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MARKET VISION

ANNUAL REPORT 2001



INDEPENDENT POST AND TELECOMMUNICATIONS AUTHORITY

Mission

OPTA stimulates sustained competition in the telecommunications and post markets. That is to say: a lasting situation in which private individuals and business end-users can choose between providers and services in such a way that the price and quality supply in the various constituent markets is created by effective market incentives. In the event of insufficient choice OPTA protects end-users.

MARKET VISION

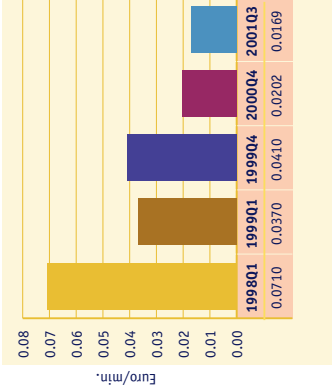


INDEPENDENT POST AND TELECOMMUNICATIONS AUTHORITY

OPTA's objectives

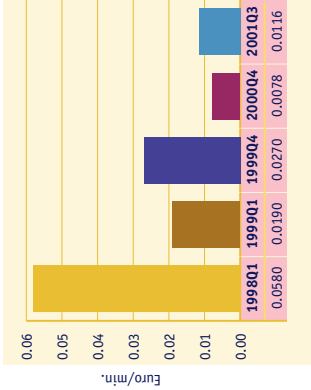
The tariff margin for an imaginary competitor of KPN that owns its own large network in this scenario continued to decrease in 2001, indicating that a squeeze exists. With a decrease in the local interconnection tariffs for competitors – for both originating and terminating – OPTA expects that this tariff margin can increase to an interval of 0.018 – 0.0222 euro/minute in 2002.

Tariff margin best case: a competitor of KPN with its own network



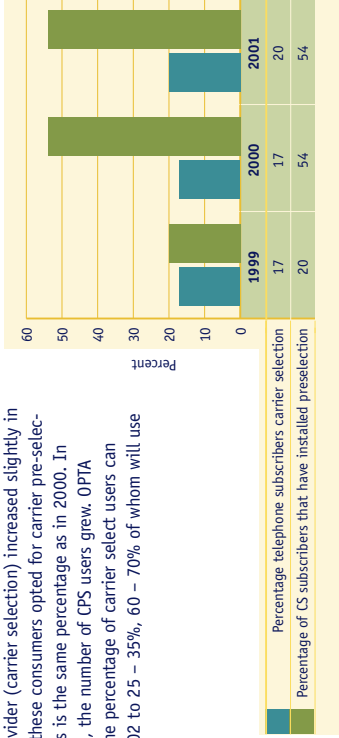
The tariff margin increased in 2001 for one of KPN's competitors because this competitor's own network is minimal, necessitating national interconnection from KPN twice. Here, too, there is no longer a price squeeze on KPN competitors. OPTA expects that this tariff margin can continue to increase in 2002 to an interval of 0.013 – 0.017 euro/minute.

Tariff margin worst case: a competitor of KPN without its own telephone network

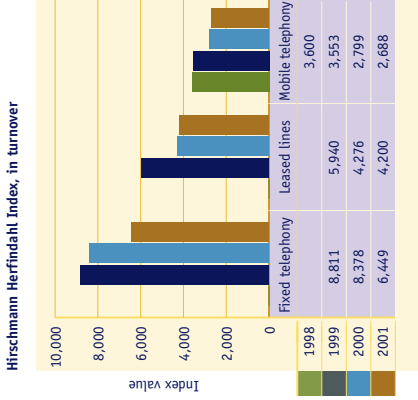


The number of consumers that place telephone calls via an alternative provider (carrier selection) increased slightly in 2001. 54% of these consumers opted for carrier pre-selection (CPS); this is the same percentage as in 2000. In absolute terms, the number of CPS users grew. OPTA expects that the percentage of carrier select users can increase in 2002 to 25 – 35%, 60 – 70% of whom will use CPS.

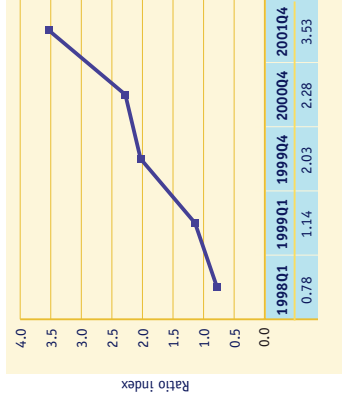
CS and CPS users



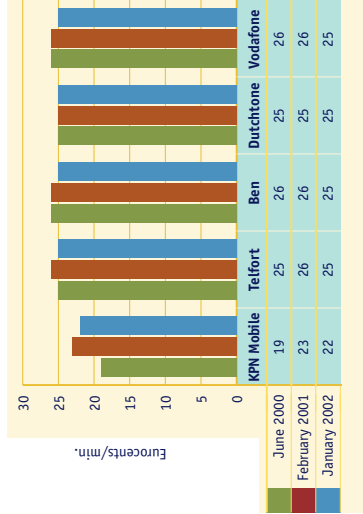
The Hirschmann Herfindahl Index (HHI) is an indicator of concentration in a market. The lower the value, the more competitive the market. An index figure of no more than 1800 reflects an effectively competing market. In the three markets for fixed telephony, leased lines and mobile telephony, the level of concentration decreased in the past years. In 2001, more competition was seen in the fixed telephony market in particular. In the markets for leased lines and mobile telephony, the market appears to be stabilising. An effectively competitive situation has not yet been achieved in any of these three markets.



Ratio between annual decrease of national and local tariffs of KPN



Tariffs for calls from a fixed (KPN-) telephone to a mobile telephone



Foreword

OPTA's vision of the developments in the postal and telecommunications markets for the coming year lies before you, together with the results of the Market Monitors Post and Telecom and the 2001 Annual Report. The enclosed foldout shows the objectives OPTA has set for the year to come. Within the limits imposed on OPTA by legislation and the courts, and because of the variety of the actors in the market, these objectives have been quantified.

Market mechanisms and safeguarding the public interest

Looking back, it can be concluded that the liberalisation of the telecommunications market, with the assistance of an independent regulator, is bearing fruit for both businesses and consumers in the Netherlands. Market mechanisms, providing they are properly monitored, enhance both social and economic welfare. This no longer seems to be as self-evident as it was a few years ago. Naturally, the government could not simply withdraw from privatised economic sectors without keeping an eye on the public interests in these sectors. The government must clearly define the requirements for safeguarding the public interest. The telecommunications sector serves as proof that public interests need not suffer from liberalisation of the market.

The success of market mechanisms in the telecommunications sector

The increased welfare achieved for both businesses and consumers is clearly visible in the telecommunications market. Since 1998, the price for a long-distance telephone call has decreased by more than 50%. Prices paid by end-users for a variety of services continued to decrease in the past year, and competition on the markets for both fixed and mobile telecommunication has increased. Despite the unfavourable economic climate, newcomers were able to increase their market shares, and the sector as a whole contributes an increasing and increasingly important share of the gross national product. OPTA's independent, sector-specific regulation has – in all modesty – clarified and effectuated the requirements as defined in Brussels for this development of the market in the Netherlands. However, at this time, after four years, there are still market segments that need proper enforcement of strict rules, and these segments receive top priority from OPTA. Examples include the market mechanisms on the local market for telephony and broadband internet access, and the tariffs for calls to mobile telephones both in and outside of the country. The regulatory framework that will change as a result of the implementation of the new European ONP directives will also stimulate OPTA to exercise regulation that is more attuned to the market dynamics.

Success can be repeated in the post sector

The question is why the Netherlands does not repeat the success achieved in liberalising the telecommunications sector in the postal sector. After all, the public interest in this sector can also be safeguarded in the same manner. Nevertheless, liberalisation of the postal sector has not been achieved. No uniform agreements on complete liberalisation of this network sector have been made on the European level, despite the fact that there are sufficient economic and social reasons to do so. Like Sweden, the United Kingdom is therefore liberalising this sector in anticipation of European agreements. The same applies to the market in the Netherlands: there are no general economic or social reasons to maintain the remaining monopoly in the postal sector. Our national postal network is healthy and no longer needs extra protection. Dutch consumers could benefit earlier from more market mechanisms in the postal sector.

Safeguarding public interests in converging communication markets through cohesive regulation

The success of market mechanisms and independent regulation in the telecommunications sector could determine ambitions in overlapping areas. After all, the traditional distinction between various networks (telephone

network, cable network, broadcasting) over which a specific service (telephony, distribution of broadcast programmes) is provided, has faded: the networks and the services are converging. Converging markets need cohesive rules and regulation. The new European legislation approved in 2001 reflects this trend, as do the changes in regulatory arrangements in other European countries. Regulation of the communication sector in the Netherlands is still fragmented along traditional lines. A study needs to be made of the establishment of a communication authority responsible for all economic regulation with reference to the telecommunication, ICT and media sectors. Effectuation of a cohesive package of rules and policy choices requires specific expertise regarding market organisation and – if necessary – competition regulation. Effective and efficient action is only possible if these tasks are performed in an unfragmented manner. A single body could quickly take action if the market situation necessitates such.

Market mechanisms in cable television

Cable television is another example of a telecommunication sector in which the success of liberalisation of the telecommunications market can be repeated. The cable sector in the Netherlands could conceivably develop into a real alternative to the existing KPN network. However, this necessitates reorganisation of the existing legislation and the existing regulatory regime, so that the appropriate economic stimuli will induce the cable operators to establish a truly competitive infrastructure. OPTA will actively participate in the creation of this situation to the best of its ability.

Protecting consumer interests

Last but not least, OPTA draws attention to the interests of the consumers of new broadband services and the internet. Quality, price and terms of business in the existing provision of services are left to the mercy of an imperfect market. It must be concluded that consumers are confronted with a variety of access and switching difficulties. This is not in keeping with the concerns of politicians about polarisation of society and the desire to make internet accessible to an even wider public. OPTA can play a part in safeguarding clear public interests.

In closing, the Commission is thankful to the OPTA executive board and employees for the effort devoted in the past year to coming closer to achieving OPTA's mission: promoting enduring competition and protecting the end-user.

The Hague, March 2002

J.C. Arnbak, chairman
H.A. van Karnebeek, vice-chairman
L.Y. Gonçalves – Ho Kang You



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1 Vision of the telecommunications market

Despite the changing economic conditions and the stagnation of developments in terms of enduring competition, developments in the telecommunications market will certainly not grind to a halt. OPTA remains aware of this. The regulatory framework is also changing as new European ONP directives are implemented. As a result, regulation can be more optimally attuned to market dynamics. OPTA will continue to perform its mission in 2002: breaking down access barriers for competitors and consumers. But this is nothing new. OPTA will, however, indicate exactly what it hopes to achieve in the markets discussed, within the freedom of movement it has been allotted by legislation and the courts. Moreover, this vision will place particular focus on the areas in which new or radically changing developments are expected and in which OPTA hopes to play an important part. This pertains to developments in the cable sector, addressing the convergence of communication networks and regulation thereof, increased attention for consumer interests in the internet market, and more intensive international cooperation between regulators.

■ Markets grow despite worsening economic climate ...

The importance of the ICT sector in the Netherlands is clearly evident. In the period 2000 – 2002, this sector contributed nearly 0.6 percentage point more to the growth of the gross national product, which averaged three and one-quarter percent.¹ On the end-user market, in 2001 the traffic turnovers increased by 10.4%.² The driving forces behind this development were mobile telecommunication and the increase in internet usage in particular. The slowing trend in the growth is not unusual: the penetration

level of successful new products normally follows an S-curve. The rapid growth of the market in the early period is now levelling off and stabilising, but is still higher than average.

... and sentiments in the financial markets hide actual market opportunities

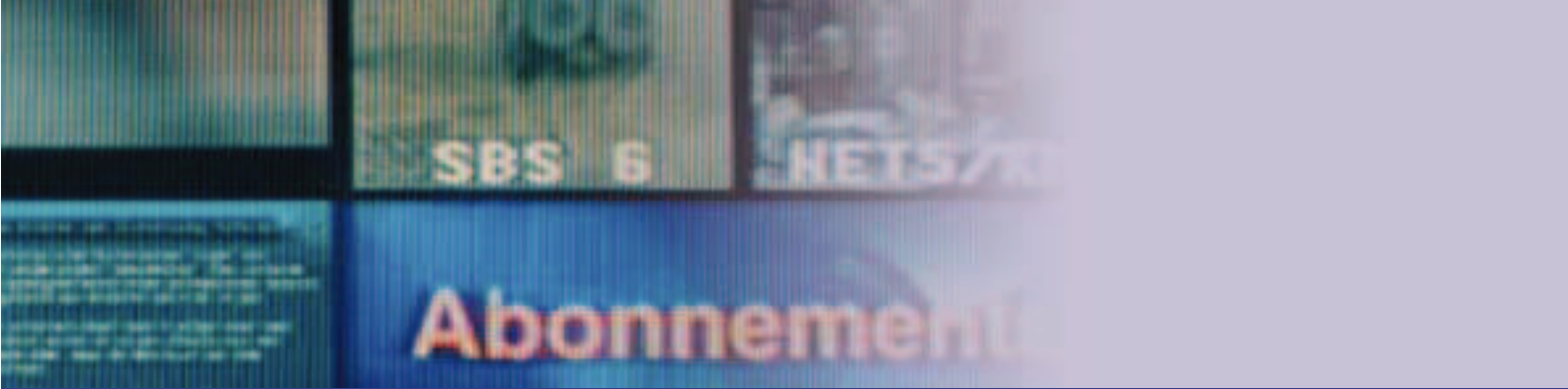
The Market Monitor Telecom also clearly indicates that, despite the poorer investment climate, competition increased in 2001 and growth was still seen in both the fixed and mobile telecommunication markets. This despite the increased pressure on the investment possibilities of (Dutch) telecom companies due to earlier optimistic international expansion of their activities. In the Dutch market, OPTA believes that there are still sufficient opportunities for market parties to apply a healthy business case. However, these opportunities become less clear as sentiments in the financial market take precedence. OPTA expects that the market parties will focus more on the actual market demand instead of implementing a strategy based on using supply to generate demand.

■ User tariffs continue to decrease ...

The tariffs end-users paid for telephony decreased in 2001 according to OPTA's Market Monitor Telecom. In the (absolute) decrease of the end-user tariffs, stagnation gradually appeared to occur, at least in KPN's tariffs, even though the tariffs are still regulated by a tariff ceiling, known as the price cap. The price cap includes a continued decrease in the end-user tariffs. The price squeeze test developed by OPTA also takes into consideration the fact that it must be possible for end-user tariffs to decrease.

¹ Source: ESB, 4 May 2001.

² Source: ICT Market Monitor 2001-2002



EV-KRANT

... while the price squeeze was reduced

In 2001, OPTA successfully addressed the prevention and alleviation of price squeeze. This squeeze is in part determined by the level of the wholesale (access) tariffs. Because OPTA applied the price squeeze test in 2001 in evaluating KPN's end-user tariffs and therefore determined new, lower inter-connection tariffs in mid-2001, a squeeze no longer exists. The market monitor also reflects this improvement.

■ Structural obstructions for competition were removed ...

In 2002, OPTA continued to pay full attention to the relationship between the end-user tariffs and the wholesale tariffs. The regulator's efforts included improving the cohesion between the regulatory arrangements for these tariffs. The objective of this approach is to structurally remove the risk of a price squeeze.

The extent to which end-user tariffs are regulated depends on the competitive situation on the various sub-markets and, in areas where market mechanisms do not work sufficiently, on the opportunities other providers have to enter into the competition. When there are no barriers on the wholesale level that can limit or frustrate competition, this could in part give OPTA cause to stop the detailed regulation of KPN's end-user tariffs.

OPTA assumes that the fact that there are no alternative providers in itself explains the existence of (unfair) barriers for newcomers; study and analysis is called for in this respect. The absence of competition in certain market sectors also makes it possible to unilaterally determine supply and prices. This could result in monopolistic behaviour. Caution must therefore be exercised in definitely ending the regulation of end-user tariffs.

... especially for local access ...

Access to KPN's network, on the local level in particular, and the various aspects of that access will continue to be a major area of attention in 2002. KPN's supply in the area of access still lacked many necessary parts as prescribed by general law. For example in the area of line sharing/bit stream access, as well as the areas of interconnecting leased lines and local carrier pre-selection. The operational execution of the existing supply of access also had shortcomings, as is evident from matters including an increase in disputes involving the operation of access (collocation, application systems, delivery procedures).

... for competitors and also for consumers

Barriers not only exist for competing providers, but also for end-users. In the latter case we refer to them as switching barriers: barriers that prevent consumers from easily switching to the provider of their choice.

Examples include complicated application procedures, long notification periods and the loss of service in the event of relocation. OPTA will take particular action in situations in which switching barriers are created in order to frustrate competition.

■ Concrete objectives for 2002

OPTA expects that the combined policy focusing on both competition in services (including through local carrier pre-selection) and competition in infrastructure (partial and complete unbundling of the local loop) will offer the best safeguard for truly opening the large local market in particular. Within the possibilities allotted to OPTA through legislature and the courts, OPTA has formulated the following concrete objectives for 2002:

1. Structural prevention of price squeeze. This should be evident in the market monitor 2002, where in the worst-case scenario the trend will



continue to an interval of 0.013 – 0.017 euro cent and in the best-case scenario the tide is turned and returns to the interval of 0.018 – 0.022 euro cent;

2. Promoting local competition through:
 - a. the supply and use of local telephony via CPS, which should be particularly evident in an increase in the number of CPS users among the (growing) numbers of CS users. If the trend continues, the number of CS users should increase to 25 – 35%, while the number of these users that utilises CPS should grow to around 60 – 70%.
 - b. Further growth in the number of (wholly and partially) unbundled local loops used by competitors. Now that more and more barriers are being removed, the market monitor should show growth in the vicinity of 15000 – 30000.

■ **Mobile market is becoming saturated; competitive dynamics can be improved**

Once again in 2001, the number of subscribers in the mobile market grew significantly, albeit that the growth was not as explosive as in the preceding years and saturation is becoming evident. In the near future, competition will focus more on winning existing mobile subscribers, and/or getting subscribers to switch. The end-user tariffs appear to be competitive, but OPTA believes that the interconnection tariffs in this market are too high (unreasonable). OPTA therefore advocates a decrease in the terminating tariff. In addition, the regulator is studying the possibilities for service providers to lower the access thresholds for the existing mobile networks. In itself, it is encouraging to note that in 2001 the first service provider (Tele2) started operations as an MVNO on an existing mobile network. OPTA believes it is logical that existing providers should be more willing to offer access to their networks in a period of less-favourable economic circumstances: new service providers will bring new

customers and thus more call volume on the relevant networks.

With reference to new types of mobile telecommunication (UMTS), OPTA will keep a close eye on possible cooperation between mobile providers, which is permitted within certain limits, in order to combat cooperation between providers that is undesired and thus disrupts the competition.

■ **Objectives for 2002**

1. Lower mobile terminating tariffs, which should be evident in the market monitor 2002 in terms of the tariffs for calling from fixed to mobile. The standard tariffs should show a decreasing trend, to the interval of 12 to 16 euro cents.
2. Easier access to the mobile market for service providers. This should be evident in an increase in the number of service providers on this market.

■ **Internet via the cable makes cable a true alternative for the telephone network ...**

In addition to KPN's telephone network, the Netherlands has a second fixed infrastructure for electronic communication with nearly national coverage: the local cable networks. In particular, the parties on the cable market have invested significant sums in making it possible for them to offer internet access. For end-users, the cable has become a true alternative for the telephone network. However, consumers do not yet have sufficient choice between internet service providers. Via the cable, the consumer often only has the choice of using the cable operator's own service provider. NLIP and VECAI are studying the possibility of 'opening' cable networks to multiple internet service providers. OPTA applauds this initiative. In 2002, OPTA will be receive the legal competence to force cable operators to offer this type of access if necessary.

... but not yet for telephony

Telephony for private users via cable networks was only available on a small scale in 2001, according to the Market Monitor Telecom. Problem areas in this development are technical on the one hand (slower development of IP telephony than anticipated), and on the other hand for many cable companies they lie in finding a competitive business case. This is in part due to the margin between the purchasing costs and the end-user tariffs – which must compete with KPN – and in part due to the contracts that cable operators have with municipalities for the supply of services. If telephony via the cable is to be successful, new European regulations can also play a vital part. Based on these new rules, OPTA will also act more pro-actively in the cable market in order to deal with competition between these infrastructures.

■ Modernisation is limited by existing rules ...

In the service it traditionally provides – distributing programmes – cable holds an extremely strong position. Pressure from competition – satellite television and DVB-t – is only limited at this time. The arrival of digital television will fail to meet expectations for the time being. According to VECAI, the existing legislation for traditional cable distribution leaves few options for the market parties to initiate digital television and the relevant new (interactive) services. The existing legislation does not reflect the economic reality of a modernised cable infrastructure. Compared to the framework made possible by the liberalisation of the traditional telephone infrastructure, the existing cable regulations place more limits on the room for establishing fair competition with providers in the telecommunication markets.

... but OPTA is working on revising this legislation

OPTA believes that digitalisation of cable networks could be an important step forward towards con-

verging and thus competing infrastructures. This necessitates reorganisation of the existing legislation, so that more consideration is given to the appropriate economic stimuli to induce the cable operators to establish a truly competitive infrastructure. OPTA is prepared to contribute to and actively participate in the debate about possible new tariff control regiments that address consumer access and provider access as these relate to one another, e.g. by introducing a tariff model with a flat fee for basic services. Rebalancing of tariffs, as was done in the telephony market in 1998, is a possible option. With a view to markets that will continue to converge and future regulation that is oriented towards convergence, OPTA believes that a wide debate is called for that should achieve results even this year. OPTA will consult with the market parties for this purpose in 2002. The problems of financing and the ideas about rebalancing of consumer tariffs will be included in this consultation. Moreover, the efficiency of the applicable 'channel approach' – in which unused capacity is paid for by consumers of the used capacity – will be discussed in the consultation document.

■ Competition in broadband services must intensify ...

Broadband services hold great potential for the cable market in the Netherlands. Seen from a European perspective, the use of broadband services in the Netherlands is relatively progressive. Approximately 6% of all households in the Netherlands have internet access via a broadband connection. This will increase to about 35% in 2005. These are only the connections via the cable and the telephone line. The emergence of DSL services is closely related to this.³ It is desirable that the competition between broadband services via the telephone network (ASDL) and via cable networks intensifies. Here, too, OPTA's main areas of focus include tariffs and access.

³ Source: Vrijband: a broadband vision for the Netherlands, p. 47

... while consumer interests deserve more attention ...

In the consumer market for internet, a demand will remain for inexpensive, fast, reliable and high quality access in the years to come. Exaggerated expectations in recent years regarding the growth of the internet market for consumers convinced a number of smaller parties to leave this market segment.⁴ This means that the remaining parties will compete more for consumers' favour, albeit that there is a risk that these players will agree among themselves on their behaviour, at the consumers' expense. OPTA believes that insufficient attention is being devoted to the interests of consumers on the internet market. Quality, price and terms of business in the existing provision of services are left to the mercy of an imperfect market. It must be concluded that consumers are confronted with a variety of access and switching barriers. This is not in keeping with the concerns of politicians about polarisation of society and the desire to make internet accessible to an even wider public. OPTA can play a part in safeguarding public interests.

... and freedom of choice comes first

On the internet market, many companies are active that are strongly vertically integrated. By definition, this is the case with cable operators. As already indicated, willingness to open their networks to multiple internet service providers is growing. In the telecommunications sector, KPN is the perfect example of a vertically-integrated provider. Alternative network providers that hope to reach consumers with internet services – either with or without affiliated ISPs – are still dependent on KPN's network for the last bit of access. The manner in which access to the local loop is allowed may not comprise any unnecessary barriers. This would unnecessarily limit the consumers in their choice of service (provider).

Two other aspects also play a crucial part in the internet's future position: reliability and security. In 2002 OPTA will be competent to regulate what are known as Trusted Third Parties (TTPs), which will contribute to the reliability and security of transactions via internet.

■ Converging markets deserve cohesive rules and regulation

Traditional technical boundaries are fading ...

Regulation in the communication sector is fragmented at this time. This is a result of the applicable legislation, which is based on the traditional distinction between various infrastructures (telephone network, cable network, broadcasting) over which a specific service (telephony, distribution of broadcast programmes) is provided. These old infrastructure boundaries coupled with services, however, are rapidly fading, resulting in convergence of both the networks and the services. As a result, the options available to consumers for receiving services via different infrastructures and different peripheral equipment are increasing. For the providers of these services, this means that they must be able to supply their services to the end-user via different infrastructures. For the consumer, this means making choices, which are sometimes very complicated.

... networks are converging, and so does European legislation ...

The new European legislation approved in 2001 is in keeping with this convergence. An important premise for this new set of directives is that they are neutral with reference to the technology. As a result, the scope of the directives is broadened to include access to all types of communication infrastructure. In this manner, convergence results in the need for a more cohesive approach to matters involving

⁴ Source: NLIP



access to services in their relation to the various networks (fixed and mobile) over which these services are supplied. This applies not only to telecommunication services and networks, but also to broadcasting services and networks. In anticipation of implementation of the new European directives, OPTA will act in anticipation of this development in so far as it can within the existing legislation.

... and regulation of the communication sector must follow suit

OPTA already indicated that this convergence development must have consequences on the regulation. In its response to the draft government viewpoint regarding the evaluation, OPTA indicated in 2001 that a study needs to be made of the establishment of a communication authority responsible for all economic regulation with reference to the telecommunication, ICT and media sectors. These developments are already reflected in other European regulatory arrangements. More and more countries are opting for an approach in which regulation of voice and data communication, fixed and mobile communication, and cable and telecommunication networks is integrated. This is evident in Table 18 of the Market Monitor Telecom. Within Europe, technological convergence has therefore resulted in convergence of the regulation thereof. There is a clear reason for this. For effective regulation, a regulator must be assigned a cohesive set of tasks while strongly operational tasks that are related to regulating competition must be assigned to the same regulator. It is only logical that, in a converging market environment to which future legislation is attuned, market regulation tasks be assigned to a single regulator. OPTA has already indicated in this respect that frequencies for mobile telephony should be auctioned and number plans should be determined. The relevant standards and policy choices are, of course, the responsibility of the relevant min-

istry and the Parliament. However, implementation requires specific expertise regarding market regulation and, where necessary, competition regulation. Effective and efficient action is only possible if these tasks are performed in an un-fragmented manner. A single body could quickly take action if the market situation necessitates such.

■ Study of the results of convergence must have consequences on the regulation

Finally, convergence has consequences on the distribution of information and therefore also on safeguarding the interests of society that are related to the content of that information. An important issue in this respect is the applicability of traditional media regulation in this changing environment. The parts played by the content and distribution suppliers will overlap to an increasing degree. This necessitates policy regarding the definition of the public domain. When is pluriformity safeguarded; how should cross-ownership, vertical integration and privacy aspects be dealt with? In certain European countries, the regulation of distribution and content has already been combined as a result. OPTA certainly does not want to assert in advance that this would also be a desirable development for the Netherlands. First and foremost, the media sector has its specific task in communicating the broad social, cultural and ethical values of our society. The Ministry of Education, Culture and Science and the Commissariat for the Media play essential parts in this respect. In addition, a clear distinction can be made between the regulatory tasks pertaining to the economic and to the content aspects of communication services. Convergence will, however, result in new developments in this respect as well. There is sufficient cause to anticipate these developments. OPTA therefore advocates that the consequences convergence will have on the regulation of the com-



munication sector be studied, while at the same time the advantages and disadvantages of uniform division in the regulation of content and the regulation of economic matters should be addressed.

■ Stronger international cooperation and harmonisation

With the effectuation of the new European legislation, international attuning of regulation policy will become more important in the near future than it has been in the past. The European Commission's objective of more harmonisation provides for this. Taking the new legislation into consideration, the existing attuning that occurs within the International Regulators Group (IRG) will be formalised and increased in the European Regulators Group (ERG), in which the European Commission also plays a part. Areas to be addressed include maintaining the efficiency of regulators, promoting a harmonised regulatory policy, and improving the transparency of regulation within the European Union.

To an increasing degree, regulators will collectively determine and effectuate the regulation rules in a harmonised manner. Harmonisation between the European Commission and the national and international general competition authorities will also intensify. Moreover, implementation of the new legislation will result in regulation that is based more on periodically pre-defined markets than is currently the case. In preparation for the new rules, which will be implemented in 2003, the current regulation policy will already shift towards this legislation.



2 Vision of the postal market

■ Competition, monopoly and OPTA's objectives

While few parties attempted to enter the postal sector in previous years, this changed in 2001. In 2002, intensive entry is expected from market parties. Because the incumbent in a network sector naturally holds a strong position, rapid entry of parties and thus development of competition is no easy task. A number of crucial criteria are important for successful entry and subsequently enduring competition.


The premise for liberalisation of the postal market is the Postal Act and the services it defines. The reserved service is the exclusive delivery by TPG of letters weighing up to one hundred grams. Other assigned services include all services that TPG must supply and its competitors may supply. These include letters and printed matter weighing up to 2 kilograms, as well as domestic parcels weighing up to ten kilograms. The free services are services that TPG offers in competition with others.

At first glance, the postal market appears to be largely accessible for TPG's competitors. However, a large part of the market is still reserved for TPG because an important share of postal traffic consists of services up to one hundred grams.

Other than the competitive intensity in the postal market in the Netherlands, the liberalisation process appears to be developing slowly from a European perspective. Brussels will not demand further liberalisation of the national postal markets until 2007. However, the Member States are allowed to act in anticipation of European policy. The United Kingdom is much ahead of the European planning for liberali-

sation of the postal market. The regulator Postcomm has announced that Great Britain will strive to achieve a completely open postal market in three phases, to be completed in 2006. The first step is opening thirty percent of the business market for bulk mail to competition in April 2002: shipments of at least 4,000 items will be liberalised. The second phase will follow two years later, when another thirty percent of this market will be opened to competition because the number of items per shipment will be lowered by five hundred to one thousand. In March 2006, all postal services will be opened to competition. The postal market in Germany is also ahead of the European obligations. Access to the German incumbent's sorting centres is possible. Additional liberalisation measures would make it possible to prepare the market in the Netherlands for complete competition more quickly than in most other countries in Europe. This has proven to be a favourable strategy in the telecommunications sector. Further opening of the market can also give all market parties a durable efficiency impulse that would not only establish the conditions for enduring competition, but also ensures that end-users of postal services enjoy the benefits of this improved efficiency in the form of lower tariffs and higher quality. However, OPTA does not have sufficient tools to promote competition in the postal market. In instances where OPTA is authorised to act, it reports developments.

The Market Monitor Post indicates that TPG has a respectable score from the international perspective in terms of its performance. Moreover, the postal market in the Netherlands as a whole is still a leader in terms of the extent of liberalisation. Nevertheless,



the questions of the manner in which the postal market can be opened for more of TPG's competitors and the manner in which TPG's performance can be further improved must be addressed. With reference to the services provided in the monopolised share of the market, the regulator must assess whether consumers, who have no choice for these reserved services, have access to the best possible services.

Early in 2002 OPTA consulted the market parties regarding their views on the major market developments of the future. This consultation round brought to light that in the future a limited number of players with a total package of services will survive on the postal market in Europe. Due to the limited scale of the market in the Netherlands, this is also true for this country. High quality national coverage is essential to survival. In addition, market parties focus now and will focus in the near future on niche markets in which specialisation is the distinctive factor rather than scale size. Direct mail continues to be an interesting, growing market for the parties. An increasingly important part is played in this market by improved databases with customer data that facilitate offers of tailor-made products.

OPTA's major objectives for 2002 can be formulated as follows:

1. TPG will comply with the bookkeeping rules it must apply in accordance with the conditions determined by OPTA so that any possible cross-subsidising can be combated;
2. Recommendations to the Ministry regarding the evaluation of the tariff control system. The Ministry will determine how tariffs will be regulated in the future and OPTA's part therein;
3. OPTA advocates more extensive access for competitors to TPG's network. The consequences this will have on the Universal Services must be considered;

4. Regulation of the implementation by TPG of a measuring system to determine the delivery period for letters weighing up to 100 grams that accurately reflects actual practice. An adequate measuring system is needed to determine whether TPG delivers 95% of all letters within one day.
5. Regulation of TPG's post office policy in accordance with the General Postal Guidelines Decree and the agreements made in Parliament.

