Vision of the market

Annual report 2004

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MISSION

OPTA stimulates sustainable competition in the electronic communications 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.

These documents have been compiled on the basis of Section 17 of the Independent Post and Telecommunications Authority Act. The annual report contains the elements specified in Section 12 of the Information Statute.

Disclaimer

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The Dutch text is the leading version. OPTA accepts no responsibility whatsoever for misunderstandings arising from any discrepancy or as a result of mis-translation.
In such circumstances reference will be made to the original Dutch text Dutch document title, a copy of which is available upon request.

FOREWORD

OPTA is pleased to present its vision of the developments in the communications and postal markets in the Netherlands, together with the Commission's 2004 Annual Report. The market vision also discusses OPTA's priorities and objectives for the coming year.

The landscape in the communications sector is changing. Convergence is now reality: technological developments have made it possible to offer the same services using the same technology (the internet) via multiple types of networks. This is evident in the introduction of voice and television services via the internet. The communications sector is also broadening through integration with the IT, media and entertainment sectors.

Convergence has as consequence that companies that did not compete in certain services in the past now do so. The competition potential is increasing, but the problem areas will not immediately disappear because network owners are still able to create entry barriers for competing parties. OPTA will intervene if and when providers abuse their dominant position.

The changing landscape is partly driven by the rapidly growing popularity of broadband internet. The number of ADSL connections is growing particularly fast. The growth in the number of connections for cable modems lags behind this development. ADSL and cable providers were able to offer broadband internet access in more locations in 2004 than in 2003. New providers with their own infrastructure continue to enter the market. The Netherlands takes the lead in Europe in terms of infrastructure competition, partly thanks to OPTA's strict access policy. Consumers benefit because they have more choice, pay a lower price and enjoy increasingly faster internet speeds.

Convergence gives providers the opportunity to bundle their services. Consumers can profit from advantages such as one-stop shopping, a single invoice and discounts as compared to purchasing individual services. The extent to which bundling will cause shifts on the market is partly dependent on the willingness of end-users to switch providers.
Bundling also involves economic risks. By bundling their products, providers can create a stronger bond with their customer. However, this may not create barriers for switching to another provider. Bundling can also be anti-competitive. Bundling may not be used to avoid regulation of individual services.

The changes in the communications sector strongly affect existing markets and cause transition problems between the old and the new situation. This is particularly true for regulated markets, for instance fixed telephony. New technologies, e.g. calling via the internet, need

space in order to blossom. With dominant providers, however, OPTA must find the balance between giving sufficient space for innovation and safeguarding competition. Regulation can inadvertently disrupt innovation stimuli, but the introduction of new technology may not mean that competitors no longer have a chance.

The other side of the technological developments is the increasing number of problems in the area of internet security, such as unrequested receipt of e-mails (spam), unknowingly automatically connecting to the internet (auto dialers) and installation of espionage software (spyware). These problems cause economic loss and directly affect consumers. The new communications legislation has authorised OPTA to address problems caused by providers in the Netherlands. However, OPTA cannot do this alone. Market parties and consumers must also shoulder their responsibilities.

The new Telecommunications Act offers the instruments for regulating changing markets. If there is no true competition, OPTA will impose fitting and proportionate obligations on dominant providers. To ensure customisation, the European framework requires regulators to perform careful analyses. The Telecommunications Act in the Netherlands also adds a motivation obligation. The other side of the coin is a long throughput time, which has caused uncertainty in the market. However, 2005 is the year in which the measures on all markets will be made known and effectuated.

Now that regulation is becoming more liberal, monitoring compliance with the imposed measures will gain in importance. Within that framework, OPTA will utilise its authority more emphatically than in the past to enforce the imposed obligations via threats of judicially imposed penalties or fines.

Competition is steadily increasing in the free segments of the postal market. In 2007 the postal market in the Netherlands will be completely opened to competition, providing the United Kingdom and Germany actually liberalise their markets. Clear criteria as to when this condition is satisfied will minimise the investment uncertainty of the market parties. Once the liberalisation is a fact, it is important to remove entry barriers so that competition can truly flourish.

The Commission is thankful to OPTA's management and staff for their efforts during the past year.

The Hague, March 2005

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

READING INSTRUCTIONS

Vision of the market

The vision of the market for electronic communications and the vision on the postal market reflect the Commission's views on important trends and competition developments in the market, as well as on the position of the end-user. This section also discusses the meaning these visions have on market regulation and the part OPTA plays. The vision concludes with the priorities and objectives for the coming year.

Annual Report and Annual Accounts

In the annual report, OPTA accounts for its activities and results in the year 2004 based on its most important activities and events. The report is structured according to the principle From Policy Budget to Policy Accounting (Van Beleidsbegroting tot Beleidsverantwoording - VBTB): what we wanted to achieve, what we have achieved and how we achieved it. The question of what it cost is answered in the annual accounts. The annual accounts give insight into OPTA's financial house-keeping.

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OPTA Priorities 2005

1. COMMUNICATION SERVICES VIA THE INTERNET

Technological developments have resulted in more services being supplied via multiple types of networks using the same technologies. This is called convergence. Last year OPTA indicated in its market vision that converging infrastructures and services were emerging. This trend continued in 2004.

More than 90 percent of all households in the Netherlands currently use a fixed telephone connection to the KPN telephone network. This percentage is decreasing because consumers are changing to mobile telephony and using broadband connections (cable and ADSL) for telephony.

At this time, more than 95 percent of all end-users watch analogue television via the cable. The arrival of digital television via the ether and television services via broadband connections (IPTV), however, offers households alternative ways to watch television: via the ether or the internet instead of cable only.

Thanks to the convergence, providers can offer various products collectively in a bundle. Preferably, these all involve one, single network. An example of this is television, telephony and broadband internet via the cable. At this time not all providers can offer all of their products via a single channel. In order to offer all of the products, they still use multiple networks. An example here is KPN that has added digital television via the ether (Digitenne) to the products it offers via the fixed network.

Dissociation between service and infrastructure

The convergence in the communications sector is being stimulated by two technological developments. Firstly, the supply of voice telephony and digital television via a broadband connection is continually improving. Secondly, the association between a service (e.g. telephony) and a specific network (e.g. KPN's fixed network) is becoming weaker. This second development is a result of the fact that a universal transport layer can exist between the service and the network: the Internet Protocol (IP). This is a common language by means of which end-users' computers and other peripheral equipment exchange packages of information via the internet. This transport is possible via any type of digital network, providing there is sufficient bandwidth.

The structure of the market is changing

Because services and networks are no longer dependent on each other, the market structure is changing. Competition relationships between various providers can shift rapidly. Horizontal competition occurs between market parties where there was little or no competition with one another in the past. A relevant example is the competition between KPN and the cable companies with reference to fixed telephony.

On the other hand, vertical competition also occurs, because parties that were dependent on one party in the past, now have a number of options. An example in this respect is a program provider that used to be dependent on the cable companies for broadcasting. Now negotiations are held for broadcasting programs not only with the cable companies, but also with companies such as Digitenne: a program provider now has multiple infrastructures to choose from. As a result, in time the negotiating power may shift from the network provider to the program provider[1].

The market is broadening

Not only the market structure is changing. The integration of the communications sector with the IT and media sector has brought more parties to the market. Small and large software providers, such as Skype and Microsoft, have also started to focus on the communications sector. Skype, for example, is developing software for voice services via the internet, and numerous telecom providers in the United States are already using Microsoft software to provide television services.

In turn, some providers in the communications sector can be expected to offer services such as messaging and chatting, therewith encroaching on the field of Microsoft and others. Another example is a communications provider that wants to launch a package of broadband internet, telephony, television and video-on-demand. This provider is confronted not only with access issues, but also with content rights.

End-users can profit

Convergence caused by the transition to IP networks can offer many (financial) advantages for both providers and consumers. For providers, the convergence enables them to cut costs, develop new services and offer clients all products in a single package. The development is favourable for end-users because they can acquire all services (telephone, television, internet, etc.) via a single connection. The type of network (cable, DSL, mobile, wireless) will be increasingly less important in the future for the service being provided. The end-user will also profit from lower tariffs because competing providers will pass on cost reductions. Moreover, technological possibilities will contribute to creating an increasingly broader and better integrated supply of internet, communication, media and entertainment services.

1. At this time, the negotiating power still lies with the cable network providers because other infrastructures do not yet offer a full alternative to the cable.

Position broadband access providers stronger

One risk involved in these developments is that consumers become dependent on one, single provider for all of their internet communication services. In essence, the provider of the broadband access service 'owns' the end-user. Providers of broadband access services are expected to attempt to entwine the various services via their networks with internet access to an extent that competitors without a network will have difficulty offering services, or will not be able to do so at all. A provider can do so by means of contract terms or technical solutions that ensure that this connection can only be used for the services of that provider (for example, by only permitting the provider's own chat program and blocking Microsoft's MSN).

However, this need not mean that OPTA will intervene. If there is insufficient competition, OPTA can oblige a dominant provider to open its infrastructure. If there is sufficient competitive pressure, the parties will have to make agreements through commercial negotiations.

In the end, the question is whether providers of broadband access will be able to create barriers. The internet makes this technically more difficult because many services are publicly available.

Space and freedom where possible

The developments described above clearly show how possibilities for competition are increasing on the communications market. But this does not necessarily mean that this competition actually exists.

OPTA's premise is that where possible, market parties must have the space and freedom to utilise the new technical possibilities. But there are limits to this.

Initially, OPTA will take action when (competition) problems can occur due to abuse of a dominant position. Problems can occur with regard to access to the local loop (see section 2), the transition from old to new technology as seen in the market for fixed telephony (see section 3), and bundling of various services (see section 4).

OPTA will take subsequent action if the public interests are threatened by pollution of the digital highway, for example due to spam and auto dialers, or if consumer's personal space is violated, as is the case in the event of violation of privacy (see section 5).

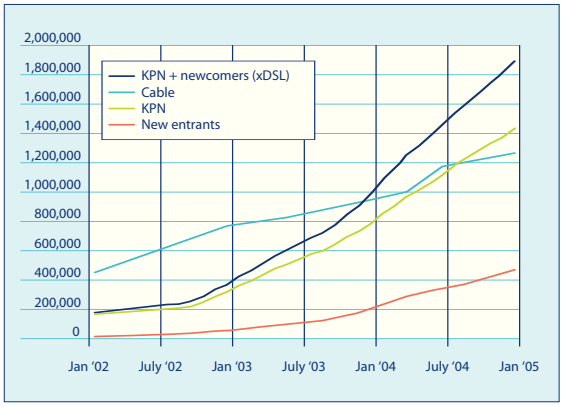
2. DEVELOPMENTS ON THE BROADBAND MARKET

The digital highway to the end-user

Convergence is intensified by the decoupling of service and infrastructure (see section 1) and by the growing number of households that are using broadband internet.

In the Netherlands, there are two fixed infrastructures with a local loop access network: KPN's copper network and the cable companies' coaxial network. Broadband access via xDSL[2] can be supplied via the copper network. The xDSL connection lines have grown faster than the cable modem connection lines since 2003. At the end of 2003, xDSL was larger than cable for the first time. Last year, xDSL was also expected to grow faster than cable in 2004. And as this annual report shows, this is what actually happened. The number of xDSL connections increased from 980,000 at the end of 2003 to 1.9 million as at the end of 2004. The number of cable modem connections increased in the same period from 940,000 to 1.3 million (see Figure 1).

Figure 1 **Number of xDSL and cable modem connection lines,** 2002-2004



Source: KPN, Platform Nederland Breedband

45 percent of the households indicated at the end of 2004 that they used an internet connection via the cable or via ADSL[3]. This means that the Netherlands has about 18 broadband connections per 100 inhabitants (see Figure 2)[4]. This puts the Netherlands together with Denmark in the lead in the European Union[5]. Research agency Telecompaper[6] predicts 4.4 million broadband connections at the end of 2005, with a penetration level of 62 percent of the households in the Netherlands.

2. DSL is a collective term. Households use a variation: ADSL.
3. Source: EIM Consumer study bundled communication products in the Netherlands, December 2004, Telecom Paper - Dutch broadband 2004, March 2005.
4. Source: Analysys, September 2004.
5. See also the 10th implementation report by the European Commission.
6. Source: Telecom Paper - Dutch broadband 2004, March 2005.

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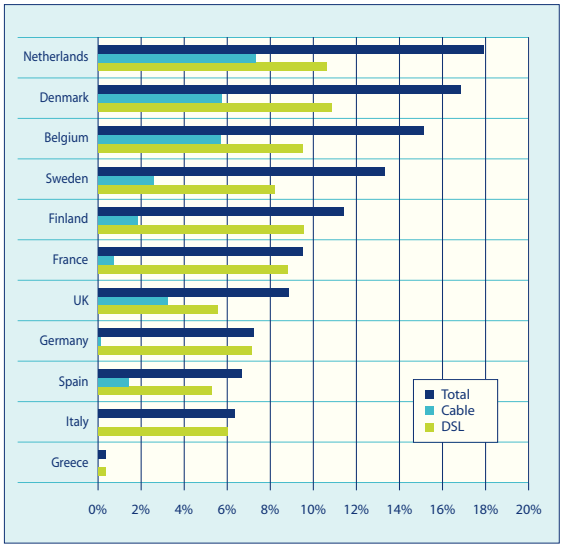
Figure 2 **Penetration level broadband internet via cable and DSL per inhabitant in a European perspective,** 2004



Source: Analysys, September 2004

Alternatives for DSL and cable

Alternative technologies for broadband internet access for consumers are still highly limited. However, these technologies may increase the competition in the broadband access market in a number of years.

Providers of fiber optic connection networks still primarily focus on the (large) business market. Municipalities and housing corporations, however, are taking the initiative of establishing fiber optic networks (Fiber to the home). Wireless access technology also exists on a limited scale, such as the Wireless Local Loop (WLL).

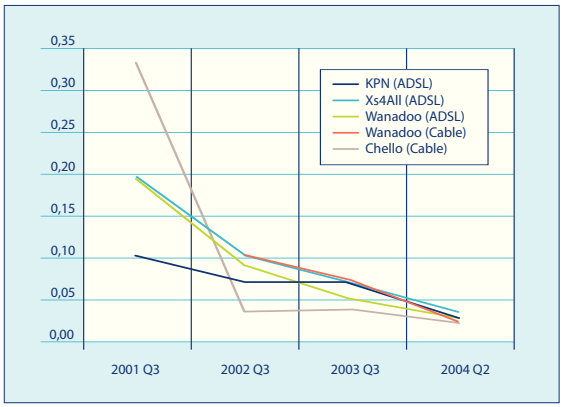
In 2003 two licenses for WLL were auctioned[7]. These were acquired by Enertel and Versatel. Enertel has indicated that it wants to use its license to construct a WIMAX network[8]. WIMAX is the successor to Wifi, which is used for wireless internet access via hotspots in public areas. Due to its limited reach, WiFi can only supplement a fixed internet connection[9]. WiMAX could, however, be developed as an alternative connection network, in particular in scarcely populated areas. But the technology is still in an experimental phase; multiple standards will soon be fighting for the consumers' favour.

Cable and DSL providers continue to invest

Competition between the parties is stimulating cable and xDSL providers to invest in more rapid access techniques for the existing network. The end-user benefits from these market dynamics because increasingly higher internet speeds are becoming available at a price that remains the same.

This development is reflected in Figure 3: the price per month for one kilobit per second (kbit/s). In 2001 the end-user received 512 kbit/s for € 100. In 2002, the end-user paid only half as much for this speed. In 2004, € 50 bought internet that was four times as fast: 2048 kbit/s. This means that in 2004 the price per kbit/s was only one eighth of what it was in 2001.

Figure 3 **Price for 1 kilobit per second download speed,** 2001-2004 , in euros per month



Source: OPTA, based on data collected by Analysys.

Investment choices may conflict

KPN and the cable providers have control of the local networks, and therewith control most of the technical developments in these networks. Competitors are dependent on these networks, and are confronted with the operational choices made by the network owner. A relevant example is the discussion between KPN and competitors regarding the introduction of faster internet via the current infrastructure. The competitors want to upgrade their existing ADSL technology to ADSL2+, while KPN has indicated that it may also be using a third technology: VDSL. ADSL and VDSL could conflict, and VDSL requires larger investments than ADSL2+.

Here OPTA is confronted with the area of tension that exists between innovation and competition. OPTA has no preference for a certain technology. This is not OPTA's concern. However, it is not in the end-user's interest if the technical innovative choice of the dominant party excludes sustainable competition. In that event, OPTA will intervene. Technological innovation benefits from multiple parties challenging one another to improve their performance.

7. In 2005 KPN and T-Mobile acquired the concessions for the 26 GHz band.
8. Source: Webwereld, 27 October 2004.
9. Wifi chips use a Wifi station (hotspots), but the station is connected to the internet via an ADSL or cable connection.

Roll-out continues and new parties enter the market

At this time, broadband internet is available nearly throughout the Netherlands via KPN and the collective cable companies. With the exception of remote areas, broadband can be connected from nearly all of KPN's local exchanges via the local loop.

Providers without a local loop, such as Versatel, Tiscali and BBned, connected their infrastructure to an increasing number of local exchanges in 2004. These providers utilise the access to KPN's local loop (as mandated by OPTA), and are thus able to reach end-users.

In 2004 Wanadoo also indicated that it would start connecting to the local exchanges. Other providers may follow this example. Figure 4 shows the municipalities in which at least two or three providers of internet access via ADSL are active. These providers offer internet access to one or more internet service providers (ISPs), who in turn offer internet services to end-users.

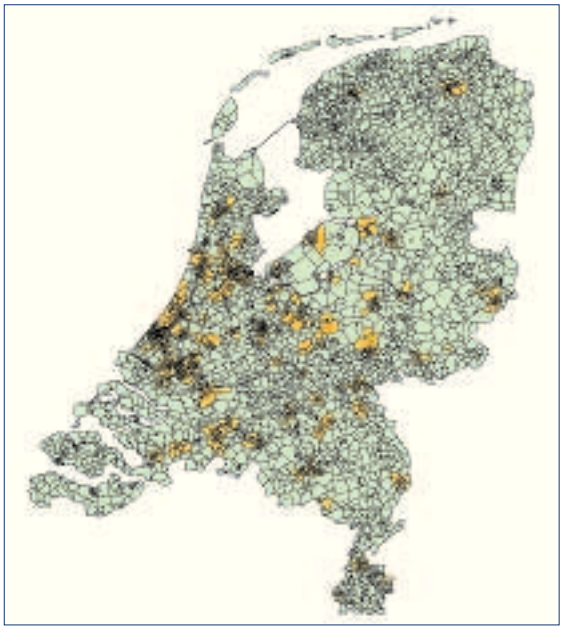
Figure 4A | **Roll-out of ADSL networks in the Netherlands**

In the orange section, at least two ADSL internet access providers are connected to KPN's local exchange.

