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Contact

Our reference

Your reference

Direct line

Date

Subject

Enclosure(s)

2 May 2002

OPTA/EGM/2002/201095

Significant Market Power, The Netherlands
OPTA 2002 market survey

(070) 315 35 83

Dear Sir or Madam,

Under the Telecommunications Act (hereinafter "TA"), the Commission of the Independent Post and Telecommunication Authority (hereinafter "OPTA") has the authority to designate a telecommunications operator as an operator with Significant Market Power (hereinafter "SMP"). The main criterion for such a designation is a minimum market share of 25% in terms of turnover.¹ As a result of such a designation, a number of extra statutory obligations are imposed on the SMP operator. For example, in relation to delivery obligations, non-discrimination, cost-orientation and publication of tariffs and delivery conditions. An important target of these obligations is that other, often smaller or newer operators, are given the opportunity to attain a better competitive position in the telecommunications market. The importance of SMP for the development of competition on the telecommunications market and for the position of individual companies, is therefore considerable.

Annual review of the telecommunications market

At this point in time, KPN has been designated in the market for fixed public telephony and for leased lines, and KPN Mobile has been designated for mobile telephony. Based on the Guidelines for designation of significant market power,² OPTA annually reviews whether or not the designation of

¹ For more detailed information, see article 6.4 of the Telecommunications Act.

² Guidelines for designation of significant market power, Official Gazette, 8 March 2000, no. 48.

an operator as a party with SMP should continue. An important source of information for the review is the annual market survey. Based mainly on this market survey OPTA will further determine whether or not the existing designations for mobile telephony, fixed telephony, and for leased lines should remain in force, and whether or not other operators should be designated. OPTA has decided to take an integrated approach to the SMP designation for the mobile, fixed, leased lines, and fixed & mobile segments. In this way, an attempt is being made to reduce the burden as far as possible for your company insofar as it is active in the various market segments.

In order to gain sufficient insight in the whole public telecommunications market in The Netherlands, a limited number of questions concern parts of the market on which no operators with SMP can be designated (non-SMP markets: non-telephony and non-leased lines markets). In view of the coherence between the markets as a whole and the markets on which operators with SMP can be designated (SMP-markets), OPTA needs a general overview of the whole telecommunications market. After all, often these non-SMP markets are downstream markets of the SMP-markets. Furthermore OPTA deems such a general overview necessary as preparation for the new European directives on electronic communications that are expected to be implemented in national law in 2003. The market definition and market analysis which will then have to take place in conformity with competition law, requires an insight in the telecommunications market as a whole.

Questionnaire

Within the framework of this market survey you will find four questionnaires as annexes.

A general questionnaire:

1. Public telecommunications services and networks (English version available). This questionnaire should be filled in by all operators and contains general questions on:
 - Fixed telephony
 - Mobile telecommunications
 - Leased Lines
 - Other telecommunication services (a. broadband internet access, b. data communications, c. dark fibre, d. remaining telecommunications services)

Three specialised questionnaires which apply to your company if your company is active in this market or has registered at OPTA for this market:

2. Fixed public telephony (Only in Dutch)
3. Mobile public telecommunications (Only in Dutch)
4. Leased lines (English version available)

We request that you answer the questions of the questionnaires which are relevant for your company. We request that you download the relevant questionnaires from our web site (www.opta.nl) => thema (right upper corner of home page) 'aanmerkelijke marktmacht' => 'achtergrondinformatie') and once filled in, return it to OPTA by e-mail (e-mail:

amm2002@opta.nl). For the sake of completeness we must point out that you are legally obliged to give this information to OPTA.³

We request that you fill in the answers as completely as possible. When you do not have the exact information, we ask you to estimate. If you are not able to provide a part of the requested information, we ask you to give reasons for not being able to do so. If there is cause for such, OPTA may request you to provide an accountant's declaration concerning the accuracy and completeness of the financial information provided.

Confidentiality of the data

OPTA requests that you indicate clearly which answers you consider as confidential. The market analysis, which is based on the answers and that will be made public by OPTA, will not contain data that can be traced to confidential data of companies.

All questions relate to the determination of SMP. OPTA can also use the data for other legal tasks where the data is needed. Also in that case the confidentiality of the data will be guaranteed.

Further procedure

In particular on the basis of this market survey, OPTA will carry out a market analysis in order to determine whether the existing SMP designations should be changed or continued. OPTA expects to make the non-confidential part of the market analysis public in October or November 2002. This market analysis will then be available on OPTA's web site.

Point of contact

OPTA will contact you to check if you have received the questionnaire and to ask who the point of contact within your company for answering the questionnaire will be. OPTA would very much appreciate it when - after receipt of this letter - you could indicate - by telephone or e-mail - who will be the point of contact within your company.

At OPTA a number of employees will act as point of contact. You can contact these employees by telephone or e-mail:

OPTA Telephone : +31 - 70 - 315 9223 or 9224
e-mail : amm2002@opta.nl

³ On the basis of article 18.7 of the Telecommunications Act.

Questionnaire answers

The answers should be send before **31 May 2002** - both per letter and per e-mail - to:

OPTA
Project team AMM 2002
Department of Retail Market
PO Box 90420
2509 LK Den Haag
The Netherlands

e-mail: amm2002@opta.nl

Yours faithfully,

The Commission of the Netherlands Independent Post and Telecommunications Authority (OPTA)
On behalf of the Commission,
Head of the Department of Retail Market

K. Noorlag