In order to achieve these objectives, regulation must be effective. This is only possible if the available tools suffice. The authority OPTA has to act on the postal market is insufficient to effectively help develop a level playing field for all market parties. This is not a desirable situation, because not only market parties but also the end-users benefit from an effective regulation policy and continued competition developments. However, the regulator is not the party that must decide whether more authority is needed in order to monitor the market mechanisms in the postal market.

■ Segregated bookkeeping serves to give insight into improper cross-subsidising

TPG is required by law to distinguish in its financial accounting between the reserved, the other assigned and the free services. Segregated financial accounting is intended to give insight into and prevent improper cross-subsidising between the reserved and the other assigned services on the one hand and the free services on the other. For this segregated financial accounting system, TPG is required to define an allocation system for income and expenditure. At the end of 2000, OPTA approved TPG's allocation system but placed a number of conditions on this approval. TPG did not agree and filed an objection. In its decision on this objection of October 2001, OPTA did not deviate from most of these conditions.



The conditions pertain to matters including the system of Activity Based Costing and the allocation of equity as applied by TPG. TPG subsequently filed an appeal with the court of Rotterdam. The court announced its decision at the end of March 2002. The court ruled against OPTA on a number of points the most important of which being that OPTA is not competent to place requirements on the financial accounting with the objective of preventing unauthorised cross-subsidising. This makes it more difficult for OPTA to prevent cross-subsidising. However, the court did rule in favour of OPTA on a number of other points, including a clarification of the Activity Based Costing system and allocation of the costs for shareholder and loan capital proportionately to the equity used for the services in the categories as distinguished. This means that TPG must further improve its allocation system. Whether the improvements will ultimately make it possible to prevent cross-subsidising must be learned from actual practice. If this is not the case, OPTA will urge the State Secretary to modify the postal regulations. OPTA still regards that it is impractical that when it discovers improper cross-subsidising, it is not competent to take action. In this case OPTA must ask the NMa to take action against the market disruption.

■ **Tariffs: monopoly is not meant to attain excessive returns**

The prices TPG is allowed to charge its customers are still primarily regulated via what is known as the tariff control system. This serves to protect consumers and competitors from unreasonable pricing. The existing tariff control system, however, has failed to achieve its objectives and ambitions. For example, there are no efficiency stimuli in the system, and it does not take the drastic cost reductions that TPG has implemented into consideration. Consumers do not benefit from the possible excessive returns as currently generated by TPG.

It was never the intention that the post monopoly be used to generate excessive returns for shareholders or to fund an expansion strategy on the open market. When TPG was still fully government owned, excess profits flowed back to the good of society as a whole. At this time, however, by allowing excessive returns a flow of funds is being generated from the captive customers to (primarily) private shareholders both in and outside of the Netherlands. OPTA believes that if maintaining a monopoly is done to serve objectives other than cost coverage of the Universal Services, this must be determined by Parliament.

In addition to these objections on the basis of principle, there are practical objections to a weak tariff control system, i.e.: from the perspective of fair competition and allowing market mechanisms to work on the postal market. Greater profits from a monopoly allow more room for cross-subsidising. Firstly, this brings the risks involved in direct cross-subsidising of open market services by monopolised services. Secondly, cross-subsidising may occur if the capital from unreasonable monopoly profits results in deep pockets that competitors do not have. Such deep pockets should not be filled on the basis of a privileged position. This could result in services that generate a loss being marketed (longer) in order to generate a market share, thereby pushing competitors from the market. Regulation of direct and especially indirect cross-subsidising is insufficient in the Netherlands. It is therefore essential that the tariff control system itself prevents the generation of excessive returns.

This all ultimately results in a situation in which consumers and business customers benefit relatively little from the efficiency improvements achieved by TPG in recent years. The new tariff control system must be equipped to consider the effects of cost



reductions in determining the tariffs. Moreover, the new tariff control system must also take more notice of the increasingly larger part played by investment and capital goods in the TPG monopoly. The more machines TPG installs to reduce the part played by labour and personnel costs, the more relevant it becomes to gain insight into the yield TPG achieves on its invested capital.

OPTA believes that a new tariff control system is needed that does justice to these objections and expected developments, as a framework for the actual purpose of the monopoly: providing universal services based on a reasonable profit. OPTA is advising the Ministry of Transport, Public Works and Water Management regarding a new system to be implemented for regulating the prices charged by TPG. The Ministry will then decide on the legal framework for a new tariff control system.


■ Menu for access

Based on the Postal Act 2000, TPG must allow access to its post office boxes. OPTA is authorised to mediate in the event of conflicts regarding conditions and tariffs. In 2001 OPTA mediated in a conflict regarding the conditions applicable to access to the post office boxes. The postal market welcomed this. An increasing number of providers have announced interest in purchasing the service 'access to post office boxes'. This was evident from the consultation round organised by OPTA. The increased certainty that businesses have regarding conditions and tariffs applicable to access to post office boxes can stimulate the demand for these services. Responses to the consultation document also indicated that the market parties have ideas that would result in improved possibilities for access to post office boxes, e.g. by delivering post to TPG's sorting centres. OPTA is considering the need for a study of these possibilities.

The consultation round organised by OPTA in the postal market at the beginning of 2002, showed that the market has mixed views about access to TPG's network at points other than post office boxes based on ex-ante regulation. Important new players on the postal market consider access to various points in TPG's network essential for further development of competition on the postal market. Moreover, a number of parties want to work on their own strength and not be dependent on TPG's services.

The postal sector is a network sector. Unlike the newcomers on the postal market, TPG has a modern network with national coverage. Newcomers cannot profitably establish a network of this type within a short period of time. The (initially) often limited scope of activities, and therefore the longer period required for a return on the investment, is an obstacle for investments by newcomers. OPTA believes it would be opportune to allow parties other than TPG access to TPG's network, analogous to the Open Network Provision for telecommunications and the possibilities that already exist in Germany. The objective is to create a level playing field for all providers. It remains to be seen whether other parties will be able to establish a customer base without access to parts of TPG's postal network that is substantial enough to justify further investments for branching out their own networks. As a result, competition will not develop quickly on the postal market.

OPTA believes that ex-ante regulation, in which access to TPG's network is regulated on the basis of on non-discriminatory, reasonable and objectively justifiable conditions, is essential for establishing greater competition. This need is also present among the market parties. OPTA believes that a menu for access should be established: per shipment, a market party should be able to determine



at which point it will enter TPG's network: the letter boxes, the post offices, the sorting centres or the postmen. OPTA also believes that a further study is required of the economic effects of access to the network on the quality of the universal services. The Ministry of Transport, Public Works and Water Management must take the lead in this respect.

■ Quality of services measured in various ways

With the effectuation of the new General Postal Guidelines Decree on 1 June 2000, TPG is required, as concession holder, to ensure that individual letters and letter shipments with items weighing up to 100 grams are delivered in at least 95% of the instances in a calendar year on the day after they were posted, where the day of posting is not a Sunday or an official holiday. TPG must submit the entire results of the studies of this delivery period to OPTA before 1 April 2002, accompanied by a detailed and accurate description of the measuring system applied. In order to ensure that the results of the measurements are reliable, the measuring system is to be assessed by OPTA in advance.

In 2000 and 2001, OPTA was active in assessing the appropriateness of the measuring system used by TPG. In May 2001 OPTA notified TPG that the measuring system needed modification. This appears to have been achieved for most of the points indicated by OPTA. However, there are still a number of crucial matters over which OPTA and TPG have differing opinions.

For the year 2002, OPTA intends to agree with TPG on a measuring system that accurately reflects the actual (partial) flows of letters weighing up to 100 grams. An appropriate measuring system is essential in properly evaluating whether or not the standard prescribed by the General Postal Guidelines Decree of 95% is achieved.


Before 1 April 2002, TPG will inform OPTA of the extent to which the standard of 95 percent was achieved. OPTA will announce its assessment early in June.

The content of the post office policy is determined by DGTP and must satisfy a number of legal requirements, in particular those stipulated in the General Postal Guidelines Decree. The General Postal Guidelines Decree states material requirements about matters including the geographic spread of post offices and alternative services. The State Secretary also made agreements with Parliament regarding the supplementary conditions that should be satisfied by the post office policy. OPTA's task is to determine whether the post office policy is being implemented in actual practice in accordance with the General Postal Guidelines Decree and the agreements with the Parliament. OPTA will report its findings to the State Secretary.

■ Still a number of problem areas in the open part of the market

There are still many matters that obstruct competition on the postal market. Some opened parts of the market are developing slowly, while others simply cannot get going. The reasons for this are economic on the one hand, while on the other there are still obstacles created by insufficient legislation. This is one of the issues that became apparent from the consultation with the market parties organised by OPTA early this year.

The market parties indicated during this consultation that for the time being, they will not start with what are known as the document exchange services. The high quality of TPG's services and the doubts as to the financial feasibility make document exchange uninteresting from a commercial perspective at this time. This confirms earlier studies performed in this matter at OPTA's request.



The consultation also indicated that trade traffic is troubled by a lack of clarity regarding the distinction between printed matter and letters. This definition problem brings the risk that printed matter will be categorised as letters in trade traffic. Currently applicable legislation states that printed matter becomes a letter if anything has been added in writing. A clearer distinction is important, in part because letters weighing up to one hundred grams may only be transported by the concession holder. The Postal Act must give an unambiguous definition of the distinction between printed matter and letters, which in actual practice comes down to the fact that if the nature of the printed matter is retained, the shipment will still be categorised as printed matter. OPTA believes that the mere fact of adding text in writing does not change the nature of printed matter. OPTA believes that new legislation must put an end to this confusion because it obstructs competition. This is even more important considering the fact that OPTA believes that the market for printed matter will continue to grow in the coming years, increasing the urgency of the problem.

The electronic letter box, launched in mid-2001 by TPG under the name Privver, can be considered a supplementary service supplied by TPG in competition with other parties. Electronic services via Privver include sending invoices and bank statements, and are not included in the monopoly held by TPG. Electronic services involving letters may be provided by anyone, because this does not include physical transport as regulated by the Postal Act. This matter proved to be insufficiently clear, according to the consultation responses.

When post is erroneously addressed or delivered, it is nearly always returned via TPG. Generally, receivers returning the letters drop them into TPG's

red letter boxes. Processing the returned post costs a relatively large amount of time, involving costs for competing post transporters. Rapid, correct processing of returned items (for addressed printed matter) can be an important consideration to a party with a shipment in determining whether or not to use an alternative provider. After all, this gives the party with the shipment the ability to keep its highly important database up to date. OPTA will determine the extent to which its authority includes obliging TPG to deliver returned post from other providers. Another problem area is the fact that newcomers on the postal market want the option of distributing packages based on a collection system via the post offices, as became apparent in the consultation. In principle, OPTA advocates a system of this type and is determining the extent of its competence in this respect. The parties also indicated in the consultation that the discount rules applied by TPG are insufficiently transparent, and that not all discount rules are stated in TPG's tariff booklet. The last problem area concerns the use of pre-stamped 'Postage paid PTT Post' envelopes by parties with large amounts of post. The money these parties and newcomers have invested in this respect makes them less willing to do business with one another. In order to remove obstacles for bulk users who want to change over to other providers, it must be possible to make these investments transferable. Here, too, OPTA will determine its authority to remove these obstacles.

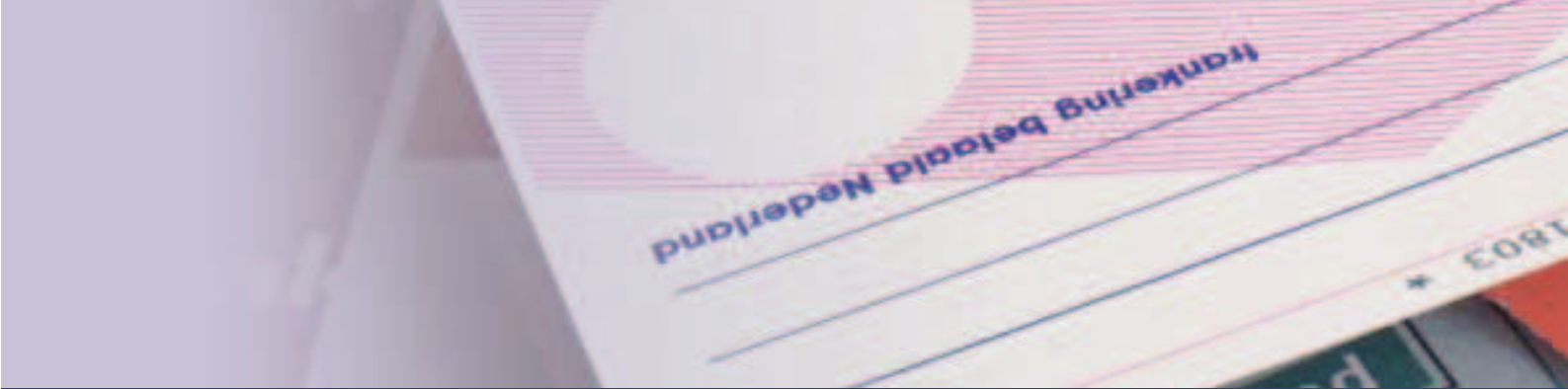
■ **OPTA's policy: anticipation of further European liberalisation**

An increasing number of market parties want to start or expand their services in various areas. In order to properly direct these possibilities for competitors, the postal regulator must have sufficient tools. Ex-ante regulation of a network sector such as the postal sector will continue to be neces-



sary for the time being, because TPG's network cannot be completely duplicated in the short term. Conflicts will continue to arise for quite some time regarding access to TPG's networks and the relevant tariffs. The part played in this respect by the postal regulator should be facilitating. This can only be the case if the regulator is the contact with the appropriate tools needed to regulate and monitor the postal market as it becomes an effectively liberalised sector.

The development of competition in the postal market from an international perspective should also be addressed by OPTA. On a European level, this has resulted in delaying modification of the existing regulations until 2007, meaning that, for the time being, the postal markets will not be opened further. For the market in the Netherlands, this means that today's newcomers do not have sufficient possibilities for entering all sub-markets. This limits the competition. By anticipating future measures from Brussels for further liberalisation, the Netherlands could keep pace with a number of other progressive European countries, including Great Britain and Germany. This would make the postal market in the Netherlands more attractive for newcomers, and this intensified competition would generate gains in efficiency from which the end-users would benefit. More international attuning with colleague regulators could accelerate liberalisation of the European market.



3 Market monitor telecom 2001

Competition in the market for fixed telephony continued to develop in 2001, despite the disappointing economic and financial climate. The market is still growing, albeit that it has slowed.

In the market for fixed telephony, newcomers held a stronger position than in 2000. This was a result of the rapidly growing popularity of carrier (pre-)selection. KPN nevertheless continued in its role as the dominant player on the market for fixed telephony, meaning that this telecom company remained a provider with significant market power in 2001.

In the market for fixed public telephony, competition occurred through providers with their own telephone networks and providers of carrier selection (CS) and carrier pre-selection (CPS) services.

Moreover, in some areas telephony via the television cable was established. The provision of this type of service is nevertheless experiencing difficult development, according to the VECAI.

On the leased line market, the development of competition stagnated.

■ Local access

■ Carrier (pre-)selection group continued to grow in 2001 ...

With carrier pre-selection, consumers can directly call through a provider other than KPN without entering the carrier selection company's code first. Many carrier selection companies also offered pre-selection in 2001. In 2000, the percentage of consumers that used carrier selection was 17 percent, as it was in 1999. In 2001, this percentage increased to 20. Striking is the fact that of the carrier selection users, a stable percentage used pre-

selection: some 54 percent in both 2000 and 2001. This stagnation could be the result of the difficulties involving an efficient application procedure for CPS and the fact that not all calls can be terminated advantageously via CPS at this time. Local calls will be added to the CPS traffic in mid-2002. What is more, the existing 'national' package (where the area code must be selected in order to use the local CPS) will be divided into three packages: the local calls (biba), where CPS will be possible without selecting the area code, the long distance package outside of the area code (buba), and the fixed to mobile package.

... broadband development lags behind

The development of competition on the market for broadband services failed to meet expectations in 2001. These services are available from two groups of market parties. These are cable operators, via their networks, and companies in the telecom market via either bundled or unbundled local KPN loops, including what is known as MDF access. MDF Access is particularly suited for broadband services, especially as xDSL services, where voice telephony can be included in a total package of services. Parties that compete with KPN's Mxstream services via their xDSL services had a hard time in 2001.

More extensive unbundling can stimulate competition in (broadband) services on the consumer market and also intensify competition on the business market for leased lines, especially for the low capacity leased lines. KPN held a strong position in this market in 2001. A potential barrier for market parties wanting to offer services via unbundled local loops was access to the collocation areas necessary for

these services, for which they are dependent on KPN. OPTA must ensure that acquiring access to these areas and the tariffs charged for that access do not frustrate more rapid development of competition in this market segment. OPTA published policy rules for this purpose at the end of 2000. The number of conflicts involving collocation areas increased significantly in 2001. OPTA published a decision regarding the tariffs that KPN may charge for various aspects of this type of access.

■ More competition in fixed telephony

Competition in the market for fixed telephony has intensified; in the leased line market competitive developments stagnated. The Hirschmann Herfindahl Index (HHI) is an indicator of concentration in the various markets. The lower the index, the more intensive the competition. This index indicated strong development of competition in fixed tele-

phony in 2001. An effectively operating market has an HHI of no more than 1800. This level is still far away, as is evident in Figure 1.

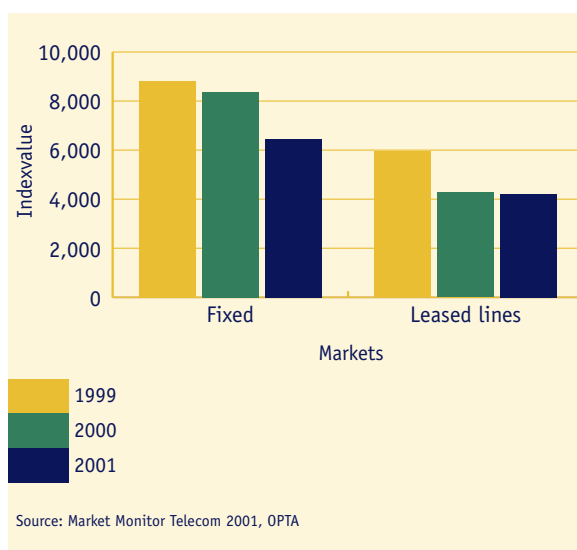
■ Fixed telephony: KPN's market share continued to decrease; local competition still problem area

Competition in the market for fixed telephony developed considerably in 2001. KPN's market share decreased from 85-95 percent⁵ in 2000 to 75-85 percent in 2001. The number of competitors with a small market share increased significantly in 2001. For international telephony, KPN's market share remained stable at 55 – 65 percent. In the markets for both fixed to mobile traffic and national traffic, KPN's share decreased from 85 – 95 percent in 2000 to 75 – 85 percent in 2001. This competitive development was in particular a result of the development seen in the use of carrier pre-selection services. KPN's share in the local telephony market was still more than 95%. This was in part caused by the fact that for the time being, KPN allows competitors only limited options for rolling out their networks up to the local exchange. Whole or partial leasing of the last part of the telephone line – to the consumer's home – for broadband services (xDSL) will gain importance and is expected to intensify in the future.

■ Leased line market: KPN still dominant; competition growth stagnates

The market for leased lines was liberalised earlier and is in general characterised by more intensive competition than the market for fixed telephony. However, the Hirschmann Herfindahl Index indicated that the leased line market stabilised in 2001. Entry and exit data from the Market Monitor Telecom indicate that the number of players on the market for leased lines remained virtually unchanged. The change in market shares was also minimal. The pub-

Figure 1 Hirschmann Herfindahl Index fixed telephony and leased lines in turnover (1999-2001)



⁵ Market shares are given in intervals of 5 percent to protect commercially sensitive information.

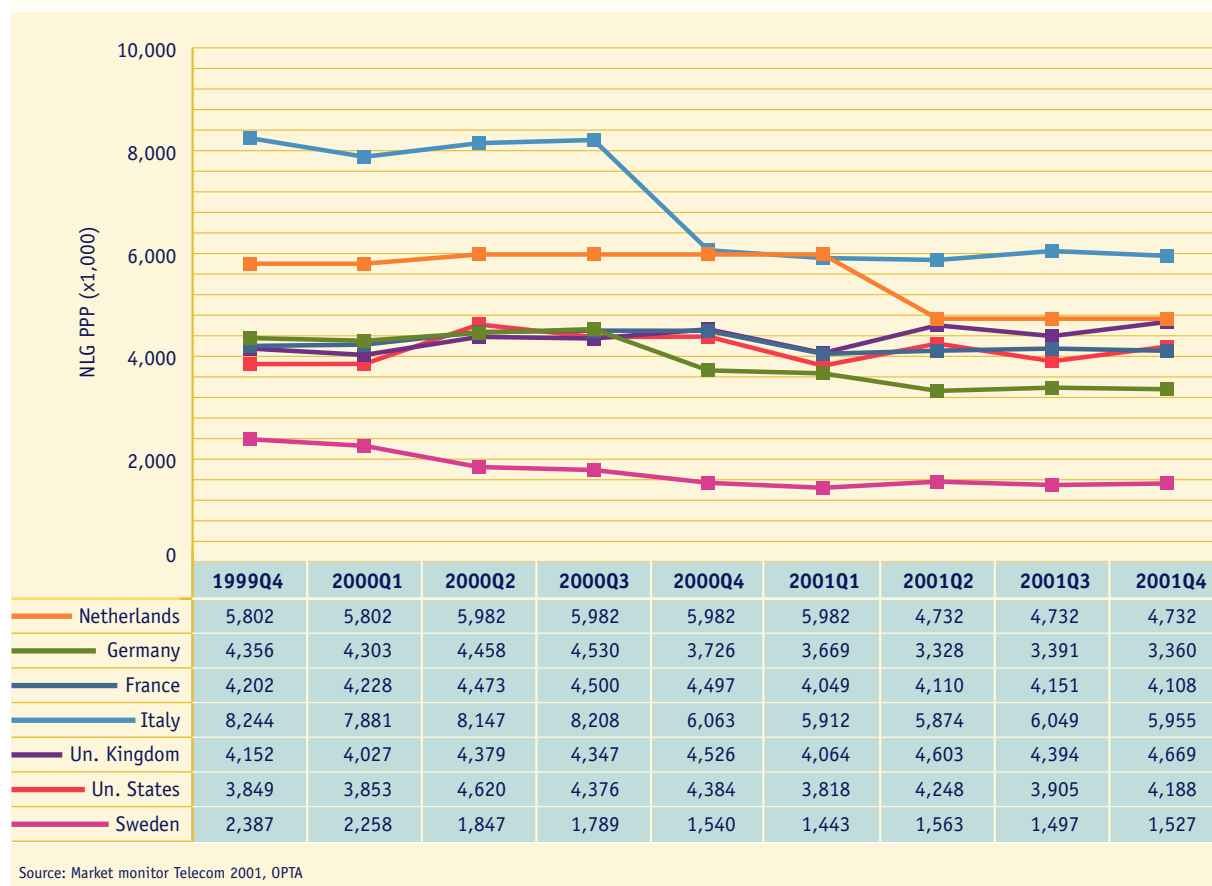
lic report of the significant market power study of the market for leased lines indicates that KPN still held a share of 55 – 65 percent in the total market. With 5 – 15 percent, BT Ignite is the second-largest player on this market. An analysis of the various leased line segments indicated that KPN holds a particularly dominant position in the more traditional segment up to 2 Mbit/s and on Permanent Virtual Circuits (PVCs). In these segments, the strongest competition was seen on leased lines with a specific capacity of 2 Mbit/s. KPN had better access to end-users in this segment than most of its competitors because of its local loops and because Wireless Local Loop (WLL) has not yet been established. In the market for new types of (retail) leased lines with a

capacity of more than 2 Mbit/s, KPN does not hold a dominant position; it is not even the largest player in this segment. KPN was therefore no longer designated as holding significant market power as of March 2001.

■ Tariffs for leased lines up to 2 Mbit/s still high

Although the analysis of the market shares in the leased line market indicated that competition existed between the players in 2001, this has not yet been translated into low tariffs for digital leased lines with a capacity of up to 2 Mbit/s. This is apparent in the international tariff comparison given in Figure 2.⁶

Figure 2 International comparison of rates for 2 Mbit/s leased lines on an annual basis in NLG PPP⁶ (x 1000), excluding VAT (over various distances)



⁶ PPP stands for Purchasing Power Parity, allowing comparison of purchasing power between the different countries.



A barrier for further development of competition in the market for leased lines is the lack of a supply of interconnecting leased lines from KPN. As a result, providers had no alternative to leasing lines from KPN and had to lease these at retail tariffs. These retail leased lines were not adequately attuned to these providers' needs.

■ Continued decrease in end-user tariffs in 2001

In recent years, the consumer tariffs for telephony have decreased by an average of some fifteen percent. This is shown in Table 3. Striking is the fact that infrequent callers still confronted with high telephone bills in 1999 saw their bills increase again early in 2002. The reason for this relatively small increase could be the rebalancing effectuated in 2001 of the lower start tariff and the higher call tariffs for local telephone calls. This was especially hard on infrequent callers, who make primarily local telephone calls, and perhaps on small business consumers. Apart from this development, on average

the tariffs for telephony continued to decrease in 2001. This is characteristic for more intensive competition between the market parties.

The competition experienced by KPN in 2001 was primarily from carrier selection providers. With carrier (pre-) selection, a consumer is (automatically) given the option of having telephone traffic terminated by a competitor by selecting the competitor's four-digit code prior to selecting the regular telephone number. Telephony via these providers was less expensive in 2001 for all callers (Table 4). Infrequent callers and small business users therefore also had a less-expensive alternative to telephony via KPN. In addition, infrequent callers had the option of a BelBudget subscription instead of a Belbasis subscription. With Belbudget, the monthly subscription fee is lower than with Belbasis, but the call tariffs are higher. However, carrier selection cannot be combined with this type of a subscription.

Table 3 Consumer profiles for fixed telephony via KPN with a 'belbasis' subscription, 1998 – 2002 (annually, in euros)

	01-01-98	01-01-99	01-01-00	01-01-01	01-01-02
Infrequent caller	232.3	261.5	259.5	255.3	259.8
Average caller	555.2	530.0	509.6	480.8	472.5
Frequent caller	1,009.1	907.0	853.1	774.7	761.6
Internet user	913.9	849.9	837.0	808.3	796.6
Small business user	3,051.4	2,684.9	2,386.0	2,107.8	2,109.8

Source: Market Monitor Telecom 2001, OPTA

Table 4 Consumer profiles for fixed telephony via carrier select companies, 1999 – 2002 (annually, in euros)

	1999	01-01-00	01-01-01	01-02-02
Infrequent caller	261.3	257.4	253.2	250.5
Average caller	497.6	479.9	452.1	420.2
Frequent caller	801.7	755.0	692.8	645.1
Internet user	865.2	848.1	789.3	713.0
Small business user	1,913.0	1,870.2	1,661.9	1,615.2

Source: Market Monitor Telecom 2001, OPTA

International comparison of tariffs: telephone tariffs in the Netherlands relatively low

A comparison of prices in other countries indicated that the tariffs for both private and business end-users are relatively low in the Netherlands. At the end of 2001, telephony was only less expensive for private end-users in the United Kingdom and Sweden. For business telephone traffic, the Netherlands, Finland and Sweden are the countries with the lowest tariffs for a package of services. International comparisons are usually based on a package of standard services. This standard package was modified in 2000 to include the tariff for calling from a fixed to a mobile connection. In most coun-

tries, including the Netherlands, the inclusion of this service in the package resulted in an increase in the weighed tariff per minute for private end-users, as shown in Figure 5. The effect was more diffuse in the business market (Figure 6). A further tariff decrease was possible in this market as a result of the effects of continued strong competition in the large business market (including via PABX). Large tariff decreases for services other than fixed-mobile telephony contributed to a further decrease in the price per minute in this market.

The tariff decreases for telephony seen in the Netherlands since 1998 were initiated earlier than KPN was given the obligation to decrease these tar-

Figure 5 Price per minute of national telephony package (PSTN, incl. fixed-mobile calls from 2000), private users (in NLG PPP)



Source: Market Monitor Telecom 2001, OPTA

iffs via the price cap. The price cap is from 1999. What is more: these decreases in KPN's tariffs have been greater than required based on the price cap to date. Striking in this respect is that the problem of the price squeeze also occurred earlier in the Netherlands than in other European countries. This indicates that KPN may have implemented a preventative price strategy in the past with reference to newcomers. The regulation regiment for end-user tariffs therefore may only be lifted if the competition barriers have been removed and end-users have sufficient choice.

Another conclusion that can be drawn from Figure 5 and 6 is that the tariffs increased once again in

2001 in a large number of countries. This indicates that the bottom of the decreasing tariff development appears to have been reached in many countries, on both the private and the business markets.

In the past, the tariff development therefore resulted in price squeeze in the Netherlands, in particular in the provision of local telephony (traffic within the area code). KPN's tariffs for local telephony are so low that newcomers could not profitably offer local telephony unless they owned an entire network. The tariff margin – the difference between the interconnection tariffs and the end-user tariffs – has decreased in recent years in the Netherlands. In 2001, this margin – important for competitors – was

Figure 6 Price per minute of national telephony package (PSTN, incl. fixed-mobile calls from 2000), business users (in NLG PPP)



Source: Market Monitor Telecom 2001, OPTA

increased in a number of cases, and decreased less in others.

■ Squeeze resolved

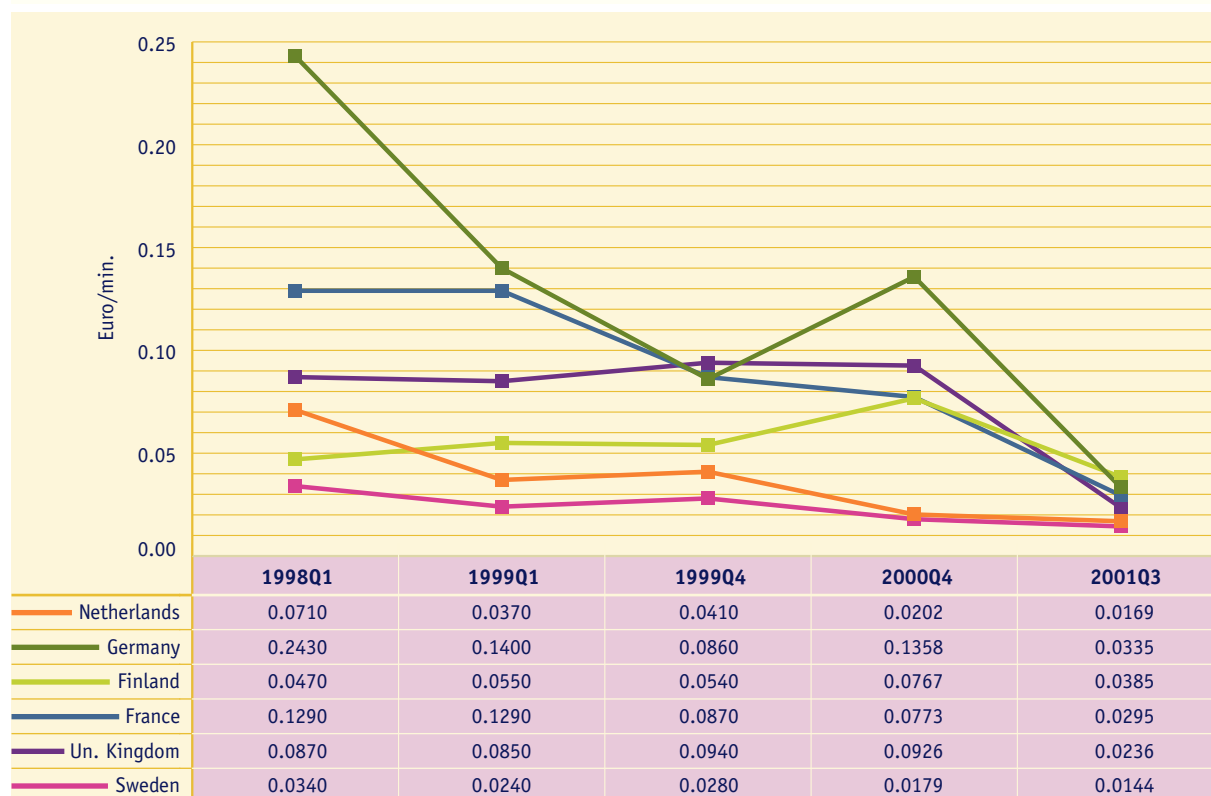
OPTA developed the price squeeze test in 2001 together with the NMa. Tariff proposals submitted to OPTA by KPN must satisfy this test: a tariff change by KPN may not result in a price squeeze. In the past year the problem of the price squeeze has been resolved, also for local telephony. In this market segment, OPTA imposed a rebalancing - as referred to above for end-user tariffs - of the start tariff for a call (which decreased) and the local call tariff (which increased slightly). In addition to the development of the price squeeze test, the decrease in tariffs for both originating and terminating interconnection tariffs as of 1 July 2001 helped to establish a larger tariff margin for competitors. OPTA will

continue to attune the wholesale and retail tariff regulation to one another in 2002.