Source: http://www.xs4all.nl/~rhunen/ADSL, modified by OPTA. Only data from KPN, BBned and Tiscali were processed. Figures from Versatel were not available on this website.

Figure 4B | **Roll-out of ADSL networks in the Netherlands**

In the orange section, at least three ADSL internet access providers are connected to KPN's local exchange.



Source: http://www.xs4all.nl/~rhunen/ADSL, modified by OPTA. Only data from KPN, BBned and Tiscali were processed. Figures from Versatel were not available on this website.

In the local exchange, large flows of data are distributed to the individual end-users. A KPN competitor (or cable operator) must have access to the line that runs to its customer's home. To make this possible, KPN must open these individual lines to the competitors. This is called unbundling.

There are two types of unbundling: shared and full unbundling. With shared unbundling, broadband access is supplied by the competitor while the telephone services still lie with KPN. With full unbundling, broadband access is supplied by the competitor and the customer has terminated his fixed telephone subscription with KPN. This is currently the case with only 12 percent of the end-users, and it applies virtually only to business clients.

There's relatively high infrastructure competition in the Netherlands. OPTA's strict access policy in recent years has ensured that many market parties can utilise the unbundled access to KPN's local loop (from the local exchange to the consumer) as deemed obligatory by OPTA. This is evident in the number of unbundled connection lines that are held by competitors. At the end of 2004, about 25 percent of the unbundled lines were held by KPN's competitors. This is an increase as compared to the percentage seen in 2003, and equals nearly 500,000 lines. This means that KPN still holds 75 percent.

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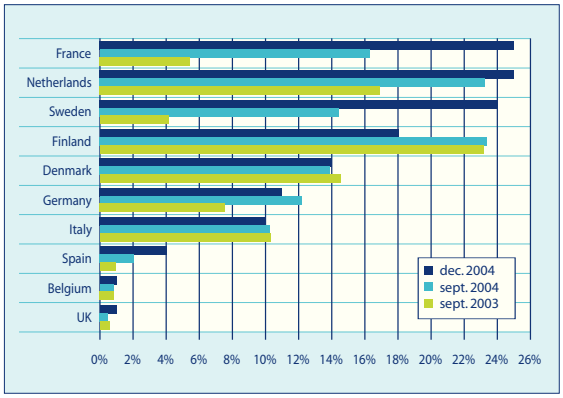
In this area, the Netherlands takes first place in the European Union - together with France and Sweden - (see Figure 5). In a number of other European countries, competitors are given access to higher parts of the former monopolist's network (bit stream access). As a result, there are generally fewer competitors who have rolled out their own network to the local exchanges. With its approach, OPTA opted to stimulate infrastructure competition, which offers the best safeguard for sustainable competition in the longer term.

Figure 5 | **Percentage of unbundled lines held by competitors in a European perspective,** 2003-2004



Source: ECTA Portal

Full unbundling more important

With the emergence on the consumer market of calling and other media services via IP, the demand from competitors for completely unbundled lines is likely to increase. Consumers will then no longer be bound to KPN's fixed telephone connection. They can purchase broadband internet, telephony and other services via the broadband connection belonging to a competitor.

Combination BelBudget and ADSL a threat

In 1998, the government required KPN to offer BelBudget to clients who want to be accessible but who do not call frequently. The subscription fee for BelBudget is about 40 percent lower than the normal subscription fee for fixed telephony from KPN, but the costs per minute are about three times higher.

KPN's cost orientation obligation is violated if it offers ADSL combined with BelBudget[10]. The rate for BelBudget is part of the Universal Services and as such is kept low by means of regulation by the Minister of Economic Affairs. As a result, the tariff for BelBudget combined with ADSL is lower than the wholesale tariff that competitors must pay KPN for use of the fully unbundled local loop. Even in theory, competitors can not ask competitive prices without suffering losses.

The combination of BelBudget and ADSL prevents competitors from offering a wide portfolio of services via the broadband connection because the combination allows KPN to offer ADSL at a lower tariff.

3. SHIFT FROM CLASSICAL TELEPHONY TO INTERNET TELEPHONY

Competition on classical fixed telephony is stabilising

The traffic volume on the fixed telephone network is steadily decreasing (see box). KPN must tolerate competition on the market for fixed telephony from providers of Carrier (Pre-)Select Services (C(P)S). The market share of these C(P)S providers stabilised in 2004. CPS providers are losing about three percent of their customers each month, a large share of whom are switching (back) to KPN. On an annual basis, this means that at least one third of the clients are being won over, removing attention and resources for expansion of the market position.
A possible reason for the large turnover rate among clients is that C(P)S providers continue to share their customers with KPN, while KPN retains responsibility for collecting the subscription fee for the fixed connection.

In 2004 about 30 percent of households used C(P)S[11]. After KPN, Tele2 is the largest provider on the total market for fixed telephony, with a market share of about twenty percent.

Table 1 | **Market shares KPN fixed telephony,** 2002-2004

	2002	2003	2004
Local	>80%	>75%	>70%
National	>65%	>60%	+/-60%
Fixed-mobile	>65%	>60%	+/-60%
International	>50%	>45%	+/-45%

Source: KPN quarterly figures.

Calling via the Internet Protocol (VoiP)[12]

With the arrival of internet telephony, other providers are also entering the market for fixed telephony. Internet telephony or calling via the Internet Protocol (IP) is a collective term for a number of techniques for making voice telephony possible over an (IP) broadband network. Voice over the internet has existed for quite some time, but the quality was always insufficient for providing a serious alternative to classical telephony. That problem has now been remedied.

Last year OPTA reported the emergence of internet telephony for the first time. Internet telephony is rapidly gaining ground on the business market. According to research agency MarketCap, in August 2004 about nine percent of companies with more than fifty employees

10. In analogy: BelBudget cannot be acquired for the purpose of calling via a CPS provider.
11. Source: EIM, Consumer survey purchase of bundled communication products in the Netherlands, December 2004. This survey was performed on OPTA's behalf.
12. Calling via the Internet Protocol (VOIP) will henceforth be referred to as: calling via the internet, despite the fact that calling via the internet is only one of the many types of VOIP.

called via the internet[13]. In the first quarter of 2003, this was only 0.3 percent of companies. MarketCap predicts that this percentage will increase to 25 by the end of 2005. Deloitte and Touche estimate that as of the end of 2006, more than two thirds of large companies in the Netherlands will call via the Internet[14].

VoIP on the consumer market

On the consumer market, the percentage of internet telephony was still negligible in 2004[15]. Although estimates as to how quickly internet telephony will replace traditional types of fixed telephony vary significantly, it is generally agreed that a development of this type will be seen in the years to come. As compared to other European countries, the starting position for internet telephony in the Netherlands is excellent[16]. A relatively large number of people in the Netherlands have a broadband internet connection, meaning that there is a large number of potential clients. What is more, the Netherlands has a relatively high level of competition on the local loop (via unbundling), and has a cable network (virtually) covering the country that has been prepared for two-way traffic. This competition stimulates providers to innovate and differentiate their products.

Countries outside of Western Europe, such as the United States and Japan, are leaders in the field of internet telephony. In Japan, for example, in 2004 nearly half of the households that had a broadband connection already called via the internet. This is about ten percent of the total number of households.

Opportunities and threats to market parties

Internet telephony offers opportunities for some providers, but represents a threat to others. Some market parties are already active. These developments offer cable companies new opportunities after the disappointing results of their efforts in the area of fixed telephony in recent years. The earlier ‘calling via the cable’ also revolved around the traditional circuit switch technology. Calling via the internet offers cable companies a chance for success. The number of people that call via the cable in Amsterdam, for example, increased after internet telephony was introduced. For providers such as Versatel, BBned and Tiscali, internet telephony offers the opportunity to expand their existing package of internet services with telephony. Because these providers use KPN's local loop, OPTA will ensure that they can compete with KPN under the same conditions. The number of providers of internet telephony that do not have their own networks is increasing. The investment barriers for these service providers are relatively low.

Internet telephony poses a threat for providers of classical fixed telephony, i.e. KPN and CPS providers. KPN is confronted with inexpensive competitors. CPS providers can no longer reach their clients if they have terminated their telephone connection with KPN. What is more, internet telephony places downward pressure on the tariffs, meaning that CPS providers can no longer be competitive with their existing business models. CPS providers will therefore increasingly change to internet telephony.

In time, internet telephony is expected to result in a decrease in the price for fixed telephony.

For KPN, internet telephony offers opportunities for offering an integrated package of services. KPN may opt to further modify its network (to IP technology) and move end-users to this network. The end-user need not notice this. The speed at which KPN will do this on a large scale is in part dependent on the competitive pressure from less expensive alternatives. With the transition to internet telephony, KPN will cannibalise part of its own telephone service based on the old network. Because this KPN service is regulated, OPTA will, in case of insufficient competition, ensure that KPN does not needlessly delay the transition to a more efficient technology (internet telephony). The technological development as sketched is not determined by OPTA, but OPTA can ensure that there is sufficient competition to stimulate parties to innovate.

Lower tariffs for the end-user

The main advantage of internet telephony is that the costs can be significantly lower than the costs for traditional telephony. The combination of data (internet) traffic and voice over the same infrastructure renders considerable cost savings. As a result, in time internet telephony is expected to result in a decrease in the price for fixed telephony.

Regulation of internet telephony

Internet telephony poses challenges and transition issues not only for the market parties, but also for the regulator. Is internet telephony a process innovation that will make fixed telephony less expensive? Or is it a new relevant market? How should the expected continued decrease in the traffic volume on KPN's fixed network be addressed (see box)? OPTA needs to find the answers to these questions.

To give internet telephony room to blossom, OPTA will search for a balance for dominant providers between leaving the market to itself and safeguarding competition. Anticipative regulation can interrupt the market

13. Source: MarketCap, Internet telephony and IP telephony market monitor, August 2004. This solely pertains to Voice over IP (transport of voice over external IP connections) and not to IP telephony in a broader sense (voice applications over the LAN and application of IP hard and/or soft phones).
14. Source: Automatisering Gids, October 28th, 2004
15. EIM, Consumer survey purchase of bundled communication products in the Netherlands, December 2004.
16. See also Analysys - Where next for broadband VoIP, February 2005.

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mechanisms and innovation. Governments and regulators must find a balance with reference to potential newcomers between safeguarding low entry barriers and imposing necessary end-user obligations to ensure that the service is sufficient. These obligations involve issues such as transparency, number portability and the accessibility of emergency numbers.

Some types of internet telephony (VoDSL and IP telephony) offer the same functionalities as traditional telephony via the PSTN network. In that case, the same services appear to be involved, albeit in a new technological wrapping. Because the new Telecommunications Act is technology neutral, this would mean that there is no new relevant market, but that internet telephony belongs to the same market as fixed telephony. Because KPN is expected to dominate this market, KPN will also be subjected to obligations for internet telephony similar to the obligations that apply for classical fixed telephony.

Governments and regulators must find a balance with reference to potential newcomers to ensure that the service is sufficient.

In addition to specific obligations for dominant providers, the Act also prescribes obligations that apply to all providers of public fixed telephony. However, some of these obligations may form an unnecessary entry barrier, thus making it difficult for small providers to offer internet telephony, and therewith slowing market developments. For example, the law requires providers of public telephony services to ensure that the emergency number 112 can always be accessed. But not all providers can control the quality and reach of the service, for example because they cannot influence the network performance.

Proper agreements regarding interoperability

Another requirement that the law imposes on providers is interoperability. With the arrival of internet telephony, multiple telephony systems will co-exist. Users calling via the internet must be able to communicate with (be interoperable with) users of other telephony services. To enable end-users from different providers to talk with one another, the parties must negotiate agreements. In these negotiations, the more end-users a provider has, the stronger its negotiating position[17].

Problems for small providers in reaching proper agreements regarding interoperability can therefore result in inefficiently few new entrants on the market.

Flexible number plan

Dynamic markets demand a flexible number plan. A situation must be avoided in which a new series of numbers must be opened for every new technology, such as internet telephony. This causes switching barriers for end-users, because they cannot keep their old number. Moreover, this delays the introduction of new services because the number plan must be continually modified. By applying as few number series as possible with the broadest possible defined applications in the number plan, optimum flexibility is achieved.

Because services are converging,[18] the automatic rate recognition of numbers will also disappear. The first three digits 010, for example, no longer automatically stand for a network number in Rotterdam, and more expensive lines can no longer be automatically recognised by 0900. The question arises as to whether numbers can still be used to give insight into issues such as tariff transparency, recognisability and reliability.

17. The value of a network service increases significantly with the number of users (positive network effect).
18. Providers could launch services that allow people to be reached on both their mobile and fixed telephone via the same number.

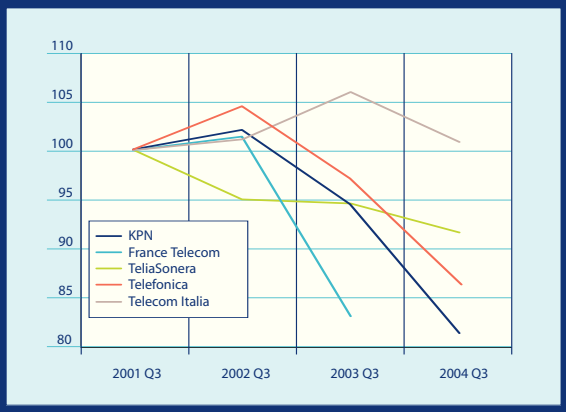
DECREASE IN TRAFFIC VOLUME ON FIXED NETWORK

Decrease in traffic volume on fixed telephone network….

In 2003, a definite decrease was evident in the traffic volume on KPN's fixed telephony network. As expected, the traffic volume of KPN and its competitors continued to decrease in 2004 (about 12 percent)[1]. KPN's own fixed telephony minutes and dial-up internet minutes via analogue modems (narrowband internet) decreased by 23 percent. The primary cause of this reduction is that people are calling mobile rather than via the fixed network, and are using broadband internet more than narrow-band internet. Possibly telephony is being replaced by chatting and instant messaging to some extent.

In 2004, the number of fixed KPN connections decreased by three percent[1]. It is estimated that at the end of 2004, more than ten percent of all households no longer had a fixed telephone connection. The number of dial-up internet minutes through KPN and its competitors collectively decreased by about forty percent in 2004. The introduction of internet telephony may accelerate the decrease in the use of the fixed telephone network. The same trend is seen in other European countries, as shown in Figure 1.

Figure 1 **European comparison of the development of traffic volume (3rd quarter) on the fixed net of the former monopolist,** 2001-2004, quarter 3 2001 = 100



Source: Market monitor Communications, OPTA. Figures all pertain to the total traffic volume.

… need not result in increasing costs

The decrease in volume is a risk for CPS providers. They offer telephony via KPN's fixed network. The decrease in volume can result in higher wholesale costs. After all, the fixed costs for the network remain (partly) the same, while the traffic volume decreases.

The decrease in the number of traffic minutes on the fixed telephony network need not, however, result in a directly proportionate increase in the costs per minute. The network is still used for the new and replacement services. Rather than 'minute' traffic, this involves data traffic such as broadband internet (and internet telephony). Thus KPN's network is being used in a different manner.
Market developments result in a shortened economic life cycle for the old technology, accelerating the transition to more efficient technology. In a competitive market, a competing party must anticipate new developments. Costs can be reduced, the network can be innovated and/or excess capacity can be depreciated more rapidly.

Inefficient costs may not be recouped

For the time being, the fixed telephony market is a regulated market. The decrease in traffic volume is a business-economic risk. KPN must be able to earn back the efficient costs and the costs of the Universal Services (required by the government). Inefficient costs may not - when there is insufficient competitive pressure - be recouped by charging consumers higher prices, for example, or charging competitors higher prices for use of the network. KPN could also allocate these costs to the new technology, e.g. internet telephony, by charging higher prices there. OPTA will prevent this from happening.

Modifying the Universal Services

As provider of the Universal Services, KPN must satisfy any and every reasonable request for the supply of a fixed telephone connection at a low tariff (BelBudget). If in the years to come the decrease in the traffic volume and in the number of connections on KPN's fixed network continues, the costs of the Universal Services will increase. If this is the case, a number of possibilities arise:

- The situation remains unchanged and KPN accepts the higher costs.
- KPN indicates that the existing Universal Services are too expensive. A Call for Tenders for the Universal Services will then be published.
- The Minister modifies the Universal Services, making them less expensive. Possible options include a budget mobile telephone or a broadband internet connection with a connection for internet telephony.

1. Source: KPN - Figures 4th quarter 2004.

4. BUNDLING

Bundling is offering multiple products as a single product - the bundle. This has been common practice on the mobile market for many years. The classical example is offering a(n inexpensive) cell phone in combination with a mobile subscription. Another example is bundling call minutes and SMS services. On the services level, products from separate markets are now being bundled. The cable companies, for example, launched bundles of fixed telephony, broadband internet and television of the market in 2004, and KPN bundled its fixed telephony and ADSL services with digital television.

Bundling is made possible by technological developments, such as voice and television over a broadband internet connection (see also sections 1 and 3). Because broadband internet capacity is increasingly less scarce (see section 2), it is increasingly less attractive for providers to charge for services per minute. Bundles usually have a flat fee. This means that for a fixed monthly fee, users can call or surf the internet as much as they want.

Bundling still in its early stages in 2004

On behalf of OPTA, EIM studied the extent to which consumers utilise bundles with the services fixed telephony, mobile telephony, broadband internet and television. A distinction was made between four characteristics of a bundle:

- the receipt of a single invoice for multiple services;
- the application of a discount as compared to the price for the individual products;
- simultaneous purchase of the products;
- a conscious choice to acquire the services from a specific provider.

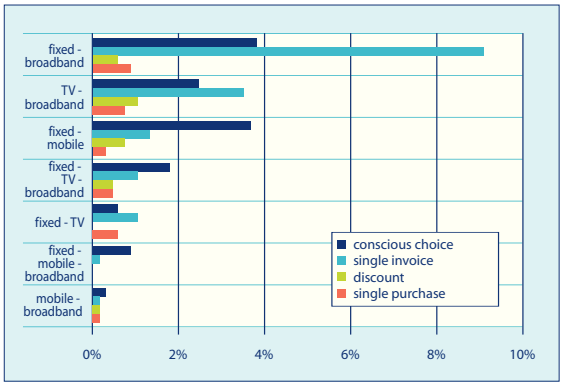
If the services purchased by a consumer satisfied one or more of these characteristics, the product was considered a bundle.

