prevent price squeezes and related anticompetitive behaviour.

Discounts / Bundling of Discounts /Promotions

Ebone hopes, but is not convinced, that sufficient legal/regulatory deterrents exist in The Netherlands with regard to anticompetitive bundling by KPN (e.g. bundling of leased line services with other services or products), but wishes also to draw OPTA’s attention to the possibility of bundling of discounts, or promotions resulting in bundling of multiple services and products. These can constitute a form of price squeeze or can otherwise be used as anticompetitive instruments. The recent discussion surrounding Mxstream pricing provides an illustration.

Q2a/b: Desirability of migration to a multi-year system of tariff regulation and question as to whether the current market situation is appropriate for this

Ebone believes that it is premature to move to a 3-year tariff regulation system, especially with regard to retail leased lines / leased lines interconnection, in view of the comparative lack of maturity in this area in The Netherlands (there is no leased lines interconnection at this time). Of course, Ebone, like any operator, wishes to have maximum visibility over future pricing for local access, but since in The Netherlands the bulk of the work on cost-orientation of leased lines interconnection remains to be done (to our knowledge the cost-accounting methodology has not yet been determined; Ebone favours the LRIC methodology in this context; footnote 15 of the consultation document is also silent on this point), it seems more appropriate to work with a 1-year tariff regulation system, which can be progressively refined.

Ebone is in favour of integrated tariff regulation of retail leased lines and interconnecting leased lines, and expects that there will be a need for detailed supervision by OPTA in order to prevent price squeezes and other anticompetitive effects, resulting not only from pricing stricto-sensu (see for instance our remarks about up-front versus recurring portions) but also from the applicable architecture for leased lines interconnection (location of points of interconnection, availability of customer-sited leased line interconnection, third party backhaul, etc.).

More generally, we would like to express our surprise at the formulation of Question 2a/b which focuses solely on the multi-year aspect, but does not cover what exactly is to be done on a multi-year basis. Indeed, moving to a multi-year system, and using the same timeframe for retail and interconnection price regulation is only part of what OPTA is proposing; what OPTA is also proposing is to move to a price cap system for interconnection tariffs, and this is not explicitly put up for consultation.

Ebone is strongly of the opinion that using only a price cap system is insufficient. Indeed, price floor regulation is at least as important. A situation whereby KPN acts in conformity with a price cap, but is able (on an enduring basis, or more punctually) to break through the price floor, is not acceptable, and needs to be prevented by ex-ante regulation and/or by a system whereby OPTA has the ability/duty to scrutinise KPN's retail leased line tariffs, and associated discount models, promotions, bundles etc. so as to prevent undue preference for its own retail leased lines business and price squeezes in relation to KPN's interconnecting leased lines offerings.

Another point of concern regarding a price cap system for the regulation of both retail leased lines and interconnecting leased lines relates to the possible use of 'baskets' containing multiple types of leased lines or even leased lines and other services, which would open the possibility of 'gaming' by KPN, in the sense that KPN could implement (enduring or punctual) price changes for certain items within the basket (be it a retail basked or an interconnection basket) in an anticompetitive manner. Ebone is of the opinion that, both for retail leased lines, and for leased line interconnection, price caps, if utilised, should be applied individually to each type of leased line; even a system with baskets and subcaps can be open to anticompetitive abuse.

Q3 Intention of the college to require KPN's retail business to purchase from KPN's network business on the same terms and conditions as interconnecting operators, and using the same costing principles

Ebone wholeheartedly agrees with this proposal, which can/should be imposed irrespective of whether a 3-year integrated tariff regulation system and/or interconnection price cap system is implemented. For the record, Ebone has some concern about the possibility that OPTA's proposals could at a later stage lead to volume discounts being introduced in the context of interconnection; paragraph 43 of the consultation document provides some reassurance in this regard.

We would also wish to point out in this context that, at this time, terms and conditions and costing approaches are clearly different in the area of voice telephony (the focus of the consultation document) for KPN’s own traffic and for interconnecting operators, and presumably this is also the case in the area of leased lines.

There is the aspect of costing/terms and conditions, and also the accounting aspect for the purposes of determining significant market power. For instance, the EIM report "Marktonderzoek AMM 2001: de markt voor huurlijnen" reveals clearly that certain leased lines revenues are excluded from the study. The revenues that are excluded are termed: "Internal Deliveries". Whereas some leased line revenues can be claimed to be "internal", it should be quite clear that, for instance, the provision of leased lines by smp operator KPN to KPN subsidiaries such as KPN Mobile can and should not fall under this heading. An analysis of KPN's annual report for the year 2000 reveals that KPN, in its reporting, classifies revenues from the provision of services to KPN Mobile as "Internal Deliveries" along with the provision of services to the KPN segments "Fixed Network Services", "IP/data" and "ICM". Presumably this is also the way in which KPN reports its revenues to OPTA. Therefore, serious concerns are warranted about the way in which KPN is conducting itself with regard to the provision of leased lines to its various businesses.

Q4 Actual use by KPN’s retail businesses of wholesale specific facilities (e.g. wholesale billing system and carrier services organisation)

Ebone agrees with this proposal.

With regard to paragraph 49, in which OPTA suggests a move to proportional cost attribution on the basis of the totality of the generated volume (by KPN and by others), Ebone can see the logic behind this, but wishes to emphasise that removing cost causality must be a conscious and documented regulatory decision, which should not lead to a situation in which the costs will no longer be calculated or published (footnote 26 of the consultation document provides some reassurance in this respect).

Q5 Proportionate allocation of costs to all traffic using the KPN network

This is a question relating directly to voice telephony; no comments.

Q6 Application also to other types of ‘wholesale specific costs’.

Ebone agrees with this in principle, but has two concerns: (i) it is unclear to us why this linked only to EDC reporting? (ii) the terminology ‘wholesale specifieke kosten’ lacks precision; interconnection and special network access are very specific concepts, specific to the telecommunications sector, and which entail a different interdependency relationship between parties than in a mere wholesale context, and entail very specific costs.

Q7, Q8 and Q9

These are questions relating directly to voice telephony; no comments from Ebone.

With regard to Q8b (intention to extend network to KPN local exchanges), Ebone may in the future do so in certain circumstances, notably in the context of leased lines interconnection. However, Ebone would like to emphasise that the EU legal and regulatory framework for telecommunications mandates leased lines interconnection, including customer-sited leased lines interconnection (customer-sited leased lines interconnection is not included in KPN's ILL proposals at this stage).