Figure 7 shows an international comparison of the tariff margin for a competitor of the ex-monopolist, in which the competitor is assumed to have an extensive network with national coverage and only interconnects twice with the incumbent's network to connect two end-users. In the Netherlands, this tariff margin has decreased over the years. The decrease appears to have stagnated in 2001. Of the countries compared, this margin was by far the smallest in Sweden and the Netherlands. Analyses by OPTA indicate that squeeze no longer occurred with this type of interconnection.

In the same manner, Figure 8 gives insight into the change in time of the tariff margin for a competitor

Figure 7 Tariff margin in best case a competitor with its own network only submits a request for two times local interconnection



Source: Market Monitor Telecom 2001, OPTA

of the incumbent by which the competitor has only an extremely limited network and therefore must request double transit twice over the KPN network to connect two end-users. In the Netherlands, this tariff margin has decreased over the years, but increased again in 2001. This means that this type of service became more profitable for competitors. Here the squeeze has clearly been resolved. The Netherlands holds a position in the middle among the countries compared.

■ Interconnection tariffs: BULRIC system bears fruit

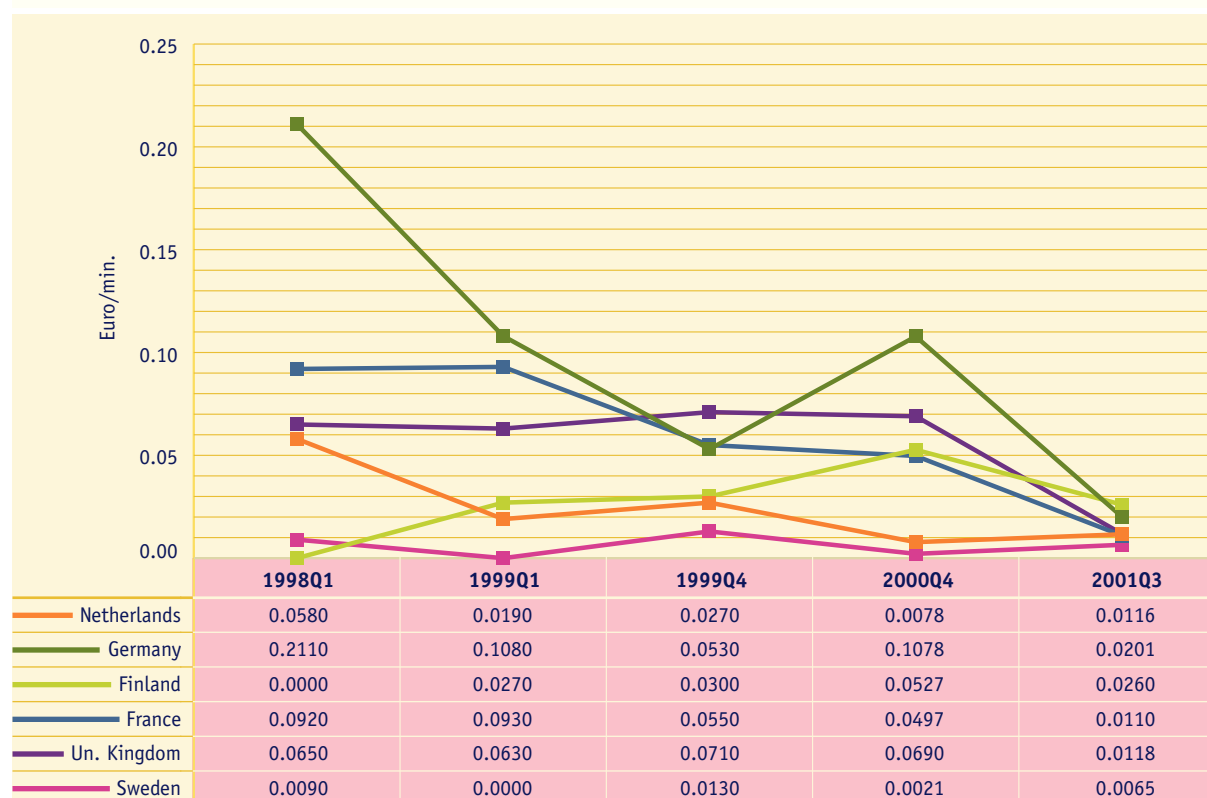
In mid-2001, the Bottom Up Long Run Incremental Cost model was introduced. This BULRIC model is the cost allocation system used to determine the cost-oriented terminating interconnection tariffs for KPN.

This resulted in a significant decrease in the tariffs as of 1 July 2001, as shown in Table 9. While interconnection tariffs decreased sharply in the Netherlands, this trend was not seen or seen to only a limited degree in other countries. In all tariff types, the Netherlands belongs to the group of countries with the lowest tariffs. The double transit terminating tariff was even the lowest in the Netherlands of all countries compared, while the single transit tariff was only lower in the United Kingdom.

■ Tariffs for telephony from fixed to mobile still high

The tariffs charged by KPN in the Netherlands to end-users for calling from a fixed connection to a mobile telephone were still disproportionately high

Figure 8 Tariff margin in worst case: a competitor without its own network submits a request for two times double transit interconnection



Source: Market Monitor Telecom 2001, OPTA



early in 2002 as compared to the tariffs for telephony from a mobile phone to a fixed connection. This was caused by the underlying terminating tariffs. Although mobile providers can distinguish themselves for consumers by competing on these tariffs, this did not occur in 2001. As shown in Table 10, these tariffs remained virtually equal for all providers except KPN Mobile. A reason for providers not to compete in these tariffs is the fact that in practice, when purchasing and using a mobile telephone, consumers do not calculate the costs involved in receiving calls from a fixed connection. What is more, the caller usually does not know which provider the mobile receiver uses. In principle, this highly undesirable failure of the market mechanisms makes it possible for the parties to keep these tariffs artificially high.

Figure 11 shows the development over time of the investment ratios of three incumbents, as compared to one another. This ratio is defined as Capital Expenditure/Net Revenue. The figure indicates that over the years, British Telecom has had a relatively stable investment ratio. This has only been true for Deutsche Telekom to some extent since 1999, albeit that this ratio has continued to grow. KPN had a higher investment ratio in 2001 than the other incumbents. This is because KPN incurred an investment backlog in the early 1990s which it has been catching up on since 1998 in order to deal with the growing volume of internet traffic. This catching up process reached a peak in 1999 and then decreased, as shown below. This means that KPN's investment ratio was not yet stable in 2001. This ratio is expected to continue to decrease.

Table 9 Development of terminating tariffs (in euro cents, based on a 3-minute call in peak hours)

	Local tariff		Single transit tariff		Double transit tariff	
	2000Q4	2000Q3	2000Q4	2001Q3	2000Q4	2001Q3
Netherlands	1.09	0.77	1.50	1.02	1.71	1.34
Germany	0.88	0.83	1.89	1.79	2.28	2.17
Finland	1.43	1.43	1.43	1.43	2.63	3.28
France	0.63	0.58	1.33	1.23	2.01	1.83
Italy	0.75	0.75	1.33	1.33	1.80	1.80
UK	0.62	0.62	0.90	0.90	1.80	1.80
Sweden	0.91	0.91	1.24	1.24	1.70	1.70

Source: Market Monitor Telecom 2001, OPTA

Table 10 Tariffs fixed to mobile (from KPN to mobile operators, in euro cents (rounded) per minute, excluding VAT)⁷

Calling to:	Standard			Off-peak			Weekend		
	Jun '00	Feb '01	Jan '02	Jun '00	Feb '01	Jan '02	Jun '00	Feb '01	Jan '02
KPN Mobile	19	23	22	19	17	16	8	8	9
Telfort	25	26	25	19	18	17	17	18	17
Ben	26	26	25	17	18	17	18	18	17
Dutchtone	25	25	25	18	17	17	17	17	17
Vodafone	26	26	25	17	18	17	17	18	17

Source: KPN, 2002

⁷ Carrier-select operators provide this service at slightly lower tariffs.

The asserted negative effect that price regulation is said to have on investment behaviour is not evident from these figures. Since the liberalisation of the telecommunications market in the European Union, systematic investment reductions were not seen until after the stock crisis in 2001, which has now caused focus to shift to reducing debt and improving cash flows.

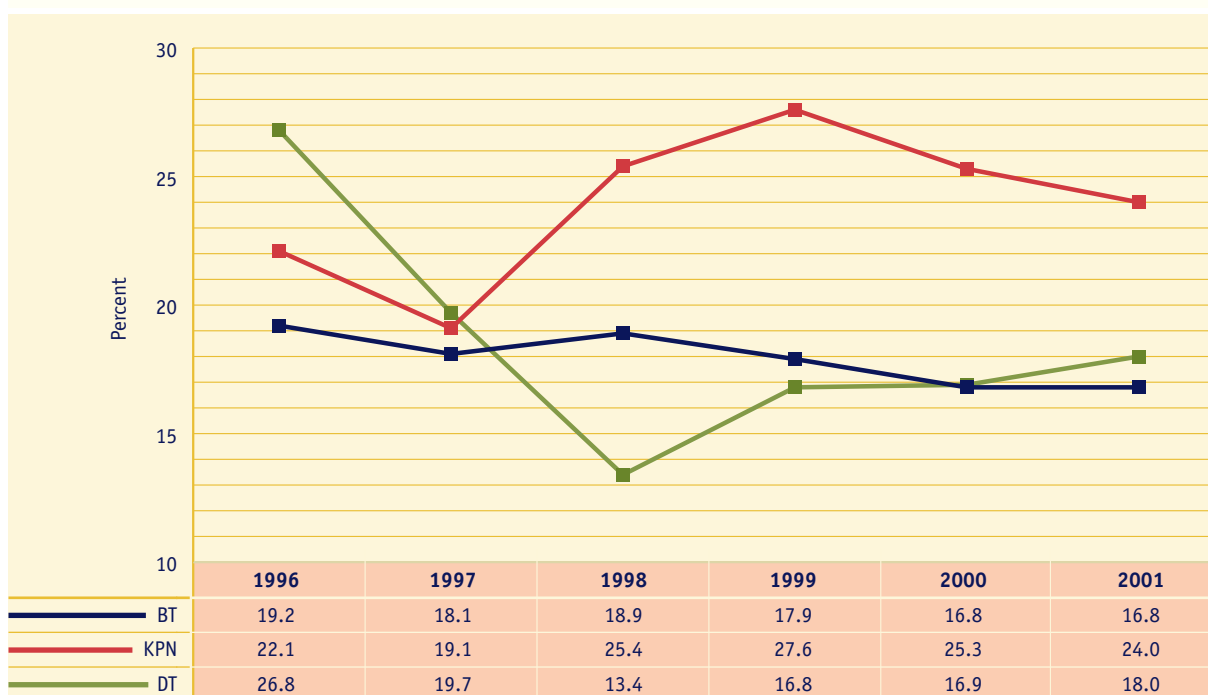
■ Number of network connections in the mobile market still shows strong growth in 2001

The market for mobile telephony grew in 2001. Although the growth has slowed as compared to previous years, the number of consumers with a mobile telephone increased by more than two million as compared to 2000, to 12,352 million. Thus the penetration level increased to more than 75 percent of the entire population of the Netherlands. This growth can be expected to continue to slow in 2002. In addition to saturation of the market for second generation mobile telephony, this also per-

tains to the expected arrival of 2.5 G and 3 G mobile telephony (GPRS, UMTS).

If the numbers of network connections of the various operators are compared, it becomes apparent that the market share of the entire number of subscribers held by KPN Mobile was still large, but has continued to decrease. The market share held by Vodafone also continued to decrease, even though the number of subscribers increased. The three smallest providers once again showed the most growth in 2001. Based on the number of network connections, these three collectively represent a market share of nearly 32 percent (Table 12). It is not apparent which provider the various types of consumers choose. In the past, (large) business clients in particular proved to opt for one of the largest two providers (KPN Mobile and Vodafone) for their mobile communication services, but this was because these two parties were active on the mobile market earlier than Ben, Dutchtone and Telfort. As a result, the newcomers had less potential in this

Figure 11 Investment ratios of three incumbents, in percentage



Source: Market Monitor Telecom 2001, OPTA

Table 12 Network connections mobile telephony on the market in the Netherlands, 1998 – 2001 (end of the year, in thousands), market shares in brackets

Provider	1998	1999	2000	2001	Change in number of abonnees 2000/2001
KPN Mobile	2,220 (64.3%)	3,500 (51.5%)	4,702 (46.8%)	5,205 (42.1%)	+ 11%
Vodafone	1,180 (34.2%)	2,180 (32.1%)	3,005 (29.9%)	3,232 (26.1%)	+ 8%
Ben	0	300 (4.4%)	600 (6.0%)	1,310 (10.6%)	+ 118%
Dutchtone	0	360 (5.3%)	900 (8.9%)	1,200 (9.7%)	+ 33%
Telfort	50 (1.5%)	450 (6.6%)	850 (8.5%)	1,405 (11.4%)	+ 65%
Total (100%)	3,450	6,790	10,057	12,352	+ 23%

Source: Market Monitor Telecom 2001, OPTA

financially attractive market segment. They therefore focused more on private users.

■ Concentration continues to decrease in the mobile market: competition increases

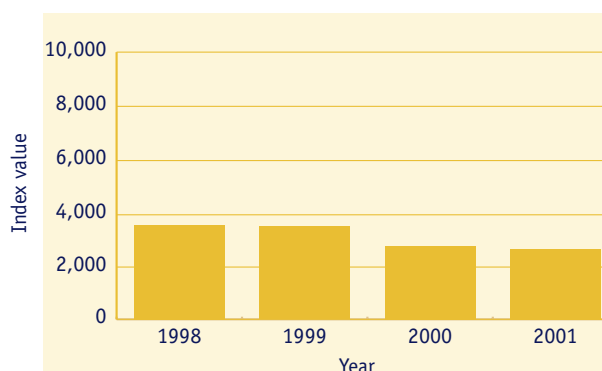
Figure 13 indicates that the concentration in the market for mobile telecommunication, according to turnover, continued to decrease in 2001. This is in keeping with the conclusion that the numbers of network connections are spread more evenly over the various providers. The three youngest players on the market saw their market shares increase, and achieved brand familiarity among consumers. Although the level of concentration continued to decrease, this development appears to be slowly drawing to an end. At this time, the market can not yet be characterised as effectively competitive because the figure for the level of concentration is still rather far from this value (of no more than 1800). KPN Mobile's designation as a provider with significant market power was continued in 2001 in contrast to the Libertel designation. This designation obligates KPN Mobile to give the market parties access to its network if they reasonably request special access from KPN Mobile. For the record, Telfort

offered Tele2 access based on commercial conditions in 2001, and Tele2 therewith started operating on the market as a mobile virtual network operator (MVNO).

■ Tariffs for mobile telephony relatively low in the Netherlands as compared to other countries

The fact that competition in the mobile market is achieving effect is evident from Table 14. Even in the course of time, the Netherlands has (had) the lowest mobile end-user tariffs for private consumers compared to all countries except the selected Scandinavian countries. From an international perspective, competition on the market in the Netherlands appears to be developing well.

Figure 13 Hirschmann Herfindahl Index for the mobile market, in turnover (1998-2001)



Source: Market Monitor Telecom 2001, OPTA

Moreover, this trend characterises the intensive price competition seen on the market in recent years. Nevertheless, the decrease in tariffs also appears to be drawing to an end in the mobile market.

■ Internet use increasingly accepted

The number of internet users increased in the Netherlands in 2001 as compared to 2000, as shown

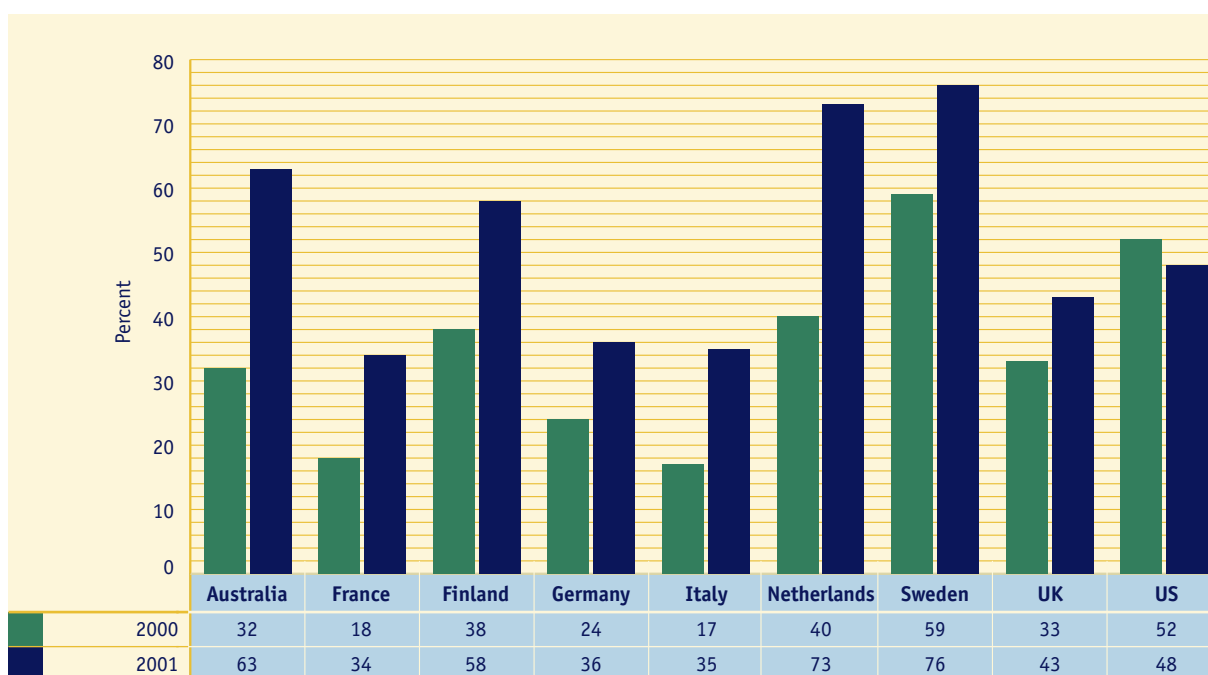
in Figure 15. Moreover, this figure indicates that strong growth can be seen in the numbers of internet users in all of the selected countries in Europe. This reflects the position internet has rapidly acquired in day to day communication. The penetration is the highest in Sweden and the Netherlands. The higher demand for internet access is often accompanied by a demand for high quality services.

Table 14 International comparison: package of mobile telephony services for private use, expenditure per year in USD, including VAT

	NL	Aus	Ger	Fin	Fra	Ita	UK	US	Swe
2000Q2	279	261	477	145	400	266	366	396	175
2000Q3	278	555	355	151	421	258	317	396	178
2000Q4	252	369	329	140	382	303	309	396	165
2001Q1	293	396	372	158	433	350	326	409	178
2001Q2	264	389	333	144	385	313	325	409	173
2001Q3	291	285	338	159	420	367	337	343	204
2001Q4	259	266	312	148	387	321	323	413	194

Source: Market Monitor Telecom 2001, OPTA

Figure 15 Internet users as a percentage of the total population (2000-2001)



Source: Market Monitor Telecom 2001, OPTA

The demand for ADSL services, for example, increased even though this type of service is still at the very beginning of its development. Competition among internet providers is characterised not only by a diversity of quality, but also in the development of innovative tariff structures.

The market study by Heliview shows the same increase in internet use, although the percentage for 2001 differs slightly.⁸ Table 16 shows that growth continues. This once again indicates that internet access and internet use is becoming increasingly widely accepted in the Netherlands. A development can also be seen in consumer behaviour in terms of their choice of internet access. Not only the price but also the quality are stated to be

Table 16 Internet use in the Netherlands in percentages (1999 – 2002)

	Internet penetration in %
Early 1999	25
Early 2000	40
Early 2001	55
Early 2002	62

Source: Heliview, 2002

important reasons for changing providers if this was technically possible. Heliview concluded that 37 percent of the internet users use a 'free' internet provider, by which no subscription fees are charged but only call tariffs. This percentage was 48 percent early in 2001. Moreover, 52 percent of the internet users use 'paid' providers, with a flat fee subscription. This was 41 percent in 2001. Furthermore, as the charges for telephony increased, more consumers opted for these flat rate subscriptions. Many consumers appear to view using internet via a paid provider as an attractive option.

Although 65 percent of the internet users acquired access via the regular analogue telephone line and 15 percent had an ISDN connection, the percentage of internet users with a cable connection increased from 11 percent in 2001 to 15 percent in 2002. The number of internet users with an ADSL connection was approximately three percent. The study also indicated that 28 percent of the internet users via the telephone line (analogue or ISDN) were considering switching to internet via the cable if possible. The most important reason for this was the quality of the internet connection, in particular the speed of the communication. Twelve percent of the internet users were considering switching from a regular telephone line to an ADSL connection.

Although the growth of DSL connections has only just started, the number of ADSL connections via KPN increased in one year from 13,500 to 125,000. The entire DSL market consisted of 130,000 subscribers in the Netherlands in 2001. This means that competition was extremely limited. Thus the developments on the ADSL market failed to meet expectations. Although there is a high demand for ADSL services, as evident from Heliview's study, the supply was the primary bottleneck.

■ Dynamics in the market

Finally, in this market analysis 2001, for the first time OPTA included an entry and exit indicator. In previous years, figures about parties entering the market were available, but parties exiting the market were not registered. The numbers of parties entering and exiting the market represent an indicator for the dynamics in the telecommunication sector.

Table 17 shows that after 2000, a strong decrease was seen per category in the number of parties entering the market. This was true for both network providers and service providers. For the category

⁸ This deviation occurs because the Heliview research is based upon a random selection of the Dutch population. The time of inquiry can effect the outcome.

Table 17 Entry and Exit in the market for telecommunication

Categories	'97 present	'98 entry	'99 entry	'00 entry	'01 entry	'01 exit
1. Owners or providers of a public telecommunication network	95	5	12	56	22	14
2. Owners or providers of leased lines	62	4	4	20	10	11
3. Providers of a public telecommunication service	193	7	4	102	43	32
4. Owners or providers of a broadcasting network	92	1	14	5	3	10
5. Providers of a system for conditional access	15	n.a.	3	4	0	2

Note: A company may be active in various categories at the same time; simply adding together the five categories results in double counting.

Source: Market Monitor Telecom 2001, OPTA

'owners or providers of leased lines' in particular, the development in the number of market parties appears to mirror the development in the market concentration index as shown in Figure 2. The number of parties exiting the market was considerable as compared to the number of parties entering. This appears to support the assertion that a shake out occurred in the market.

■ Competencies of regulators compared: the Netherlands does not take the lead

In Europe, national regulators of the telecommunication markets cooperate in the IRG. In 2001 this cooperative group discussed harmonisation of the authority of regulators in Europe. From a comparison of the competencies of these sector-specific regulators in Europe, it is apparent that the Netherlands is only partly keeping pace with the European trend.

Clearly most of the regulators are competent to compile the national number plans. In the Netherlands, this competence is assigned to the

Ministry of Transport, Public Works and Water Management. OPTA clearly does not keep pace in this respect with its European colleagues. The same applies to the issue of frequencies for business use.

Table 18 Competencies of regulators in Europe (January 2002)

	Application of competition law as well as telecommunication law (concurrent powers)	Responsible for regulation of content	Responsible for compiling the national number plan	Responsible for frequencies for commercial/business use
Germany	Yes*	No	Yes	Yes
Sweden	No	No	Yes	Yes
United Kingdom	Yes	Expected (OFCOM)	Yes	Expected (OFCOM)
Ireland	No	No	Yes	Yes
Norway	No	No	Yes	Yes
Luxembourg	No	No	Yes	Yes
Portugal	No**	No	Yes	Yes
Greece	Yes	No	Yes	Yes
Spain	No***	No	No	No
Netherlands	No	No	No	No
Austria	No	No	No	No
Liechtenstein	No	No	Yes	Yes
Iceland	No	No	Yes	Yes
France	No	No	Yes	Yes
Italy	No	Yes	Yes	Yes
Denmark	No	No	Yes	Yes
Finland	No	Yes	Yes	Yes
Switzerland	No	Yes	Yes	Yes
Belgium	No	No	Yes	Yes

* In close co-operation with the competition authority (Bundeskartellamt)

** Some competition law competencies

*** Regulator uses and applies general competition law principles, concepts, doctrines and jurisprudence in its Resolutions.

Source: OPTA, 2002

4 Market monitor post 2001

According to the Postal Act the postal market in the Netherlands is divided into three segments, i.e.:

- **The concession or reserved services**

The concession gives concession holder TPG the obligation and exclusive right to postal services for processing traffic of letters weighing up to one hundred grams (for no more than three times the standard tariff of 39 euro cents).

- **The other assigned services**

In addition to the reserved services, the Postal Act obligates TPG to provide a number of other services. These are known as the other assigned services. Unlike the reserved services, the concession holder does not have the exclusive right to offer these services. This sub-market is therefore open to competitors. The major services in this segment are:

- letters and printed matter, each individually weighing up to 2 kilograms;
- domestic parcels, each individually weighing up to 10 kilograms.

The concession and the other assigned services collectively form the concession holder's assignment.

- **The free services**

The free services are not part of the assignment. Like the other assigned services, this segment of the market is open to competitors.

In the postal market, OPTA ensures that TPG adheres to the rules within its assignment. In the segments open to competition, OPTA ensures there are real possibilities for competitors of the incumbent to successfully enter the market.

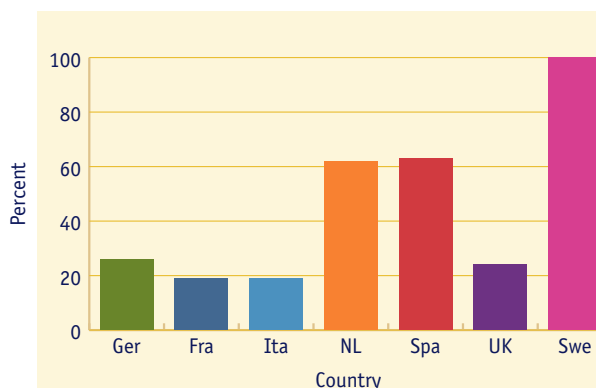
The Market Monitor Post 2001 presents, often in comparison to the year 2000, an analysis of competitive developments on the postal market in the Netherlands, including those from an international perspective. The performance of the concession holder is also analysed. Lastly, the Market Monitor Post describes OPTA's position and the tools it has as regulator of the postal market.

■ Competition on the postal market slow to develop

As compared to the other European countries, the postal market in the Netherlands is relatively open: a large share – measured in numbers of posted items – is open to competition. This is related to the increasing importance of the direct mail segment. Despite the possibilities for competitors, TPG will remain the largest player on the market for the time being.

Figure 1 shows the percentage of all posted items that belong in the free part of the postal market for various European countries. The figure indicates that in the postal market in the Netherlands, 62% of all

Figure 1 Postal items offered in the free part of the market, in percentage (2001)

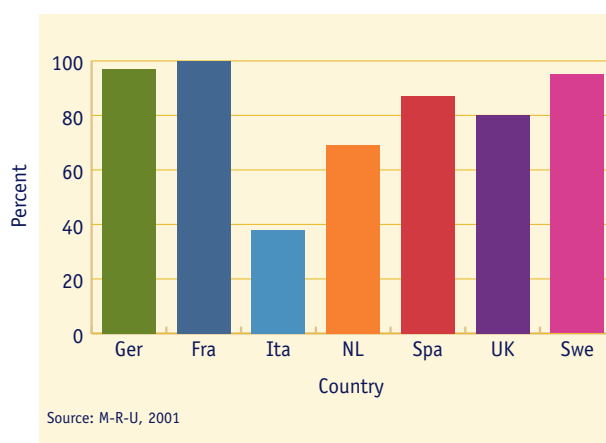


Source: M-R-U, 2001

postal services provided occurred in the free part of the market. Like in Sweden and Spain, the postal market in the Netherlands is relatively open. This high percentage is in part a result of the fact that, unlike in Germany, Spain and the United Kingdom, for example, direct mail is not the exclusive field of the concession holder. The market segment direct mail has gained significant importance in recent years.

When the postal market is open to competition, this does not necessarily mean that competition is ensured. This is demonstrated in Figure 2, which reflects the percentages of the sales on the free market achieved by former monopolists. The clearest example of an open postal market with little competition is Sweden. Although the Swedish market is fully liberalised, the former Swedish incumbent Posten AB still processes 95% of all postal items.

Figure 2 Postal items processed by incumbent in the free part of the market, in percentage (2001)



As compared to the other European countries, the postal market in the Netherlands is relatively competitive. Nevertheless, TPG still processes 69% of all posted items in the segment of the free part of the market 100 to 2000 grams, as shown in Figure 3. Moreover, TPG holds a dominant position in the growing market segment direct mail. According to a study performed by PricewaterhouseCoopers in 1998, TPG's share of the market segment for direct mail is between 80 and 90 percent. Research agency TNO also indicated early in 2002 that TPG is still by far the largest provider in the direct mail segment.

■ Slight increase in number of newcomers

Table 3 shows the development in the supply on the various segments of the postal market. Although the entire supply of companies on the market has increased, the developments in the supply in the various segments vary. Last year, like in previous years, the number of national postal companies continued to decrease. The number of local postal companies remained unchanged. However, a number of courier services entered the postal market in the past year. The TNO study indicated that the market for courier services is relatively small as compared to the market for national postal companies.

■ Obstacles for newcomers: results of the consultation document

In December 2001, OPTA sent a consultation document to the market parties in which the parties were asked to what extent they experienced obstacles in entering the postal market. This consultation round focused on matters including a number of possible types of access to the TPG network at points other than access to the post office boxes.

Table 3 Development in the number of market parties on the various sub-markets

	All postal and courier companies	Nationale postbedrijven	Lokale postbedrijven	Koeriersdiensten
1998	3,650	1,835	70	1,745
1999	3,660	1,610	75	1,975
2000	3,820	1,560	75	2,185

Source: CBS Statline

Important new players on the postal market consider access to TPG's network essential for further development of competition on the postal market. Moreover, a number of parties want to work on their own strength and not be dependent on TPG's services. The responses from the market parties indicated that access to the post office boxes is slowly progressing. This was in part a result of the first conflict in this area in which OPTA mediated in 2001.