Developments in the area of bundling lagged somewhat behind the expectations in 2004. The study indicated that bundling was still in its early stages on the market in the Netherlands in 2004. For example, only three percent of households received a discount for purchasing two or more products from the same provider. Sixteen percent of households received a single invoice for multiple services.

End-users who purchase fixed telephony, broadband internet and television from a single provider were given a discount most frequently (23 percent). However, this combination was only seen in two percent of households at the end of 2004. End-users who purchase fixed telephony and broadband internet from a single provider received a single invoice most frequently (90 percent). This combination was seen in ten percent of the households.

Figure 6 shows the percentage of households that made use of the various characteristics of different types of bundles. This is indicated per characteristic. Households can satisfy more than one characteristic.

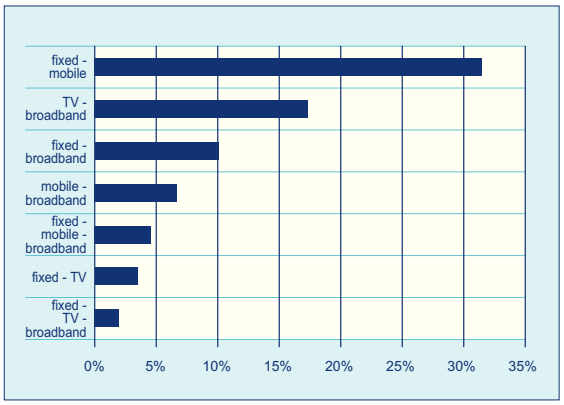
Figure 6 | **Households per type of bundle,** October 2004



Source: EIM, Consumer study purchase of bundled communication products in the Netherlands, December 2004.

Based on the characteristics listed above, it was learned that only few consumers purchased a bundle in 2004. However, it is possible for providers to offer existing clients a bundle. Many end-users purchase multiple products from a single supplier without this being offered as a bundle as defined in the study. Thirty percent of households purchase fixed and mobile telephony from a single provider (KPN and Tele2), while 17 percent do so with television and broadband internet (in particular from the cable companies - see Figure 7).

Figure 7 | **Households with products from a single provider,** October 2004



Source: EIM. This includes providers and their subsidiaries. KPN and Het Net, for example, are the same provider.

Bundles on a larger scale in 2005

In 2005, providers are expected to offer bundles of services on a larger scale. The introduction of voice services via the Internet Protocol is the driving force behind this development. Discussions with market parties indicate that 2005 will be the year of the triple play: a broadband internet connection will be offered in combination with fixed telephony (usually internet telephony) and television. Some providers will also add mobile telephony to the bundle. The extent to which the introduction of bundles will result in significant market shifts in 2005 is unclear. This will be partly dependent on the willingness of end-users to switch and their interest in one-stop shopping.

Advantages for providers and end-users

Bundling is advantageous for both end-users and providers. End-users, for example, will have to perform fewer actions to purchase multiple products. What is more, the end-user can obtain a discount or enjoy the ease of a single invoice. In the event of problems, the end-user can always turn to the same party.

For the provider, cost reductions (for example through collective distribution) are a reason for bundling. Bundling is also a response to the switching behaviour demonstrated by consumers. Providers use bundling with the aim of strengthening customer loyalty. A dis-advantage, however, can be higher switching barriers. OPTA's premise is that customer loyalty is fine, but that no unnecessary barriers may be created to prevent switching - within a reasonable period - to a different provider. Fitting, clear agreements must be made in this respect. Otherwise bundling will restrict effective competition.

Economic risks

Economic risks involved in bundling are present, in particular when bundling also includes regulated services, such as fixed telephony. By bundling products, dominant providers can force competitors from the market or increase barriers for new entrants (see box).

Bundling poses a risk for providers that are unable to offer a wide range of products. The extent to which this affects the competitive position is determined by factors including the extent to which end-users opt en-masse for a single provider for all products. In time, this can mean that there are no longer separate service markets, but that competition only exists between providers of entire bundles. In that case, the bundle actually becomes the relevant market. This does not yet apply.

Regulating anti-competitive bundles

As long as there is not a relevant market for bundles, OPTA will evaluate bundles on the basis of the regulated and unregulated components they contain. OPTA will take action if a provider with a dominant position on a regulated market abuses its market power to strengthen its position on a closely related market. Providers may not use bundling to avoid regulation of the individual products.

Pure bundling is not commonly seen in the communications sector. Products such as telephony, internet and television are currently being bundled, but they are also available as individual products (mixed bundling). OPTA will take strict action if a dominant provider bundles regulated products that are not available individually. In that case the chance of abuse is significant. If the regulated products are available individually, OPTA will monitor the tariffs for bundles charged by dominant providers. If a bundle contains a discount that is too high, competitors will no longer be able to compete without suffering losses.

Two examples of anti-competitive bundling

Suppose that a provider offers products A and B in a bundle.

If the products A and B are only available in the bundle and not individually (pure bundling), a provider with a high market share in product A can use its strong position to enlarge its market share in product B by only selling product A in combination with product B. However, consumers that purchase product A from this provider, are also obliged to purchase product B from the same provider. A provider that offers only product B is placed in an inferior position.

If the products A and B are available not only in a bundle, but also individually (mixed bundling), a provider with a high market share in product A can use its strong position to enlarge its market share in product B by offering the bundle of products A and B at a lower price than the individual products A and B. Consumers pay less when they buy the products together. The discount is advantageous to the consumer, but if the discount is too high, a provider offering only product B no longer has a chance and competition is excluded.

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5. PROBLEMS WITH TRANSPARENCY AND INTERNET SECURITY

Market more complex and less transparent

The down side of the convergence in the communications sector (see section 1) is a less-transparent market. More providers offer more differentiation on existing products. This makes a simple comparison and assessment of the price-quality ratio difficult. An example in this respect is the tariffs for international (mobile) roaming: mobile calling via a different (foreign) network in other countries. The tariffs- as well as the manner in which calls are diverted - are often not transparent for consumers. Consumers are often surprised when confronted with a sizeable invoice while they thought they were calling a toll-free number in the other country. The same applies for being called while in another country; unlike what many consumers believe, costs are also involved for receiving calls. Another example is the choice of calling via the internet instead of traditional telephony. If a consumer is considering the switch to internet telephony because of the lower costs involved, he also needs to know if a different quality is involved. Otherwise the services cannot be compared.

Price lists are also becoming less transparent. One mobile provider, for example, includes SMS messages sent during the weekend in the subscription, while another charges an additional fee for this. The tariffs for sending SMS messages to certain numbers are not always clear. Internet providers sometimes apply a data limit. The additional fee charged for exceeding this limit is often unclear.

Providers compete intensively for consumers' favour and attempt to win customer loyalty by offering packages or bundles of services. Bundles often have a single tariff, making it difficult to compare the tariff for the individual products in the bundle with the individual products available from other providers. When purchasing a mobile telephone subscription, for example, the consumer often gets a ‘free’ cell phone. Then the consumer pays a fixed fee per month for calls and sending SMS messages. The costs of these individual products is often no longer clear.

General terms of business can also differ significantly from one provider to another. Although this does not always directly affect the tariffs, it does affect the transparency and ultimately the competition. Providers are allowed to prevent consumers from profiting from a good deal and then immediately switch to another provider. However, this must be clearly stated in the general terms, so that a consumer can make an informed decision. The consumer must know before the fact what he is buying and which obligations it involves. Uniformity of general terms can contribute to transparency. The consumer will then no longer be surprised, for example, when he discovers that terminating the subscription with the current provider is much more difficult or will take longer than with the previous provider.

Transparency obligations

From the above it is apparent that the lack of transparency can obstruct effective competition. OPTA can impose transparency obligations on the entire market in general or on dominant providers in particular.

The transparency obligations that OPTA could impose on a dominant provider might include an obligation to specify costs according to the times and locations of calls. Transparency obligations that OPTA could impose on the entire market include information about the number policy, tariffs, quality and personal privacy issues.

OPTA can also leave the issue of improved transparency to the market itself. Comparison sites exist on the Internet where prices and conditions are compared. The question involved with these sites, however, is the extent to which they are objective. If consumers believe that certain market parties influence these sites, they will not trust the information. If this means that the site is not used anymore, the transparency stimulus ceases to exist.

If required, OPTA will develop a site of its own or issue a seal of approval to improve consumer trust. However, OPTA will not intervene unless this is necessary, and will only impose obligations as a last resort. Important criteria in this respect are the amount of time during which there have not been any market initiatives, the extent to which market parties can be expected to take the initiative, and the extent to which market initiatives will create an objective and transparent comparison. OPTA will also monitor whether transparency obligations render the desired effect. A negative effect of tariff transparency could be that providers can more easily attune their tariffs to one another, keeping prices artificially high.

Consumers, finally, also bear responsibility. They can gather information on their own regarding the tariffs and carefully read the general terms of business. This will also be taken into consideration in OPTA's decision regarding the imposition of transparency obligations.

Growing problems internet security

The internet plays an increasingly important part now that voice and media services can also be provided via the internet. The integration of the communication and IT sectors means that viruses that only affected computers in the past can also infect mobile telephones. Certain types of internet supervision are therefore becoming more important. However, the open platform nature of the internet - it belongs to everyone -makes it more difficult to regulate.

More and more households have a broadband internet connection and are confronted with internet security issues such as *auto dialers, spam and spyware* (see box). Addressing these problems is often referred to as internet management or internet governance.

Irritation and economic loss

Insecurity on the internet is damaging in a number of ways. It is extremely irritating to consumers, to begin with. They are irritated by unwanted e-mails, viruses and worms, which change their internet browser's start page, for example. It takes effort, time and money to avoid and prevent this, e.g. the need to use anti-virus software and installing and maintaining a firewall. Secondly, privacy and trust play an important part. Consumers must be able to trust, for example, that confidential information will not be sent to third parties. If this does happen, consumers become more hesitant to use services such as internet banking, and will be afraid to make (expensive) purchases via the internet. This slows the development of the ICT market.

But it is also detrimental to the use of internet. Spam is clogging transport channels, and in combating spam, e-mail from certain providers is refused by some servers *(blacklisting)*. E-mails from correct users are then also blocked. Connections between consumers are then no longer self-evident, eroding the trust in the internet. Research[19] has indicated that in 2004 83 percent of the e-mail sent from American providers consisted of spam. This costs internet providers one-half billion dollars a year due to the capacity consumed by this traffic. To prevent internet delays, Internet Service Providers are forced to make additional investments in capacity.

Auto dialers are programs that are installed automatically - and unobtrusively, either with or without the user's permission - on a computer. The computer then automatically dials (which is why they are called auto dialers) and maintains a lengthy connection with an expensive 0900 number or foreign number. From a technical perspective, auto dialers are highly similar to programs that pass personal data and traffic data on to third parties without the user's knowledge (spyware). A dialer establishes connections that can be used to exchange information via the internet. Dialers to toll numbers are sometimes a legitimate way to make payments via the internet. But this is seldom the case. More and more auto dialers are being used to establish connections with expensive toll numbers without the end-user's knowledge. Once the consumer discovers this, it is already too late.

Unrequested messages received via e-mail, mobile telephone (SMS or MMS) or another electronic channel are referred to as ***spam***. It is often impossible for the receiver to opt out of receiving these messages. Sending spam is prohibited in virtue of the Telecommunications Act, unless the individual has given explicit permission. There are exceptions: a company that has acquired an e-mail address during the sale of a product or service may also use this address to send messages, even when it hasn't received permission to do so. However, the message must make it possible for the consumer to opt out if he does not want to receive the messages. What is more, the prohibition only applies to messages received by natural persons (usually private individuals). Companies are not (yet) protected by the law.

Spyware is espionage software. Spyware makes information on a computer accessible to third parties, or sends various data via the internet. This often pertains to the surfing behavior, as well as personal or business-confidential information. Naturally, spyware violates consumer privacy. The user does not know which information is released or what is done with it. The data is often passed to marketing departments for commercial objectives. The programs are also used to use infected computers to distribute spam without the owner knowing that this is happening.

19. Source: Webwereld, 28 December 2004

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Action against Dutch providers

An effective approach to the problems involved in internet security is not always easy. OPTA is only authorised to take action against providers in the Netherlands. Based on complaints received via www.spamklacht.nl, spammers are tracked down and if possible, action is taken against the sender. These OPTA activities contribute to reducing spam. The number of spam runs (sending a quantity of spam messages in a single batch) per month decreased after the effectuation of the spam prohibition on 19 May 2004 (see Figure 8).

Figure 8 | **Number of spam runs sent in the Netherlands,** November 2003-November 2004

Source: www.spamvrij.nl

Another way to address problems such as spam and auto dialers is by means of what is known as chain responsibility. In this respect, all parties involved take collective responsibility for the problems involved in internet security, so that responsibility cannot be passed on from one party to another. Companies that have spam sent by a third party would then also be punishable. Within this framework, providers of public electronic communication services are called to account by OPTA if they are not doing enough to prevent spam. However, this does require a legal basis.

Accept own responsibilities

Problems involved in internet security change so quickly that the law cannot keep up. It is a game of cat and mouse, as it were. The legislator cannot possibly predict every technological application and include them in the law in advance. This makes it possible for the malicious to find and abuse the flaws in the law.

With auto dialers, consumers are often insufficiently aware of the consequences of their actions. Providers must protect consumers by making it sufficiently transparent what a consumer is agreeing to by clicking on something. OPTA ensures that this is actually the case and can take action if a violation takes place in the Netherlands.

In markets where technological developments play an important part, self-regulation by the market is often more effective than regulation by means of relatively static legislation and regulations. This is why the market must accept its own responsibilities in remedying the problems involved in internet security. An over-active regulator interrupts the market's stimulation to address issues, and instead makes the market more dependent on regulation.

An example of a successful market initiative in addressing internet spam was taken by the Internet Service Providers. ISPs can place a domain name on a blacklist, so that no more spam can be sent from there, but then no other e-mails can be sent either. This is a type of self-regulation that the regulator can easily support in administrative terms. Another initiative is the spam filter, such as that recently introduced by America On Line (AOL). AOL has also worked with other providers and Microsoft to tackle spammers that use non-existent sending addresses. Partly thanks to these initiatives, the number of spam messages sent to consumers in the United States decreased by 75 percent in a period of one year[20].

A way to address problems such as spam and auto dialers is by means of chain responsibility.

Consumers also bear responsibility. A large number of problems can often be avoided simply by taking a simple action, or by simply not taking an action. This starts with properly reading a dialog box before clicking on OK and installing a program. Not opening e-mails from unknown senders and not leaving your e-mail address behind can also help to fight spam. The website www.spamklacht.nl contains information provided by OPTA about how certain problems with auto dialers and spam can be avoided.

20. Source: Webwereld, 28 December 2004.

Daan Molenaar,
project manager for combating spam.

'NOW NEARLY 75 PERCENT OF ALL INTERNATIONAL E-MAIL TRAFFIC IS SPAM. SOMETHING HAS TO CHANGE.'

OPTA TAKES ACTION AGAINST SPAM

In 2004, OPTA was given the authority to take action against spam. In the first year, this resulted in fines for the three largest spammers in the Netherlands. An additional 14 warnings were issued. In six months, an investigative system was established, partly based on consultation with regulators in other countries and by intensifying the cooperation with the Data Protection Board.

Daan Molenaar, project manager for combating spam, describes the operation.

'Spam is a huge problem. Now nearly 75 percent of all international e-mail traffic is spam. The entire internet is heavily burdened with messages that people do not even want. Something has to change. Fortunately, OPTA is now able to do something about it.

We are the regulator in the telecommunications sector, thus is was only logical to assign this responsibility to OPTA. It is our task to regulate the market. Combating spam is part of this.

Spam is a problem for both consumers and the business sector. It costs them a lot of money. Certainly for people who are still collecting their e-mail via a modem or who

6. REGULATION UNDER THE NEW TELECOMMUNICATIONS ACT

Dynamic developments

As indicated in the earlier sections, the communications sector is changing rapidly. Product and process innovations bring new and less expensive products. These dynamic developments require reticence on the part of the regulator. New technologies and alternative infrastructures must be given the opportunity to blossom. In particular in innovative markets, the risk of erroneous intervention is significant because markets are moving and market positions can change rapidly.

The new Telecommunications Act recognises this, prescribing that emerging markets be excepted from regulation. However, the Act also indicates that regulation must be independent of the technology involved. In practice, this means that the difference between existing and new markets is not clear-cut. In section 3, for example, the question was posed whether voice over IP is a process innovation (fixed telephony in a new technological jacket) that makes existing products less expensive, or whether it is a product innovation that results in a separate emerging market.

In any case, such developments affect existing markets and cause transition difficulties between the old and the new situation. This is especially a challenge when the old situation is regulated, as is the case with fixed telephony. With reference to dominant providers, OPTA will strive to find a balance between giving

have a data limit. But the time involved in reading the messages and their technical processing also involve costs. The server and service of internet providers is being monopolised for 75 percent by spam. And then there are the indirect costs involved in keeping spam out, such as spam filters. The situation is simply absurd!

Trust

Spam is causing people to lose their faith in the internet. This may sound dramatic, but the development of new services depends on the extent to which people are willing to move on the digital highway. Certainly when it comes to banking over the internet, for example, which is a matter of trust. The apparently uncontrollable stream of spam scares people. Internet can save a lot of time and money, certainly in the business sector, but this will succeed or fail depending on the trust people place in it.

Limitations

OPTA is authorised to combat spam that originates in the Netherlands, but only if it is sent to consumers. Businesses are free to act as they please in this respect. Considering the high costs that spam involves for the business sector, we are also analysing how we can address this issue.

This year we demonstrated that we can quickly find and fine spammers in the Netherlands. A number of the large fish have already been fined. If they do not stop now, they will soon be fined again. Considering the limited margins that can be earned on spam, these fines will hurt.

However, most spam originates outside of the country. Ninety percent of all spam comes from the United States or Asia. OPTA cannot take action against this. OPTA does cooperate with regulators in other countries. By drawing their attention to spam that originates in their country, they have an opportunity to combat it. Because of the scope of this problem, all parties are willing to cooperate. And that cooperation is necessary, because electronic communication is no longer limited by country borders.

In any event, we are able to combat spam from the Netherlands. A worldwide approach will take some time, but if all regulators do their best, ultimately spammers will have nowhere to go. Responses to the action we have taken to date have been positive… except from the parties that were fined, of course!

Information

People can protect themselves against spam. Internet providers have spam filters, for example. But it also helps if you don't leave your e-mail address behind when you don't need to. It is also important to protect your computer from contamination by certain viruses. These viruses allow your computer to be used for sending spam, without your knowledge. There is no need to be afraid of the internet, but you must be aware of how to use it.

Information, including the website www.spamklacht.nl is therefore an important weapon in our battle against spam. People can report spam, after which we can investigate it. Based on these complaints, we can also determine what is causing most problems and where we should put our priorities. The spam reported on the site already bore fruit last year, when the Dutch spammers mentioned above were identified and fined.'

sufficient space for innovation and safeguarding competition.

Economically-oriented approach

The new Telecommunications Act gives OPTA new regulation instruments. The key phrase is customisation. Under the old telecommunications act, the obligations were directly derived from the law on a one-to-one basis. This straightjacket gave little room for the nuances that are indispensable in the current technological and market developments. The new Telecommunications Act places more faith in market mechanisms. It is more attuned to the principles of general competition law and intervention is only permitted when there is a lack of actual competition. OPTA will be liberal when it can but strict when it has to be.

The new Telecommunications Act prescribes that OPTA perform a market analysis at least once every three years on the basis of the principles of general competition law. The current premise is formed by the 18 markets recommended by the European Commission. The period of time between the definition of the relevant markets by the European Commission, requesting information from the market parties and the ultimate effectuation of the finalised decisions is long. This means that regulation runs the risk of having to catch up with the facts. To prevent this, OPTA takes developments expected in the years to come into consideration in its decisions.

An important part of the market analysis is international attuning with the European Commission and regulators

in other Member States. Economic circumstances can vary between the countries. Unlike other countries, for example, the Netherlands has many broadband connections via the cable as well as many market parties that have rolled out their own infrastructure. The European framework requires an economically-oriented analysis by the national regulators. Deviating national circumstances - like in the Netherlands - require deviating regulation - by OPTA. In some cases, these deviations conflict with the interests of the European Commission in applying strongly-harmonised regulation in the various Member States.

Sustainable competition as a premise

The premise of the new legislation and the market analysis decisions is that the interests of the end-user are best served on the longer term by sustainable competition. Sustainable competition is competition that is not dependent on regulation. Competition between companies with their own infrastructure (infrastructure competition), for example, is easier to sustain than competition that is dependent on imposed access obligations for parties that do not have their own infrastructure (services competition). By imposing access obligations, OPTA ensures that investments in new, competing infrastructures are not frustrated.

If infrastructure competition is possible, it is to be preferred. Access measures are then only intended as transitional measures in achieving infrastructure competition, and are therefore temporary. Whether infrastructure competition is possible, however, is often very difficult to predict. In recent years infrastructure competition in the higher layers of the networks - up to the local exchanges - has increased. Moreover, technological developments appear to limit the extent to which local loop networks can act as natural monopolies.

Retail regulation is only applied if infrastructure or services competition do not force the market to offer a competitive price and quality.

Liberal regulation and strong enforcement

OPTA has opted for a liberal approach to regulation. To offer the market certainty, obligations are defined in so far as possible for a number of years. This gives the market more freedom. However, OPTA will exert its authority more emphatically than in the past to enforce the imposed obligations via fines or legal penalties. After all, the freedom given may not be abused.

The premise for the market analyses is that regulation will be defined for three years. Only in extremely exceptional cases will OPTA modify its decisions intermediately. This could happen if the premises of the market analysis change significantly. To assess this, OPTA will continue to actively monitor the market and pro-actively approach market parties for information.

OPTA PRIORITIES 2005

Priority	Objective
Market analysis	The market analysis decisions for all 19 markets have been approved.
Retail regulation fixed telephony in the future and consequences on number plan	Establish clarity in the market with reference to future retail regulation for fixed telephony and the consequences this will have on the number policy.
Regulation and monitoring VoIP supply	Establish clarity in the market with reference to the competition framework for the regulation of VoIP. This also includes the obligations for end-users that VoIP providers must satisfy.
Bundling	Establish clarity on the market regarding the manner in which OPTA will deal with bundling proposals for free and regulated services. Bundling may not be used by dominant providers to avoid regulation.
'Emerging markets'	Establish clarity in the market regarding what OPTA considers to be an ‘emerging market’; OPTA will preferably attune this viewpoint internationally (ERG).
Dialers	Fewer problems with dialers and fewer complaints through an effective approach (information, investigation and legislative process).
Follow-up on improvement points OPTA evaluation 2005	OPTA will follow up on the improvement points identified in the OPTA evaluation in 2004-2005 (see Chapter 5 of the Annual Report).
Enforcement policy	Establish clarity in the market regarding the manner in which enforcement instruments will be employed and when they will be employed.
Discount investigation KPN	Discounts given on regulated services by KPN in the past will be punished and OPTA will ensure that conditions are created to prevent this in so far as possible in the future.

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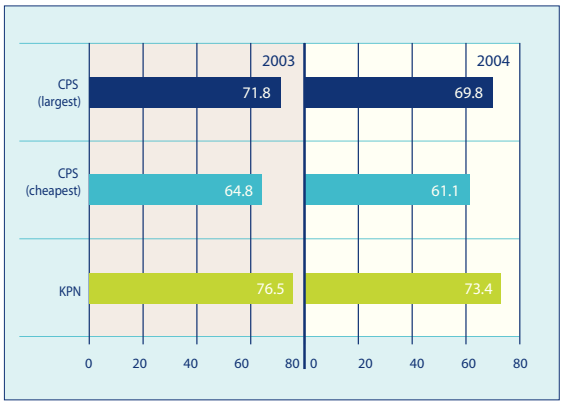
Market Monitor communications

Figure 1 **Costs for fixed telephony per two months via KPN and via CPS,** 2003-2004, in euros



Source: Market monitor Communications, OPTA

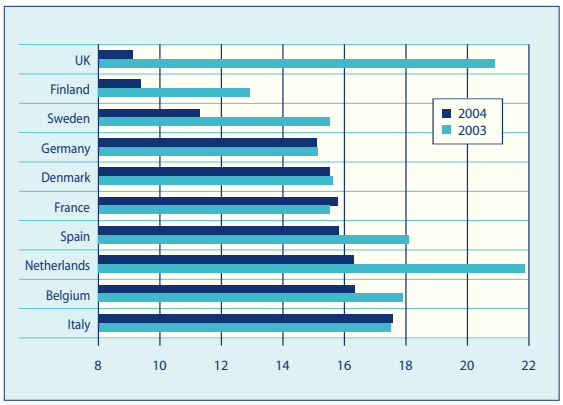
Figure 1 shows a call profile for an average user with a BelBasis subscription. Based on this profile, the bi-monthly costs were calculated for calling via KPN and via CPS. The table shows that the costs for fixed telephony decreased in 2004 as compared to 2003. The primary reason for this is the reduction in the tariffs for telephony from a fixed to a mobile phone. Discounted numbers and other discount schemes were not included in these calculations. The largest CPS providers are Tele2, Pretium Telecom, Scarlet and BudgetPhone.

Figure 2 **Costs for fixed telephony in a European perspective,** 10 minute call, 2004, in euros

Source: Eurostat

Figure 2 shows the costs for fixed telephony in the Netherlands as compared to other countries. As compared to other countries, the tariffs in the Netherlands are low.

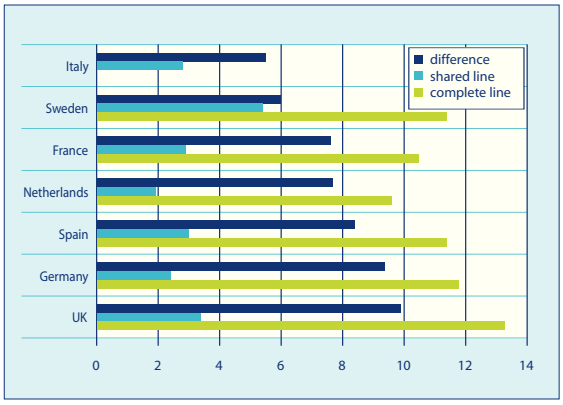
Figure 3 **Terminating tariffs for incoming traffic on a mobile network in international perspective,** July 2003 and July 2004 (average for all operators), in euro cents per minute



Source: EC, 10th implementation report

Figure 3 shows the terminating tariffs for incoming traffic on a mobile network. Thanks to intervention by the various national regulators after consultation within the ERG (European Regulators Group), the tariffs charged by the mobile providers for this traffic decreased in nearly all countries. This resulted in a decrease in the costs for telephony from a fixed to a mobile phone. The tariffs in the Netherlands moved closer to the average for the European Union in 2004.

Figure 4 **Tariff lease of a fully unbundled local loop and a shared local loop in international perspective,** 2004, in euros per month

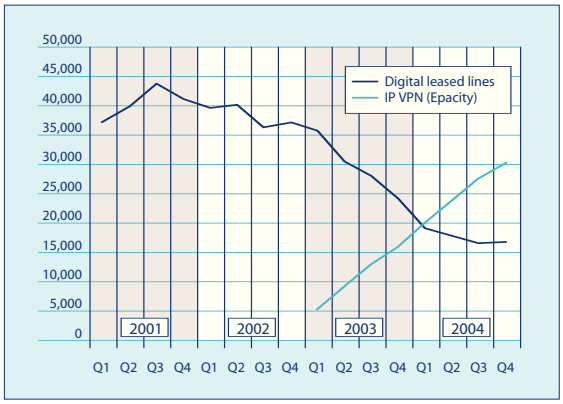


Source: EC, 10th implementation report

The former monopolists in the European Union lease lines that run from local exchanges to consumers' homes, to their competitors. This is called unbundling. Figure 4 shows the tariffs for the lease of a shared and a fully unbundled line (see also section 2, Vision

Communication) and the margin between the two. The margin between a shared and a fully unbundled line is relevant because it represents the additional costs that a competitor must pay if that competitor's client terminates the telephone line with the former monopolist. This makes it interesting for the competitor to supply telephony to the client in addition to a broadband connection, if the margin on the additional telephony service is higher than the additional costs for taking over the entire line.

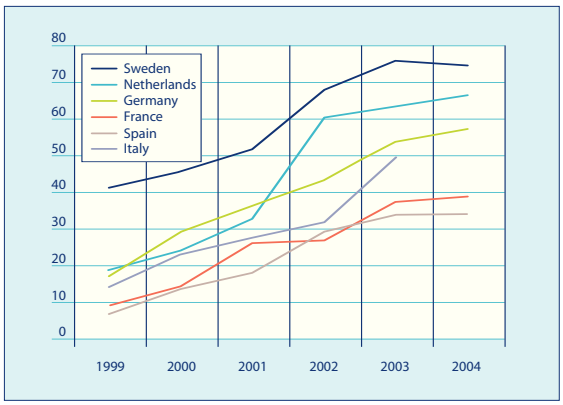
Figure 5 **Migration of leased lines to data communication,** 2001 - 2004, number of lines



Source: KPN Quarterly reports

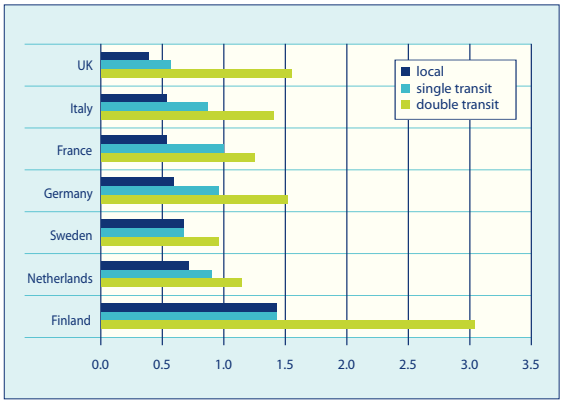
Leased lines are primarily used by companies to connect their branches. Like in recent years, the number of leased lines decreased in 2004. Despite the decreasing tariffs for digital leased lines, companies are migrating to less expensive data communication networks based on the internet protocol, e.g. Internet Protocol Virtual Private Networks (IP-VPN).

Figure 6 **Internet penetration (% of the population) in an international perspective,** 1999 - 2004, in percentages



Source: www.internetworldstats.com

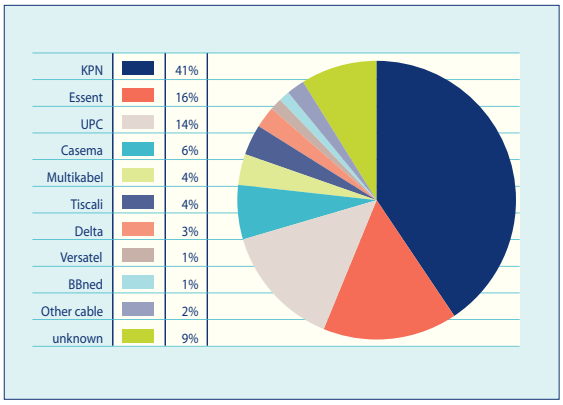
Figure 7 **Fixed interconnection tariffs in a European perspective,** 2004, in euro cents per minute



Source: Market monitor Communications, OPTA

In Figure 7, a distinction is made between the three tariffs that are charged for the use of the network belonging to the former monopolist: local interconnection, single transit and double transit. This distinction addresses the hierarchy of the network of the former monopolist. Local interconnection means that a competitor has its own network that has been rolled out significantly far. The competitor needs interconnection on the local level with the national former monopolist in order to establish a connection between two end-users. The single transit tariffs are the costs for interconnection on the regional level. With double transit, a competitor has its own limited network. The competitor therefore needs inter-connection on the geographic network in addition to the regional network belonging to the former monopolist.

Figure 8 **Market shares broadband internet access providers based on consumer research,** total market, 2004



Source: EIM [1]

In 2004, EIM asked households in 2004 from which provider they purchase broadband internet access. The results of this consumer survey are shown in Figure 8. Most households indicated that they purchase broad-band internet access from KPN (ADSL). KPN is followed by Essent (cable) and UPC (cable).

1. EIM, Consumer survey into the purchase of bundled communication products in the Netherlands, December 2004.

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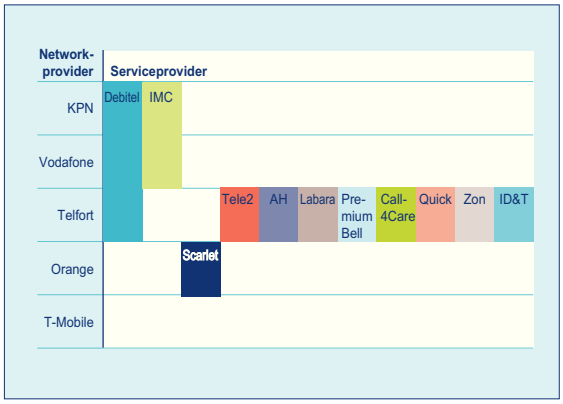
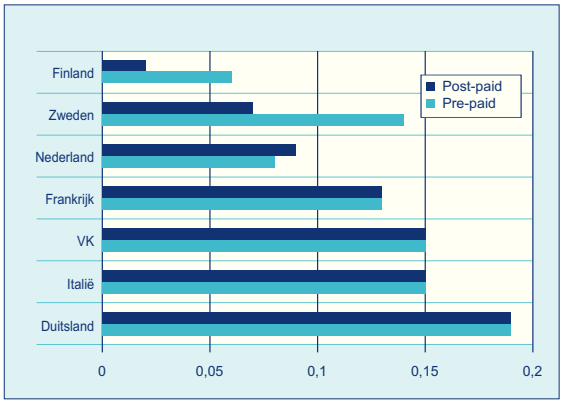
Figure 9 | **Competition on the market for mobile telephony**



Source: OPTA

Figure 10 | **SMS tariffs in an international perspective,** January 2005, lowest peak tariffs in euros



Source: Market Monitor Communications OPTA, based on price lists provided by national operators.

Figure 9 reflects the competition on the market for mobile telephony. There are five mobile telephony providers in the Netherlands that have their own network. There are also a large number of service providers active on these networks. Telfort in particular has positioned itself as a provider of wholesale access for service providers. Some service providers use the networks of multiple access providers.

Figure 10 shows the lowest SMS tariffs in various EU Member States. This represents the standard tariff for a domestic SMS. In the Netherlands, SMS tariffs have decreased significantly. In general terms, in 2003 an SMS still cost more then twenty cents and in 2004 less than ten cents.

Table 1 | **Number of customers (in millions) and market shares of mobile network providers, 2001-2004**

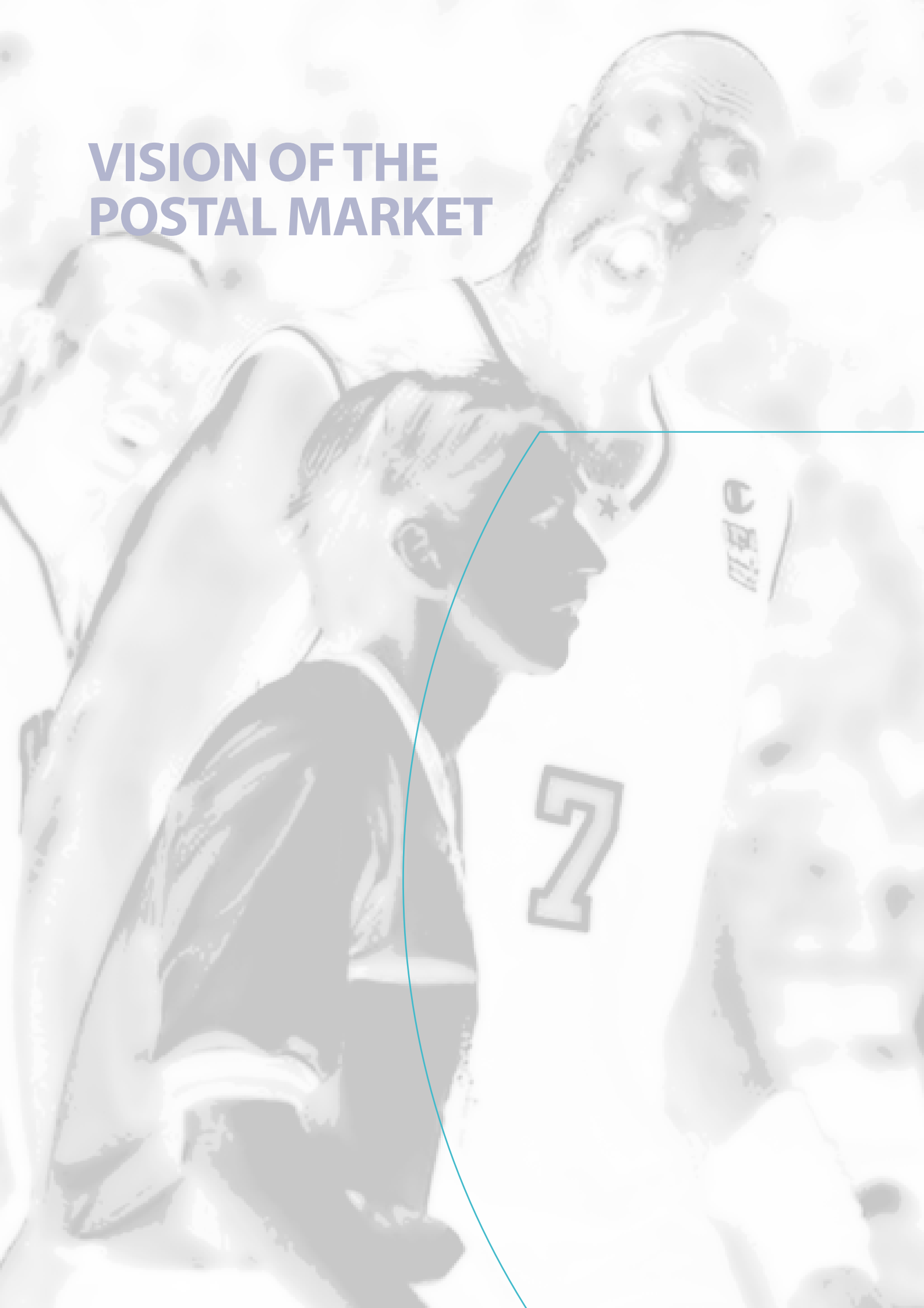
	2001		2002		2003		2004	
KPN Mobile	5,2	43,5%	5,0	41,8%	5,2	39,0%	5,8	39,0%
Vodafone	3,2	26,9%	3,3	27,1%	3,2	24,4%	3,5	23,9%
T-Mobile (Ben)	1,1	9,2%	1,4	11,8%	2,0	15,1%	2,3	15,2%
Telfort (O2)	1,3	10,7%	1,3	10,7%	1,6	12,1%	1,7	11,6%
Orange (Dutchtone)	1,2	9,6%	1,0	8,5%	1,2	9,3%	1,5	10,4%
Total	**12,0**		**12,1**		**13,2**		**14,8**	

Source: Market Monitor Communications OPTA [2]

Table 1 lists the number of connections and the market shares held by the mobile network providers. In comparing the figures, due caution should be applied because not all providers apply the same definitions.