■ Reserved and other assigned services: Performance TPG did not improve substantially

The assignment of the concession holder TPG consists of the exclusive concession and the other assigned services. Insight into the developments of the tariffs and the quality of TPG's services is an important indicator for the concession holder's

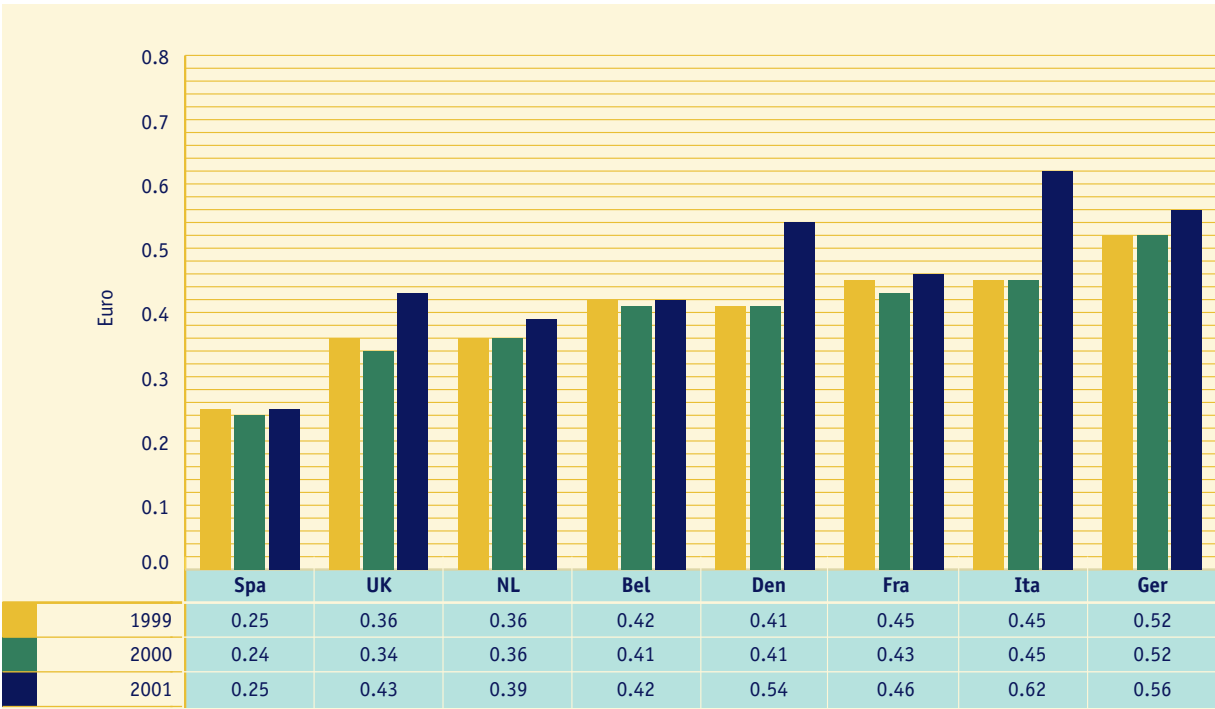
behaviour in markets in which no competition is possible, e.g. in the reserved part of the market.

■ Tariffs: TPG's position improves slightly from an international perspective

Figure 4 shows the tariffs for posting letters weighing up to twenty grams in a number of European countries. The tariff is corrected on the basis of consumer power. The tariff in the Netherlands for letters in this lightest category was one of the lowest in Europe. The tariff in this weight class increased in all countries in 2001 as compared to 2000. With the exception of Spain, the tariff in this class in the Netherlands was the lowest.

However, if the average tariff for a package of products (consisting of letters up to twenty grams, letters from 20 to 50 grams, and two letter types from 50 to 200 grams) is considered, the average tariff TPG charges for the package of services is in the middle range of European tariffs. This is reflected in

Figure 4 International comparison of developments in tariffs for letters up to 20 grams (in Euro)



Source: Annual reports TPG (1999 – 2001)

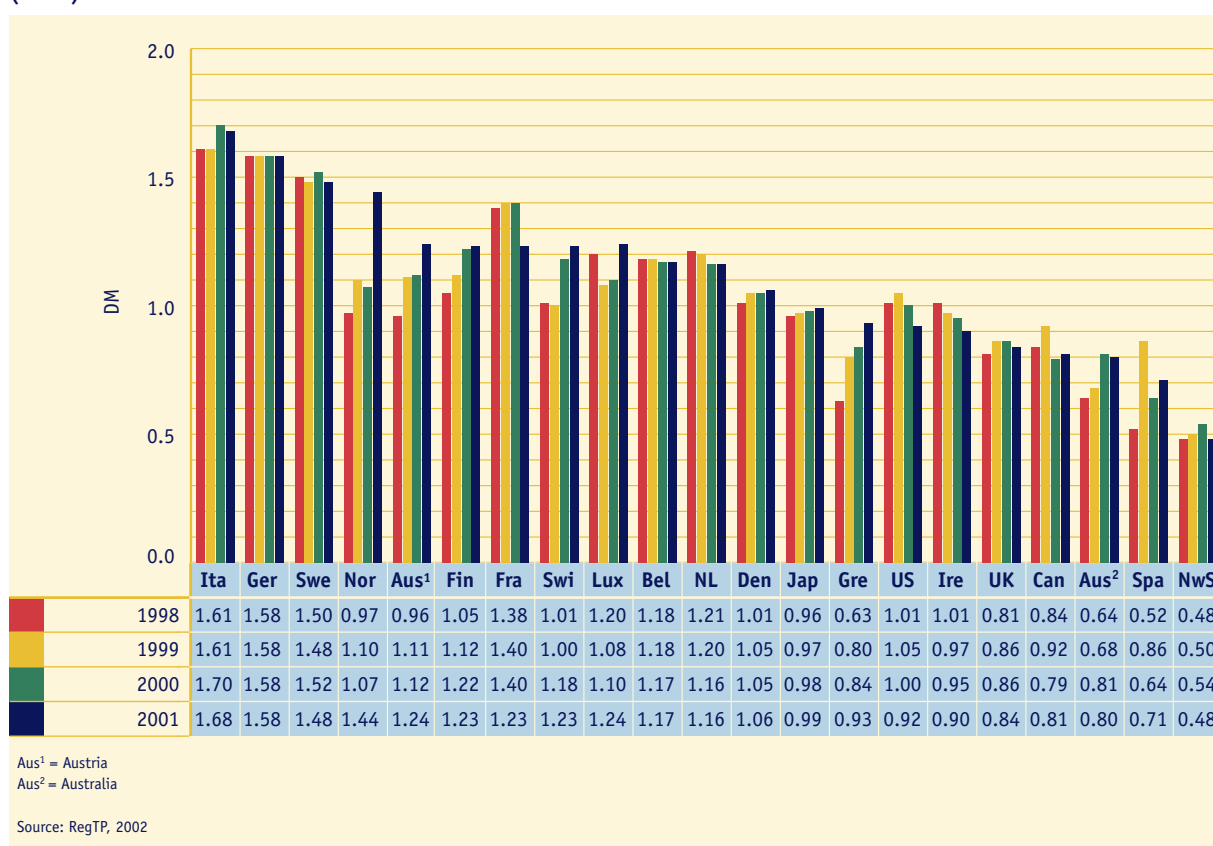
Figure 5. This figure also shows that the tariff for this package decreased slightly in the Netherlands in recent years. In 2000 there were only six countries where the tariff for this package of services was higher; in 2001 this number had increased to ten. The relative position held by the Netherlands therefore improved slightly in the past year. However, it can also be concluded from Figure 4 that although the tariff for letters up to 20 grams was relatively low, letters weighing between 20 and 2000 grams were relatively expensive by comparison. This is also evident from the middle position held by the Netherlands in the international comparison.

■ Quality of services not substantially improved

The services provided by TPG improved in 2000, in

particular because the percentage of post delivered within 24 hours increased. This is shown in Table 6. After this percentage decreased in the period 1995 – 1999 from 95% in 1995 to 89% in 1999 for private correspondence, the percentage increased again in 2000 to 94%. The percentage of business correspondence delivered within 24 hours increased from 93% in 1999 to 95% in 2000. The average longer delivery period for letters, which was caused according to TPG by a modification in the logistical structure, therefore appears to have been reduced. The number of letter boxes increased in the period 1998 – 2000. Although the customer satisfaction of private consumers decreased slightly, the business market showed slightly improved satisfaction. In general, it can be concluded that the quality of the services provided by TPG as measured did not change substantially in the period 1998 – 2000.

Figure 5 International comparison of the development of rates for a package of services in the weight class 20 - 200 grams (in DM)



■ New post office policy 2001 – 2005 requires minimum number of service points

As of 1 January 2001, the new post office policy was effectuated. This policy indicates what modifications in the service points must be made by TPG within a period of five years. For example, there must be a minimum of 902 post offices with a complete range of products, and the spread must be such that in thinly populated areas, 85% of all inhabitants have access to a post office with a complete range of products within five kilometres. On average for the entire country, access to a complete range of products within five kilometres is 95%. For populated centres with more than 5,000 inhabitants, this percentage is 100. In smaller populated centres, the premise is that in nearly all cases a complete range of products must be available within a radius of five kilometres. The number of post offices with a nearly complete range of products must be at least 1292. Thus there must be at least 2194 post offices at the end of 2005. Because not all developments can be predicted over such a long period, the absolute minimum has been defined as 2000 post offices. Table 6 shows that in the period 1998 – 2000, the number of post offices and TPG post agencies decreased from 2239 to 2138. Although this number is lower than the number TPG must have at the end of 2005, it is still

more than the absolute minimum of 2000 post offices.

■ Regulation regiment can be tightened

The regulator is legally competent to regulate the development of competition on the postal market and compliance by TPG with its assignment. In addition, the regulator's independent status can improve its effectiveness.

■ Segregated financial accounting implemented by TPG

In a number of European countries, the regulator of the postal market has obligated the incumbent to segregate the financial accounting for the reserved services, the other assigned services, and the free services. This segregation is considered necessary for insight into existing cross-subsidising. Cross-subsidising occurs when the incumbent uses profits achieved in the reserved part of the market to keep the tariffs for services in the free part of the market artificially low. Cross-subsidising frustrates the competitive process. Table 7 indicates in which of the seven countries the concession holder segregated its financial accounting in the years 2000 and 2001. The incumbents in Germany and Sweden already seg-

Table 6 Development in the quality of TPG's services

	1998	1999	2000
Private correspondence within 24 hours (%)	93	89	94
Business correspondence within 24 hours (%)	95	93	95
Post delivered correctly first time	99.8	99.8	99.8
Customer satisfaction – private consumers (%)	86	84	83
Customer satisfaction – business (%)	87	85	86
Number of post offices and agencies	2,239	2,214	2,138
Number of letter boxes	19,437	19,599	19,725
Number of new disputes submitted to the mediation committee	73	68	56
Decisions in disputes in favour of TPG	37	41	27
Decisions in disputes in favour of customers	3	2	3
Number of disputes settled out of court	18	14	16

Source: Concession report TPG

regulated their financial accounting in 2000; the incumbents in the Netherlands, France and the United Kingdom segregated their financial accounting for the first time in 2001

Table 7 Segregated financial accounting

	Segregated financial accounting in actual practice in 2000	Segregated financial accounting in actual practice in 2000
France	No	Yes
Germany	Yes	Yes
Netherlands	No	Yes
Spain	No	No
Sweden	Yes	Yes
United Kingdom	No	Yes

Source: Market Monitor Post 2001, OPTA; EC, 2001

■ Tariff control system gives insufficient efficiency stimuli

The objective of the tariff control system (also called price cap) is to stimulate TPG when competition is lacking to work efficiently as the market would if there was competition. The tariff control system in the Netherlands consists of two packages of services: a small user package and a total package. In the market in the Netherlands, where the price cap applies to a larger share of the market than just the reserved part, the average price of a package of various services may not increase more than the wage sum index. Because the productivity factor is set at zero in the applicable price cap, TPG is not forced to gain efficiency profits that flow back to the end-users.

Table 8 gives insight into the existence and effectiveness of a price cap in various countries in 2001. The value 0 means no price cap is applied. The value 5 means there is a price cap but it does not sufficiently stimulate the former monopolist to improve

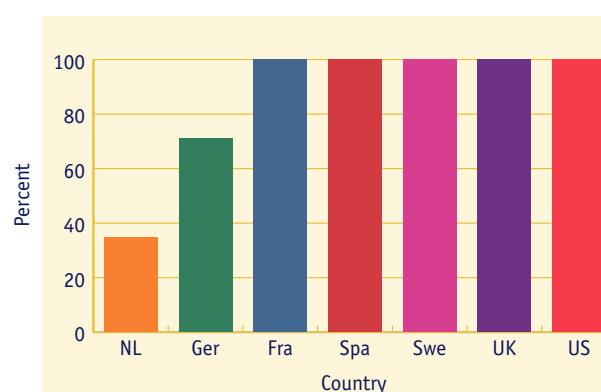
Table 8 International comparison of the price cap quality in 2001

	Quality of the price cap
France	5
Germany	10
Netherlands	5
Spain	0
Sweden	5
United Kingdom	10

Source: Market Monitor Post 2001, OPTA; EC 2001

efficiency. The value of ten, here for both Germany and the United Kingdom, implies that the price control applied on the postal market is effective. The price cap in France and Sweden allows the incumbent to allow the price for a package of services to increase at the same rate as the Consumer Price Index. This is comparable to the situation in the Netherlands, where the price may increase each year at the same rate as the wage sum index. This means that the Netherlands holds a position in the middle. No price cap is applied in Spain.

Figure 9 International comparison of state interest in the incumbent in percentage (August 2001)



Source: Market Monitor Post 2001, OPTA; EC, 2001

■ Legal authority to promote access to TPG's network is limited

Access to parts of TPG's network is important for enabling competition on the postal market. TPG is already obligated to allow competitors access to its post office boxes against non-discriminatory, reasonable and objectively justifiable conditions. A dispute submitted by a market party involving the conditions TPG applies to access to its post office boxes was decided by OPTA in favour of the market party. OPTA may only further stimulate access to TPG's network with reference to the post office boxes by mediating in disputes.

■ Independence of the regulator important in stimulating competition

Based on an international comparison, the state holds a relatively small interest in the national incumbent in the Netherlands. This is shown in Figure 9. This interest also decreased in 2001 from 43.4% to 34.8%. The shares held by the other states in their respective national incumbents remained unchanged.

The state interest reflects the manner in which the development of competition in the market is regulated. Another indicator also plays an important part: the degree of independence of the sector-specific regulator. Table 10 shows whether the regulator

Table 10 International comparison of the regulator status (2001)

	Regulator independent
Germany	Yes
France	No
Netherlands	Yes
Spain	No
Sweden	Yes
United Kingdom	Yes
United States	Yes

Source: Private Postal Operators in Europe, M-R-U (2001)

has an independent status in seven countries. Like the regulators in Germany, the United Kingdom and the United States, the regulator in the Netherlands holds an independent position. This is not the case in France, Spain and Sweden, where the regulator must report directly to a ministry. In principle, if the government holds an interest in the national incumbent, the independent status of the regulator serves to better safeguard the development of competition.

■ Scope of the reserved services in EU Member States

Table 11 shows the scope of the reserved postal services in the EU Member States. Sweden and Finland have completely opened their postal markets

Table 11 Scope of the reserved part of the market in EU Member States (2001)

	Country Letter weight limit (in grams)	Direct mail weight limit (in grams)	International letters in reserved area
Sweden	None	None	No
Finland	None	None	No
Netherlands	100	None	No
Italy	350	350	Yes
Spain	350	None	Yes
Germany	200	50	Yes
France	350	350	Yes
United Kingdom	350	350	No

Source: Private Postal Operators in Europe, M-R-U (2001)

to competition. France and Italy protect the postal market relatively the most. The share of the market reserved for TPG in the Netherlands was relatively small from an international perspective.

Although no changes occurred in comparison to last year's situation, the liberalisation process was not entirely without progress in Europe. In 2001, the regulator in the United Kingdom, Postcomm, announced that the market in this country would be completely liberalised in three phases, from 2002 to 2006. The United Kingdom is therefore ahead of the liberalisation planning in Europe, to occur starting from 2007. In Germany, other types of access to the Deutsche Post network are being considered.





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Introduction

The Independent Post and Telecommunication Authority (OPTA) regulates the postal and telecommunication markets in the Netherlands. OPTA is an independent executive body that commenced its activities on 1 August 1997. The foundation and institutional embedding of OPTA are defined in the OPTA Act. OPTA's most important task is to ensure that the telecommunications market changes as quickly as possible from a monopoly to a market with effective competition. OPTA regulates the compliance with the legislation and regulations intended to support these changes.

■ Mission

OPTA stimulates sustained competition in the telecommunications and post markets. That is to say: a lasting situation in which private individuals and business end users can choose between providers and services in such a way that the price and quality supply in the various constituent markets is created by effective market incentives. In the event of insufficient choice OPTA protects end users. In 2001, OPTA's mission was concretely translated into:

1. Safeguarding equal network access for providers to the networks owned by parties with significant market power;
2. Improving the conditions under which competitors can enter the market;
3. Increasing the available options for users and protecting consumers when there is insufficient choice.

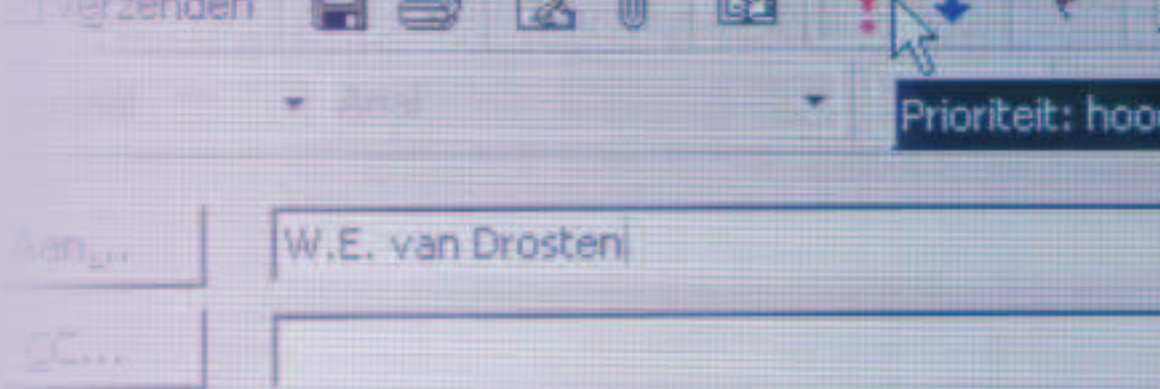
■ Equal network access

An ex-monopolist must give other market parties access to its network under equal conditions. In this respect, it is important that (potential) competitors

have insight into the possibilities, conditions and tariffs that KPN can offer its consumers in the area of interconnection. KPN is obliged to make these known in a clear manner in a type of catalogue called the Reference Interconnection Offer (RIO). OPTA makes sure that KPN satisfies this obligation. In 2001, OPTA forced KPN to significantly improve the RIO under the threat of judicially imposed penalties. As a result, the completeness and transparency of KPN's offer of interconnection services improved considerably. KPN was also obliged to open up the last section of the network to competitors, from the local exchange to the home – known as the local loop. This is particularly important with reference to the market for broadband internet. In 2001, OPTA mediated in a number of disputes in the area of shared access to the local loop and collocation, to the benefit of competitors of KPN. Furthermore, important steps were taken in forcing improvements in the reference offer for unbundled access. As a result, the access possibilities that KPN must offer its competitors have become transparent.

■ Conditions for access to the market

Secondly, in 2001 OPTA devoted efforts to improving the conditions under which competitors are to be given access to the market. An extremely important step in this respect was taken by OPTA with the introduction of a tariff regulation model for interconnection tariffs. This resulted in a significant reduction of these tariffs. OPTA also rebalanced KPN's end-user tariffs. Through the combination of reducing interconnection tariffs and rebalancing the end-user tariffs, and by applying the price squeeze test, OPTA solved the price squeeze for competitors to a significant degree. Solving the price squeeze increases the competitive possibilities in the



telecommunication market. The price squeeze occurs when the difference between KPN's end-user tariffs and the purchasing price of telecom services for alternative providers is too low, preventing room for competition.

2001 was also an important year in terms of improved access to the postal market. In a dispute regarding this market, OPTA determined the conditions under which TPG must offer access. This is an important step in the development of competition on the postal market.

■ Freedom of choice for users

Topics addressed by OPTA in 2001 in this respect were: number portability, carrier (pre-) selection, and the selectability of numbers.

Thanks to OPTA's efforts, the mobile providers improved the possibilities for number portability, making it easier for consumers to transfer to a competitor. OPTA's efforts also resulted in an increase in the range of choices in the area of local telephony. As a result, starting from 2002 local calls can also be processed via carrier pre-select providers.

Developments in the area of wholesale services (FRI-ACO) made it possible for competitors to purchase internet access from KPN in 2001 at a fixed tariff.

As a result, end-users can now be offered internet at a flat tariff. Finally, OPTA published its policy rules, giving consumers easier access to new services, including electronic mail boxes and information and service numbers. The policy rules make these services 'dialable' from any fixed or mobile telephony network.

■ Protection of the end-user

In order to protect end-users when there is insufficient choice, OPTA regulates end-user tariffs. OPTA applies a price ceiling for KPN's telephone tariffs and regulates the delivery conditions for leased lines.

In 2001, OPTA was able to significantly reduce the delivery periods for leased lines.

In the area of post, OPTA devoted particular attention to the quality of TPG's services, such as the delivery period for post and the post office policy.

This annual report discusses the many activities undertaken in 2001 to achieve the objectives described above. OPTA achieved its mission for 2001, but understands that there is still much to be done in order to establish effective competition. The first chapter provides a variety of examples of the manner in which OPTA achieved its objectives. This chapter contains a list of OPTA's activities in 2001. The second chapter describes the policy environment of the regulator: an evaluation of the past four years, cooperation with the Ministry of Transport, Public Works and Water Management, with the Netherlands Competition Authority, as well as international cooperation. The third chapter discusses OPTA's business operations.

Current developments

■ Remuneration system

On 27 December 2001, the administrative law sector of the district court of Rotterdam announced two important decisions regarding OPTA's remuneration system.

The first case concerned the fee for regulation of a significant market power, to be charged by OPTA to KPN, based on the applicable regulations. In the other case, TeleDiscount B.V., the subject was charging a fee for regulation of numbers for an entire year while the numbers were issued in the course of the year.

These fees are defined in the OPTA fee regulations. According to the court, these must be viewed as retentions. This means that the fees may only be charged if the company to which they are charged clearly profits from the related efforts. The relevant fees, and thus the regulations, do not satisfy this premise of profit according to the court. In both cases, the court determined that OPTA applied the regulations in a correct manner. Nevertheless, the claims were found to have grounds because the fees are based on a non-binding regulation.

The court's decisions may have far-reaching effects on the remuneration system as determined by law. This is one of the reasons why OPTA has since filed an appeal against these decisions with the Appeals Commission for the Commercial Sector. OPTA also consulted closely with the Ministry of Transport, Public Works and Water Management regarding the possible consequences. Agreements were made regarding safeguarding OPTA's cash flow position, and the organisation of a new remuneration system is being studied that can be implemented as quickly as possible if necessary.

■ Collocation tariffs

Within the framework of a decision on an appeal in a dispute between BaByXL and KPN, on 11 February 2002 the tariffs were determined that KPN is to charge for a number of elements in its collocation services. These tariffs amount to approximately forty five percent of the tariffs charged earlier to BaByXL by KPN and apply until 1 January 2003.

■ Cost allocation system post

In 2001 TPG appealed OPTA's decision regarding the requirements for approval of the cost allocation system. The court rendered its decision at the end of March 2002. The court decided against OPTA on a number of points, the most important of which being that OPTA is not authorised to place requirements on the financial accounting with the objective of preventing unauthorised cross subsidising. This makes it more difficult for OPTA to prevent cross subsidising. However, the court did decide in favour of OPTA on a number of other points, including a clarification of the Activity Based Cost system and allocation of the costs for shareholder and loan capital proportionately to the capital employed for the services in the categories as distinguished. This means that TPG must further improve its cost allocation system.

1 OPTA's activities

OPTA regulates the transition of the telecommunications market from a monopoly to a market with equal opportunities for multiple providers. In order to achieve this, OPTA's activities include regulating the quality of the services and the structure of telecommunication tariffs. This applies not only to providers' services and tariffs for end-users, but also to those between the various providers. OPTA also regulates the accessibility of the telecommunications market, e.g. access for competing telecom providers to KPN's network and to the telephone numbers available in the Netherlands. On the postal market, OPTA also ensures that competitors have access to PTT Post's post office boxes and regulates the quality of the concession services.

■ 1.1 Telecommunication services for end-users

■ 1.1.1 Tariff ceilings for end-user tariffs

The tariffs KPN is allowed to charge to end-users are limited by a tariff ceiling. Each year, this tariff ceiling is reduced by a certain percentage. This system is known as the price cap system. The tariff ceiling was determined for the period from 1 July 1999 to 30 June 2002, and decreases each year by 5.3 percent after an inflation correction. Because the costs of telephone traffic are largely dependent on the volume of traffic, OPTA modifies the price cap if and when the number of minutes of traffic deviates from the expectations by more than ten percent.

The strong growth in internet traffic via the telephone network in 2001 gave OPTA cause to study the volume of local telephone traffic and to consult

with the market parties. The outcome of the study was that the traffic volume amounted to one hundred and forty eight billion minutes. This is eleven percent lower than initially expected. As a result, OPTA determined on 1 July that the decrease in the tariff ceilings for KPN's end-user tariffs for the period from 1 July 2001 through 30 June 2002 would amount to 4.5 percent.

When the price cap system was determined in 1999, it was already apparent that competition on the market for international telephone traffic is so intense that there was no need to regulate the ceiling for international tariffs. In November 2001, KPN submitted a proposal to increase the tariffs for international telephone calls. OPTA approved this tariff increase. In 2001, OPTA evaluated the framework within which it assesses the discounts that KPN may offer its clients. This evaluation resulted in a modest change of the discount framework with reference to the allowable discount for international traffic. This meant that KPN may offer its clients a discount to a maximum of the level of the integral costs of the relevant services.

■ 1.1.2 Tariff changes of leased lines

As from 1 April 2001, KPN implemented a thorough change in its tariffs for leased lines, fixed connections between two points. KPN also simplified the categorisation of the leased lines. The number of distance categories was reduced from six to three, i.e.: 0 to 1 km, 1 to 50 km and more than 50 km. The tariffs for digital leased lines with a capacity of 64 Kbit/s to 2 Mbit/s decreased by approximately fifteen percent; the prices for Analogue and DigiLine increased by an average of about ten percent. OPTA

evaluated the new tariffs based on an assessment framework: the tariffs may not be lower than the cost price of the service and the profit must be reasonable. OPTA determined that the tariff changes for DigiStream and Analogue satisfied these requirements. The negative yield for DigiLine was determined to be acceptable because this product is currently at the end of its technical life cycle.

At the end of July, OPTA commenced consultation with leased line providers regarding future regulation of tariffs for leased lines, with the objective of improving competition and combating high end-tariffs for end-users. During this consultation, a majority of the market parties indicated that there must first be a supply of interconnecting wholesale leased lines from KPN before any price cap system for end-user (retail) leased lines can be implemented. This approach offers improved protection against a price squeeze. Based on this consultation, OPTA suspended implementation of a price cap system for retail leased lines until KPN has established a supply of interconnecting leased lines.

■ 1.1.3 Differentiation of end-user tariffs

Most market parties apply the same terminating tariffs as KPN. A limited number of parties opted not to (completely) follow KPN's reduction of these tariffs as of 1 July 2001. This resulted in differences. Under certain conditions, KPN is allowed to charge the higher tariffs to the end-users, but as SMP provider it must submit this to OPTA for evaluation before implementation. OPTA approved a number of these proposals.

■ 1.1.4 Delivery period for leased lines

As a party with significant market power, KPN is obliged to supply a number of types of leased lines on a large part of the market for leased lines: analogue leased lines, and 64 Kbit/s and 2 Mbit/s

leased lines. Albeit that this supply obligation guarantees the availability of leased lines, legislation in the Netherlands does not define a delivery period. A benchmark by the European Commission indicated that KPN's delivery periods for leased lines, with a duration of forty to two hundred days, was much higher than the European average.

In May 2001 OPTA published new policy rules in which twenty-five working days is defined as a reasonable delivery period. If delivery takes longer, OPTA may enforce compliance, e.g. under threat of a judicially imposed penalty.

The policy rules have rendered results. For all types of leased lines, the delivery period at the end of 2001 was approximately twenty-five days.

■ 1.1.5 Subscriber data from KPN

KPN must supply its subscriber data to Denda based on Section 43 of the ONP Decree leased lines and telephony. Denda wanted the subscriber data in order to publish an electronic telephone directory. As manager of telephone numbers, KPN is obliged to supply this information. OPTA determined which subscriber data is to be supplied and at what price; the price was determined at 0.23 Eurocents per piece of data. KPN filed an appeal against OPTA's decision.

In 2001, the court ruled that OPTA had decided correctly in the case of the tariff system and the obligation to supply subscriber data to Denda for the purpose of compiling a telephone directory. The court decided that KPN must supply its subscriber data based on cost-oriented tariffs to all parties that intend to publish a telephone directory that satisfies the legal requirements. However, Denda may not make wider use of the KPN data than KPN itself does. KPN filed an appeal against the court's decision. A judgement is expected sometime in 2002.

In 2000, Denda wanted to use KPN's subscriber data to start a subscriber information service where consumers could request telephone numbers. KPN demanded a new licence agreement with Denda for this purpose with a safety deposit of 11.62 Eurocents per piece of data. On 4 December 2000 OPTA determined that KPN is obliged to supply the subscriber data to Denda and that the desired safety deposit could be no more than 0.23 Eurocents per piece of data. It was also determined that no new licence agreement was needed because Denda already had an agreement with KPN. The files with subscriber information that KPN supplied to Denda in 2001 satisfied OPTA's judgements.

In May 2001 Denda was assigned the telephone number 118 for the purpose of providing subscriber services. This makes Denda the first provider of subscriber information that is not a network provider or telecom service provider.

■ 1.1.6 Subscriber information for KPN

As provider with significant market power, KPN must publish a complete and public telephone directory and maintain a subscriber information service. This must also include the numbers of subscribers with other providers. KPN may not restrict or levy a charge on its competitors who must submit subscriber data. KPN still had not satisfied this obligation in May. OPTA then sent KPN a notification of obligation under threat of a judicially imposed penalty on May 3: the directory and the information service had to be completed no later than 19 September 2001.

For the completeness of the directory, KPN was dependent on information from other fixed and mobile telecom providers. Because some of these providers failed to supply the necessary information, KPN was unable to satisfy the deadline. It was for this reason that OPTA suspended the obligation

under threat of a judicially imposed penalty for a period of three months. A number of providers still failed to supply the necessary data. That part of the obligation that pertains to the subscriber information service was therefore suspended by the regulator until 1 April 2002; the part pertaining to the public telephone service was suspended until 13 May of the same year.

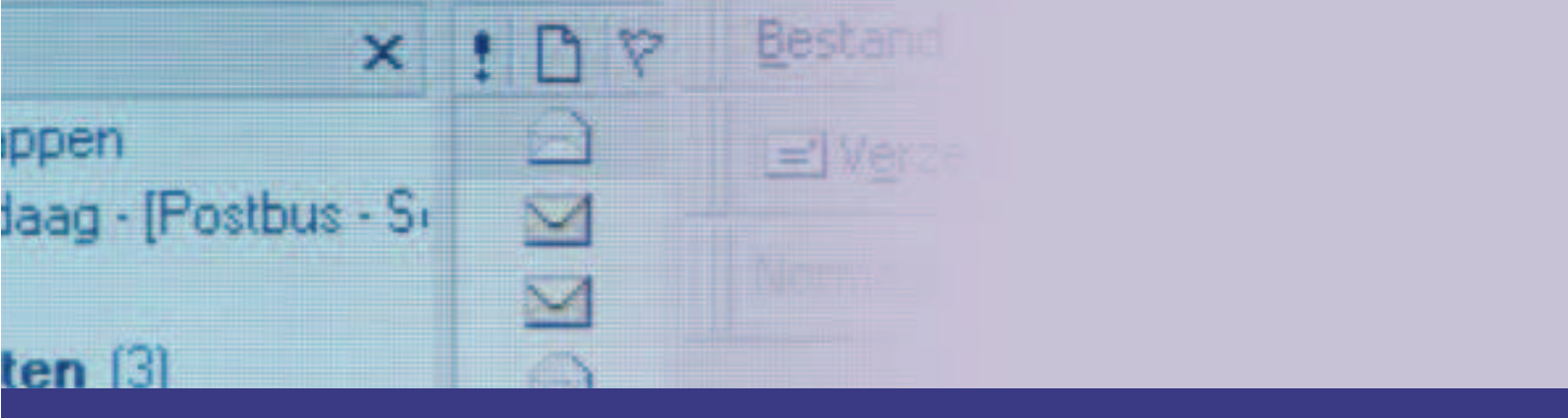
■ 1.1.7 Number portability

The ability to transfer a telephone number from one provider to another (number portability) is one of the requirements for good competition on the market for telephone services. In December 1999, OPTA therefore prescribed a number of quality standards with reference to number portability for the providers of mobile telephony. Because porting of numbers did not take place smoothly, the quality standards were formulated in the form of an obligation under threat of a judicially imposed penalty. OPTA therewith required providers to report on the number portability each month.