2. 2001, 2002, 2004 operators, 2003 BTG. Figures 2001 and 2002 from September. 2003: end of the year. 2004: KPN Mobile, Vodafone, T-Mobile September, Orange June, Telfort March.

VISION OF THE POSTAL MARKET



Division postal market

In compliance with the Postal Act, the postal market in the Netherlands is divided into services that are the exclusive right of the concession holder and other services that have been assigned to the concession holder. The combination of these services comprises the assigned services to be provided. The assigned services are subject to the requirement of Universal Services. This requirement is intended to guarantee users a minimum level of services with a specific level of quality by obligating TNT[1] to provide these services.

Universal Services

- domestic: letters weighing no more than 2 kg and parcels weighing no more than 10 kg
- foreign: letters weighing no more than 2 kg and parcels weighing no more than 20 kg
- registered post with stated value, court documents (post office boxes)
- collection and delivery: 6 days per week with the exception of holidays
- delivery period: on average 95 percent of the letters within 24 hours

Exclusive right:

- Domestic and foreign letters weighing no more than 100 grams[2].

The concession holder in the Netherlands is TNT. OPTA ensures that TNT adheres to the rules that relate to performing the assigned services.
Other providers are allowed to offer services that are included in the Universal Services but not in the concession (exclusive right). In addition to the services assigned to the concession holder, TNT also offers services that are not subject to rules: the 'free' part of the postal market. Where possible, OPTA strives to remove entry barriers for new entrants in the liberalised section in order to promote sustainable competition in the postal market.

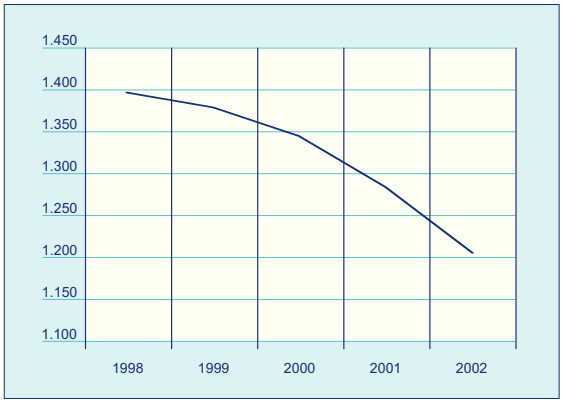
In addition to the distinction made in the Postal Act, a division can also be made into four segments: post sent from consumer to consumer (C2C, four percent of the entire postal market), from consumer to business (C2B, four percent of the entire postal market), from business to consumer (B2C, 58 percent of the total postal market) and from business to business (B2B, 34 percent of the total postal market).

The largest player in the Netherlands is TNT. TNT is also a large global player, with sales totaling about 12 billion euros in 2003[3]. There are also a number of relatively new players that are active on the postal market in the Netherlands, including Deutsche Post (in particular its subsidiary Selektmail), Royal Mail, La Poste and Sandd. Sandd focuses on addressed printed matter (magazines, direct mail, etc.) with a delivery frequency of two times a week. Selektmail offers a wide range of services.

Volumes TNT letter post under pressure

Letter post volumes of former monopolists are under pressure[4]. The same holds true for TNT: the post volume of TNT's letter post in the Netherlands decreases by a few percentage points each year (see Figure 1). Post companies are increasingly confronted by competition from electronic communication. Research[5] has indicated that consumers are increasingly using e-mail and SMS instead of traditional post. Data from TNT indicate that - unlike the volume of letter post - the volume of bulk mail (e.g. folders) remained relatively constant until 2003[6]. TNT expects a further decrease in the quantity of addressed post[7] it processes, in any event until the economy starts recovering. TNT states as reasons for this, in addition to the increasing use of e-mail, SMS and electronic invoices, the reduced frequency of bank statements and the increasing competition.

Figure 1 **Volume of letter post delivered by TNT to mail boxes,** 1998-2002, in millions



Source: TNT Form 20-F, Annual Report 2002.

To compensate for the decrease in volume, TNT and other postal companies are expanding their activities or attempting to increase their scale by means of take-overs. An example in this respect is the cooperation between TNT and Sanoma, making TNT more active in the magazine market.

New entrants

Shifts in the postal market in the Netherlands were modest in 2004. TNT retained its dominant position in most segments. For post from consumers to consumers

1. During the year under review the name of the concession holder was TPG N.V. This name was changed into TNT N.V in mid-April. TNT N.V. is the legal successor of TPG N.V. and as concession holder it is obligated to execute the mail delivery in the Netherlands and to or from areas outside the Netherlands.
2. Out-going international post and printed matter are not included.
3. Approximately one-third of which is generated by the postal division; see TNT Annual Report 2003.
4. Source: UPU - Postal Market Review 2004
5. Source: Ministry of Economic Affairs - Networks in figures 2004
6. Source: TNT Form 20-F, Annual Report 2002
7. This is more than just letter post; it also includes addressed printed matter.

TNT retained a market share of 100 percent. This segment includes - in addition to small parcels and letters weighing more than 100 grams - in particular letters weighing less than 100 grams, for which TNT holds the exclusive right. Letters, irrespective of their weight, represent about one-third of the turnover on the entire postal market.

In the delivery of post between consumers and businesses, competition is seen on the market for packages, where TNT still holds a share of about 50 percent. In 2001 TNT took over the contracts held by Media Expresse with Sanoma, giving it a strong position on the market for magazines and periodicals. On the market for unaddressed printed matter (folders) and daily newspapers, TNT is a relatively small player.

In the delivery of post between businesses, competition is seen on the parcel market. Parcels between businesses represent nearly twenty percent of the entire turnover in the postal market.

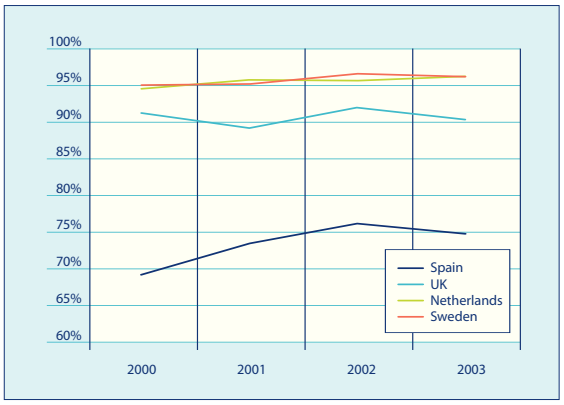
Alternative providers are gradually increasing their relative share of the postal market as compared to TNT. The companies Sandd and Selektmail show steady growth in the turnover they achieve in the Netherlands. Sandd and Selektmail took responsibility for about nine percent of the turnover on the postal market in the Netherlands last year[8]. Sandd asserts that its turnover has more than doubled from € 14 million in 2003 to € 32 million in 2004. The number of post items delivered by Sandd increased from 60 million to 130 million, which, according to Sandd, takes its market share of the free postal market up to five percent. Selektmail experienced similar growth and expects its turnover to double once again in 2005.

TNT satisfies requirements Universal Services

OPTA monitors effectuation of the Universal Services by TNT. In 2003 TNT satisfied all requirements involved in the Universal Services. TNT scored better again this year in the delivery period of national and international post. Delivery within 24 hours is an important criterion for 98 percent of the consumers[9]. Domestic letter post must be delivered within 24 hours in 95 percent of the cases. In 2003, TNT achieved a percentage of 96.1 percent (see Figure 2). Letters within Western Europe must be delivered within three days 85 percent of the time. In 2003, TNT achieved a percentage of 93.2 percent (see Figure 3). In general, consumers are satisfied with the quality of the post delivery[10].

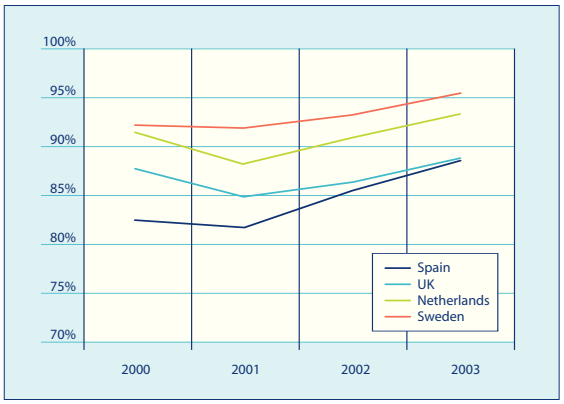
In 2003 TNT also satisfied the requirements of the post office policy. This policy prescribes that TNT ensure that

Figure 2 **Domestic post, delivered within 24 hours,** in a European perspective, 2000-2003



Source: Market Monitor Post OPTA, based on figures in annual reports and from other regulators

Figure 3 **International post, delivered within three days,** in a European perspective, 2000-2003



Market Monitor Post OPTA, based on IPC figures - External quality of service monitoring, 2002, 2003.

nearly every inhabitant of an urban centre has a post office within a radius of 5 kilometers. In residential areas with more than five thousand inhabitants, this must be an office that supplies all obligatory services.

In accordance with the post office policy approved by Parliament, the number of post offices at which all services were available has decreased in recent years: from 1169 at the end of 2002 to 1136 at the end of 2003[11]. The agreements involved in this post office policy were included in the legal stipulations this year (Barp, published January 2005). These stipulations include the requirements that the number of post offices at which all services are available must be at least 902 at the end of 2005 and that the number of post offices with at least an almost complete range of services may not be less than 2000.

The post offices that are closed are replaced by service centres with a more limited range of services. Consumers have indicated that they primarily consider this to be a limitation of their convenience. On average,

8. Both Sandd and Selektmail claim a turnover of about 5 percent of the market. Source: www.sandd.nl and www.selektmail.nl
9. Source: Ministry of Economic Affairs - Networks in figures 2004.
10. Source: Ministry of Economic Affairs, Notitie Post, January 2004.
11. Post Office Plan TNT.

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however, consumers are satisfied about the distance between the post office and their homes[12].

The postal market liberalised in two stages

The European Directive requires that countries in the European Union liberalise their markets in stages. The legal letter monopoly, for example, was decreased from 350 grams to 100 grams in Europe in 2002, and will be further decreased to 50 grams as of 1 January 2006. The Netherlands already reduced the monopoly from 350 grams to 100 grams in 2000. It will follow the directive in the reduction to 50 grams as of 1 January 2006.

The existing European post directive no longer applies as of 1 January 2009. Before the end of 2006, the European Commission will propose a new directive. The Minister of Economic Affairs announced that the Netherlands will anticipate complete European liberalisation in 2007 by completely freeing the postal market in the Netherlands. The motivation for this is that the Netherlands will benefit economically from an accelerated liberalisation of the market, providing Germany and the United Kingdom follow suit. This is because the Netherlands, Germany and the United Kingdom represent the largest part of the European postal market, and the major European players are from these countries. By making the liberalisation dependent on developments in Germany and the United Kingdom, a disadvantage for TNT is avoided. OPTA shares the Minister's vision: it is to the advantage of (in particular business) end-users that competition is up and running as quickly as possible.

Consumers will probably not notice the liberalisation immediately, business users might.

However, it remains to be seen whether the German and British postal companies can establish a large market share if the market in the Netherlands is liberalised (somewhat) earlier. If these parties enter into the market relatively quickly, the end-users (in any event the business end-users) in the Netherlands will profit earlier. For the record, Postcomm, the regulator in the United Kingdom, recently announced that their market would be fully liberalised as of 1 January 2006.

Wider access possibilities

The Post Memorandum sketches matters including the main lines in the areas of access and tariffs in the fully-liberalised postal market in 2007.
Access in the postal market means that TNT must make its services accessible for competitors at a reasonable tariff. At this time, TNT is not obligated to allow access to its (distribution) network. In practice, TNT already offers parties with large batches of post (banks, for example) the possibility of supplying post to one of the six regional sorting centres at a reduced tariff. The level of the tariff reduction is determined by the costs that TNT does not incur as a result (avoided costs), such as transport from the letter box to the sorting centre. This scheme applies to bulk letter post. The Post Memorandum proposes that as from 2007, TNT must allow access to its delivery network against non-discriminatory and transparent tariffs and conditions. The Post Memorandum from the Minister of Economic Affairs indicates that OPTA will be assigned explicit mediation authority in this respect.

The tariffs for the Universal Services will be subjected to a price-cap system. This means that tariff increases will have a maximum. The maximum until 2007 is equal to the average general increase in wages. However, TNT has promised the Minister of Economic Affairs that the tariffs for consumer post will be frozen until 2007.

The Post Memorandum proposes that the tariffs for consumer post may increase in 2007 by no more than the inflation rate or the consumer price index. This is comparable to the existing price regulation in various other EU countries (see Table 1).

Table 1 | Tariff regulation systems in other EU countries

Germany	Tariff increases limited to the consumer price index, minus the expected increase in productivity.
Finland	No tariff determination. The prices must be related to the costs.
Sweden	Tariff increases limited to the consumer price index. This only applies for single letter post weighing no more 500 grams.
UK	Tariff increases limited from April 2003 to June 2005 to the consumer price index minus 1 percentage point. In April 2003 the prices initially increased by 3 percent.
Portugal	Tarriff increases limited to the consumer price index minus 0.5 percentage point.

Source: MarketMonitor Post OPTA

12. Source: Ministry of Economic Affairs - Networks in figures 2004

Economies of scale and entry barriers

The total market for letter post consists of letters weighing no more than 100 grams for about 70 percent. Only 3 to 5 percent of this post weighs more than 50 grams. With the reduction of the monopoly from 100 to 50 grams as per 1 January 2006, only a small part (about 3 percent) of the letter post will be open to competition.

As of 2007, letter post up to 50 grams will probably also be open to competition. However, it remains to be seen whether competitors will achieve sufficient economies of scale to enter into the consumer market. On the consumer market, economies of scale play a part in the collection and delivery of post (red letter boxes and post offices), sorting of post and the delivery frequency. In other words, a competitor needs a large number of clients to be able to profitably deliver, collect and process letters from individual consumers. Thus even if a new provider is significantly more efficient than the former monopolist, the costs per unit may be considerably higher than those incurred by the former monopolist due to the small market share. This presents an entry barrier. On the business market, economies of scale are less important. Businesses usually supply large quantities of sorted post themselves. The largest entry barrier is the delivery of post from businesses to consumers within 24 hours, because the competitor must also visit every home almost daily in this case.

Complete liberalisation will give competitors the possibility of expanding their existing services to include letters. As a result, like TNT, they can offer (business) clients a complete package of services - one-stop shopping - and give a corresponding discount. This is important if market mechanisms are to function properly: if competing providers are only allowed to offer a limited range of services, consumers and business end-users will be hesitant to switch: inertia will prevail.

Rapid certainty with reference to liberalisation

As already indicated, the Minister of Economic Affairs has made the liberalisation dependent on the liberalisation of the German and British markets. In principle, the liberalisation will take place as scheduled, but if the foreign markets are not truly liberalised, the Minister retains the right to ‘pull the emergency brake’. This does not give much certainty about the developments to be expected, despite the fact that market parties are faced with important investment decisions. This uncertainty can be reduced by giving concrete criteria regarding the effectuation of the emergency brake procedure.

Rapid, proper processing returned post

Unnecessary entry barriers can obstruct the establishment of true competition. This is why it is important that the processing of returned post and access to the postal code system be safeguarded.

It is important that the processing of returned post be properly organised for all competitors as well. Rapid, proper processing of returned post is an important consideration in the choice between TNT and its competitors. It enables the company to keep its customer files up to date. When post is addressed or delivered incorrectly, it is usually returned via TNT because the recipients return the post using the red letter boxes or through the post office. TNT has now reached agreements with two providers for remedying this problem. The question is whether these agreements also apply to new entrants on the market.

Competitors require access to the most current postal code system for delivering letters to the correct address. This postal code system is also often used in applications by businesses that are involved in direct mailing (addressed advertising). The postal code system cannot be replicated by competitors. TNT manages the postal code system and regularly revises it, partly for the purpose of adding new addresses (housing developments). Access to this system is therefore vital in supplying the same quality of services. At this time, this access is not properly regulated, forming an entry barrier for TNT's competitors.

General non-discrimination obligation for TNT’s subsidiaries with reference to competing service providers is important.

TNT supplies (part of) the infrastructure for other service providers. As a result, it can influence the level of costs and service offered by competing service providers. This applies not only to existing services, but also to services as yet to be developed. Because TNT is vertically integrated, it can favour its own (or affiliated) service company as compared to (service) competitors. To prevent this, ex-ante regulation is important, by means of a general non-discrimination obligation for TNT's subsidiaries with reference to competing service providers.

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ANNUAL REPORT

INTRODUCTION

OPTA monitors and regulates the markets for electronic communication and post. It was established to promote competition on the telecommunications and postal markets. Competition on markets promotes the freedom of choice and lower prices for consumers and businesses. In addition to actively stimulating competition, OPTA has a number of other tasks that are intended to ensure that the market functions as desired and to protect consumers, such as combating un-requested e-mails. OPTA's regulation is oriented towards an open and transparent market with a sufficient supply of services and providers, in which market parties and end-users are protected from dishonest competition and abuse of a monopoly or market position.

In this annual report, OPTA accounts for its activities and results in the year 2004 based on its most important activities and events. The report is structured according to the principle From Policy Budget to Policy Accounting (Van Beleidsbegroting tot Beleidsverantwoording - VBTB): what we wanted to achieve, what we have achieved and how we achieved it. The question of what it cost is answered in the annual accounts.

OPTA's activities in 2004 primarily focused on achieving the following main objectives:

- Working with the new Telecommunications Act
- Promoting sustainable competition in the telecommunications and postal markets.
- Protecting consumers
- Maintaining effective and efficient regulation
- Internal organisation

In addition to accounting for its objectives, OPTA is required to account for its expenses for each market category. The law has determined that an important part of the money involved in OPTA's activities is to be funded by the market. This is the main line that runs through the annual report. These market categories are:

- electronic communications
- post
- numbers
- trusted third parties

The new Telecommunications Act was effectuated in May 2004. This new act has had significant consequences on OPTA's activities. It is for this reason that the revised Telecommunications Act is regularly discussed in this annual report.

1. ELECTRONIC COMMUNICATIONS

1. Working with implementation of the new Telecommunications Act
2. Promoting sustainable competition
3. Protecting consumers
4. Effective and efficient regulation

A large part of OPTA's work pertains to regulation of the markets for electronic communications. The revised Telecommunications Act places main emphasis on the broad term 'electronic communications'. Electronic communications includes fixed and mobile telephony, internet access and transmission of broadcasting signals. Thus every type of electronic communication, and no longer simply 'telephony' or 'leased lines'. In short: the technology involved in supplying the services - copper, fiber optic or cable - is irrelevant. Determinant is whether there is a competition problem. This has enlarged OPTA's area of operations. Electronic communications is highly dynamic; it is growing and it is constantly being innovated. At the same time, the structure of some markets is (still) such that competition is not always a matter of course. Again and again, this necessitates new solutions and customisation of regulation.

New Telecommunications Act, new working method

The revised Telecommunications Act was effectuated on 19 May 2004. This Act effectuates six European directives in Dutch law and serves as the primary foundation for OPTA's activities. The act has widened OPTA's position and area of operations. The manner in which access to networks belonging to dominant market parties can be enforced has been extensively modified, increasing the ability to customise. The revised Telecommunications Act prescribes that the extent to which regulatory activities are based on economic principles must be greater than in the past. General competition principles play a more important part in OPTA's activities. Because of the revised act, OPTA regulates more areas (for example combating spam), and its working method is primarily based on market analyses that focus on controlling market dominance.

The implementation of the revised Telecommunications Act means that OPTA must base its regulation measures on the outcome of market analyses. These analyses focus on defining the relevant markets and answering the question of whether there are dominant parties on these markets (legal criterion: significant market power), and which fitting measures should be taken. For each market, OPTA defines tailor-made solutions based on the motto 'flexible where possible and strict where necessary'. The new regulation system requires OPTA to study (at least) 18 markets, determine whether there is a party with significant market power and, if so, impose fitting obligations on the relevant market party. These 18 markets have been identified by the European Commission. If necessary, OPTA can regulate other markets not identified by the European Commission. The regulation system requires OPTA to act in keeping with long-term competition, which will ultimately give consumers more choice in terms of price and quality.

1. WORKING WITH IMPLEMENTATION OF THE NEW TELECOMMUNICATIONS ACT

Effectuating efficient and effective implementation of the new Telecommunications Act required significant effort from OPTA in 2004. In the period under review, a series of measures and activities were undertaken to modify and prepare the market for electronic communications in the Netherlands for the new European regulatory framework. OPTA continually strove to give market parties and other interested parties certainty and predictability where possible. Although OPTA could not act in anticipation of the market analyses, it did strive to offer insight into its regulation doctrine, and also requested feedback from the market in this respect. Safeguarding the investment certainty for businesses is an important calibration point for OPTA. Moreover, OPTA is aware of the administrative burdens it has placed on the market parties with reference to the project market analyses. In so far as possible, these burdens were limited to the bare essentials.

Market analyses commence

With the effectuation of the Kabelwetje or Cable Legislation (an interim modification of the old Telecommunications Act), since February 2004 OPTA is authorised by law to gather information and data from the market parties for the purpose of market and dominance analyses. Based on the sometimes sizeable questionnaires, OPTA asked businesses in the various market clusters to supply information about matters

Relevant markets in electronic communication

- **Cluster fixed telephony:**
  - access to the public telephone network at a fixed location for end-users (markets 1 and 2);
  - publicly available telephone services provided at a fixed location to end-users (markets 3 through 6);
  - call establishment on the public telephone network provided at a fixed location (market 8);
  - call termination on separate public telephone net-works provided at a fixed location (market 9);
  - call transfer services in the fixed public telephone network (market 10).

- **Cluster leased lines:**
  - terminating segments of leased lines on the wholesale level (market 13);
  - bundle segments of leased lines on the wholesale level (market 14);
  - the minimum collection of leased lines to end-users (market 7).

- **Cluster mobile telephony:**
  - call termination services on separate mobile net-works (market 16);
  - access to and call establishment on public mobile telephone networks (market 15);
  - the national wholesale market for international roaming via public mobile telephone networks (market 17);

- **Cluster broadband:**
  - unbundled access to the local loop (including shared access) for the supply of broadband and voice services (market 11);
  - wholesale broadband services (such as bit stream access) (market 12).

- **Cluster broadcasting:**
  - distribution services for the delivery of broadcasting signals to end-users (market 18).

Regulation steps

The Telecommunications Act prescribes the following system that OPTA must follow when imposing obligations on market parties. The process consists of three steps:

1. Analysis and definition of relevant markets
First, OPTA must define the 'relevant market'. This means that for each market, OPTA must analyse which products and which market parties are competing with one another, whether a distinction must be made between consumers and business clients, and whether, for example, competition occurs on a national or regional scale. For instance, is fast internet via the cable part of the same market as fast internet via the fixed telephone network (xDSL)? The definition of relevant product markets and geographic markets is based on the principles of general (European) competition law.

2. Determining dominance and economic position of dominance
Next, OPTA must determine whether parties are active that hold an economic position of dominance (significant market power) on the relevant markets. An economic position of dominance means that a company need take little competition into consideration and can therefore charge higher prices than the prices that would apply if effective competition existed. A large market share can indicate the existence of an economic position of dominance.

3. Imposing fitting measures
If a company is active on the market that holds an economic position of power, OPTA must impose fitting and proportionate obligations on that company. The obligations imposed by OPTA must offer a solution to the identified competition problem on the analysed market, but may not go further than necessary for solving the competition problem. The main test for OPTA is: what is good for competition on the longer term, and therefore ultimately good for consumers? Reticence and customisation have central focus, for example when imposing access obligations. When imposing obligations, OPTA must motivate these not only in terms of quality but also, if possible, in quantitative terms.

Before OPTA actually decides to impose obligations, the draft decisions go through two rounds of consultation, one on the national level and one on the European level. The decisions are first submitted for comments to the market parties active on the market in the Netherlands, and then to the European Commission and other European telecommunications regulators. The European Commission must ensure that the European directives upon which the Telecommunications Act is based, are applied uniformly by all EU Member States.

including turnover, sales, purchase prices and retail prices. In addition to this quantitative information, OPTA requested a variety of qualitative data regarding market positions, market developments and entry barriers. In compiling the questions, OPTA applied the premises of actual working hypotheses and asked the market to respond to these.

The questionnaires were sent to the market parties in March 2004. Initially, OPTA planned to be able to submit its draft decisions to the market for consultation in the autumn of 2004. However, collecting the information required more time than anticipated. What is more, a number of the answers submitted by market parties were incomplete or lacked sufficient quality. It was for this reason that the time schedule was modified: the draft decisions were submitted to the market parties for consultation in the course of spring 2005. The European telecommunications directives offer the EU Member States time to conclude and implement their decision making until 1 May 2006.

The market raised serious criticism regarding the large quantity of detailed questions. Although OPTA attempted to offer the market clarity in advance regarding the upcoming questionnaires and their scope, the market parties complained about the sizeable administrative burden. In consultation with the market, measures were taken to alleviate the problem areas as identified. Individual agreements were made, for example, regarding the supply of answers in phases, and the questionnaire was reduced for smaller market parties.

The market analyses focus on competition problems that differ in terms of content for each market. In the market for the transmission of broadcasting signals, for example, the crucial issue is whether the retail market - meaning the consumer price - for broadcasting needs regulation. Is sufficient competition achieved simply by regulating the wholesale market? In the mobile market, the central issue is the price of calls from a fixed telephone to a mobile telephone, and the extent to which this price should be reduced. In the regulation of the broadband market, the core question is the extent to which ADSL via the fixed network competes with fast internet via the cable.

Harmonisation obligations

According to the Lisbon objectives that the countries in the European Union agreed to, Europe must be the most competitive economy in the world in 2010. Harmonisation of and uniformity in the markets for telecommunications can be an important stimulus in this respect. For a proper competitive climate, the directives for electronic communication must be effectuated in the same manner throughout the entire EU. Within the European Regulators Group, a collective framework was compiled for the imposition of fitting obligations and measures for dominant market parties at OPTA's initiative. The European regulators collectively agreed to stimulate long-term competition, and only to intervene where truly necessary. The regulators will be reticent, for example, in imposing obligations for network access. Focus is placed on stimulating competition between the various infrastructures.

For a proper competitve climate, the directives for electronic communication must be effectuated in the same manner throughout the entire EU.

Improved economic motivation of decisions

In the period under review, OPTA's Economic Analysis Team devoted effort to stimulating the development of economic thinking within OPTA. Relevant discussions with market parties contribute to the predictability of future OPTA policy. The team was established as a think tank, and its responsibility is to ensure that the decisions can be sufficiently motivated in economic and competition-stimulation terms. The manner in which OPTA effectuates its competition-stimulation task, after all, is based on the economic theories of market mechanisms. The team performs research and writes memoranda about economic issues as they relate to regulation. The memoranda are intended to render in-depth content and serve for discussion with interested parties, both inside and outside of OPTA. The team zooms in on topics that are current in the various markets (called horizontal themes) and strives to give insight into regulation dilemmas. In 2004, the transition from the old to the new Telecommunications Act also played a central part in the team's work.

During the period under review, the Economic Analysis Team published various memoranda about a variety of topics:

- Balancing between infrastructure and service competition, in which it became clear that there is not always a choice between these two types of competition. For broadband, a scenario regarding this question was detailed in a separate paper.

- Papers were published about price discrimination and bundling of services. Two themes that will form the heart of future (retail) regulation policy. Based on these papers and other sources, OPTA commenced the development of this new policy at the end of 2004.

- A paper about vertical integration describes the advantages and disadvantages of vertical integration. A discussion that is on-going not only inside the electronic communications sector. The team concluded that vertically integrated players are not necessarily the bad guys and can render consumer advantages as long as competition is not excluded.

- A paper about the issue of when an access obligation can and cannot be imposed on a dominant player. The team asserted that this obligation may only be imposed if the company holds a strongly-dominant position on both the wholesale and retail markets.

- Lastly, a paper about the introduction of new services and the relevant risk of other parties being excluded from the market.

Internet telephony - Voice over Internet Protocol

Internet telephony is an example of new technology for which OPTA must provide customised regulation. The European regulatory framework prescribes that regulators must be extremely hesitant in their approach to emerging markets. After all: the market must have the time and space to innovate and develop.

OPTA is intensively involved in the issue of internet telephony. In time, the growth of internet telephony will result in a (drastic) reduction in telephony via KPN's telephone network, for example. It will become advantageous for consumers to replace traditional telephone services with internet telephony. OPTA published a consultation document to discover opinions in the market regarding the obligations to be satisfied by providers of Voice over internet. The outcome of the consultation will affect OPTA's market analysis decisions.

The assignment of telephone numbers for internet telephony must also be based on a system other than the traditional one. Internet is not limited to country borders, making it difficult to issue regular numbers, such as geographical numbers, for internet telephony. The market was consulted regarding the relationship between internet telephony and the use of telephone numbers. OPTA was able to offer market parties clarity regarding the telephone numbers that can be used for internet telephony, enabling market parties to continue the development of internet telephony. On the European level, OPTA devoted effort to compiling a collective viewpoint regarding the use of numbers for internet telephony.

Interoperability

To stimulate competition between providers of telecommunication services, it is particularly important that consumers who use different providers be able to communicate with one another. In the new Telecommunications Act, the term interoperability has central focus with reference to the necessary relationships between services and networks. Players in the markets for electronic communications are obligated, if another player so requests, to negotiate regarding the connections between their networks. For telephony, there is even an obligation to establish interoperability.

In the new Telecommunications Act, the term interoperability has central focus.

The extent to which the obligations apply affects the operations of the companies involved, and is one of the reasons why OPTA believes that it is vital to give clarity with reference to interoperability. In the summer of the period under review, OPTA submitted its policy line to the market parties for consultation. The objective was to announce policy rules to the market parties by the end of 2004. A decision handed down by the Trade and Industry Appeals Tribunal regarding a conflict between T-Mobile and SMS provider Yarosa, however, caused OPTA to withdraw the consultation regarding interoperability. The judge determined that OPTA had applied a view of interoperability that was too broad. The decision indicated that a company may only request (negotiations about) interoperability if it operates a network and if the request is intended to improve the communication possibilities of its own clients.

Fine policy reformulated

The amended Telecommunications Act gives OPTA more authority to impose fines, for instance if the spam prohibition is violated. For some violations, OPTA can also impose fines that are higher than they could be in the past. In the period under review, OPTA formulated and published its fine policy rules. The rules give parties in particular clarity regarding the factors that determine the level of the fine. The size of a fine is determined on the basis of the seriousness of the violation with relation to the actual economic context. Fines may amount to up to € 450,000 or a maximum of ten percent of the relevant turnover.

As indicated else-where in this annual report, OPTA already imposed a number of fines in 2004 in keeping with this fine policy.

2. PROMOTING SUSTAINABLE COMPETITION

Competition is an important stimulus for economic growth, resulting in prosperity advantages for consumers. OPTA facilitates, stimulates and optimises competition in the electronic communications markets. It promotes consumer choice, between providers and between services. It also strives to ensure that the prices in the market will allow market mechanisms to function properly, in turn enabling new parties to enter into and remain on the market. Changing providers must also be possible without barriers or difficulty.

Transition regime wholesale tariffs

Each year, KPN submits a proposal for the prices for use of and access to the KPN network. The level of the wholesale tariffs is limited by the standard of cost orientation. OPTA evaluates whether the tariffs are higher than the sum of the underlying costs plus a reasonable profit margin. At the end of 2004, OPTA published a decision in which KPN's wholesale tariffs (interconnection tariffs) for 2004/2005 were determined. This decision has resulted in significantly lower prices for a number of important wholesale services. What is more, it gives the market parties maximum legal certainty regarding the applicable tariffs. This affects the competitive position of the market players who use KPN's fixed network, such as providers of fast internet and carrier (pre-)selection.

Because the new legislation was effectuated in the period under review but the market analyses were not yet concluded, OPTA decided to apply a transition regime in determining the wholesale tariffs. The details of the standard of cost orientation were defined differently than in previous years. The introduction of the transition regime gives the market certainty. Top priority was assigned to safeguarding the importance of avoiding legal uncertainties and proceedings regarding the wholesale tariffs. OPTA also wanted to ensure that on-going proceedings against the tariffs as determined last year would be withdrawn. The uncertainty made it necessary for market parties to reserve financial resources as provisions. Another factor was the significant decrease in call volumes on KPN's fixed network.
The growth of broadband internet and mobile telephony means that less call traffic runs via the fixed network. OPTA believed that, in anticipation of the market analyses, this development should be included in its considerations.

In 2004 OPTA negotiated the level of the wholesale tariffs with KPN. The objective of these negotiations was to arrive at a tariff proposal that was acceptable to OPTA. In previous years, other market parties were more closely involved in this process by means of sounding board groups. Although the working method applied in this period resulted in certainty and more rapid determination of the tariffs, it also resulted in many questions and criticism from the market. In particular, market parties were dissatisfied with the lack of transparency in the process and with the fact that they had not been involved in the negotiations at an earlier stage. This was the reason for intensive consultation with the market at that point in time. OPTA has indicated that it finds transparency extremely important, and that in the future it will consider how it can improve ways in which it takes the broad criticism from the market into consideration.

Involuntarily switching to another provider

OPTA has devoted effort to protecting consumers better against slamming: involuntarily switching to another calling company for fixed telephony. This problem occurs in the procedure for (de-)registration for carrier (pre-)selection. To make the transition from one fixed telephony provider to another easier, for example the switch from KPN to Tele2, providers can submit orders to KPN to transfer a subscriber directly. Naturally, this is only allowed if the subscriber has given explicit permission to do so. In the hunt for clients, or due to technical shortcomings, sometimes a client is transferred without explicit permission, so that the subscriber suddenly discovers that calls are made through a different provider.

OPTA believes that slamming is a minor but persistent and irritating problem for consumers. In a conflict procedure between market parties, OPTA has devoted efforts to the compilation of a modified code of conduct in order to minimise slamming. However, OPTA did not succeed in getting all parties to agree and does not have the legal authority to take measures against involuntary switches. Based on the complaints regarding this issue received by OPTA, it has asked the Ministry of Economic Affairs to modify the law so that OPTA can take measures against slamming.

Easier switching between broadband providers

When a change is actually made from one fast internet provider to another, normally a period occurs during which the consumer has no connection. This ‘black hole’ in the provision of services and the confusion involved in the transfer gives many consumers sufficient reason not to switch to another provider. Obstacles of this type decrease competition. If a consumer wants to leave, he must be able to determine at what point in time the

connection with the new provider will be established without being cut off by the previous provider in the mean time. This is why OPTA has imposed requirements to ensure that the transition period is as short as possible. As a result, the average transfer period has been reduced from more than a week to a few hours.

Discount regime

During the period under review, OPTA has processed a large number of tariff requests from KPN. Due to its market power, KPN is required to submit all of its prices for consumers and business telephony to OPTA for approval in advance. OPTA assessed whether the legal requirement of pricing based on the underlying costs is being complied with and whether the competition can deal with the relevant end-user tariff. If the prices are too low, the competition suffers. Competitors that use KPN's network must deal with the wholesale tariffs that KPN charges for network access. The competition could easily be squeezed between KPN's low consumer prices and high wholesale prices, making it impossible to earn any money. OPTA keeps an extremely close eye on this 'gap' between purchase and retail prices. If OPTA were to allow discounts that are too large, consumers would have short-term financial profit, but would have less freedom of choice in the long term. This is because other call providers would not be able to offer the same discounts and would be forced from the market.