From a study performed by OPTA in 2001, it became apparent that the quality of the number portability has increased significantly since December 1999. The decreasing number of consumer complaints confirmed this view. In actual practice, number portability functioned so well that OPTA decided to lift the obligation under threat of a judicially imposed penalty. On 1 July, the obligation under threat of a judicially imposed penalty regime was replaced by policy rules that define how porting of numbers should take place.

■ 1.1.8 Carrier pre-selection for local traffic

Subscribers who call using carrier pre-select must be able, just like KPN subscribers, to make local calls without dialling the area code. This is because there is a large chance that the caller will forget to dial the area code and therewith automatically place the



call through KPN, which has a detrimental effect on the competitive position of carrier pre-select providers as compared to KPN. Because various market parties were willing to solve this problem, it was initially decided to let them work out their own solution. However, no agreement was reached regarding technical implementation. OPTA therefore took urgent action in October. This resulted in a round table meeting in November with various interested parties. In part based on that meeting, OPTA published its viewpoint in December: as of 1 August 2002, KPN must also offer carrier pre-select for local traffic in such a way that the subscriber need not dial the area code. KPN subsequently dropped its demand of payment in advance.

■ 1.1.9 SMS spam

Following a number of complaints, in 2001 OPTA initiated a study regarding *spam*. With spam, unsolicited commercial SMS messages are sent via mobile telephone to hundreds of end-users simultaneously. The study indicated that the possibilities for OPTA to prevent spam are limited. However, the European Union is in the process of reviewing its Telecom privacy guideline. An announcement is expected in February 2002, stating that the new Telecom privacy guideline will include an obligatory opt-in regulation for spam. With the opt-in regulation, permission in advance from the addressee is required for transmitting advertisements via SMS.

■ 1.2 Telecommunication services between providers

■ 1.2.1 Policy rules interconnection tariffs

On 13 April 2001, OPTA published policy rules for interconnection tariffs, for tariff regulation and the relevant procedures. Interconnection tariffs are the costs that KPN charges competitors for using its network. On 29 June 2001, OPTA approved the tariffs for interconnection and special access services for the period from 1 July 2001 until 1 July 2002. Under the policy rules, the terminating tariffs are determined on the basis of a new method. For originating access, collecting traffic, the Embedded Direct Cost model (EDC model) will still be applied. The terminating tariffs are based on the BULRIC method, which was developed in cooperation with the market parties. BULRIC stands for Bottom Up Long Run Incremental Costs. The BULRIC method is based on the costs that would be incurred by an efficient operator. With this new method, the new interconnection tariffs are lower.

The actual costs incurred by KPN are still determinant for the originating tariffs calculated by means of the EDC model. OPTA distinguishes between terminating and originating because the level of competition differs with these services. For originating services, market parties can choose between collecting telephone traffic via KPN, via another provider or via their own infrastructure. This does not hold true

Figure 1a Originating access carrier (pre)selection

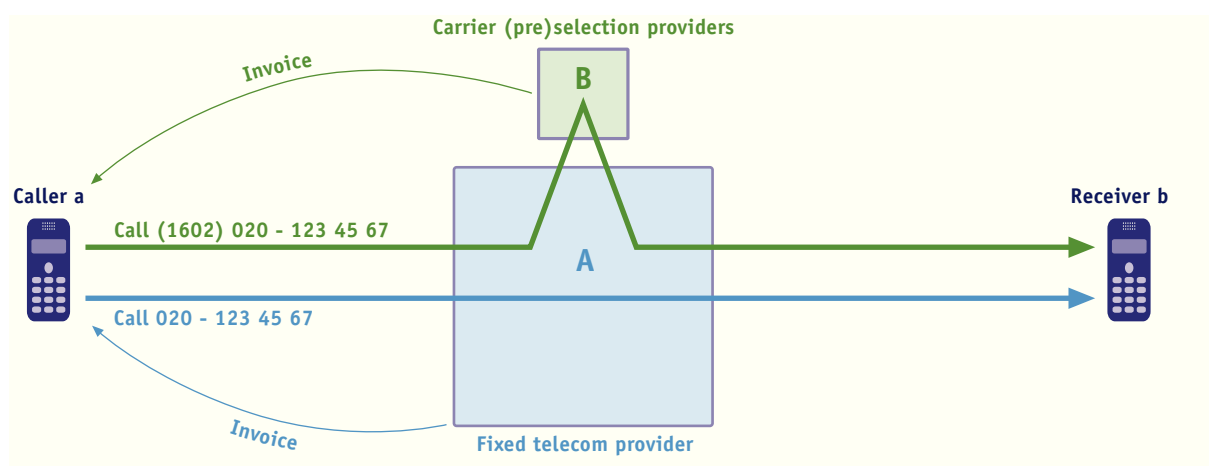
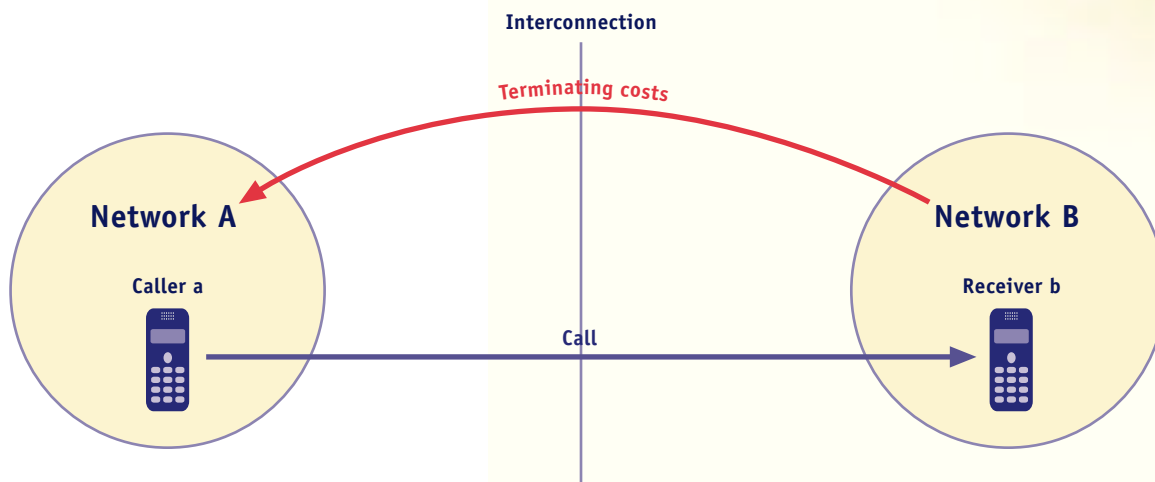


Figure 1b Terminating access



for the terminating traffic: a KPN subscriber can only be reached via the KPN network.

■ 1.2.2 Reasonability interconnection tariffs

In a dispute between the Energis telecom company and KPN, on 15 October 2001 OPTA announced its first decision regarding the reasonability of interconnection tariffs by parties other than KPN.

■ 1.2.3 Price squeeze solution

If KPN's interconnection tariffs are high in comparison to its end-user tariffs, the other providers do not have sufficient margin to cover their costs. This effect is known as a price squeeze. The providers are basically squeezed by the high purchasing price – the interconnection tariff – and a selling price that is too low – the end-user tariffs. This makes it virtually impossible for them to compete. OPTA received many complaints about this issue.

Together with the NMa, OPTA published the 'Price Squeeze Guidelines' in February 2001. In this document, the NMa and OPTA indicated how price squeeze is measured, for which sub-markets the price squeeze is determined, and how the NMa and OPTA will take action against price squeeze. A price squeeze test was compiled for four sub-markets: local calls, long distance calls, calls from fixed to mobile, and calls from fixed to a 0670 number. During the first quarter of 2001, it was determined that there was only a price squeeze on the market for local calls.

In order to solve the price squeeze, OPTA proposed to rebalance the local end-user tariffs, the relationship between the start tariff and the traffic tariff. The start tariff is the standard tariff per call; the traffic tariff is the cost per second. On 15 August 2001 KPN reduced the start tariff from 4.54 Eurocents to 3.5 Eurocents and increased the traffic

DECISION IN TERMINATING TARIFFS DISPUTE ENERGIS - KPN

In a dispute between Energis and KPN Telecom, OPTA decided that the terminating tariffs applied by Energis in the period from July 1998 until August 2000 were not unreasonable as compared to KPN's terminating tariffs. The tariffs were initially the same, but because KPN is obliged by law to apply tariffs that are based on costs, the KPN tariffs were lower than the Energis tariffs in the relevant period. OPTA found no indication that the tariffs applied by Energis were unreasonable.

tariffs. This change enhanced the competition and had no effect on the turnover and costs for KPN. Because of the tariff changes, calls lasting less than three and a half minutes became less expensive, and end-users making short calls no longer subsidised the long callers and internet users. Another effect was that the conditions in the new situation were more favourable for internet providers to offer their services via the special 06760 connection numbers. These numbers were specially appropriated for internet traffic in order to relieve the pressure on the KPN fixed network.

The reduction of the interconnection tariffs per

1 July 2001 also contributed to solving the price squeeze. In order to prevent price squeeze from occurring in the future, OPTA developed an integral system for tariff regulation for end-user and inter-connection tariffs offered by KPN. This shall be implemented as of 2003.

■ 1.2.4 Transit tariffs

Transit tariffs are tariffs that a telecom provider is allowed to charge to parties that use its network for transporting traffic to a third provider. The transit tariffs therefore reimburse for the costs of using the network capacity. In general, transit tariffs are

Table 1 KPN end-user tariffs for local traffic (within the region) in Eurocents

	Before 15 August 2001	Per 15 August 2001	Increase as percentage
Start tariff	4.54	3.50	-23.0%
Conveyance tariffs			
• peak	2.55	2.84	+11.4%
• off-peak	1.38	1.50	+8.7%
• weekend	0.93	1.00	+7.5%

Table 2 The new tariffs for terminating access based on BULRIC (in Eurocents)

	National Per 1 July 2001	Regional Per 1 July 2001	Local Per 1 July 2001
Start tariff	1.10	0.78	0.59
Conveyance tariffs			
• peak	0.97	0.76	0.57
• off-peak	0.48	0.38	0.29
• weekend	0.36	0.28	0.21
Average difference compared to the old tariffs	-30%	-30%	-8%

Table 3 The new tariffs for carrier selection originating access based on EDC (in Eurocents)

	National Per 1 July 2001	Regional Per 1 July 2001	Local Per 1 July 2001
Start tariff	1.43	1.05	0.82
Conveyance tariffs			
• peak	1.27	1.03	0.79
• off-peak	0.63	0.51	0.40
• weekend	0.47	0.38	0.30
Average difference compared to the old tariffs	-16%	-13%	+7%

higher than the terminating tariffs.

Early in 2001, OPTA initiated a study of whether it was correct for KPN to charge transit tariffs instead of the terminating tariffs, in response to complaints received from a number of carrier (pre-)select providers that offer internet traffic to business units of KPN. KPN may only apply transit tariffs if these business units are independent legal entities. OPTA concluded that KPN Broadband Networks, as a provider of IND-2 and UDS networks, is not an independent legal entity and that transit tariffs therefore may not be charged. In order to force KPN to comply, OPTA made preparations for an obligation under threat of a judicially imposed penalty. With reference to this case, OPTA also initiated a study of the transit tariffs charged by KPN for traffic destined for KPN Mobile. The final decision on this matter is expected in the first quarter of 2002.

■ 1.2.5 Temporary Reference Interconnection Offer

The Reference Interconnection Offer (RIO) by KPN is a catalogue of the possibilities, conditions and tariffs that KPN can offer its competitors in the area of interconnection. In 2000, the RIO failed to satisfy the requirements stipulated in the Telecommunication Act: the catalogue needed modification on forty two points.

A modified version of the RIO issued in 2001 still failed to satisfy the legal requirements. In March OPTA issued notification of three obligations under threat of a judicially imposed penalty: for interconnection on the level of local exchanges, for interconnecting leased lines, and for collocation in relation to interconnection. KPN included the last two subjects in the RIO at the end of 2001. In addition to the obligations under threat of a judicially imposed penalty, OPTA consulted with KPN and the market parties regarding possible temporary offers of interconnecting leased lines that the market parties

would be able to use in the short term. This enables the market parties for the first time to utilise an offer at wholesale level, meaning that they are no longer forced to purchase the retail product leased lines.

In June OPTA issued three new notifications to KPN of obligations under threat of a judicially imposed penalty: for bi-directional connections, sea cable access and number portability. In December OPTA organised consultation regarding the results of the discussions with KPN about the problem areas still remaining from earlier discussions and about the notifications of obligations under threat of a judicially imposed penalty.

■ 1.2.6 Reference Offer for unbundled access from KPN

As a provider with significant market power, KPN is obliged to publish a reference offer for unbundled access to the local loop (RO ULL). This is a catalogue describing the minimum offer from KPN with reference to unbundled access: the conditions for unbundled access to the local loop, a description of the collocation services, conditions for access to information systems, and the terms of business and service levels. Publication of the RO ULL promotes transparent and non-discriminating market conditions, and thus the competition on the local loop. OPTA has been assigned responsibility for enforcement in the Netherlands of the European rules on unbundled access of December 2000.

The RO ULL of 16 May 2001 did not contain elements such as services and facilities, neither did it include explicit quality and service levels for the services to be provided. However, at that time OPTA was not authorised to force KPN to make the necessary changes. A new offer from KPN in September contained a number of improvements but still failed to satisfy the legal requirements. In the last quarter OPTA therefore consulted closely with KPN and other



providers regarding the changes to the reference offer. The providers indicated that agreements regarding the service levels for ordering and delivery of local loops in the RO ULL had high priority for them. A Service Level Agreement (SLA) contains agreements about quality levels, for which parties can be called to account when these levels are not achieved. As of late December, no agreement had been reached regarding the content of an SLA.

■ 1.2.7 Collocation

As a former monopolist, KPN manages the local exchanges. The local loops to the subscribers' homes run from these exchanges. Physical presence of other providers in these exchanges is required if competitors are to be able to offer services. This presence in these exchanges is called *collocation*.

KPN is obliged to supply collocation. In March, OPTA demanded that KPN take all areas in an exchange into account when a competitor of KPN requests that its equipment be installed in the exchange. KPN is allowed to charge the costs of collocation, e.g. for creating a protected area and installing racks for the competitor's equipment. KPN's collocation tariff must be cost oriented.

In a dispute between KPN and BaByXL on 15 August, OPTA initially determined that the costs of collocation are dependent on the situation in the exchanges, meaning that separate collocation tariffs could be applied for each local exchange. There were a total of thirteen hundred exchanges in 2001. However, this method gave the providers insufficient certainty with reference to future financial obligations, making it difficult for them to attract external funding. In part because of this OPTA worked to establish uniform collocation tariffs. In 2001 OPTA

started a study of the level of cost-oriented tariffs for collocation. The results of this study are expected sometime in 2002.

■ 1.2.8 Unified Messaging

On 29 June 2001 OPTA decided that KPN Telecom must provide a temporary connection with the KPN network for XOIP, so that XOIP can supply an Unified Messaging service. Moreover, KPN Telecom and KPN Mobile must cooperate in finding a permanent solution for access to their networks. With Unified Messaging, electronic messages can be 'listened to' by the receiver in various ways: e.g. a voice mail in the form of a fax or an e-mail in the form of a voice mail.

■ 1.2.9 Calling to mobile networks

Calling a mobile number should be less expensive, according to OPTA, in particular with reference to the tariffs for calls from a fixed to a mobile telephone. OPTA wants a decrease in the tariffs that mobile operators charge for delivering a call to other providers. A consultation project with mobile telephone providers was initiated for this purpose. On 19 December 2001, OPTA published the consultation document 'Regulation of mobile terminating tariffs'. There are two possibilities for decreasing the tariffs. Firstly, OPTA can designate KPN Mobile as a provider with significant market power on the collective markets for fixed and mobile telephony. However, KPN Mobile does not satisfy the requirements of this designation. Secondly, OPTA can implement a reasonability test for the mobile terminating tariffs. The consultation document contains proposals for establishing a reasonability test of this type. The proposals would force providers to apply

KPN MUST OFFER BABYXL SHARED ACCESS

KPN favours itself over other DSL providers by offering its subsidiary Mxstream shared access to the local loop before it can be offered to other providers. This was OPTA's judgement on 12 November in a dispute submitted by BaByXL. OPTA also ruled that KPN must offer other providers the type of shared access to the local loop that they desire, at a cost-oriented tariff. KPN offers only one type, whereas the market parties prefer a different type.

TEMPORARY CONNECTION FOR XOIP

Unified Messaging service provider XOIP wants direct access to the networks of KPN Mobile and KPN Telecom. These two parties, however, only give a minimum of information regarding the possibilities and want a financial contribution from XOIP (KPN Mobile) or information about the call profile (KPN Telecom). The two network providers appear unwilling to cooperate. However, as providers with significant market power they are obliged to cooperate. In the tentative decision announced in June, OPTA required KPN Mobile and KPN Telecom to provide information and, if XOIP so desires, to negotiate. According to OPTA, KPN Telecom must also establish a temporary facility through an ISDN 30 connection so that XOIP will soon have access to the fixed network.

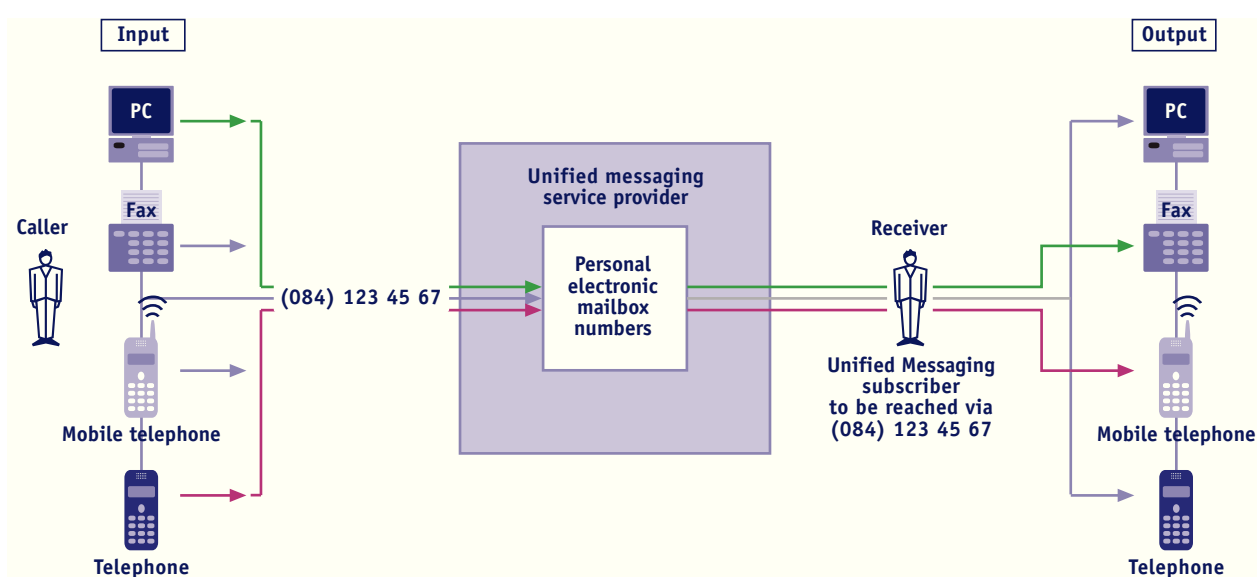
cost-oriented tariffs after a period of no more than one and a half years. OPTA asked the various market parties to respond to the consultation document in writing no later than 1 February 2002.

1.2.10 Rules for site sharing

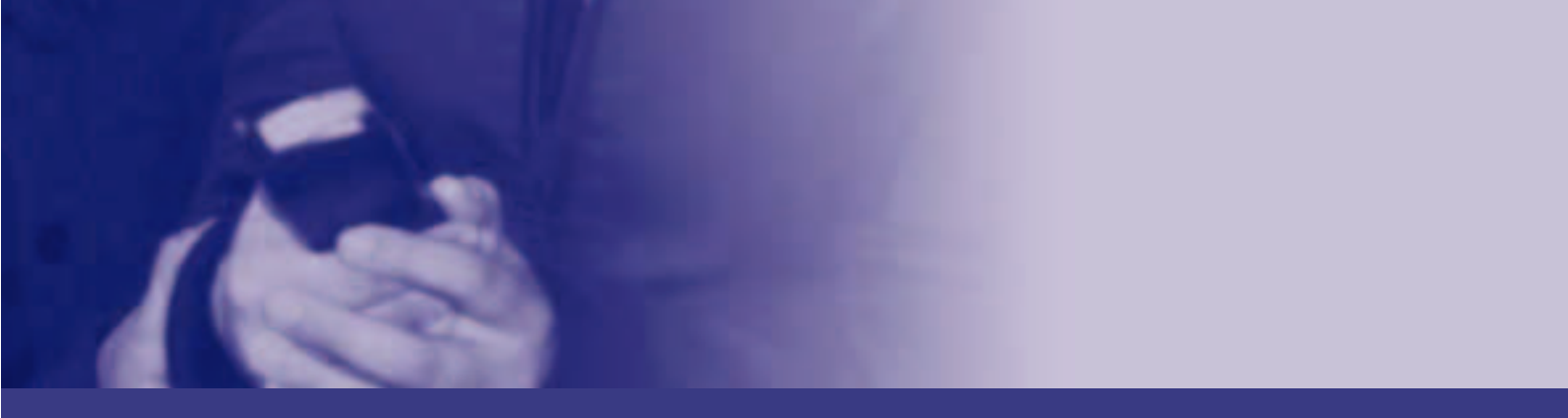
In a dispute between Dutchtone and KPN that has been on-going since December 1998, the highest court of appeals, the Commission of Appeals for the Commercial Sector (CBB) rendered a decision on the scope of OPTA's competence over the infrastructure for mobile telephony. The decision stated that in satisfying its legal responsibilities, OPTA has more freedom than was assumed to date.

If the legislator opted to express OPTA's competence in vague terms, according to the decision of the CBB, it is in the first place OPTA's responsibility to determine the details. According to the CBB, the court is only authorised to assess whether OPTA has duly considered all interests involved, whether OPTA sufficiently explains why it has arrived at a certain

Figure 2 Unified messaging



With Unified Messaging, electronic messages can be 'listened to' by the receiver in various ways.



choice or decision, and whether that choice or decision is reasonable.

The CBB announced this decision with reference to an appeal filed by OPTA regarding co-use of aerial installation sites, known as *site sharing*. The decision of the CBB was in keeping with OPTA's broad view of the legal term aerial installation site. As a result, new market parties will be eligible for site sharing sooner than in the past and thus eligible to roll out their networks. The CBB determined that the Telecommunication Act assigns OPTA competence to determine rules for sharing aerial installation sites. Site sharing is desirable from the perspective of costs, horizon contamination and the speed of the rollout of mobile networks. In a legal sense, the decision is important because the CBB corrected a decision made by the Court based on an appeal filed by OPTA.

■ 1.2.11 Cooperation UMTS

At the request of the UMTS licence holders, OPTA, the NMa and the Ministry of Transport, Public Works and Water Management compiled a collective memorandum in which they provided a detailed explanation of the possibilities for cooperation in establishing UMTS. Both the regulating bodies and the Ministry believe that cooperation will result in faster development of UMTS. Nevertheless, there are limits to the cooperation because the competition between the licence holders must be retained. Cooperation should be limited to collective installation and collective use of the UMTS radio network, such as base stations and the Radio Network Controller. Collective use of frequencies and the core network is not permitted. The core network consists of the traffic exchanges, the databases and other resources necessary to supply services.

■ 1.2.12 Special access to the mobile network

Providers of mobile telephony with significant market power must satisfy reasonable requests for special access. In order to bring more clarity to this matter, OPTA published the consultation document 'Special access to the mobile network' on 30 November 2001. In this document, OPTA published its tentative views regarding matters including the reasonability of requests. More clarity regarding special access to mobile networks should simplify the introduction of other service providers and thus stimulate effective competition. Based on the responses to the consultation document, guidelines will be compiled in the course of 2002.

■ 1.3 Significant market power

OPTA designates a party as a provider with significant market power (SMP) if it holds a market share of more than twenty five percent on the relevant market. The Telecommunication Act offers the option of refraining from this designation. OPTA can designate a provider with a market share of less than twenty five percent or can refrain from designating a provider with more than twenty five percent. The criteria to be applied include: the ability to influence market conditions, control of the resources for access to end-users, or experience in supplying products and services on the market. An SMP provider has obligations, for example offering non-discriminatory interconnection, satisfying reasonable requests for special access, and unbundled access to the local loop. Each year OPTA determines whether the designation of providers with significant market power on the markets for fixed telephony, mobile telephony and leased lines market should be continued.

At the end of 1999, OPTA designated KPN, KPN Mobile and Libertel as providers with significant market power. KPN on the market for fixed telephony and the leased lines market; KPN Mobile and Libertel both on the market for mobile telephony.

■ 1.3.1 Leased lines

KPN submitted a request to the District court of Rotterdam for the suspension of the designation on the general leased lines market. According to KPN, Section 7.2 of the Telecommunication Act implicitly distinguishes between various types of leased lines. According to the telecom company, OPTA must distinguish between various sub-markets: between leased lines that are smaller than, equal to and larger than 2 Mb per second and leased lines with a variable capacity, known as Permanent Virtual Circuits. For the sub-market of leased lines with a capacity of more than 2 Mb, KPN contests that it holds a market share of more than twenty five percent.

On 31 January 2001, the Court of Rotterdam rendered its decision in this case. The judge decided that OPTA must distinguish between the various sub-markets and suspended part of OPTA's decision, i.e. the part with reference to leased lines with a capacity of more than 2 Mb. The Court believed that OPTA needed to differentiate the market for leased lines within the framework of a designation based on Section 7.2 of the Telecommunication Act. OPTA suspended the designation in accordance with the Court's decision.

On 15 October 2001, OPTA published new guidelines for designation of SMP providers on the market for leased lines to supplement the existing guidelines of 16 March 2000. The changes in 2001 concerned the designation on parts of the market for leased lines based on Section 7.2, for example for types of leased lines in a certain geographic area.

■ 1.3.2 Fixed and mobile telephony

On 6 December 2001, OPTA decided that there was no reason to deviate from continuation of the designation of KPN as provider with significant market power on the market for fixed telephony.

OPTA withdrew the designation of Libertel as a provider with SMP on the mobile market as of 20 December 2001 based on other market and legislative developments. The market survey performed by OPTA indicated that Libertel's market share fluctuated around twenty five percent. KPN Mobile's designation was not withdrawn because it holds a market share significantly above twenty five percent.

In 2001 OPTA investigated whether a provider existed with significant market power on the collective markets for fixed and mobile telephony. Based on the outcome of a market survey, OPTA concluded that none of the providers held significant market power on the collective markets for fixed and mobile telephony.

■ 1.4 Issuing numbers

■ 1.4.1 Efficient use of mobile numbers

The Directorate General Telecom and Post of the Ministry of Transport, Public Works and Water Management assigns series of telephone numbers to certain destinations. Telephone numbers starting with 06 are available for mobile telephony. The number of mobile numbers that can be issued is therefore limited. Early in 2001, OPTA indicated that if the existing growth continues, the limits of the number plan will soon come into view. In a six month period, the number of mobile telephone numbers issued grew from twenty six to thirty six million, and the number of users increased from nine million to eleven million. A trend analysis indicated



that if numbers continue to be used in this manner, a shortage of mobile telephone numbers would occur within two years.

Based on a study of the efficiency of the use of mobile numbers, OPTA published a consultation document on 23 May 2001. This document indicates that requests for mobile numbers should be accompanied by an explanation: how did the applicant use mobile numbers assigned in the past? OPTA's premise in improving the efficiency of number management is that a party should be issued a number if it truly needs it. Consultation with the market parties and an additional workshop indicated aspects including that various providers of mobile telephony assign their customers two 06 numbers: one for regular telephone traffic and one for network-related voice mail services. OPTA believes this is not the most efficient manner for using mobile numbers. In the course of 2001, the growth in the issue of numbers decreased significantly. In the early months of 2002, OPTA will ask an external agency to determine whether reasonable and feasible alternatives exist for issuing two telephone numbers per customer.

■ 1.4.2 Policy rules number trade

With reference to a number of complaints received from the market related to the trade in 'name numbers', OPTA determined a number of policy rules in March 2001. The policy rules are intended to establish more clarity regarding the trade in telephone numbers. Based on the criteria in these rules, OPTA will henceforth determine whether number trade exists. Elements in these criteria include how long a number has been in use and the marketing costs involved in making the number known. The price of the number must be reasonable in relation to the investments made. In order to enforce compliance with the policy rules, OPTA has the option of withdrawing the number.

■ 1.4.3 Auctioning allocation of numbers

In 2001, OPTA received an increasing number of requests for alphanumeric numbers. Moreover, various applicants submitted applications for the same alphanumeric information number virtually simultaneously. Numbers are assigned based on the principle of 'first come, first served'. OPTA discovered that this method of assignment is not always the most desirable. The number 0800 – BUTCHER (0800-2882437) could, for example, be assigned to a number trader as a result. From a social viewpoint, this is not a desirable situation because the number will not be used immediately or could be used for another purpose than the name would suggest. In such cases, the Telecommunication Act gives OPTA the option of assigning the numbers by auction or lottery. An auction is to be preferred because this gives the applicants themselves influence on the acquisition of scarce numbers: a small-scale market mechanism. The new European legislation also provides for auctioning of telephone numbers as an efficient allocation mechanism. OPTA concluded that auctioning is a possible and desirable option and is awaiting more detailed regulations from the Ministry of Transport, Public Works and Water Management before actually commencing with the auctions.

■ 1.4.4 Telephone Information Services Code Foundation

The Telephone Information Services Code Foundation (STIC) regulates the use of 0800 and 090x numbers, and was certified by the Minister of Transport, Public Works and Water Management in 2001. Since its certification, OPTA has received significantly more complaints from end-users that actually should be dealt with by the STIC. In order to attune the complaint processing by the two organisations, STIC and OPTA have agreed to procedures for passing on complaints and for referral of end-users.

■ 1.4.5 Short information numbers

Short information numbers (eight-digit 0800, 0900, 0906 or 0909 numbers) are scarce and represent a large share of the available numbers. Reticence is called for in issuing these numbers. This means that a short number must be useful. It should be heavily dialled, for example, such as telephone numbers for telephone votes during the Eurovision Song Contest.

OPTA simplified the requirements for the use of short information numbers on 31 January 2001. Studies had indicated that the original requirements were too strict for many of the number holders, as a result of which OPTA was forced to withdraw a disproportionately large number of these numbers.

■ 1.4.6 Carrier selection

Until 1 September 2000, only one hundred carrier select numbers were available: the series 16xy. Because the number of carrier select providers was increasing, early in 2001 OPTA had already issued eighty five of the 16xy numbers. Because a shortage threatened, the Ministry of Transport, Public Works and Water Management opened a second series as of 1 September 2000: 10xyz. This increased the number of carrier select numbers by 1000.

With this increase, OPTA can issue more than one number to carrier preselect providers. These providers can receive a second number. The carrier preselect providers want to use these numbers to serve various target groups, e.g. private and business users, or to offer different levels of quality.

■ 1.4.7 Local numbers

In March 2001, OPTA decided that long-distance calling via a local number violates the Telecommunication Act and that this service must be terminated no later than 2 January 2002. OPTA allows only a small number of exceptions to this rule. The use of

local numbers is only tolerated for local calls to an internet provider outside of the user's own area code and in the event of calamities.

■ 1.4.8 084- and 087-numbers

According to the Telecommunication Act and the number plan, only 084 numbers may be used for Unified Messaging. KPN completed the infrastructure for this purpose during the first half of 2001. The providers were also active. In the course of the year, they offered personal assistant services, whereby users can be reached at varying connections and choose how they want to receive the message. Initially the number plan only allocated 087 numbers for these services. However, various providers wanted to offer their services via a single telephone number. In the interest of the providers and the end-users, OPTA asked the DGTP to modify the number plan. The 084 and 087 numbers were designated to 'personal assistant services' in 2001. These services include Unified Messaging.