Large discounts provide the consumer with short-term financial profit, but less freedom of choice in the long term.

Positive decision on telephony via broadband

In the period under review, OPTA made a decision that was positive for KPN based on a tariff proposal submitted by KPN regarding voice telephony via the broadband connection, also known as Voice over DSL. For small business users, this is a less-expensive alternative to calling via the fixed network. Like with internet telephony (Voice over IP), Voice over DSL requires a custom solution from OPTA. With Voice over DSL, the connection method is more efficient, so that costs can be saved. The question is whether KPN gives too much discount and applies tariffs that are too low.
On 4 November 2004, OPTA decided that KPN is allowed to pass the saved costs on to clients.

Discount campaign KPN: fine € 450,000

As a large player in some segments, KPN has the market power to force competitors from the market by using discount campaigns. KPN is therefore required to have its discount campaigns approved in advance.
In this particular case, KPN offered BelZakelijk subscriptions with an extra discount without approval by OPTA. This campaign allowed subscribers to call free of charge for one month. OPTA noted a serious violation of the Telecommunications Act and started a penalty procedure. Early in 2005 OPTA imposed the maximum penalty of € 450,000 on KPN.

Martijn Meijers,
senior advisor with OPTA.

'CRITICISM FROM THE MARKET, BUT CERTAINLY AND CLARITY REGARDING WHOLESALE TARIFFS.'

BALANCING BETWEEN OPENNESS AND FINAL RESULTS

Each year KPN submits a proposal to OPTA for the tariffs it wants to charge its competitors for use of the fixed network. The Telecommunications Act prescribes that these tariffs be based on the underlying costs. This prevents KPN from forcing other telephone providers out of the market by charging tariffs that are too high.

OPTA then evaluates the cost allocation applied by KPN. If this cost allocation is incorrect in OPTA's view, KPN is asked to modify it. Usually, these modifications result in lower tariffs than the tariffs proposed by KPN.

In 2003 this procedures caused a dispute between OPTA and KPN: KPN did not agree with the modification of the cost allocation as requested by OPTA. KPN then submitted an appeal against OPTA's decision about the tariffs to the court.

In 2004, OPTA decided to determine the tariffs in a different manner, both putting an end to the 2003 dispute and making it possible to determine the tariffs for the period after July 2004. To do so, early in 2004 OPTA invited KPN to discuss the tariff proposal that KPN would be submitting for the coming period. Martijn Meijers is senior advisor with OPTA and took responsibility for these discussions with KPN.

'The tariff proposal for 2003/2004 was under review of the court and it was going to take a long time before any clarity could be given. What is more, the Telecommunications Act applicable at the time did not provide very well for a situation in which OPTA rejected a KPN proposal. This lack of clarity meant a large lack of certainty for market parties, because it would be quite some time before they knew exactly what they would have to pay KPN. This would have had an extremely detrimental effect on the investment climate, while possible post-charged fees might have presented some parties with problems that could not be overcome.

Discussions with KPN

We did not want to wait for KPN's proposal for 2004 so that we would not be forced to go through the same process as in 2003. This is why we invited KPN at the beginning of the year to discuss the proposal with us, providing this would also solve the dispute of the previous year. Besides, a system had to be found anyway for the transition from the old to the new Telecommunications Act. This was a good reason for establishing a transition system and breaking through the stalemate.

Apparently, KPN also realised that it would be good to quickly resolve the problem. After all, court cases involve a lot of time and money. And uncertainty regarding the tariffs is not favourable for KPN's operations either.

Other market parties critical

To keep other market parties informed about the results, we organised an information meeting at the end of May where the market parties were asked to respond in writing to the transition system. Some of the market parties were very much opposed. They would have preferred to have been involved in the discussions earlier, and were now confronted with a feat that was already pretty much accomplished. Looking back, I think that it would indeed have been better to inform the other market parties earlier in the process.

However, we were not only concerned with the tariffs for the period 2004 and thereafter. We also wanted clarity regarding the previous year. It was therefore difficult to decide exactly when to inform the other market parties. If they had been involved too early in the process, the discussions would probably have been forced into details too quickly and too much, because each market party has its own specific interests and priorities. That would have delayed the process and threatened the ultimate results. Now that we waited, some of the parties felt left out. Nevertheless, we achieved excellent results. Even most of the market parties agree with this.

Results

The most important objective we achieved was the fact that we established clarity and certainty about the tariffs KPN must apply for the period July 2003 through January 2006. This is in the best interest of all the market parties - including KPN - and thus of the continued development and innovation in the telecommunications sector in the Netherlands.

What is more, the transitional system for the period from July 2004 until January 2006 gives KPN's competitors a considerable tariff reduction. Perhaps the outcome of the regular assessment would have been even lower. But if that had meant that another court case lasting years was needed, I believe that a slightly lower tariff cannot compensate for the risks and uncertainty about the tariffs.

Now that the problems from the past have been resolved, we can fully concentrate on the new Telecommunications Act and on the question of how KPN's tariffs should be assessed in the future. Naturally, we will encounter some bumps along the way, but by responsibly determining the process, we have a good chance of getting all noses pointing in the same direction. Naturally, we will also address the point of better informing the market parties involved.'

This was a good reason for establishing a transition system and breaking through the stalemate.

Calling from fixed to mobile less expensive

In 2004, OPTA once again devoted significant attention to the high tariffs for termination of mobile calls. These are the prices that one mobile calling company charges another provider for the termination of calls on its network. As a result, clients with a different provider are able to call the mobile end-user. A mobile provider holds a monopoly on the termination of calls to subscribers on its network. As a result, excessive tariffs are charged, in particular for calls from a fixed to a mobile telephone.

Without regulation, the termination tariffs could increase without restriction, interrupting the various relevant market mechanisms.

Under collective pressure from the Netherlands Competition Authority (NMa) and OPTA, at the end of 2003 the mobile calling companies decided to reduce their mobile termination tariffs in phases. The first phase was implemented on 1 January 2004, and this gradual reduction will be completed in mid-2006. By then the termination tariffs will have been reduced by one-half. Callers from a fixed to a mobile telephone are expected to save a total of € 200 million in costs as a result during the period under review. The outcome of the on-going analysis of the mobile market will herald further price reductions.

Costs of call termination fixed networks

OPTA has devoted specific attention to the level of the termination tariff applied by fixed network providers. This pertains to the prices KPN must pay for call termination to parties with their own fixed network. For example: calling from KPN to a subscriber on Versatel or MCI's fixed network. Like the mobile termination tariffs, these providers do not suffer from competitive pressure in the termination of calls. After all, the call can only be directed to the consumer over its network. Without regulation, the termination tariffs could increase without restriction, interrupting the various relevant market mechanisms.

OPTA has determined the level of reasonable termination tariffs on fixed networks in policy rules. Based on these rules, OPTA has required parties to reduce their tariffs in conflicts.

Digging rights and tolerance

Being able to lay, maintain and relocate infrastructure for electronic communication is vitally important in particular to the long term objective of competition between infrastructures. In virtue of the Telecommunications Act, OPTA regulates certain aspects of the underground installation and relocation of telecommunication and broadcasting cables. This pertains to rules regarding when digging rights and tolerance obligations exist, as well as the relevant payment obligations. In principle, a general tolerance obligation exists for digging activities related to laying or relocating cables.

In the period under review, OPTA undertook many activities to inform interested market parties, municipalities and private individuals regarding the details and scope of the digging rights and tolerance obligation. OPTA also made a number of decisions based on conflicts.

Based on changes to the Telecommunications Act, as from mid-2005 OPTA will have more authority and thus a broader working field in dealing with conflicts. The new European regulatory framework infers that the establishment of infrastructure be stimulated.

KPN not allowed access to UPC cable network

In the autumn of 2004, KPN submitted a conflict to OPTA regarding access to UPC's cable network. Its objective was to offer a digital package of radio and television programs via the UPC network; in addition to telephony and internet, KPN wants to be able to offer its clients broadcasting services. OPTA rejected KPN's request at the end of December. The rules in the 'old' Telecommunications Act that were still applicable made it impossible to honor KPN's request. Whether or not KPN will be allowed access later is largely dependent on the outcome of the economic market analysis of the broadcasting market that OPTA will conclude in the first half of 2005. OPTA did not have the opportunity to evaluate the content of KPN's request. KPN requested a type of access that is not provided for in the applicable act. Parties can only request transmission of specific programs, not of an entire package. KPN's request focused on transmission capacity, not on the transmission of individual programs.

KPN's violation of number information service

When transferring telephone subscriptions, telephony providers must have access to number information. In 2002 OPTA imposed an obligation on KPN to make number information available to competitors quickly and easily. Clients, in particular in the business market, often do not have all of the relevant number information,

meaning that KPN is the only party that has this information. It was learned in 2004 that KPN now uses a faster and easier system for its own use but erroneously failed to make this system available to competitors. KPN is subject to a legal non-discrimination obligation to provide this access. As a result, KPN detrimentally affected the competition, therewith seriously violating the Telecommunications Act. A fine of € 225,000 was therefore imposed.

3. PROTECTING CONSUMERS

Protecting consumers and the public interest is one of OPTA's main objectives. This is certainly the case in market segments where market parties hold a weak competitive position and where market mechanisms are insufficiently stimulated to protect consumers against abuse or disadvantages. Consumers' interests are primarily pursued through regulation of the market and by stimulating competition, but in a number of cases direct action is taken to protect consumers. For example, OPTA has specific authority to combat spam and undesired installation of software on home computers. Pollution of the electronic highway is a direct threat to competition and growth. OPTA identifies instances in which consumers need protection, partly based on complaints received.

Combating spam

It is forbidden to send unrequested e-mail messages, SMS messages and faxes to private individuals. The collective name spam is used to refer to all of this undesired communication. In 2004, OPTA was assigned the authority to take action against spam sent from inside the Netherlands. Consumers can submit complaints about spam to the website established for this specific purpose: www.spamklacht.nl. Based on these complaints, OPTA investigates the sender of undesired e-mail and imposes fines if necessary. Detailed information about how consumers can protect themselves against spam is also given. In 2004 OPTA received nearly 5,000 spam complaints. At the end of 2004, OPTA imposed three fines for sending of spam via internet and SMS. These cases involved large spammers in the Netherlands. See also the summaries on page 80.

Most spam currently originates in the United States or Asia. OPTA cannot address this; that authority lies with the regulators in these countries. By exchanging information with these regulators, sometimes foreign spammers are dealt with. In 2004 OPTA agreed to a cooperation protocol with the French regulator in order to combat spam within a European framework.

OPTA also entered into a cooperative agreement with the Data Protection Board (College Bescherming Persoonsgegevens - CBP) encompassing reciprocal assistance in actual investigations (for uniform interpretation of the law). In order to send spam, address files are needed. As a result, a lively trade exists in e-mail addresses and mobile telephone numbers. This problem is being addressed by the CBP.

Combating involuntary calls to toll numbers

Since the new Telecommunications Act was effectuated, OPTA has monitored the prohibition against undesired installation of software (known as cookies). In 2004 many complaints were received regarding auto dialers, which make computers call an expensive telephone number. An important cause of this problem is that while surfing on the Internet, users get ‘pop ups’ on their screen and sometimes say ‘ok’, therewith approving installation of the program and the payment obligation involved. The installed software then makes lengthy calls to a toll number or a foreign number without the consumer knowing, with the ensuing disastrous effects on the telephone bill. In the period under review, OPTA extensively investigated auto dialers, but has proven insufficiently able to take action against this phenomenon at this time. In practice, these programs have often been installed on the computer with the user's permission, albeit not always very clearly.

In 2004 many complaints were received regarding auto dialers, which make computers call an expensive telephone number.

OPTA worked intensively with the Information Services Foundation (Stichting Informatiediensten) and the Independent Committee for Information Numbers Foundation (Stichting Onafhankelijke Commissie Informatienummers), exploring ways to warn consumers against auto dialers. To make it clear to consumers what action they can take to protect themselves, OPTA focused on providing information in cooperation with the Ministry of Economic Affairs (including via OPTA's website). The Minister of Economic Affairs is preparing new legislation to give OPTA more room in regulating the use of auto dialers.

Cooperation with the Disputes Committee for Consumer Affairs Foundation

OPTA is not authorised to render decisions in conflicts about contracts between individual consumers and telecom providers, such as the amount of a telephone bill. This is the responsibility of the Disputes Committee for Consumer Affairs Foundation (Stichting Geschillencommisssies voor Consumentenzaken, SGC). OPTA only acts if the conflict is about obligations determined by law that are not related to contract law, such as telephone boxes and the obligation to offer telephone services in remote areas. Because this situation is confusing, OPTA has proposed that these cases also be dealt with by the SGC. Working agreements were made in this respect in 2004.

By providing information, OPTA hopes to make consumers more aware of possibilities and warn them of risks.

As from September 2004, the SGC is the single institution for consumer conflicts. Clear working agreements have been made for the transitional period, and the organisations work closely together. In 2005 these OPTA tasks are expected to be formally transferred to the SGC. Thanks to OPTA's efforts, more telecommunication providers have become affiliated with the SGC, enabling this organisation to deal with more consumer complaints.

SMS code of conduct successful

Mobile telephone users are not only troubled by spam, but are also intensively approached for subscriptions to SMS information services. Based on the numerous complaints regarding termination of these paid services, OPTA urged the market parties to compile a code of conduct in 2003. This course of action was chosen because a code of conduct normally works faster than regulation by means of fines. Based on the reduced number of complaints regarding this subject, this code appears to have been successful in 2004. As a result, OPTA expects that it will not need to take as much action in 2005. Naturally, OPTA will continue to keep an eye out for relevant complaints.

Public information

In the review year 2003, OPTA expressed its intention to improve its availability. OPTA has succeeded in achieving this objective. In 2004 OPTA improved its responses to consumer queries and questions from market parties. In particular the FAQ section of the website and the more rapid telephone services contributed to this. The registration of complaints and queries was also expanded, enabling OPTA to identify trends more quickly and respond to them faster. OPTA also provided information via the telephone and website, including in combating auto dialers and spam. By providing information, OPTA hopes to make consumers more aware of possibilities and warn them of risks. These measures will be expanded in 2005.

The OPTA front office is not only the address for queries, but also the place to report complaints. Appendix 3 contains a summary of the complaints received. Based on these complaints, OPTA can determine consumers' priority of subjects and take necessary action. The list of subjects was headed in 2004 by complaints about auto dialers and portability of (mobile) numbers.

Number portability when switching

To make it easier to switch to another telephone provider, OPTA has taken the viewpoint that a number may be taken along to the new provider even while the old subscription is still valid. The Trade and Industry Appeals Tribunal, however, determined that this is not allowed and that OPTA has interpreted the Telecommunications Act too freely. The portability obligation commences only after the current contract has been terminated. Complaints were also received in 2004 regarding the portability of numbers for which contracts had been terminated.

International roaming

OPTA has taken the initiative of studying tariffs for international mobile calls, in cooperation with other European regulators in the European Regulators Group. Mobile providers charge extremely high tariffs when users from other countries use their networks (e.g. a Dutch person placing a mobile call in France). OPTA can only regulate what mobile providers in the Netherlands charge to foreign providers whose subscribers place mobile calls in the Netherlands. The same holds true for the other regulators; they are only authorised to address the tariffs charged by mobile providers in their country. Based on the survey, a collective approach will be agreed to on the European level in 2005.

Regulation of compliance Universal Services

As a provider of the Universal Services, KPN is required by law to offer a basic level of certain telephone services. This obligation guarantees that all households in the Netherlands have access to telephony. KPN must offer these services for a reasonable price. Both the price and

the scope and details of the services are subjects that are regulated by OPTA. For example, OPTA asked KPN in 2004 to also offer selective number blocking for 06 numbers. To protect consumers and based on complaints, in 2004 KPN was once urged to offer this service. Starting from 1 December 2004, KPN now also offers selective number blocking for 06, 084 and 087 numbers. Furthermore, the availability of a specified telephone invoice on paper was achieved in the period under review.

Weaving error in regime quality reports

Providers of fixed public telephone services and providers of public pay telephones are required by the Telecommunications Act to report each year about the quality of the services they provide. Insight into the quality of the services provided enables consumers to compare the performance of the various providers. The quality reports must be published by the companies themselves and must be submitted to OPTA each year before 1 April.

Market parties must have faith that OPTA will quickly and efficiently conclude its conflict mediation.

Under the old Telecommunications Act, a similar obligation existed. Early in 2003, the Commission consulted with the market regarding this reporting obligation, so that policy rules about the reporting method could be compiled on the basis of the responses. After it became clear that this reporting obligation does not exist for CPS providers under the revised Telecommunications Act, OPTA decided not to compile policy rules. This is because of the fact that under the existing Telecommunications Act, only some of the market parties - those providers with their own networks - will give insight into the quality of the services provided. This weaving error was brought to the attention of the Ministry of Economic Affairs, which was requested to repair the Act in this respect. In anticipation of a decision regarding this matter, it has been decided that no quality reports will be requested for the time being.

4. EFFECTIVE AND EFFICIENT REGULATION

OPTA strives to provide effective and efficient regulation. This means that the need for intervention and the best way to intervene are critically assessed. For this purpose, OPTA maintains regular contact with the market parties and with the Ministry of Economic Affairs. Market parties must also have faith that OPTA will quickly and efficiently conclude its conflict mediation and that in any case it will comply with the time periods prescribed by law.

Pro-active regulation

In 2004, OPTA actively addressed enforcement. OPTA started a number of investigations of violations of the Telecommunications Act, in particular with reference to improper discounts. Attempts were also made to alleviated possible problem areas in the future. Developments in the broadband market involving the introduction of two new services and alternative standards (ADSL 2+/VSDL) induced OPTA to be present during meetings and negotiations between market parties regarding this subject. This pro-active regulation takes place on both the wholesale markets and consumer markets.

OPTA was also more active in seeking contact with the market in 2004. During various meetings between market parties and OPTA staff, market expectations were discussed, along with the state of regulation and OPTA's legal (im)possibilities regarding specific market developments and other subjects. These meetings have improved mutual understanding. The lessons learned by OPTA from these meetings - for example the strong need for OPTA to be transparent for the outside world in its considerations and actions - will, to an increasing extent, also be effectuated in actual practice in 2005.

Transparency procedures

OPTA has published all on-going procedures and conflicts between parties and appeals procedures on its website. As a result, market parties are better aware of OPTA's agenda. Competition-sensitive information is not published. For the parties involved in conflicts, the website is a handy point of reference for following progress and finding contact details.