■ 1.4.9 Dialability of numbers

Not all users of mobile and fixed telephony were able to call any number from their connections in 2001. The subscribers of mobile providers, for example, usually could not reach any electronic mailbox numbers (Unified Messaging, 084) or personal assistant service numbers (087). The same was often true for many 0800 and 090x numbers. Many consumers had problems with this. The poor dialability was caused by the fact that the providers of these telecom services, such as the Unified Messaging service providers, did not always have access to the networks of the network providers.

On 6 July 2001, OPTA published new policy rules for dialability. These rules explain the circumstances under which network providers are required to provide access to their networks so that service providers can make their numbers dialable for end-



users. The SMP providers KPN, KPN Mobile and Libertel must satisfy every request from service providers to make 084, 087, 0800 and 090x numbers dialable. OPTA expects the other network providers to follow suit with the SMP parties.

■ 1.5 Regulation of the postal market

■ 1.5.1 Postal tariff changes

One of OPTA's tasks is to evaluate the tariff changes of two packages of postal services provided by concession holder TNT Post Group (TPG): the total package and the small users package. According to the legal evaluation framework, the tariffs for these two packages may not increase faster than the wage inflation index as calculated by the Central Plan Bureau.

In the first half of 2001, TPG proposed tariff changes: postage for a letter weighing no more than twenty grams would increase by 2.27 Eurocents; the price of sending a letter by registered mail would increase by 11.34 Eurocents. Because the proposal remained within the legal limits, OPTA approved it. The increases were effectuated on 1 July 2001. In the second half of 2001, TPG submitted other proposals for tariff changes. These included the transition from Guilders to Euros and a tariff increase between 0.7% and 7.5% for mixed domestic mail 'postage paid' shipments of less than one thousand pieces, depending on the weight and turnover category. The new tariffs were effectuated on 1 January 2002.

Although the tariff increase is allowed by law, OPTA wondered why the postal tariffs are subject to evaluation standards other than the telecom tariffs. In evaluating the tariffs in the telecom sector, the costs involved in supplying a certain service are considered. As a result, the end-user tariffs in the

telecom sector decrease by a certain percentage each year. This enables the consumers to benefit from efficiency and productivity improvements.

■ 1.5.2 Cost allocation system TPG

TPG did not include figures for the yield on the concession services in its concession report for 2000. These are figures regarding the results of the concession services in relation to the capital involved in the concession. Because the Postal Act was modified in June 2001, TPG believes it should not be expected to submit these figures. However, because the figures were not available, OPTA could not determine whether TPG's yield was 'reasonable'. It therefore requested that TPG still submit the missing figures. Insight into the yield of the concession holder is in part determinant for the evaluation of the tariff control system, to be performed in 2002.

OPTA approved TPG's cost allocation system of costs and yield in December 2000. The system distinguishes between reserved services (concession), other obligatory services and unrestricted services. The reserved services pertain to the exclusive delivery of letters weighing up to one hundred grams, other obligatory services are the services that TPG is obliged to provide, but that other competitors may also provide. The unrestricted services may be supplied by anyone. OPTA did place a number of conditions on its approval of the cost allocation system. Each year, for example, the functioning and application of the system must be evaluated; TPG must calculate the yield of the reserved and other obligatory services based on the capital that is involved and the yield generated by these services; TPG must implement a number of changes in the cost allocation system within two months after approval (e.g. with reference to cost drivers and statistical measurements), and TPG must supply a public version of the cost allocation system.

TPG objected to the conditions OPTA placed on its approval. OPTA then organised a hearing in May 2001. TPG's obligation to presenting its results and yield separately for the three services is a result of European regulations and the new Postal Act in the Netherlands. The obligation is intended to ensure that cross subsidising of TPG services does not occur or is made visible. OPTA therefore declared most of TPG's objections to be without grounds. OPTA made this decision on 10 October 2001. The decision included a requirement that TPG satisfy its obligations by 31 December 2001. TPG filed an appeal against the decision with the district court of Rotterdam. Because the matter is complex, the court needs time to reach a decision.

■ 1.5.3 Access to post office boxes

Since the effectuation of the new Postal Act, post providers other than TPG may deliver mail to post office boxes in the post office. This 'access to post office boxes' resulted in the first dispute regarding post in 2001. Based on a complaint from MailMerge, OPTA announced its decision on 4 July 2001 regarding the conditions TPG may apply to access to post office boxes. MailMerge objected to matters such as the time at which and the manner in which it is

allowed to deliver mail to TPG's post office box sites.

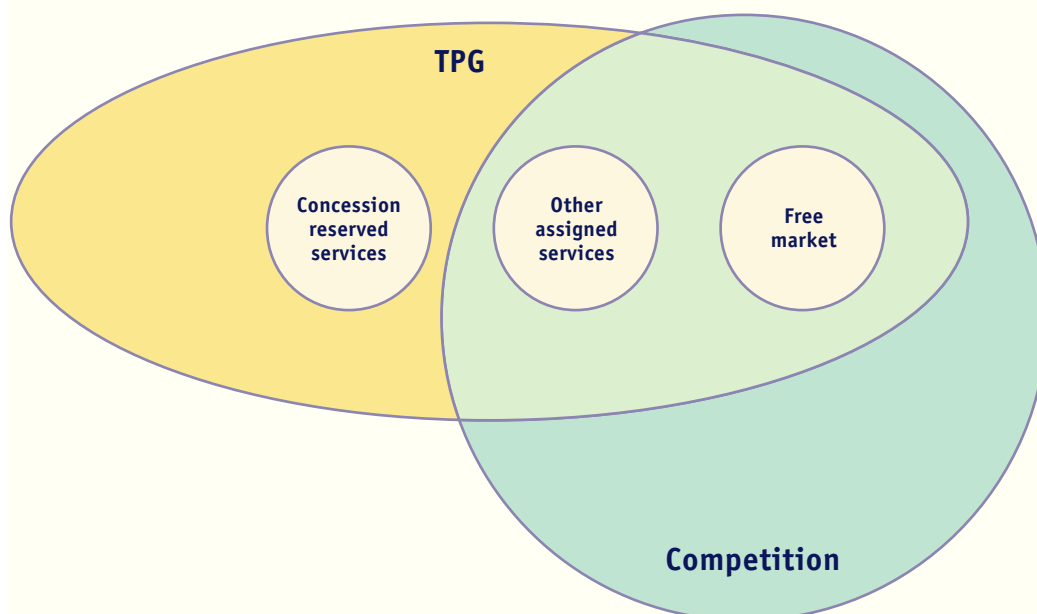
OPTA evaluated the conditions TPG offers, based on the policy rules compiled by the regulator in 2000. MailMerge was found to be in the right on nearly all points. OPTA compiled new conditions. These conditions pertain to matters such as the number of mail dispatches, the recognisability and the delivery times. OPTA also decided that providers that want to deposit mail in the post office boxes need not submit a specified request to TPG in order to do so. One general request is sufficient. TPG must then allow access on the date requested by the provider. The costs charged by TPG for delivery of the mail supplied to the post office boxes must be based on actual costs.

However, TPG did not comply with OPTA's decision with reference to un-addressed mail, as a result of which OPTA sent notification of obligation under threat of a judicially imposed penalty in December. The penalty is to be effectuated in January 2002.

■ 1.5.4 Measuring system

In its annual concession report, TPG paid attention to matters such as the quality of the services. This was done based on a system with which the delivery

Figure 3 Cost allocation system





period for letters was measured. However, according to OPTA the measuring system applied by TPG to determine the quality of its services was not clear. The OPTA Commission informed TPG by letter in 2001 that the system needed modification. Starting from 2002, OPTA may place requirements on the system applied by TPG to determine the quality of its services. In the first half of 2002, OPTA will consider whether TPG achieved the ninety five per cent norm in 2001.

■ 1.5.5 Post offices policy

OPTA regulates the compliance with legislation and regulations in the General Post Guidelines Decree (BARP). Based on these guidelines and its position as regulator with reference to the agreements made between the Minister of Transport, Public Works and Water Management and the Dutch Parliament, OPTA informed TPG in October and December 2001 of the manner in which it is to report annually on the post offices policy 2001 – 2005. The deadline for the report on 2001 was 16 February 2002. TPG failed to report by this date, which is why this annual report cannot report on the effectuation of the post offices policy in 2001.

■ 1.6 Regulation of internet, cables and radio frequencies

■ 1.6.1 Regulation of internet access

On 20 March 2001, the NMa and OPTA collectively published a consultation document regarding internet access. This publication represented the initial results of the internet team in which both regulating bodies are represented, and which was established to map and analyse the markets for internet access. The internet team published the results of the survey in December 2001 in the 'Internet Access Report'. The most important conclusion was that separate sub-markets can be distinguished for both narrowband and broadband internet access. The narrowband market is national while the market for broadband internet access is national in principle, but need not necessarily be so. With the rollout of ADSL, certain geographic areas may be omitted for economic reasons, as a result of which there will be no regional competition for broadband internet access via the cable. These conclusions are particularly important for the cable companies. If the sub-markets are defined in this manner, their market share on the broadband sub-markets suddenly increases by many dozens of percentage points. Based on the legislation that will be effectuated in 2002, these cable companies can then be designated as parties with

MUNICIPALITY OF OSS MAY DELIVER ITS OWN MAIL UNDER ITS OWN MANAGEMENT

Based on the new Postal Act, the Municipality of Oss may deliver its own mail by the employees of the local social employment centre. The Court reached this conclusion in its decision of 19 December 2001 within the framework of an appeal submitted by TPG against an OPTA decision.

Taking the new Postal Act into consideration, OPTA published its decision on 29 June 2000. The decision was in keeping with an decision by the Court in an appeal procedure that was filed by the Municipality of Oss against an earlier decision by OPTA in the case. The Court stated in its decision of 7 December 1999 that the prohibition against transporting letters weighing no more than one hundred grams does not pertain to legal entities that deliver their own mail under their own management, as the Municipality of Oss does. Because the OPTA is of the opinion that the social employment centre is part of the internal organisation of the Municipality of Oss, this case pertains to the municipality's own management. Therefore, the Municipality of Oss is not violating the Postal Act. The Court decided that TPG's appeal was without grounds.

significant market power and may be subjected to additional obligations.

■ 1.6.2 Uncoupling via 06760 numbers

Until mid 2001, telecom traffic showed enormous growth. A large part of this growth resulted from the internet. The increase in internet traffic threatened to overload KPN's fixed network. The internet traffic took up an increasingly larger part of the capacity for voice telephony. It was therefore necessary that a short-term solution be found. This solution was found in the option of routing internet traffic over a special data network. This relieved the load on the network for voice telephony.

In order to uncouple internet traffic from the voice network, it must be recognised as such at an early stage. The numbers 06760-vwxyz are designated for this purpose in the number plan. At the request of companies, OPTA also issues 06760 numbers for connection to company intranets, providing these offer a connection to the internet. This enables network managers to recognise data streams and to route them via a special data infrastructure. The success of the 06760 numbers became evident in the course of 2001. Since July, the number of requests for 06760 numbers has increased significantly.

In July OPTA approved a price model compiled by KPN for uncoupling of internet traffic via a 06760 number. This new model, called the collecting model, consists of a basic fee to be paid by the subscriber to KPN plus a surcharge for the provider's services. The provider is free to determine the level of the surcharge and the end-user tariffs for their internet services.

In purchasing capacity for internet traffic from KPN, the providers can choose from two wholesale services: MIACO and FRIACO. With MIACO, Metered Internet Access Call Origination, the provider pays KPN per minute of traffic. With FRIACO, Flat Tariff

FLAT TARIFF INTERNET ACCESS CLOSER THANKS TO COURT DECISION

The decision announced by OPTA in November 2000 regarding the supply of Flat Tariff Internet Access Call Origination (FRIACO) has been confirmed by the Administrative Court of Rotterdam. A request from KPN to overturn the OPTA decision with an injunction was denied by the court in preliminary proceedings. The court decided that OPTA rightfully obliged KPN to supply sufficient access capacity to WorldCom. This decision brings internet at a flat tariff one step closer. KPN's objections to the fact that it is obliged to supply WorldCom with FRIACO and MIACO services were ruled out by OPTA. Now WorldCom customers can also use the internet at a flat tariff.

Internet Access Call Origination, the provider pays KPN a fixed fee for the available capacity, irrespective of the amount of traffic transported. This allows providers to develop their own tariff structures for end-users. These new options have helped to enhance the use of the 06760 number.

■ 1.6.3 FRIACO tariffs

After OPTA decided in November 2000 that KPN must offer FRIACO, OPTA determined the tariff for this wholesale service in 2001. The tentative monthly tariff for an internet connection of 2 Mbit/s was determined at € 2,374.63 and was applicable until 1 July 2001. KPN was ordered by OPTA to submit a proposal for a tariff for the period starting from 1 July 2001. The proposal was to be based on the Embedded Direct Cost principles. Initially, OPTA allowed KPN Telecom to apply two restrictions in the supply of FRIACO wholesale services to internet



service providers: the FRIACO services could only be used by subscribers with an ISDN connection and KPN did not need to make more than 2000 internet gates available. The reasons for these restrictions were possible difficulties with the KPN network. After a study, OPTA removed the restrictions and obligations in its decision of 30 November 2001.

■ 1.6.4 Digital signature

Government policy focuses on many issues, including stimulating electronic business. The digital signature plays an important part in this respect, in which an independent statement regarding the true identity of the electronic business partner is a vital element. A Trusted Third Party (TTP) issues this statement. The digital signature will become enormously popular in the business-to-business market in particular. In order to initiate establishment of proper rules for the digital signature, a European guideline was incorporated in the legal regulations in the Netherlands in the spring of 2001. These regulations place quality requirements on the services provided by the TTPs.

On 18 May 2001, the ministries of Justice and Transport, Public Works and Water Management submitted a legislative proposal to the Dutch Parliament. OPTA evaluated the legislative proposal in September with an implementation test. The legislative proposal designates OPTA as regulator for the digital signature. The tasks assigned to OPTA in the proposal are dual. On the one hand OPTA registers the Trusted Third Parties, while on the other it ensures that these providers continue to satisfy the legal requirements. The proposal is expected to be passed by Parliament during the first quarter of 2002.

■ 1.6.5 Tolerance obligation cables

OPTA regulates tolerance of cables. The Telecommunication Act specifies in which instances OPTA is authorised to evaluate and make decisions regarding

TOLERATING HDPE PIPES

In a case that a private landowner submitted to OPTA, the regulator determined that the landowner, as specified in Section 5.1 sub-section 2 of the Telecommunication Act, is not obliged to tolerate HDPE pipes on his land. These pipes are not part of a public telecommunication or broadcasting network, but serve solely to protect cables that might be necessary in the future. Crystal Conduct Infra Broker, which wanted to install the pipes, may only enforce the tolerance obligation if telecommunication cables are to be installed in the pipes in the immediate future.

KPN MUST BEAR THE COSTS FOR RELOCATING CABLES

The Municipality of Lelystad wishes to install a sewerage system and perform activities to prepare for a new subdivision in an area in which KPN cables are located. Lelystad ordered KPN to relocate the cables at its own expense. KPN doubts its obligation to do so. Based on the transit obligation as determined in the General Administrative Law Act, the Municipality of Lelystad submitted these doubts to OPTA. Based on Section 5.7 of the Telecommunication Act, OPTA decided that KPN must indeed bear the costs for relocating the cables. The law stipulates that the provider of a network must relocate the cables at its own expense if this is necessary for constructing buildings or for execution of 'work by or on behalf of the obliged party'.



the obligation of parties to tolerate cables. OPTA is also authorised to make decisions on matters in which cables must be relocated if this is necessary for constructing buildings or for execution of 'work by or on behalf of the party obliged to tolerate'. OPTA publishes the most frequently asked questions and the relevant answers on its website.

A variety of disputes were dealt with in 2001. Landowners must tolerate cables for public communication or broadcasting on their land. However, a number of exceptions apply to this main rule. Two disputes regarding the relocation of cables on municipal property were also submitted to OPTA. A total of nine disputes regarding the tolerance obligation were submitted.

In November 2001, the Directorate General Telecom and Post performed a problem analysis of the tolerance obligation. In response to this analysis, OPTA published a position paper. In this paper, OPTA's recommendations included that the current phrasing of the relevant legislation, which dates from 1904, is no longer sufficient for a liberalised market. In an open telecommunications market, an extremely large number of providers may be active on publicly accessible networks. OPTA therefore feels that a fundamental study of the tolerance obligation needs to be performed in the near future. Based on this study, new regulations can be compiled that are more in keeping with the telecommunications market of the twenty-first century.

■ 1.6.6 Transmission tariff cable TV

In 2001 OPTA dealt with a number of disputes that pertained to tariffs that television cable companies charge to programme providers for transmitting programmes. These cases included Canal+ versus UPC and Canal+ versus Multikabel. OPTA expects to reach a decision in 2002 regarding the reasonability of the level of the transmission tariffs on the cable.



2 Policy environment

2001 was the year in which OPTA's activities in its first four years were evaluated. The first section of this chapter pays detailed attention to this evaluation: the set-up of the study, the results, the government viewpoint and OPTA's response to this viewpoint.

OPTA regularly consults with the Ministry of Transport, Public Works and Water Management. The telecommunication regulator also maintains contact with the Netherlands Competition Authority, the National Radio Communication Agency, the Commissariat for the Media, and the Registration Board. The areas in which these organisations are active are all related. The second part of this chapter briefly discusses this national cooperation in 2001.

Because the regulations and guidelines for telecommunications and post are the same throughout the European Union (EU), OPTA has frequent contact with colleague regulating bodies in the EU Member States. The European Commission is another important contact. OPTA meets with colleague regulators in the Independent Regulators Group (IRG). Incidental contact is also made with the International Telecommunication Union and with the Organisation for Economic Cooperation and Development (OECD). The third section of this chapter pays detailed attention to this international cooperation.

■ 2.1 Evaluation of four years OPTA

Section 25 of the Independent Post and Telecommunication Authority Act regulates the evaluation of OPTA. Within four years after effectuation of this act and every four years thereafter, the Minister of Transport, Public Works and Water Management must

submit a report of this evaluation to the Dutch Parliament (States General). When the new government took office in 1998, the State Secretary of Transport, Public Works and Water Management was assigned responsibility for telecommunication affairs. In March 2001, the first report on OPTA's efficiency and effectiveness was published. The results formed the input for decision-making processes regarding the manner in which regulation is performed in the telecommunication and post sector. In July 2001 the Government formed its viewpoint: OPTA must in any case remain independent for the next four years. The Parliament will determine its viewpoint in the course of 2002.

■ 2.1.1 Set-up of the study

Research agency Twynstra Gudde performed the study on behalf of the Ministry. The main question was: Has OPTA properly performed its statutory tasks in relation to the telecommunication and post market and made appropriate use of its competence? The extent to which OPTA, considering its competencies, has contributed to more and improved competition on this market was also assessed. An important part of the study was a comparison on the European level, by which OPTA's performance and the effects thereof on the market were compared to competition developments in other EU Member States. The report of the study also discussed the relationships OPTA maintains with its policy environment on both the national and international levels, and reviewed OPTA's internal organisation and business operations.

■ 2.1.2 Results of the study

According to the researchers, in the first four years



of its existence OPTA has positively contributed to competition in the telecom sector. The regulator properly performed its statutory tasks and made proper use of its authority. The effectiveness and efficiency of OPTA's performance in the telecommunications market was assessed as good. OPTA effectively performed its tasks and exercised its competencies in the postal market. The internal organisation and operational management were determined to have sufficient quality. The relationship with other organisations, including the NMa and the Registration Board, was also found to be good. Contacts with international organisations were even rated as excellent. This collaboration is based on professionalism and trust, according to the report. The relationship between OPTA and the Ministry of Transport, Public Works and Water Management was considered 'poor'. Although the division of tasks and agreements between the regulator and the Ministry are clear, the researchers determined that cooperation could be improved significantly.

■ 2.1.3 OPTA's response

OPTA was pleased with the positive evaluation in the report. In addition, OPTA found cause to pay attention to improving its own performance, in particular its business operations, the relationship with the Ministry, and the organisation of the regulation. Following suit with the situation in Great Britain, OPTA supports the concept of concurrent powers. This concept gives a sector-specific regulator competence to independently apply the Competition Act. OPTA also believes it is important that a further study be made of the consequences of convergence on regulation. In order to arrive at a more just division of the costs of regulation, OPTA also recommends that a contribution system be established in which companies contribute a percentage of their turnover to finance OPTA's services. Furthermore, OPTA believes that it would be fruitful for it to be

periodically heard by the Parliament Committee, e.g. based on its annual report or its vision of the market, so that information for and the relationship with politics acquires a formal framework. Finally, OPTA believes that it should study, together with the Ministry, the areas for improvement in the existing legislation and regulations.

■ 2.1.4 The Government's viewpoint

Based on the evaluation, the Government adopted the viewpoint that the OPTA Commission should be maintained as an independent administrative body until 2005. After this second four-year period has ended, the sector-specific regulation of the telecommunication and post market will reside under the NMa as a separate chamber, based on the Government's view that the independent administrative body NMa properly enforces the Competition Act and that the chamber model works as desired.

■ 2.1.5 OPTA's response to the Government's viewpoint

OPTA was pleased with the Government's viewpoint that it should continue its activities in the existing organisational set-up. OPTA agrees with the Government's recommendation that after eight years the regulator should reside with the NMa in what is known as the chamber model. OPTA comments, however, that this model must first prove its worth. Because the markets for fixed and mobile communication, internet and audio-visual media overlap to an increasing degree, OPTA believes that a study should be performed of the consequences this overlapping has on communication regulation and its embedding in the broadest sense of the term. According to OPTA, this is a logical step, considering the technological developments. Other European regulatory arrangements reflect this development in the integration of regulation of voice, data, fixed and mobile communication, cable and telecommuni-



cation networks. Technological convergence has resulted in convergence of the regulation elsewhere in Europe. The effectiveness of the regulation of the communication sector and the preceding political process of integral policy forming will benefit from a cohesive set of tasks. The importance to society of this subject is self-evident. OPTA believes that a thorough analysis is necessary before these discussions can be concluded.

■ 2.2 National cooperation

■ 2.2.1 Ministry of Transport, Public Works and Water Management

The Directorate General Telecommunication and Post of the Ministry of Transport, Public Works and Water Management is responsible for high quality, socially-responsible facilities for telecommunication, telematics and post in a competitive environment. OPTA is the regulator and operates independently of the Ministry. Nevertheless, these organisations have regular contact. Because OPTA has good insight into developments in the market, it provides the Ministry with requested and un-requested advice regarding topics related to telecommunications and post. Upon request, OPTA also assesses proposed legislation and regulations in terms of their implementability by means of implementation evaluations.

In 2001, the **advice** provided by OPTA included topics such as the national aerial policy and the distribution of radio frequencies. **Implementation evaluations** were performed with reference to the electronic signature, a legislative modification for number plans, auctions and lotteries for numbers, cable access and the ONP Leased Line and Telephony Decree. Discussions were also held with the Ministry regarding mutual cooperation. In addition, in consultation with the NMa and the Ministry, OPTA clari-

fied in more detail what activities may or may not be performed collectively in the rollout of UMTS.

Based on a memorandum from the Government, OPTA submitted recommendations regarding the national aerial policy in April. The memorandum discusses the large demand for aerial installation sites for mobile telephony and broadcasting networks and how to deal with these. Rapid rollout of aerals is good for competition on the market but also increases the risk of unrestricted growth. The health aspects involved in aerals were also discussed in the memorandum.

OPTA's response to this memorandum is that the interests involved must be carefully considered. What has priority: rapid, competitive rollout of networks, spacial planning, or the environment? The possibility of collective use of aerial installation sites (site sharing) can also be taken into consideration. OPTA questions whether the measures proposed in the memorandum will be effective. Whether suspending the licence obligation for aerals less than five metres high should be made dependent on the establishment of a covenant between the municipalities' association, the housing organisations and the providers is one example in this respect. OPTA does not agree with this coupling. The national government has clear responsibilities here.

OPTA also promotes extensive (central) harmonisation. If providers want to install aerals, they must still apply to the various government levels. This unnecessarily increases the administrative costs. Moreover, OPTA believes that the division of tasks between the Aerial Bureau and the Aerial Registry, which was established by the Government, is unclear.

In February, OPTA **advised** the Ministry regarding the **distribution of Tetra frequencies** (mobile telephony) and in May regarding the **distribution of**

the FM radio frequencies, known as the zero base distribution. OPTA placed central focus in these recommendations on the relationship between the distribution method for frequencies and the development of market mechanisms on the telecommunication and broadcasting market. Important instruments for stimulating competition include ensuring that sufficient licences are available and creating conditions under which the most efficient companies have the best chance of acquiring these licences. In actual practice, this could mean: no preferred rights for existing parties, no eligibility thresholds for new parties, and a transparent and objective distribution of the licences. OPTA therefore recommended that the licences for radio frequencies be auctioned. OPTA rejected the plan submitted by the Building Commission because it results in a complicated and unclear distribution of the frequencies. This committee proposed that four national licences be auctioned among newcomers and that the remaining six be issued to existing broadcasting companies. The existing broadcasting companies would then pay a fee for the licences that was derived from the yield from the newcomers auction. According to OPTA, this plan would not give the most efficient parties the frequencies they desired, meaning that optimum market mechanisms would not develop.

Based on a legislative proposal, in September OPTA evaluated the **implementability** of the proposed rules for the **electronic signature**. This type of signature plays an important part in electronic commerce; its reliability may, therefore, never be doubted. A Trusted Third Party (TTP) issues a statement to this end.

OPTA registers and regulates the TTPs and wants a TTP to be banned from operating on the market if its registration is withdrawn. This could occur, for example, if TTP fails to satisfy the requirements of the European directive even after being given ample

opportunity to remedy any shortcomings based on a carefully-followed procedure. OPTA believes this ban is necessary to ensure that providers satisfy their obligations.

In addition to this ban, OPTA promotes financing from the national government for the regulator's costs. This would finance the regulation of compliance with the proposed legislation. As there were so few TTPs in 2001, tariffs established without government subsidy would be so high as to act as an entry barrier. OPTA is convinced that this would be undesirable because it would deter new providers.

In December 2001, OPTA performed an **implementation evaluation** on a legislative modification of the **number plans**. The proposal included modifying Section 4.1 of the Telecommunication Act. According to OPTA, it would be better to modify the legislation in such a way that, as in other European Union Member States, the regulator would determine the number plans. This makes it easier for the market to identify the responsible party. What is more, it would improve the quality and consistency of the number plans and due attention could be devoted to long-term policy development. Finally, OPTA argued in favour of an evaluation of the entire number policy.

With reference to **auctions and lotteries for numbers**, OPTA evaluated a proposed general ordinance. OPTA stated that a lottery is much less advantageous than an auction because with an auction the market parties have a much greater number of possibilities to influence the outcome. OPTA argued in favour of a general ordinance auction with a relatively open standard that OPTA can apply as necessary to the situation. This would make it possible for the regulator to optimally attune to the market, current developments, types of numbers, their use, and other circumstances.

Vertrek op

20

2001

Retour op

12

2001

In March 2001, OPTA performed an implementation evaluation of the proposed change to the Telecommunication Act for **cable access** for programme providers and internet access providers. The legislative proposal is intended to implement the principles of market delineation and the designation of SMP parties based on the ONP Review for cable access. OPTA supports this, but believes that a number of the definitions applied in the proposed legislation are not in keeping with the definitions in the new ONP framework.

In March, OPTA evaluated a **proposed modification of the ONP Leased Lines and Telephony Decree (BOHT)**. The modification was effectuated on 21 November, bringing a change to the system for evaluating KPN's tariff proposals for leased lines and telephony. This change contained many elements that OPTA had requested. OPTA must henceforth explicitly approve tariff changes, for example. Approval is now a decision as referred to in the General Administrative Law Act; rejection already was. As a result, interested parties can submit objections and appeals regarding decisions made by OPTA. OPTA has yet to indicate how it will deal with publishing its decisions.

In order to do justice to the complexity of the information involved in justification of tariff proposals, the modified BOHT now offers the option of extending the evaluation period by three weeks. In addition, an explicit possibility for requesting additional information now exists as well as suspending the evaluation period until the requested information is received. The modified BOHT obligates OPTA to publish in the *Staatscourant* (Netherlands Government Gazette) which information and in what form must always be submitted with a request for approval of a tariff change before the request can be processed. This will improve the evaluation procedure.

OPTA and the Ministry of Transport, Public Works and Water Management discussed their **mutual cooperation** in 2001. The project **Legislation and Effective Regulation (WER)** was established for this purpose. The evaluation report on OPTA compiled by Twynstra Gudde indicated that the cooperation between the regulator and the Ministry needs attention. The problem areas in the existing legislation were also discussed. Themes of the dialogues included: 'effectiveness and tempo', 'scope and the legislative framework', 'administrative affairs', and 'dialability'. The dialogues were constructive and generated mutual understanding. The results of these discussions between OPTA and the Ministry will be incorporated where possible in the modification of the legislative framework based on the ONP Review.

In consultation with the NMa and the Ministry of Transport, Public Works and Water Management, OPTA clarified in more detail which activities may or may not be performed **collectively in the rollout of UMTS**. The three organisations determined that cooperation between the UMTS providers is allowed in the rollout, providing the competitive position of each of the parties is safeguarded. This means that restrictions apply to the cooperation, i.e. up to a certain part of the UMTS networks: the Radio Network Controller. Up to the point of this RNC, the parties may bundle their efforts. If the networks are integrated beyond that point, the competitors can gain too much insight into and influence on each other's services and the quality of those services. This limits competition.

The cooperation in creating the relevant memorandum pleased the NMa, the Ministry and OPTA. The document did not affect the competencies of each of these organisations. OPTA will regulate the (mandatory) UMTS networks rollout starting from 1 January 2007.

■ 2.2.2 The Netherlands Competition

Authority

The Netherlands Competition Authority (NMa) regulates compliance with the general Competition Act. Because the act also applies to the telecommunication and post sector, cooperation between OPTA and the NMa is both useful and necessary. Cooperation between OPTA and the NMa is important in cases that fall under the jurisdiction of both parties. An example in this respect is studying or processing complaints regarding abuse of significant market power by a company in the post or telecommunication sector.

In 1998 a **cooperation protocol** was established with agreements between the NMa and OPTA about consultation and attuning. This protocol was clarified and modified later in keeping with the Amsterdam Treaty and the new Postal Act in 2000. The cooperation protocol stipulates that in areas falling under the jurisdiction of both OPTA and the NMa, OPTA will take the lead. OPTA and the NMa consulted one another in 2001 about the internet and the price squeeze, and also about **designation** of parties with **significant market power**.

In 2001, OPTA and the NMa collectively published a report about **internet access** markets. An important conclusion in this report is that separate product markets exist for narrowband and for broadband internet access. Broadband internet access can be acquired via the cable and fast internet via the telephone line (xDSL).

This report contains additional, more specific findings with reference to defining and mapping the markets for internet access. Because these markets are highly dynamic and doubts could arise regarding the competencies of both the NMa and OPTA, it is important that the developments be actively watched, for law enforcement as well as for dispute mediation within the framework of both the

Competition Act and the Telecommunications Act. The 'Internet Access Report' was a continuation of the 'Internet Access Consultation Document' published in March 2001. In compiling this report, the reactions to the consultation document as received from market parties were taken into consideration. The consultation document was the first product generated by the internet team in which both the NMa and OPTA are represented. The establishment of this team was announced in their response to the government memorandum 'Cable and consumer: market mechanisms and digitisation'.

Both OPTA and the NMa were also involved in finding a solution to the **price squeeze**. Price squeeze occurs when the margin between the end-user tariffs and the interconnection tariffs is so small that competitors are squeezed from the market. Both OPTA and the NMa are authorised to take action against KPN if the end-user tariffs are too low. In order to give the various parties on the telecommunications market insight into the manner in which the lower limit of the tariffs is evaluated, OPTA and the NMa decided to collectively compile policy rules in this respect. The advantages of this cooperation include ensuring that OPTA and the NMa do not apply different definitions, e.g. for the minimum level of the tariffs and delineation of the relevant markets. On 28 February, OPTA and the NMa collectively published guidelines that are in keeping with their cooperation protocol.

■ 2.3 International cooperation

An important share of OPTA's international activities in 2001 pertained to the negotiations in Brussels regarding the new set of directives for the electronic communication sector. OPTA regularly consulted with the directorate generals Information Society and

Competition of the European Commission (EC) in this regard. The EC has competencies based on the European competition regulations. OPTA also regularly participated in the meetings of the ONP Committee. In this committee, consultation is held with other regulating bodies, national governments and the EC regarding implementation of the new European telecom law and regulation. OPTA also contributed to the seventh EC study of progress made by the Member States in implementing the telecom regulations. The results of this study were published in the seventh implementation report.

■ 2.3.1 New regulation

The development of the set of directives for **new legislation**, known as the Open Network Provision Review (ONP Review) is nearly completed. During the first quarter of 2001, the Council of Ministers and the European Parliament compiled their collective viewpoints. In December the parties reached a compromise regarding the main issues. Now the set of directives can be finalised. In order to arrive at a compromise, continual negotiation takes place between the European Parliament, the Council of Ministers and the European Commission. They approved four of the five proposed directives: the framework directive, a directive about access to interconnection, and the authorisation directive for universal services. The new set also includes a privacy directive, which will be finalised in 2002. The directives were translated into new legislation. The Ministry started this process and reached agreements with OPTA in 2001 about its involvement. The new legislation is expected in mid 2003. The new legislation will **not be technology dependent**. The 'telephone network' will be called a 'communication network', for example. The markets will not be defined in the legislation. Instead, the European Commission will publish recommendations in which the product markets are listed that the

Commission believes should be regulated *ex ante*. In the new legislation, OPTA, in cooperation with the NMa, will delineate these markets in more detail and analyse them based on the principles of general competition law.

Legislation will therefore shift towards general competition law, as a result of which the designation of parties with significant market power will be dependent on other indicators. The quantitative threshold, the level of the market share, for example, will be replaced by a qualitative one. The obligations of an SMP party must be attuned to the current competition problems on the relevant markets. OPTA identified these based on a market analysis. The exact obligations of SMP parties will also no longer be defined in advance. In designating obligations, OPTA motivated its choices. The obligations of an SMP party therefore no longer exist: one SMP party may be designated other obligations than another.

The **main area of dissent** in creating the new legislation between the European Parliament and the Council of Ministers was the **consultation procedure**. The Parliament insisted that the European Commission be assigned veto rights with reference to the major decisions made by national regulating bodies. The Council was against this. As a compromise, the Commission will be given veto right with reference to a limited number of decisions. OPTA was satisfied with this outcome.

International roaming was a hot issue during the negotiations. One of the amendments submitted to the European Parliament (EP) pertained to a general obligation to apply tariffs for international roaming that are oriented towards the underlying costs. Although international roaming tariffs appear to be higher than can be justified by the costs, the proposal would not stimulate the market mechanisms. A solution was found that is more in keeping with the system applied in the new set of directives: the EP



and the Council determined that the market for international roaming will be included in the list of relevant markets, as recommended by the European Commission. This will make it possible to designate obligations for SMP parties on the market for international roaming. The IRG and the European Commission are consulting with one another for coordinated action in this respect.

■ 2.3.2 Implementation report

In November, European Commissioner Liikanen presented the **seventh implementation report** with an extensive overview of the state of affairs on the European telecommunications markets. Together with the Ministry of Transport, Public Works and Water Management, OPTA submitted important information regarding the situation in the Netherlands. The report indicates that the situation in the Netherlands is not much different from the situations in other Member States. The major issues distinguished by the European Commission in its seventh report also have top priority for OPTA. Issues that will require additional attention in the years to come, according to the Commission, include: the high tariffs for terminating telephone traffic, unbundling of the local loop, and more efficient dispute settlement. The Commission also requested attention for sufficient funding and personnel for the regulators.

■ 2.3.3 The Independent Regulators Group

On the international level, OPTA collaborates closely with other telecommunication regulating bodies. This *Independent Regulators Group* (IRG) consists of regulators in the European Union, The European Free Trade Association, and the European Economic Area. The members of the IRG exchange information and experience regarding regulation and enforcement in actual practice. The chief executives of the regulating bodies represented in the IRG meet twice each

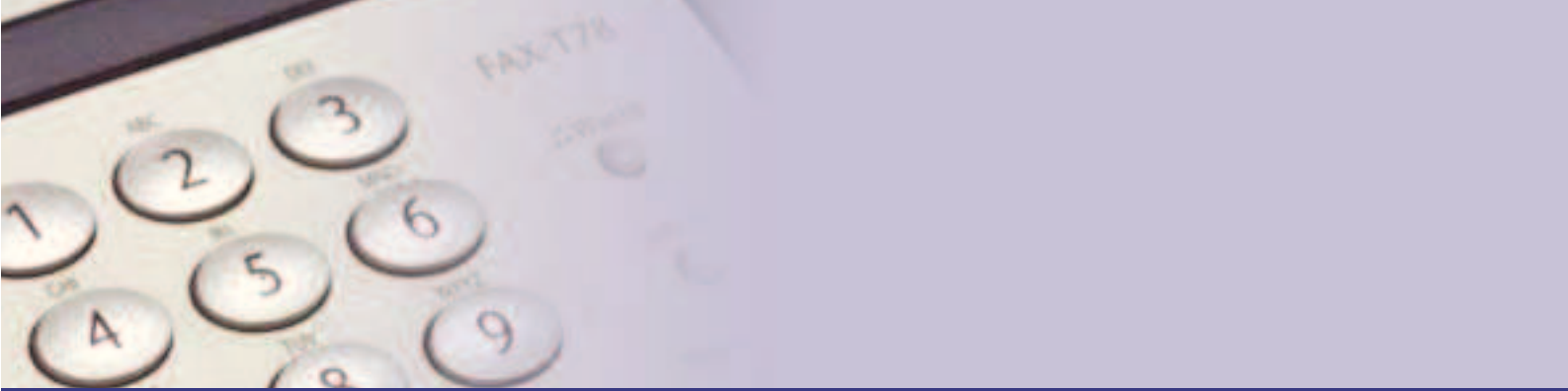
year. On the operational level, contact is much more intensive.

An important objective of the IRG is harmonising regulation of compliance with legislation. After all, uniform regulation of the European telecommunications market increases the effectiveness of the regulation in the individual Member States. Through mutual attuning, IRG also strives to assist in the evolution of a single European market for telecommunication providers in which all parties start in an equal position. In 2000, Principles of Implementation and Best Practices (PIBs) were compiled reflecting collective viewpoints on regulation. The IRG revised the PIBs for the local loop (ULL) in 2001.

In the course of the process that resulted in the definition of a new regulatory framework, the IRG held a collective viewpoint on all directives. In this manner, the IRG attempted to make a positive contribution to the discussions in Brussels, from the perspective of the regulator.

The IRG working groups devoted much work to proper attuning between the various European regulators. One working group, for example, studied the problems involved in non-transparent end-user tariffs, a collective approach to the problems involved in cost allocation, and the possibilities of applying unambiguous criteria for market analysis. The Mobile Access working group achieved a consensus regarding a uniform framework of definitions that can serve as the basis for PIBs for access to mobile networks.

The Significant Market Power working group (SMP) studied the draft guidelines for market analysis and market definition as published by the European Commission. Together with other members of the IRG, OPTA defined the market for mobile terminating. Also in 2001, a new IRG working group started. Chaired by OPTA, the NCA/NRA working group



endeavoured to find the best way of cooperation between the NRAs and the competition authorities. This is particularly important because within the new regulatory framework the regulators must work in close cooperation with the national competition authorities.

IRG also regularly discussed the idea of establishing a committee to advise the European Commission. This new **European Regulators Group** consists of the regulating bodies that will bear responsibility for implementing the recently finalised set of new directives. This makes the IRG more formal. The aim is to have the European Regulators Group (ERG) set up in the first half of 2003. The preparations are in full swing.

Like the IRG now, the ERG will determine collective visions, comparable to PIBs. If necessary, these viewpoints may be formulated as recommendations for action to be taken by the Commission. The ERG can also advise the regulating bodies about the regulation in actual practice.

Parties with interests in the postal market are represented in CEN. OPTA, being a regulator, is also a member.

■ 2.3.4 Post

The Comité Européen de Regulations Postale (CERP) is the umbrella organisation of post regulators in Europe. One of the responsibilities of the CERP is to advise the European Commission. A variety of working groups are active in the CERP. OPTA's contributions include participation in two international working groups. One of these working groups is studying European standardisation of the system used to measure how long a letter takes to go from the sender to the receiver, and the other is studying the cost allocation system for costs and yield.

In 1993 the European Commission established the Comité Européen de Normalisation (CEN) with the objective of promoting and supporting a technical standard for the measuring system. The Member States develop this standard in sub-committees.

3 OPTA Business operations

In 2001 OPTA devoted more attention to its business operations and improvement thereof. Operations pertains to management of both the primary and the supporting processes. According to the evaluation study performed by Twynstra Gudde in 2001, OPTA's internal organisation and business operations were of sufficient quality but there these areas could be improved. The budget for 2002 provides for additional activities in order to optimise business operations.

In 2001 OPTA also worked on professionalising the organisation based on a business operations statement. In anticipation of the finalised statement, OPTA reported on parts.¹ These parts are: the quality of the organisation, developments in the organisation of personnel, and the quality of business operations. The sections in this chapter describe these parts. Following this are two sections concerning the Works Council and the customer satisfaction survey.

■ 3.1 Quality of the organisation

■ 3.1.1 Management philosophy

OPTA's pioneering phase has past and, therefore, a new management philosophy is required. This was initiated at the end of 2000. In order to become a fully professional organisation, the OPTA personnel needed to modify their working methods. This means that managers have less time to devote to content; they are expected to focus more on managing their departments. The professionals must work independently and attune their perfectionism to practical objectives.

OPTA presented the management philosophy in the

autumn of 2001. It was formulated based on various sounding board sessions. During these sessions, OPTA personnel worked with an external expert to take inventory of the problems encountered in actual practice and possible solutions. Filling in the details and implementation will take place in 2002.

■ 3.1.2 Quality policy

In 2001, OPTA performed a number of projects to improve the internal quality of its business operations. A selection from these projects:

- **Dispute mediation**

The objective of this project was: improve the speed, predictability and clarity of dispute procedures and identify alternatives for the existing procedure for disputes. A new working method has now been developed. Alternatives for the procedure for disputes will be studied further in 2002.

- **Optimisation of financial management**

In preparation of the implementation of integral management, it proved necessary to take a critical look at the financial information that is needed by management. This resulted in a plan of approach for improving the financial management. The process for this plan started at the end of 2001.


- **Administrative organisation**

OPTA started to draft a manual called 'OPTA transparent'. This project will be continued in 2002. First the Business Operations department described its own procedures; now it will do so for the other departments. Most of the processes in the Business Operations department have now been described. A number of procedures are still being updated.

- **Registration of hours**

In order to improve the allocation of costs to the market parties, in 2001 extra attention was paid to

¹ As referred to in the report 'Guideline for reporting by legal entities with responsibilities designated by law' from the Audit Office.



the number of hours worked on a project (time registration) and charging the costs to the market parties. The management used information from the time registration system to an increasing degree as a management tool. In 2002, the implementation of the registration of hours will be checked more closely. There will be weekly checks for correctness, completeness and timeliness.

- **Quality of the reception desk**

Due to personnel problems, OPTA took the reception desk under its own management starting in September. Starting in January 2002, staffing of the reception desk will fall entirely under OPTA's management. In order to improve the quality of the reception desk, the staff will be offered training courses in 2002.

- **Archives**

OPTA sharpened the procedures for reminder lists and requested tenders for support for the archives function from a number of parties.

■ 3.1.3 Automation

Both the gradual increase in specialised personnel and the existing formal structure within OPTA affect the manner in which information is collected, stored and transmitted. This results in increased dependency on the information system. OPTA started three important projects within this framework in 2001:

- **Digitisation of Decisions and Files**

The objective was to digitise as much information and know-how as possible so that information and knowledge transfer can take place efficiently. In 2001, OPTA digitised all decisions from previous years and a limited number of files. In 2002, the digitised system can also be used to register incoming post, to compose a compilation of news items, or to compile a database with published articles.

- **Continuity plan**

This plan guarantees that in the event of a calamity, OPTA can continue to work on a limited scale at a different location.

- **Security Plan Review**


In order to secure the information, OPTA reviewed all of the measures in the 1999 Security Plan and modified them where necessary. The increasing attention for viruses necessitated OPTA to take strict measures in order to minimise risks.

■ 3.2 Personnel

■ 3.2.1 Growth of the organisation

The organisation grew steadily in 2001, despite the tight labour market. This caused some housing difficulties in the course of the year, making it necessary to create additional work areas and rent space on the fifth floor of the Babylon office complex. This space, where a number of Business Operations personnel work, has been rented for a period of two years. In particular, the physical distance between the Finance cluster and the rest of the organisation make this situation far from ideal. As in previous years, OPTA was once again confronted in 2001 with the limits of its personnel capacity. Because of the higher demands on the organisation's performance, work pressure was high. It was for this reason that extra attention was paid to planning and determining priorities in 2001. The high work pressure continues to be a source of concern for the management.

Although the 2001 budget provided for a significant increase in personnel, it was difficult to find candidates for a large number of vacancies. This was in part due to the specific know-how and experience required in order to work for OPTA, as well as the tight labour market. Recruitment and selection therefore placed a heavy burden on both the organisation and the budget. Nevertheless, OPTA's personnel grew in 2001 from ninety nine to one hundred and eighteen FTEs, in part thanks to the appoint-



ment of a new Recruitment and Selection adviser. This adviser utilised a variety of recruitment tools, including advertisements in daily and weekly newspapers and recruitment and selection agencies. A total of one hundred and ninety five applicants responded, thirty eight of whom were contracted with temporary or outsourcing agreements, or temporary or permanent employment agreements. Nineteen employees left OPTA in 2001. The Personnel and Organisation department developed a labour market policy in which instruments, target groups and modifications to the application procedure are proposed for the year 2002.

■ 3.2.2 Collective Labour Agreement

OPTA wants to implement an evaluation system for employee performance based on competence profiles. This system is a direct result of the Collective Labour Agreement for 2000. Preparations for implementing the system were also initiated in that year. In 2001, the details and the levels of the competence profiles were discussed with the parties involved. The system is based on the concept that, within a certain framework, each employee is his or her own manager. OPTA formulated twenty four competencies for this purpose. Each year, three evaluation interviews are held with every employee at regular intervals. The employee and his/her supervisor agree on objectives in the starting interview at the beginning of the year, and progress in achieving these objectives is discussed in a performance evaluation in the middle of the year. The cycle is completed with an evaluation interview. This system allows employees to optimally develop their skills and qualities, while managers can optimally utilise these. Implementation of this system will commence in 2002.

According to the Collective Labour Agreement for 2001, OPTA employees are entitled to a Personal Choice of Employment Conditions Package

(IKAP). The IKAP is being implemented in two phases. During the first phase, the employees can opt for payment in exchange for time off. The preparations for phase two have been made. In this phase, employees are given two opportunities each year to use the gross total sum of various allowances to finance a variety of items. Examples include using the interim or end-of-year bonus or extra days off to finance childcare, to travel first class to and from work, or to purchase a computer. The second phase will be implemented in March 2002.

Since 1 January 2001, OPTA has been using the services of Arbo Unie West. Agreements have been made with this working conditions organisation regarding OPTA's policy in the event of illness. The new company doctor was introduced to the employees during department meetings.

■ 3.2.3 Training and education

Training and education are extremely important in the knowledge-intensive telecommunications sector. New OPTA employees followed a two-day introductory course in April 2001, during which OPTA's mission was explained in more detail. The two days included presentations by employees about their work and about OPTA procedures. Telecommunication platforms, external market parties, and the Ministry of Transport, Public Works and Water Management were also present. They talked about their organisations and their relations with OPTA.

Each employee was assigned a personal education profile. The need for additional training and/or education is determined each year. OPTA also organised central courses, for example about a 'project-oriented working approach'. Six employees attended the internationally oriented course for regulators in Denmark: 'Telecom Reform: Policy Implementation Through Effective Regulation'.



■ 3.2.4 Integrity

In performing their duties, OPTA employees must avoid any type of prejudice, partiality or undesirable dependence on or relationships with social organisations, businesses or individuals. In this respect, OPTA places great import on generally accepted standards and values within its organisation. These are defined in OPTA's Integrity Code of Conduct (March 2000), which is intended to contribute to safeguarding OPTA's impartiality and independent (administrative) functioning.

Two integrity consultants advise OPTA employees regarding matters of integrity and are responsible for uniform definition and enforcement of the code of conduct. In March 2001, these consultants submitted a confidential, anonymised report to the commission concerning the number of times they were consulted and the topics on which advice was given in 2000. In 2001, these consultants gave advice in nineteen instances. Most of these involved possible acceptance by employees of appointments in the postal or telecommunication sector, and the acceptance of gifts. Where necessary, the code of conduct served as the guideline in avoiding (the appearance of) a dispute of interests or dependency on OPTA's part. Gifts were refused, for example, and the tasks assigned to employees were modified with a view to their acceptance of a position outside of OPTA. Once again in 2001, the consultants agreed that from their perspective, the integrity was not compromised in any of the cases dealt with.

■ 3.3 Quality of business operations

■ 3.3.1 Continuity of business operations

In 2001, OPTA made progress in implementing internal control measures, e.g. the monthly verification of balances. OPTA also took measures to guarantee both the necessary quality and the continuity of the

reception desk and the archives. Further attention was also paid to the details of the description and division of tasks, responsibility and competence in the administrative organisation. This was necessary as a result of the phased implementation of integral management, in which the responsibility of a head of department is determined item by item in terms of content, finance and personnel.

■ 3.3.2 Important developments

Halfway through the year 2001, OPTA reported in its midterm review to the State Secretary of Transport, Public Works and Water Management that there were problems with the budget. The Ministry did not give permission to exceed the budget as approved for 2001, meaning that OPTA rigidly restricted its expenditures in the autumn.

The financial figures showed a negative result of € 1,111,000 after deduction of interest income. This result was significantly lower than the forecast. This was caused by less income from the market parties than expected, higher costs for temporary personnel, and a strong increase in the provision for doubtful debtors. Due to this negative result, the equity decreased to € 792,000.

Part of the developments that caused budget problems were unexpected. Due to the fall back in the telecommunications market in 2001 far fewer numbers were issued and fewer new businesses registered than was planned. OPTA determines its tariffs once each year, meaning that it was not possible to modify the tariffs and therefore the income in the course of the year. In part, this had a detrimental effect on OPTA's performance of its tasks as assigned by law. Due to the complicated financing system, insight into the financial state of affairs at any given time was important. As a result, efforts could be redirected where necessary and deviations could be reported in accordance with the stipulations of

the information statute. However, this also necessitated tighter financial management.

At the end of 2001, with assistance from a number of additional temporary personnel members, a steering committee started the improvement process of the financial management and management reporting. This improvement process is part of the quality change that OPTA is striving to make, and is also important for integral management. For this purpose, a number of tasks were decentralised, for instance the budgetary responsibility. The parties responsible for the budget must have adequate instruments for controlling the budget on both the departmental and the project levels. Budgets and costs are registered for this purpose on the level of both the department and the project, while yield is registered on the level of the market category. The existing registration systems were modified for this purpose.

In order to arrive at adequate management reporting, procedures and work instructions were tightened or renewed. In 2002, progress in the activities will be discussed each month with the heads of the departments. Monthly reports will be submitted to the director.

In the course of 2002, the improvement process will be followed by an information and system analysis. This will serve to integrate the various registration processes and systems in order to improve the efficiency and effectiveness. In cooperation with the Ministry of Transport, Public Works and Water Management, a project will be started in 2002 in which key figures will be developed and working in accordance with the budgeting system 'From Policy Budget to Policy Responsibility' will be initiated. OPTA will also start a project in order to improve the quality of the primary processes.

■ 3.3.3 Problems in the organisation

Due to the tight labour market in 2001, it was difficult to find candidates for all of the vacancies on time. As a result, the work pressure remained high and many temporary employees were contracted in order to guarantee the continuity of the activities. Due to the high costs involved, budget problems occurred.

As a result of the high personnel turnover, much know-how was lost by the organisation. An attempt is being made to compensate for this in the form of competence and knowledge management.

OPTA's steady growth resulted in housing difficulties, placing an additional burden on the support services. Insufficient provision was made for the impact of the growth in the budget.

The tight financial situation caused many problems. The financial management improvement project focuses on timely identification and redirection.

■ 3.3.4 Future problems

Due to OPTA's growth, not enough work space will be available in 2002. OPTA is currently negotiating with the building owner about renting additional space in the Babylon office complex. The relocations place additional pressure on the support services.

Based on a Court decision of December 2001 regarding its fee system, OPTA expects to encounter cash-flow difficulties. Alternative means of financing are being discussed with the Ministry, therewith safeguarding the continuity of the regulator's activities.

■ 3.3.5 Measures

Negotiations with the building owner about renting additional space in the Babylon office complex. The establishment of a new financing system, based on consultation with the Ministry of Transport, Public Works and Water Management.



■ 3.4 The works council

In 2001, the Works Council approved the implementation of the first phase of the Individual Choice of Employment Conditions Package (IKAP), the Undesirable Behaviour Code of Conduct, the supplementary unemployment benefits scheme, and the block days for 2002. Items still being discussed include the Integrity Code of Conduct at the time of dismissal or resignation.

The Works Council kept a close eye on developments involving the performance evaluation as well as OPTA's budget, but did not identify any consequences on the personnel that necessitated action by the Works Council. As in 2000, in 2001 the Works Council urged OPTA to compile a personnel manual. Concrete action was taken by the Works Council in 2001 to this end. The Works Council also addressed the issues of management philosophy, work pressure, division of competencies within the organisation, guidelines for use of e-mail and the internet, a general integrity code, the company restaurant, housing, calamity plan and safety within OPTA. Finally, the Works Council initiated the procedure for the Works Council election to be held on 19 March 2002.

Two members of the Works Council left OPTA in 2001, and thus left the Works Council. The council decided not to appoint replacements for these vacancies but to finish the elected period until April 2002 with five members. These members followed a two-day course in Effective Influencing in November.

The Works Council's annual report contains more details of the activities of the Works Council in 2001.

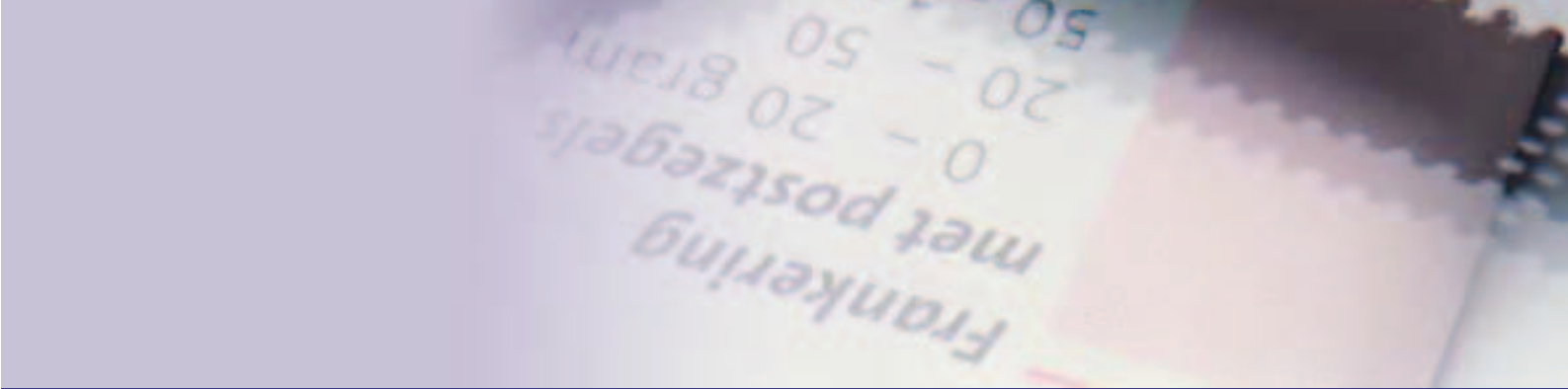
■ 3.5 Customer satisfaction survey

In order to improve the services it provides, OPTA had a customer satisfaction survey performed for the fourth time in 2001 by market research agency Heliview. The survey was performed in January 2002 and focused on organisations that have regular contact with OPTA and that perform activities in the area of post or telecommunication. Where possible, the results of the survey were compared to those of earlier surveys.

■ 3.5.1 Results and follow-up

The survey indicated that appreciation of OPTA decreased slightly. Clients gave OPTA an average grade of 6.5. This is 0.2 grade point lower than in 2000. One in every six respondents was dissatisfied and gave the regulator a grade of 5. Smaller market parties in particular and parties whose market share decreased gave lower grades. The assessment of the employees was positive, but the respondents were less pleased about how complaints and disputes were dealt with.

In the assessment of individual aspects, it was learned that the market parties are (still) dissatisfied about the manner in which OPTA keeps them informed about current affairs. Although OPTA's telephone availability was good, the respondents indicated that it was difficult to get the right individual on the line. Lower scores were also given for: the response and working speed, flexibility, complying with agreements and administrative processing. Thirty percent of the respondents indicated that they had participated in at least one OPTA consultation procedure. This was one percent more than in the year 2000. Twenty two percent of these parties indicated that they felt that their opinions were not taken into consideration sufficiently, while only thirteen percent indicated this in 2000. Most of the



respondents had also visited the OPTA website. The reactions to the website were extremely diverse, as in previous studies.

In 2001, OPTA devoted considerable effort to improving the services it provides. For example, it compiled an OPTA Dispute Procedure (PGO). The PGO gives the standard process rules for certain disputes so that the parties know what to expect when they submit a dispute. The disputes that fall under the scope of the PGO are: interconnection (including tentative decisions), special access (including tentative decisions), site sharing and cable access. OPTA also compiled rules for dealing with written complaints about how the organisation functions. These involved complaints about the manner in which OPTA functions as an administrative body or actions taken by OPTA employees with reference to third parties. This complaint procedure is a response to the study results compiled in the OPTA evaluation report, which indicated that no formal complaint procedure existed.



■ 3.6 Key figures

Numbers	Numbers assigned and reserved in 2001	Number of requests being processed on 1-1-2001	Number of requests in 2001
Information numbers	11,829	162	4,116
Other numbers	9,608,252	18	177

Registrations	Number of new registrations in 2001 In	Exiting parties Out
Public telecommunication networks	22	14
Public telecommunication services	43	32
Leased lines	10	11
Broadcasting networks	3	10
Systems for conditional access	0	2
Network connection point	31	3
Total	109	72

Disputes	Number of disputes submitted in 2001	Number of disputes being processed on 1-1-2001	Number of dispute decisions in 2001	Number of disputes withdrawn in 2001	Number of disputes being processed on 31-12-2001	Number of disputes not being processed on 31-12-2001
Fixed telecommunication						
• regarding interconnection tariffs	2	1	2	0	1	0
• regarding special access (excluding MDF-access)	2	1	2	1	0	0
• regarding MDF access	4	3	5	2	0	0
• regarding carrier (pre)selection	0	1	1	0	0	0
Leased lines	0	0	0	0	0	0
Mobile telecommunication						
• regarding site sharing	0	0	0	0	0	0
• regarding special access	1	1	1	0	1	0
Broadcasting						
• regarding cable access	6	2	1	2	3	2
Delivery of subscriber data for telephone directories	4	0	4	0	0	0
Post	2	0	2	0	0	0
Miscellaneous	10	2	4	4	1	3
Total	31	11	22	9	6	5

Complaints and queries	Number received in 2001
By telephone	1,233
By post	456
By e-mail	1,332
Total	3,021

Number of complaints about OPTA to the National Ombudsman	Number of complaints about OPTA in 2001
Total	0

Objections and appeals	Number being processed on 1-1-2001	Number submitted in 2001	Number concluded in 2001	Number being processed on 31-12-2001
Objection notices	65	114	105	74
Appeals	38	13	23	28

Appeal to higher court	Number of cases in 2001
Total	1

Hearings	Number of hearings in 2001
Total	47

Communication	Number in 2001
Connecties	9
Collecties	1
OPTAter	9
Speeches	6
Press releases	16
Press conferences	3

Number of Personnel 2001	As of 1-1-2001	As of 31-12-2001
Formation	99	118
Personnel employed	99	118
	Jan through Dec 2001	
Formation composition	117	
Total of salaries* (* 1000 Euro)	5,455	
Average salary (* 1000 Euro)	46	

* total of salaries including taxes paid, excluding allowances

Allowances and dismissal bonuses	Jan to Dec 2001
Official allowances (costs) (* 1000 Euro)	25,045
Official allowances (number)	3
First aid allowances (costs) (*1000 Euro)	2,078
First aid allowances (number)	8
Dismissal bonuses (* 1000 Euro)	0
Misc. personnel expenses (* 1000 Euro)	141
Remuneration commission and associated members (* 1000 Euro)	175

■ 3.7 Annual accounts

Balance sheet

	31 december 2001 x € 1,000	31 december 2000 x € 1,000
ASSETS		
Fixed assets		
Intangible fixed assets:		
• Formation expenses	408	490
Tangible fixed assets:		
• Tenant's property	784	852
• Equipment	270	287
• Computer hardware and software	572	751
	2,034	2,380
Current assets		
• Receivable from the Ministry of Transport, Public Works and Water Management	259	-
• Receivables from debtors	869	3,604
• Other receivables	255	801
	1,383	4,405
TOTAL ASSETS	3,417	6,785
LIABILITIES		
Shareholders' equity		
• General reserve	384	231
• Tariffs reserve	-	1,182
• Formation expenses capitalisation reserve	408	490
	792	1,903
Provisions		
• Provision for appeals	180	267
	180	267
Long-term liabilities		
• Loans extended by Ministry of Transport, Public Works and Water Management	653	817
	653	817
Current liabilities		
• Debts to credit institutions	135	1,001
• Debt to Ministry of Transport, Public Works and Water Management	-	471
• Debts to suppliers	531	901
• Taxes and social insurance premiums	232	181
• Other liabilities	894	1,244
	1,792	3,798
TOTAL LIABILITIES	3,417	6,785

Profit and loss account

	Realised 2001 x € 1,000	Budget 2001 x € 1,000	Realised 2000 x € 1,000
INCOME			
Revenues from market categories	10,725	11,165	9,734
Other income	1,789	1,632	1,124
TOTAL INCOME	12,514	12,797	10,858
EXPENDITURE			
Personnel costs			
• Salaries and social insurance charges	5,562	5,714	4,693
• Other personnel costs	2,857	1,949	1,524
	8,419	7,663	6,217
Third-party assignments	2,218	2,581	1,785
Costs of equipment	1,980	2,214	2,174
Depreciation	780	860	786
Provision for doubtful debtors	275	-	67
TOTAL EXPENDITURE	13,672	13,318	11,029
OPERATING RESULT	- 1,158	- 521	- 171
Interest income	47	-	54
RESULT	- 1,111	- 521	- 117

Capital expenditure and income account

	Realised 2001 x € 1,000	Realised 2000 x € 1,000
Capital goods expenditure	434	964
Repayments	164	163
Result	1,111	117
TOTAL CAPITAL EXPENDITURE	1,709	1,244
Depreciation	780	786
TOTAL CAPITAL INCOME	780	786
NET CAPITAL EXPENDITURE AND INCOME	- 929	- 458

Cash flow statement

	Realised 2001 x € 1,000	Realised 2000 x € 1,000
Result	- 1,111	- 117
Depreciation	780	786
Increase in receivables	3,022	- 1,711
Decrease in provisions	- 87	197
Increase in current liabilities	- 1,140	213
NET CASH FLOW FROM OPERATIONAL ACTIVITIES	1,464	- 632
Investments in tangible fixed assets	- 434	- 964
NET CASH FLOW FROM INVESTMENT ACTIVITIES	- 434	- 964
Decrease in long-term liabilities	- 164	- 163
NET CASH FLOW FROM FINANCING ACTIVITIES	- 164	- 163
NET CASH FLOW	866	- 1,759
Liquid assets as at 1 January	- 1,001	758
Liquid assets as at 31 December	- 135	-1,001
MOVEMENTS IN LIQUID ASSETS	866	- 1,759

Notes to the OPTA balance sheet as at 31 December 2001 and the Profit and Loss Account for 2001

■ 1 Principles of valuation

■ General

The amounts in the balance sheet as at 31 December 2000 are shown in the balance sheet as at 31 December 2001 for the purpose of comparison. The profit and loss account includes the budgeted amounts for 2001 and the amounts realised in 2000. Assets and liabilities are shown at face value, unless specified otherwise.

■ Intangible fixed assets

The intangible fixed assets relate to OPTA's formation expenses. These capitalised costs are shown at historical cost, less depreciation to year-end 2001. Depreciation is on a straight-line basis over a period of ten years. On the basis of the agreements made with the Ministry of Transport, Public Works and Water Management, and the independent OPTA, depreciation costs are passed on to the market parties in the tariffs.

■ Tangible fixed assets

Tangible fixed assets are shown in the balance sheet at cost, less depreciation to year-end 2001. Depreciation is on a straight-line basis, based on the estimated useful life, which varies from 3 to 10 years. The depreciation periods are as follows:

Tenant's property (= immovables)	5 to 10 years
Equipment (=equipment and office machines)	5 years
Computer hardware and software	3 to 5 years

■ Receivables

Receivables are shown at face value, less the provision considered necessary for doubtful debtors.

■ Principles for the determination of the result

Revenues and cost are stated in accordance with the income and expenditure system. The full costs are charged on to the market parties in the pricing, except for the costs of appeals and of advising the Minister.

■ Revenues from and costs of market categories

The grounds for market parties tariffs are laid down in the Telecommunications Act, the Telecommunications Act Fees Decree, the Postal Act and the Postal Act Remuneration Decree, as well as the Independent Post and Telecommunications Authority Act.

The cost-covering tariffs to be charged to the market parties are approved each year by the Minister of Transport, Public Works and Water Management, and published annually in the

State Gazette as the “OPTA fees regulation”. Tariffs are determined on the basis of the profit principle. The costs of appeals, amounting to € 1,640,000 and the costs of advising the Minister, amounting to € 144,000 form an exception here. These costs are borne by the Ministry of Transport, Public Works and Water Management on a subsequent costing basis.

■ 2 Intangible fixed assets

OPTA’s formation expenses are shown in the balance sheet as intangible fixed assets. Movements in formation expenses can be analysed as follows (x € 1,000):

	Formation expenses
Cost to year-end 2000	817
Depreciation to year-end 2000	- 327
Book value as at 31 December 2000	490
Depreciation 2001	- 82
Book value as at 31 December 2001	408

■ 3 Tangible fixed assets

Movements in tangible fixed assets can be analysed as follows (x € 1,000):

	Tenant’s property	Equipment	Computer hardware and software	Total tangible fixed assets
Costs to year-end 2000	1,002	528	2,040	3,570
Depreciation to year-end 2000	- 150	- 241	- 1,289	- 1,680
Book value as at 31 December 2000	852	287	751	1,890
Investments in 2001	34	94	306	434
Depreciation in 2001	- 102	- 111	- 485	- 698
Book value as at 31 December 2001	784	270	572	1,626



■ 4 Current assets

■ Receivables from the Ministry of Transport, Public Works and Water Management

The receivables from the Ministry of Transport, Public Works and Water Management can be analysed as follows (x € 1,000):

	31 December 2001	31 December 2000
Repayment instalment	- 163	- 163
Settlement advance payments Ministry:		
• Appeals	506	- 90
• Advice	- 84	- 218
	259	- 471

The receivables from the Ministry to the sum of € 259,000 consists of the repayment instalment on the long-term loan to the sum of € 163,000 to be paid in 2002 and the settlement of the advance payments received with reference to appeals and advice to the Ministry. The Ministry has indicated that it approves the settlement as compiled by OPTA for the costs of appeals and advice.

■ Receivables

Receivables can be analysed as follows (x € 1,000):

	31 December 2001	31 December 2000
Receivables from debtors	1,235	3,704
Provision for doubtful debtors	- 366	- 100
	869	3,604

A provision calculated as follows is included for receivables from debtors (market categories) older than two months:

in the case of receivables older than 12 months a 100%; provision is formed.

in the case of receivables of between 2 and 12 months old and for amounts in excess of € 4,500, a specific evaluation is carried out and, if necessary, a provision formed.

OPTA has appealed a decision rendered by the Court of Rotterdam regarding a contested invoice for remuneration of the annual regulation costs for 1999 to a party with significant market power, totalling € 444,000. The market parties contest the principle of profit upon which the "Remuneration OPTA regulation" is based. The manner in which this principle is applied must be revised, according to the court. In anticipation of a decision in this appeal, OPTA has suspended processing appeals against fees invoiced for annual regulation in 2000 and 2001 for parties with significant market power, to a total of € 8,250,000. If the appeal is not decided in OPTA's favour, OPTA will enter into consultation with the Ministry of Transport, Public Works and Water Management regarding a different financing system to be applied retroactively.

■ Other receivables

Other receivables can be analysed as follows (x € 1,000):

	31 December 2001	31 December 2000
Amounts still to be invoiced	-	447
Pre-paid amounts	100	102
Costs to be charged on in respect of disputes	90	39
Miscellaneous	65	213
	255	801

The costs to be charged on in respect of disputes concern extra expenses incurred by OPTA in order to be able to give an opinion on reported disputes. These costs will be claimed from the relevant market parties.

■ 5 Shareholders' equity

Shareholders' equity can be analysed as follows (x € 1,000):

	31 December 2001	31 December 2000
General reserves		
Balance as at 1 January	231	302
Withdrawal	153	- 71
Balance as at 31 December	384	231
Tariffs reserve		
Balance as at 1 January	1,182	1,001
Allocation	- 1,182	181
Balance as at 31 December	-	1,182
Formation expenses capitalisation reserve		
Balance as at 1 January	490	572
Release	- 82	- 82
Balance as at 31 December	408	490
Balance	792	1,903



NEE

JA

The principles for the formation of OPTA's shareholders' equity were laid down in the policy document 'Financial Principles of Privatisation of Supervision, Networks and Services Management'. OPTA and the Ministry of Transport, Public Works and Water Management agreed upon some additions to these regulations, allowing OPTA to form appropriated reserves for tariffs and investments.

The tariffs reserve serves to process the result of the various market categories for settlement in future tariffs. The investment reserve represents a portion of the result that may be formed to increase OPTA's financial scope for investment purposes.

Negative results will first be offset from the investment reserve and subsequently, if this is not sufficient, from the general reserve.

■ General reserves

The policy document 'Financial principles of privatisation of Supervision, Networks and Services management' provides that € 45,000 may be added to the General Reserve annually, to a maximum of € 681,000. However, this allocation depends on the prescribed minimum for the formation expenses capitalisation reserve and on the result for the financial year.

Of the part of the results consisting of income from interest and other income in 2001 to the sum of € 52,000 the maximum of € 45,000 has been allocated for general reserves. The remainder, to the sum of € 7,000, is allocated to the investment reserve. In the allocation of the results 2001, the deviation in the year 2000 has been rectified by the addition of € 108,000.

■ Tariffs reserve

A tariffs reserve was formed as from 1999. The balance of € 1,182,000 formed up to year-end 2000 will flow back to the market parties in future years. This amount represents the net realisation and budget of the revenues by market categories and the net realisation and budget of the expenditure by market categories. The negative result over the market categories in 2001 of € 1,163,000 is deducted from this tariffs reserve. In the allocation of the results 2001, the deviation in the year 2000 has been rectified.

■ Formation expenses capitalisation reserve

OPTA's formation expenses capitalisation reserve was still € 408,000 at year-end 2001. This reserve is maintained at the level of the capitalised formation expenses. In 2001 there was a release of € 82,000 to the investment reserve.



■ 6 Provisions

Provision for appeals

OPTA decided to reduce the provision for appeals to € 180,000. This provision relates to appeal cases concerning contested invoices for supervision and registration and to settlement of disputes.

■ 7 Long-term liabilities

Upon OPTA's formation, the Ministry of Transport and Public Works extended two interest-free loans, each amounting to NLG 1,800,000, in order to finance the transfer of fixed assets. The loans are repayable in 10 equal annual instalments, the fifth of which, amounting to € 163,000, was effected in 2001.

■ 8 Current liabilities

■ Debts to credit institutions

Debts to credit institutions can be analysed as follows (x € 1,000):

	31 December 2001	31 December 2000
Cash in hand	3	-
ING-bank	- 121	- 517
Postbank	- 17	- 487
ABN-Amro	-	3
	- 135	- 1,001

■ Other liabilities

Other liabilities can be analysed as follows (x € 1,000):

	31 December 2001	31 December 2000
Holiday allowance	206	154
Holiday entitlement	191	150
Invoices still to be received	382	442
Turnover invoiced in advance	-	454
Miscellaneous	115	44
	894	1,244

Provision has been made for holiday entitlement not yet taken up. The item 'invoices still to be received' relates to invoices for third-party activities in 2001, which had not been received prior to the balance sheet date.



■ 9 Commitments not shown in the balance sheet

OPTA rents office space in the Babylon building at Koningin Julianaplein in The Hague. The ten-year lease runs until 31 December 2009, and may be dissolved after five years. The total rental charge for 2002 (including service costs) is € 631,000. Bank guarantees were issued for three months rent. Space is also temporarily rented for € 55,000. Other commitments entered into as at the balance sheet date concern € 218,000 for research and consultancy assignments and € 230,000 for temporary personnel.

■ 10 Average number of employees

The average number of employees in 2001 was 113 (2000: 103).

■ 11 Remuneration of board members

Commission members received remuneration of € 247,000, including travel expenses in 2001 (2000: € 161,000). In addition, they received payments and contributions of € 32,000 (2000: € 11,000).

■ 12 Revenues from and costs of market categories and other categories

OPTA's revenues stem from its statutory obligations in relation to registration and supervision. In order to ascertain whether and to what extent the market parties concerned have complied with the statutory obligations, OPTA carries out an enforcement policy. The Annual Report provides an insight into the way in which OPTA carries out its supervisory activities and, therefore, how it obtains assurances of the legitimacy of the market parties' revenues.

Income and expenditure by market categories is analysed as follows (x € 1,000):

	Realised 2001	Budget 2001	Realised 2000
INCOME			
Revenues from market categories:			
Public telecommunications networks	2,338	2,444	2,259
Leased lines	476	492	614
Broadcasting networks	781	755	701
Public telecommunications services	3,123	3,269	1,874
Systems for conditional access	373	436	133
Mobile infrastructure licences	497	495	719
Numbers	2,230	2,367	2,889
Post and post courier concession	907	907	545
Subtotal of market categories	10,725	11,165	9,734
Other income:			
Costs of appeals	1,640	1,331	1,019
Advice to the Minister	144	301	27
Other income	5	-	78
Subtotal of other income	1,789	1,632	1,124
TOTAL INCOME	12,514	12,797	10,858
EXPENDITURE			
Expenditure on market categories:			
Public telecommunications networks	2,658	2,454	2,291
Leased lines	612	513	628
Broadcasting networks	848	800	726
Public telecommunications services	3,351	3,209	1,934
Systems for conditional access	439	382	211
Mobile infrastructure licences	534	564	677
Numbers	2,649	2,818	2,952
Post and post couriers concession	797	946	564
Subtotal of market categories	11,888	11,686	9,983
Other expenditure:			
Costs of appeals	1,640	1,331	1,019
Advice to the Minister	144	301	27
Subtotal of other expenditures	1,784	1,632	1,046
TOTAL EXPENDITURE	13,672	13,318	11,029
BALANCE OF INCOME AND EXPENDITURE	- 1,158	- 521	- 171



Other information as at 31 December 2001

■ 1 Auditor's report

■ Assignment

We have audited the 2001 annual accounts of OPTA. These annual accounts were drawn up under the responsibility of OPTA's Commission. Our responsibility to express an opinion on these annual accounts, based on our audit.

■ Activities

Our audit was conducted in accordance with auditing standards generally accepted in the Netherlands. These standards require that we plan and perform our audit to obtain a reasonable assurance that the annual accounts are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the annual accounts. An audit also includes an assessment of the accounting principles used and significant estimates made by management, as well as an evaluation of the overall presentation of the annual accounts. In our view, our audit forms a sound basis for our opinion.

■ Assessment

In our opinion, the annual accounts provide a true and fair view of the OPTA's financial position as at 31 December 2001 and the result for the year then ended in accordance with accounting principles generally accepted in the Netherlands and that the income and expenditure shown in the annual accounts also comply with the applicable provisions of the OPTA Act.

■ Explanation

Without prejudice to our assessment, we request attention for point 4 in the notes to the annual accounts, in which it is explained that OPTA has appealed a decision rendered by the Court of Rotterdam. This appeal could make it necessary to refund the annual fee for regulation for parties with significant market power over the years 1999 t/m 2001. If this is the case, a different financing system will have to be defined to be applied retroactively, based on consultation with the Ministry of Transport, Public Works and Water Management.

The Hague, 3 April 2002
PricewaterhouseCoopers N.V.

■ 2 Proposed appropriation of the results

The Commission has decided to appropriate the loss of € 1,111,000 for the year 2001 as follows:

1. € 153,000 is added to the general reserves;
2. € 82,000 is withdrawn from the investment reserve;
3. € 1,182,000 is withdrawn from the tariffs reserve.

This decision is incorporated in the annual accounts.



Appendix **1** Legal tasks and competencies

OPTA regulates the compliance with legislation and regulations in the area of telecommunication and post. These include the Telecommunications Act, the Postal Act, the relevant regulations at lower levels associated with these Acts and European regulations. The most important tasks and authorities ensuing from this legislation and these regulations are:

- Designating parties with Significant Market Power;
- Mediating in disputes between providers;
- Approving interconnection and end-user tariffs;
- Issuing telephone numbers;
- Protecting privacy;
- Supervising the post concession.

■ 1.1 Designating telecommunication companies with significant market power

OPTA determines which providers of telecommunication networks and services hold significant market power (SMP). These are normally parties holding a market share of more than twenty five percent. They are subject to extra obligations, in particular with reference to non-discrimination, transparency and (primarily) cost-oriented tariffs. For example, if a provider with SMP makes a service or product available to itself or its subsidiary, it must also make it available to other parties at the same conditions.

■ 1.2 Mediating in disputes

OPTA mediates in disputes between providers. These are primarily disputes in the area of interconnection and special access, as well as the conditions and tariffs to be agreed to by the parties.

■ 1.3 Approving interconnection and end-user tariffs

Providers with significant market power (SMP) must apply cost-oriented interconnection tariffs. In order to verify this, these providers must apply a cost allocation system that makes it possible to determine whether the tariffs are truly cost-oriented. OPTA approves these systems. OPTA also ensures that providers make the conditions under which they provide interconnection transparent.

OPTA also regulates the end-user tariffs for fixed telephony and for leased lines. This ensures that providers with SMP do not exercise that power at the expense of the end-user. They can do so by applying high tariffs that are not based on the underlying costs. This measure also prevents these providers from subsidising the competition in market sectors with competition from profits ensuing from high tariffs in markets where there is less competition (cross-subsidy).

■ 1.4 Issuing telephone numbers

OPTA issues regular telephone numbers as well as what are known as information numbers. This is done based on number plans. A number plan indicates the designated use of certain telephone numbers. Existing and new providers can request these numbers from OPTA, often by the thousands. OPTA also reserves numbers for longer-term number requirements. OPTA registers all numbers issued. This register is public, meaning that everyone can see which numbers have already been issued and which are still available.

■ 1.5 Protecting privacy

An entirely different OPTA task is enforcing certain provider obligations in the area of privacy. It must be possible for a caller to prevent his or her telephone number being made known to the called party, for example. That party would then be able to approach the caller with un-requested services. OPTA makes sure that the telecommunication providers comply with these rules.

■ 1.6 Regulating the post concession

OPTA is responsible for the regulation of the execution of the tasks allocated to the concession holder TNT Post Group (TPG) under the provisions of the Postal Act. In particular, this involves regulation of the tariffs and quality of TPG services on markets in which TPG holds a monopoly (the 'concession'). OPTA also regulates the administrative distinction within TPG between activities that are performed in competition and activities in which TPG holds a monopoly position.

■ 1.7 Competencies and enforcement

In order to exercise its regulation, OPTA can take a number of measures:

- Requesting information and perusal of documents;
- Determining rules with reference to disputes between providers;
- Issuing fines of up to € 453,780 if the law is violated;
- Issuing fines to force compliance with the law;
- Revoking issued numbers in certain cases.

Appendix 2 The organisation

The OPTA Commission is assigned tasks and responsibilities by law. In executing these, the Commission members are assisted by the members of the OPTA bureau. The organisation of this bureau can be characterised as 'flat'. Advisors are active in the various relevant fields who must be quickly able to perform independently with a high level of personal responsibility. The markets that OPTA regulates are continually changing. The dynamics of the internal and external environment make OPTA a preferred employer for college and university graduates. The OPTA bureau is managed by the director, who also attends the Commission meetings as an advisor. The OPTA bureau has seven departments. The OPTA Commission and bureau are briefly described in this section.

■ 2.1 The Commission

The OPTA Commission consists of three independent experts appointed by the Minister of Transport, Public Works and Water Management, each with their own area of expertise:

L.Y. Gonçalves - Ho Kang You;

H.A. van Karnebeek, vice-chairman;

J.C. Arnbak, chairman;

H.C. Bakker, Commission secretary and director of the OPTA bureau.

■ 2.2 The Bureau

The OPTA bureau's seven departments are: End-user market, Interconnection, Numbers & Registration, Strategy & Coordination, Legal Affairs, Business Operations, and Communication.

The **End-user market department** regulates the end-user tariffs (including discount regulations and regional tariff differentiation), obligations for fixed connections and telephony, general rules of service, privacy, universal service, licence conditions, mobile

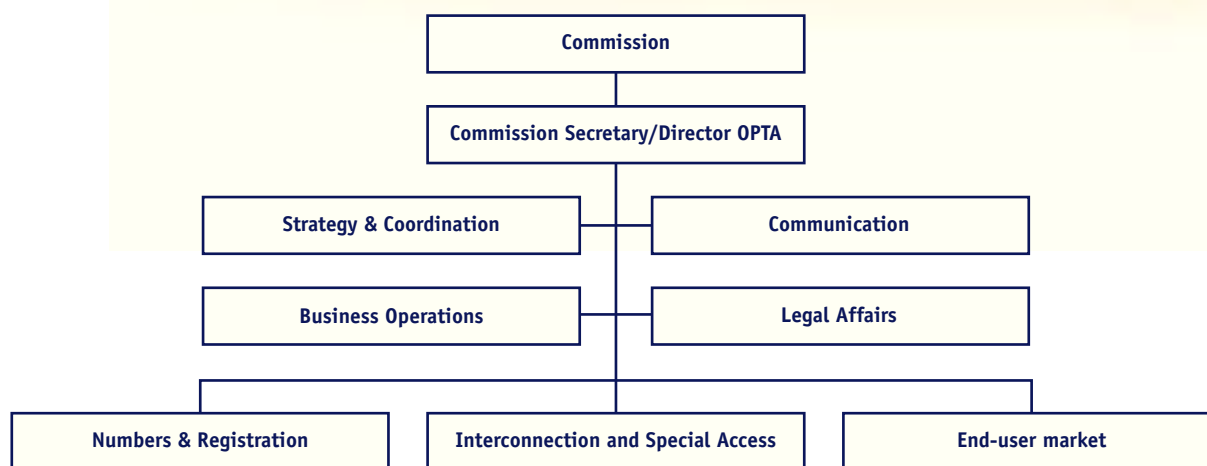
telephony and post. This department coordinates advice to the Minister in the allocation of frequencies for telecommunication.

The **Interconnection and Special Access department** is responsible for processing interconnection disputes, disputes about special access, and disputes about cable access. The department regulates various interconnection and special access aspects and infrastructure issues, e.g. tolerance regulations and site sharing. Access to the cable and conditional access systems are also the responsibility of this department, as is the level of interconnection tariffs.

The **Numbers & Registration department** is responsible for issuing numbers and enforcing correct use of series of numbers by providers. Registers are compiled for this purpose that can be publicly accessed via the website. A new task is regulating the registration of the electronic signature. The bureau Number Issuing and Registration Services issues individual information numbers, including 0800 and 0900 numbers and what are known as alphanumeric numbers.

The **Strategy & Coordination department** coordinates in matters that go beyond the department level, the coherency of OPTA policy, and consultation with external organisations. The department is responsible for monitoring plans and ensuring that decision making by the OPTA Commission is properly prepared and organised. The department maintains contact with the Ministry of Transport, Public Works and Water Management as well as other ministries, with the Netherlands Competition Authority, NMa, and with international organisations including the European Commission and the Independent Regulators Group. Strategy & Coordination also

Figure 1 OPTA's organisational structure



serves as a kind of think tank for the organisation, and develops long term strategic insights.

The **Legal Affairs department** processes objections and appeals, provides legal support to OPTA personnel and Commission members, evaluates proposed legislation and regulations, and monitors the required legal quality standards within OPTA. Legal Affairs serves OPTA as an internal law firm.

The **Business Operations department** is responsible for finance, personnel and organisation, facility management, and automation. Facility management includes the housing, reception desk, mail processing, archive tasks, and all other matters with the objective of contributing to smooth running of the operational processes within OPTA.

The **Communication department** develops the internal and external communication policy for OPTA. In addition to contacts with members of the press, publication of the magazine Connecties and supplying information via the website, this department is also responsible for OPTA's brochures. Internal policy is implemented through functions

including the library and documentation, the intranet, and the publication of an internal newsletter. The department also manages improvements in the exchange of knowledge and information in the knowledge management project.



Appendix **3** Decisions and events

January

- OPTA relaxes the requirements for use of short information numbers.

February

- OPTA publishes guidelines for price squeeze.
- OPTA gives recommendations regarding the allocation of Tetra and FM radio frequencies.

March

- OPTA obliges KPN to give competitors insight into the costs and the possibilities for installation of their equipment in its exchanges.
- OPTA publishes policy rules for the trade in telephone numbers.
- Designation of KPN as provider with significant market power withdrawn for the market for leased lines with a capacity of more than 2 Mb per second.

April

- OPTA publishes its policy rules for interconnection tariffs and tariff regulation.
- CBB allows OPTA to apply rules to site sharing.
- OPTA supplies recommendations regarding the national aerial policy.

May

- OPTA publishes policy rules for the obligation to supply leased lines.
- OPTA issues the number 118 to Denda for its subscriber information service.
- OPTA decides that quality measurement of post delivery is insufficient.

June

- OPTA decides that KPN Telecom must provide a temporary connection with the KPN network for XOIP so that XOIP can supply the Unified Messaging service.
- OPTA withdraws the obligation of number portability under threat of a judicially imposed penalty for all providers of mobile telephony.
- OPTA evaluates the reference offer for unbundled access to the KPN local loop.
- OPTA publishes its policy rules for number portability and dialability.

July

- OPTA determines the tariff ceilings for KPN end-users.
- OPTA determines the new tariffs for interconnection and special access services.
- OPTA approves a price model compiled by KPN for uncoupling of internet traffic via a 06760 number.
- OPTA renders its decision on the conditions that TPG may place on access to the post office boxes.
- Government decides on the basis of an assessment that OPTA will remain independent for the next four years.



August

- KPN changes interconnection tariffs for local traffic.
- OPTA requests fixed telephony providers to report on the quality of products and services.
- Outcome of dispute between KPN and BaByXL: KPN must give insight into actual cost collocation.
- OPTA decides that the plug may not yet be pulled on Cistron.

September

- OPTA evaluates the executability of draft rules for electronic signature.
- OPTA, the NMa and DGTP clarify the limits of cooperation in implementing and using UMTS networks.

October

- OPTA determines that TPG's objections to rules for approval of the cost cost allocation system are unfounded. TPG files an appeal with the court.
- With reference to a dispute between Energis and KPN, OPTA renders its decision on the reasonability of KPN competitors' interconnection tariffs.
- OPTA publishes new guidelines for SMP designation on the leased line market.
- OPTA informs TPG about the manner in which it is to report annually about the post office policy 2001 – 2005.

November

- OPTA consults with the market on special access to mobile networks.
- KPN must give other providers shared access to the local loop at a cost-oriented tariff.
- FRIACO restrictions lifted.

December

- OPTA extends the designation of KPN as provider with significant power on the market for fixed telephony.
- OPTA withdraws the designation of Libertel as provider with significant power on the mobile market.
- OPTA publishes the consultation document 'Regulation of mobile terminating tariffs'.
- OPTA and the NMa report on internet access and distinguish between separate markets for narrowband and broadband internet.

Appendix 4 Glossary

Alphanumeric numbers

Also referred to as name numbers – refer, for example, to the name of a company, organisation or brand. Because the digits on the telephones correspond with letters, a word is the same as a certain number.

AMVB

General ordinance.

Asymmetric Digital Subscriber Line (ADSL)

Method of transporting fast internet traffic in one direction and slower traffic back. For example: 2 Mbit/s up and 16 Kbit/s down, as a result of which broadband services (e.g. moving images) can be transferred over the telephone line.

Bottom Up-Long Range Incremental Cost system (BULRIC)

System with which costs for terminating telephone traffic are calculated. The system is based on the costs incurred by an efficient operator.

Broadband internet access

Access to the internet via cable, satellite or xDSL, e.g. ADSL.

Carrier selection/pre-selection

Method by which a telephone subscriber can have a call terminated by an alternative telecommunication provider by selecting four digits. With carrier pre-selection, this is done automatically.

Collocation

Providing housing in a local exchange in which parties (other than KPN) gain access to the local loop to the subscribers.

Commissariat for the Media

Regulates effectuation of the Media Act, which is oriented towards independent and pluriform development of the broadcasting sector in the Netherlands.

Concession (holder)

The Government has assigned a number of tasks to TPG. The assignment consists of reserved services (concession) and the other assigned services. The concession includes letters weighing up to one hundred grams. Letters and printed matter weighing up to two kilograms and parcels up to ten kilograms are included in the other assigned services.

Consultation document

A document discussing an important telecommunication or postal topic with which OPTA informs interested parties of its opinion, the decisions it intends to make, and the issues it must address, with the request that the parties respond.

Convergence

Conglomeration of multiple sectors, e.g. telecommunications, media, information technology and broadcasting.

Cost allocation system post

System that determines that the costs and yield will be proportionately divided over the three categories of services: the reserved, other assigned and unrestricted services.

Cost-oriented prices

Prices based on actual costs plus a reasonable profit margin.

Cross subsidy

Subsidising of commercial activities with money from the regular concession activities.

Embedded Direct Costs (EDC) model

System with which the interconnection tariffs for collecting telephone traffic to be charged by KPN are determined. In this respect, the costs actually incurred by KPN are determinant.

European Economic Area

Expansion of the internal market as determined by treaty with the relevant Community regulations to the countries in the European Free Trade Association.

European Free Trade Association

Association of non-EU countries that collectively form a free trade zone.

Ex ante regulation

Regulation before the fact.

Ex post regulation

Regulation after the fact.

Flat Rate Internet Access Call Origination (FRIACO)

Wholesale service supplied by KPN to other providers or internet service providers. FRIACO enables these providers to purchase a fixed quantity of capacity for a flat rate per month, with which they can offer end-users with a connection on KPN's fixed network internet access. The end-users must dial up with a 06760 number for this purpose.

Forum for interconnection and special access (FIST)

Platform established on the basis of an OPTA initiative in which market parties consult with one another regarding interconnection and special access.

General Postal Guideline Decree (BARP)

Regulations under the Postal Act in which the concession holder (TPG) is assigned certain obligations.

HDPE pipes

Empty protective pipes for cables.

Implementation report

Annual report from the European Commission regarding developments in the telecom sector.

Incumbent

Former monopolist.

Independent Regulators Group (IRG)

Forum of national regulators from the Member States of the European Union and the European Economic Area in the area of telecommunication.

Information Service Code Foundation (STIC)

Regulates use of information numbers by providers of information services and platform providers.

Integral management

The management is assigned responsibility for the entire departmental policy (personnel, finance).

Integrated Services Digital Network (ISDN)

Public telecommunication network based on international standards. Makes it possible to offer multiple telecommunication services over the network simultaneously.

Interconnection

Coupling of communication networks enabling users of one network to communicate with users connected to a different network.

**International Telecommunications Union (ITU)**

Worldwide treaty organisation, part of the United Nations, in which Member States agree on effectuation of the international telecommunication policy.

Letter monopoly

TPG's exclusive right (concession) to deliver letters weighing up to one hundred grams.

Line sharing

See unbundled access.

Local loop

The part of KPN's fixed network between the local exchange and the connection in the subscriber's home.

Local traffic (BIBA)

Telephone traffic within an area code and the neighbouring area codes.

Long distance traffic (BUBA)

Telephone traffic over a longer distance.

Mediation

The parties themselves resolve a dispute under the direction of an independent third party.

Metered Internet Access Call Origination (MIACO)

A wholesale service in KPN's fixed network that supplies competitors with access capacity at a time-related tariff with which they can offer their customers access to the internet. The end-users must dial up with a 06760 number for this purpose.

Narrowband internet access

Access to the internet via the normal, analogue telephone line: up to 128 Kbit/s, based on a maximum of two ISDN channels.

National Regulatory Authority (NRA)

National (telecom) regulator

Netherlands Competition Authority

The Netherlands Competition Authority (NMa) regulates compliance with the general Competition Act.

Number plan

A number plan from the Ministry of Transport, Public Works and Water Management indicates how (telephone) numbers are divided, their intended use (e.g. geographic numbers) and which series of numbers are available.

ONP Leased Lines and Telephony Decree (BOHT)

General ordinance that describes the obligations of providers of leased lines or fixed telephone services.

ONP Review

Review of the European telecommunications legislation and regulations that commenced in 1999.

Open Network Provision (ONP)

The European ONP directives form a framework with reference to guaranteeing access to and use of generally accessible telecommunication networks and services under reasonable conditions. The directives also pertain to guaranteeing the availability of a minimum package of facilities.

Originating access

Collecting a telephone call by an alternative provider from a subscriber from a different network provider.



Personal assistance service (084 and 087 numbers)

Subscribers can be reached at varying connection sites with 084 and 087 numbers, and the subscriber can select the method by which the message reaches him/her, via fax, voice mail or e-mail.

Price cap (tariff ceiling)

System of determining tariffs based on ceilings (maximum tariffs) for a given period.

Price squeeze

Occurs when KPN's end-user tariff is lower than the price competitors must pay to KPN in order to provide the same service to consumers. When this difference is too small, the company does not make enough profit to compete with KPN. The competitor is literally squeezed.

Radio communications agency

Responsible for management of the radio frequency spectrum in the Netherlands.

Rebalancing

By rebalancing, the tariffs for telephone subscribers are modified in such a way that the traffic-independent element (e.g. the subscription) is no longer incorporated into the traffic-dependent elements (e.g. the calls).

Reference Interconnection Offer (RIO)

Catalogue of the possibilities, conditions and tariffs that KPN can offer its competitors in the area of interconnection.

Registration board

Independent administrative body that regulates compliance with the laws that regulate use of personal data. Changed in September 2001 into the Commission for Protection of Personal Data (CPB).

Significant market power (SMP)

OPTA designates a provider as having SMP if the provider holds a market share of more than twenty-five percent on the relevant market. However, exceptions are made. For example: the ability to influence the market or experience in supplying products and services on the market. Designation as a party with SMP brings obligations.

Special access

Access to communication networks at locations other than the network connection points that are provided to most users.

Tariff control system

Mechanism that ensures that the postage tariffs increase slightly more than a percentage that is related to the inflation.

Telecommunications Act (TA)

Act effectuated on 15 December 1998, Stb. 610, 1998.

Terminating access

Termination of a telephone call by KPN to a subscriber from a different network provider.

TNT Post Group (TPG)

Holding company of PTT Post and the Australian courier service TNT.

Transit tariff

Transit tariffs are tariffs that a telecom provider is allowed to charge to parties that use its network for transporting traffic to a third provider.

Trusted Third Party (TTP)

Issues an independent statement about the true identity of an electronic business partner. This is important if parties do business over the internet and work with electronic signatures.

**Unbundled access**

Method by which a dominant market party can offer competitors facilities a la carte instead of as a complete package, and where the copper wires from the home connection to the local exchange are operated by a competitor of KPN. In this respect, there may be complete unbundling or shared access, also known as line sharing.

Unified Messaging

Electronic messages can be 'listened to' by the receiver in various ways: e.g. a voice mail in the form of a fax and an e-mail in the form of a voice mail.

Universal Mobile Telecommunication System (UMTS)

Third generation mobile telephony that makes mobile broadband communication possible.

Universal services

The whole of services that must be made available to the general public and that a former monopolist is obliged to supply, possibly at a certain maximum tariff.



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