Conflict mediation

In 2004, OPTA largely complied with the time period required by law for conflict mediation. In 81 percent of the conflicts, the cases were concluded within the agreed period of time. Under the new Telecommunications Act, in most cases an OPTA decision can be directly appealed with the Trade and Industry Appeals Tribunal without having to file an objection or appeals procedure with OPTA. It is expected that this will help the market in finding out sooner exactly what is permitted. See also the summary on page 77.

Throughput times appeals reduced

Complaints received from market parties instigated OPTA to strive to reduce the periods of time involved in appeals to decisions and to process the existing backlog in this respect. See also the diagram on page 79 of this annual report. In particular with reference to complaints about the level of mobile terminating access tariffs, a considerable backlog existed.

The period of time prescribed by law for processing appeals cases has been reduced from 14 to 10 weeks under the new Telecommunications Act. OPTA was able to process 82 percent of the procedures within this legal time period in 2004. Procedures in which the legal period was exceeded were primarily those from the backlog from previous years.

Cooperation with the Ministry of Economic Affairs

Cooperation with the Ministry of Economic Affairs is vital. In the areas of policy and regulation, this ministry is OPTA's 'Parent department'. As regulator, OPTA is responsible for effectuation of legislation and regulations issued by the Ministry of Economic Affairs, and in that sense policy and effectuation are strongly related. In addition to legislation and regulations, the Minister of Economic Affairs is authorised to give OPTA general policy directions, and is therefore able to identify accents and priorities in OPTA's application of existing laws. The Ministry does not deal with individual conflicts and on-going procedures. OPTA provides the Minister of Economic Affairs with both requested and unrequested advice, and evaluates the legal feasibility of legislation and regulations.

Recommendations regarding Nozema split

The Ministry of Economic Affairs has decided to split Nozema NV into an infrastructure company and a service provider. In 2004 the ministry asked OPTA for advice regarding the allocation of aerial installation points to the infrastructure company to be formed and/or the mast company. OPTA advised the Minister to include all masts or aerial installation points in a separate mast company, so that the masts would be available for both Nozema services and its competitors, against transparent and non-discriminatory conditions.

Cooperation with the Netherlands Competition Authority

In order to avoid the NMa and OPTA having to perform double work, intensive contact takes place between the NMa and OPTA, and a cooperation protocol exists. This protocol is intended to minimise double requests, in which both the NMa and OPTA are requested to process the same case. This is known as forum shopping. The premise is that OPTA takes responsibility as long as the conflict can be resolved within the Telecommunications Act. In addition to a clear guideline for the division of cases, this protocol also ensures that both parties can utilise one another's expertise. NMa and OPTA consult closely regarding the issues of market definition and the definition of positions of power in the areas of post and telecommunications.

Cooperation with the Ministry of Economic Affairs is vital.

In 2004 the NMa and OPTA signed a revised cooperation protocol, as a result of which OPTA is also involved in relevant merger and takeover cases. The agreements made in this respect are intended to safeguard harmonisation and uniform viewpoints in relevant concentration cases.

OPTA website improved

OPTA's website plays an important part in efficient and effective regulation. By providing more information on the website, market parties are informed more quickly. OPTA has devoted effort to making its website better accessible and more transparent. The website was completely revised in 2004 and expanded with FAQ as well as information regarding the changes involved in the new Telecommunications Act. The website also includes an extensive, parallel version in English.

2. POST

In addition to regulation of the markets for electronic communication, OPTA also regulates the postal market. The postal market has been partially liberalised. TNT[1] still holds a monopoly on letter post weighing no more than 100 grams, but the rest of the market (for example packages and the distribution of door-to-door advertising) is open for competition. In this 'free' section of the postal market, OPTA promotes sustainable competition by removing entry barriers where possible. From January 1st 2006 the monopoly on letter post will be reduced to 50 grams. In time, the market will probably be completely opened, meaning that the letter monopoly will also completely cease to exist. OPTA has started devoting effort to preparations for the complete liberalisation of the postal market, scheduled as announced for 2007.

In addition to the letter monopoly, TNT has also been instructed to offer a number of additional services. The Universal Services requirement also applies in this case. This means that these services must be available to and affordable for all. The tariffs for the services that TNT must provide, as included in the tariff management system, have been subjected to a certain maximum by the Ministry of Economic Affairs. In the period under review, OPTA has ensured that TNT complies with this maximum. For the record, TNT has promised the Minister of Economic Affairs that the consumer tariffs that are subject to the tariff management system will not increase until 2007.

OPTA monitors the quality of the domestic services provided by TNT, such as the delivery period and the availability of post offices.

OPTA monitors the quality of the domestic services provided by TNT, such as the delivery period, the number of letter boxes and the availability of post offices. In 2004 TNT's services as provided in the area of the delivery period for letters and post offices were of sufficient quality. It was also observed that in general, TNT complies with the rules (such as non-discrimination) that apply to entering into contracts for the provision of postal services for business clients. In this respect, OPTA indicated that there is room for improvement for TNT in the identification of these contracts.
OPTA approved TNT's cost allocation system for costs and yields through 2007. This system includes a reporting system that is intended to prevent cross subsidising between the monopoly market and the free services.

1. During the year under review the name of the concession holder was TPG N.V. This name was changed into TNT N.V in mid-April. TNT N.V. is the legal successor of TPG N.V. and as concession holder it is obligated to execute the mail delivery in the Netherlands and to or from areas outside the Netherlands.

3. NUMBERS

1. Auction of business numbers
2. 0800 and 0900 numbers
3. Addressing abuse of telephone numbers
4. Registration system market parties expanded
5. Registration obligation market parties

OPTA bears responsibility for the management of the national telephone number plan. The new Telecommunications Act requires that OPTA reduce the period of time involved in processing requests for new telephone numbers from 6 to 3 weeks. With reference to the new Telecommunications Act, in 2004 many new requirements were added that must be satisfied by OPTA in the assignment of telephone numbers. The possibility of auctioning numbers is one example. OPTA modified its internal processes, as a result of which the reduced period of 3 weeks was achieved in 90 percent of the cases. Now that the organisation has been established, this is expected to improve in 2005.

1. Auction of business numbers

In 2004, the new 088 numbers (one single telephone number for companies and institutions regardless of their geographical locations) were issued. See also the diagram on page 78 of this annual report. There are only a limited number of 'attractive' 088 numbers, as a result of which the Ministry believes these may have exceptional economic value. If multiple parties apply for the same numbers, these numbers are not immediately assigned to the first party submitting an application, as is the case with normal telephone numbers.

The numbers with exceptional economic value are auctioned under the parties requesting the number within one week. In 2004, an auction was announced in seventeen cases. In two cases, an auction was actually held. In the other cases, parties withdrew their requests, making it possible to assign the number without an auction. An auction procedure is applied in all series of numbers that have been identified by the Ministry of Economic Affairs as having 'exceptional economic value'.

2. 0800 and 0900 numbers

The numbers known as short information numbers (numbers starting with 0800, 0900, 0906 or 0909 that have a total of eight digits) are relatively scarce. In 2004, OPTA determined which of these numbers are still in use. It was learned that many market parties still have 'forgotten' numbers. These were ultimately given back. As a result, these numbers are once again available, and the parties have saved OPTA regulation costs. This also avoided appeals procedures against OPTA invoices.

3. Addressing abuse of telephone numbers

In extreme cases, OPTA is authorised to withdraw telephone numbers. In 2004 this occurred for numbers for personal services (084 and 087 numbers). These numbers are used to divert calls between the user's various telephone numbers, such as fax, voice mail, private and business numbers. Based on complaints, OPTA discovered that this service is being abused. By diverting calls to expensive telephone numbers, callers are confronted with unexpected high costs. OPTA has punished this abuse by withdrawing 48,000 of the 50,000 numbers assigned to one party.

4. Registration system market parties expanded

The markets that OPTA regulates have been expanded under the new Telecommunications Act. All providers of public electronic communication services and networks must register with OPTA. Under the new Telecommunications Act, these providers are divided into five market clusters and 18 markets. In 2004, the existing OPTA registrations were transferred to the new division.

5. Registration obligation market parties

Market parties are required to register with OPTA. Under the new act, more parties are subject to OPTA's regulation. OPTA therefore actively sought out the market parties that are required to register in 2004. As a result, parties such as Internet Service Providers (ISPs) were found that had not yet satisfied this obligation. OPTA approached 135 market parties for registration; fifteen of these have opposed the registration obligation.

4. TRUSTED THIRD PARTIES

To give electronic communication proper legal status for users, Trusted Third Parties (TTPs) are used. As a result, an electronic signature is equated with a handwritten signature. The authenticity of the sender of a message is confirmed through TTPs. This also improves the trust that a message has not been changed along the way on the internet. OPTA was asked to advise the Ministry of Economic Affairs about the evaluation of the TTP policy applied by the government. This policy includes assigning responsibility for regulation of the budding TTP market to OPTA. Because this market is still relatively limited (three parties), the costs determined for regulation by the Ministry are high. Based on a request from the market parties, OPTA submitted a proposal to Economic Affairs for reducing these costs and dividing them more fairly. As of 1 January 2005, the costs will be divided on the basis of the number of certificates issued by a TTP.

With the use of Trusted Third Parties (TTP) an electronic signature is equated with a handwritten signature.

Marianne Kracht,
advisor Interconnection and Special Access.

'NO INTERNET FOR SIX WEEKS WHEN SWITCHING TO ANOTHER PROVIDER? RIDICULOUS!'

OPTA DECISION MAKES QUICK SWITCHING TO ANOTHER BROADBAND PROVIDER POSSIBLE

KPN's competitors submitted a dispute in 2004 regarding the period of time needed to switch a broadband internet connection from one provider to another. KPN referred to this as an insurmountable problem, while competitors claimed that all that was involved was 'flipping a switch'. In actual practice, people who switched from one internet provider to another were forced to do without a (fast) internet connection for an average of six weeks. OPTA found this period to be too long.

As advisor Interconnection and Special Access, Marianne Kracht was involved in the decision making a faster switch possible.

'Fast internet via the cable and ADSL have taken an enormous flight. You can already tell by the number of ads for the various providers. In most of the cases, internet via ADSL still uses KPN's lines. The only thing that happens is that there is a competitor at the other end of the line instead of KPN. Other than that, nothing changes.

The open market for internet providers is well regulated. There are multiple providers, and KPN is obliged to give these competitors access to its network. In actual practice, however, the road had quite a few bumps.

When a consumer wanted to switch from one provider to another, this took a number of weeks and sometimes even up to six weeks. In the mean time, the consumer did not have an internet connection or was forced to use a much slower, old analogue modem for which s/he had to pay for every unit of time. For many consumers, and certainly for business users, this was not acceptable and gave reason to not bother switching to a different - often less expensive - provider. The competition was not as open as it seemed.

Switching procedure

The core of the problem was the switching procedure. In the case of a switch, KPN wanted to make sure first that the consumer did not have any outstanding invoices with the old provider. Otherwise the client could simply walk away and the provider would have no leverage for getting its money. KPN Wholesale (the operator of the fixed network) wanted to make unanimous agreements between all broadband (ADSL) providers. That unanimity was never reached because another KPN branch, KPN Retail, who would then cooperate in letting its customers switch to a different provider, understandably did not want to cooperate.

The competitors submitted a dispute to OPTA and we decided they were right. OPTA believed that having to pay old invoices first was an obstacle that was too large: if the consumer gives permission to change the subscription, that must be done. Of course customers have to satisfy their financial obligations, but that may not delay the change. The switchover time has now been reduced to 24 hours.

Thus the primary obstacle for switching has now been removed. With this OPTA decision, once consumers have given permission in writing, they can quickly switch to a different internet provider without having to do unnecessarily long without a fast internet connection. This enables the market parties to truly compete.

Reactions

This decision certainly made tongues wag. Not only among market parties and the professional press, but also on a variety of user websites we immediately received extremely positive reactions. With this decision, a huge source of irritation has been alleviated, as was evident from the complaints regarding this issue that we had received from users.

All of this took place last summer. I think that if you look at the broadband market now, you will see that the competition has intensified. The market has forced providers to offer sharp prices and good service, or else consumers can directly switch to a different provider. Moreover, a wide variety of other services will soon be supplied using broadband, e.g. television and telephony, and it will be easier to switch providers for these too.'

With this OPTA decision consumers can quickly switch to a different internet provider.

5. INTERNAL ORGANISATION

1. Evaluation OPTA
2. Change of management and organisation
3. Relocation to Zurichtoren
4. Integrity and security improved
5. Higher quality knowledge management
6. More efficient organisation
7. Personnel policy and absenteeism
8. Preparations revision of remuneration system
9. Digitisation of archives postponed

1. Evaluation OPTA

According to the OPTA Act, OPTA's working methods are evaluated by an independent party once every four years. This evaluation was performed in 2004 on behalf of the Ministry of Economic Affairs by organisation consulting agency Berenschot. The evaluation report concluded:

- that the extent to which OPTA has satisfied its legal tasks is satisfactory to good
- that the internal organisation can be considered satisfactory
- that the cooperation with the Ministry of Economic Affairs can be considered satisfactory to good
- that the cooperation with other organisations is good.

Under the motto ‘evaluating is learning’, Berenschot made a number of recommendations for further development by OPTA. These areas of improvement are primarily found in the development of a number of process skills with which OPTA can improve the support for its viewpoints, visions and decisions without affecting its professionalism and independence. The Minister of Economic Affairs submitted Berenschot's report to Parliament early in 2005.

2. Change of management and organisation

In order to better address the requirements of the new Telecommunications Act in terms of responsibility and the need for customisation, OPTA's management structure was modified and the position of Director was done away with. As a result, more directly than in the past the Commission bears responsibility for the OPTA organisation and for the daily management of its activities. Moreover, at the end of the period under review, a reorganisation commenced that will ensure that the entire OPTA organisation is harmonised with the package of requirements ensuing from the revised Telecommunications Act in terms of both structure and working methods. The reorganisation will be FTE neutral.

3. Relocation to Zurichtoren

In 2004 OPTA relocated within The Hague from the Babylon building to the Zurichtoren in the Muzenstraat. The housing in the Babylon building was too small and needed renovation. As a result of the move, more space per staff member is available, more conference facilities have been created, and all parts of OPTA are housed together in a single building. The relocation is also expected to stimulate the cooperation with the Netherlands Competition Authority. This is because various NMa departments including the Dutch Electricity Regulator Service are also located in the Zurichtoren.

4. Integrity and security improved

OPTA has assigned priority to its integrity policy and its security. Considering the significant influence that OPTA exerts on the market and the competition-sensitive information it works with, it is extremely important to safeguard confidentiality. The procedures and systems within OPTA were subjected to an external evaluation. This evaluation determined that the intended security improvement was achieved in 2004. What is more, integrity advisors were appointed to monitor the balance between transparency and confidentiality. The premises for this are determined in the Integrity Code of Conduct.

5. Higher quality knowledge management

Knowledge is the hub around which the OPTA organisation revolves. The various disciplines must be able to optimally cooperate and supplement one another in order to perform OPTA's tasks as effectively and efficiently as possible. In 2004 OPTA took important steps in the area of knowledge management and knowledge sharing. In the spring, the OPTA Knowledge Network was launched, replacing the old intranet. The Knowledge Network offers an automated, high-tech environment for the collection and exchange of knowledge. Subsequent steps have since been taken in implementing knowledge management as a tool for stimulating employees to utilise knowledge, experience and best practices.

6. More efficient organisation

Action was taken in 2004 to make the working processes more uniform. The working method must ensure that OPTA's working and decision-making processes are more efficient. The implementation of a plan-oriented approach has resulted in a more uniform OPTA working method. Now work is based on clear project orders, making objectives and resources more clear and facilitating internal harmonisation. Each department takes its own detailed actions, depending on the product to be supplied. It is too early to indicate the level of cost reduction that this operation will render.

7. Personnel policy and absenteeism

In the period under review, all employees were intensively trained about the effort and meaning of the new Telecommunications Act. Like 2003, in 2004 the development and evaluation of employees was characterised by competence management. It was decided that the system for personnel evaluation and competence management would be simplified.
The 24 competencies per job profile will be reduced to only eight. In the period under review, more use was made of internal and external coaching, and effort was devoted to establishing internal supervision groups.

All employees were intensively trained about the effort and meaning of the new Telecommunications Act.

Absenteeism averaged six percent in 2004 (5.26 percent not including absenteeism due to pregnancy). The absenteeism rate is one percent lower than in 2003. Compared to other national government organisations, this is average. For a summary of personnel figures, see page 81 and further in this annual report.

8. Preparations revision of remuneration system

In recent years, market parties have submitted objections to the annual invoice for OPTA's regulation costs. In part, the objections address the manner in which the costs are divided over the market parties within a market category. More specifically, the division of costs over market parties without significant market power and parties with significant market power. The latter parties bear 80 percent of the costs for a market category, while twenty percent is divided over the remaining parties registered in the relevant market category. Although the court decided in OPTA's favour regarding these invoice cases, they gave the Ministry of Economic Affairs reason to explore alternative ways to divide the costs. In 2004 OPTA and the Ministry jointly worked on the development of a system that divides the costs for the market category electronic communication proportionately according to the relevant turnover of the market parties. The revision is expected to be effectuated in 2005.

9. Digitisation of archives postponed

OPTA wanted to digitise its entire archives in 2004, therewith making its entire physical post flow available in digital format. It has since been decided to postpone this until 2006. First OPTA will ensure that its archives satisfy the requirements under the 1995 Archives Act. Based on an organisation's tasks, the act determines which categories of archive resources are to be saved forever and which categories can be destroyed in time.

6. ANNUAL ACCOUNT

Auditor's report

Assignment

In accordance with your request, we have audited the annual accounts as included on page 56 to 72 of this report of OPTA in The Hague. The annual accounts were drawn up under the responsibility of OPTA's Commission. It is 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 size and composition of OPTA's capital as at 31 December 2004 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.

The Hague, 29 March 2005

BDO CampsObers Accountants

OPTA ANNUAL ACCOUNT 2004

Balance sheet

	31 December 2004 x € 1,000	31 December 2003 x € 1,000
ASSETS		
Fixed assets		
Intangible fixed assets		
Formation expenses	163	245
Tangible fixed assets		
Tenant's property	1,203	505
Equipment	241	143
Computer hardware and software	1,522	1,132
	3,129	**2,025**
Current assets		
Receivable from Ministry of Economic Affairs	-	756
Receivables from debtors	717	761
Other receivables	234	250
Liquid assets	1,628	8,429
	2,579	**10,196**
TOTAL ASSETS	**5,708**	**12,221**

	31 December 2004 x € 1,000	31 December 2003 x € 1,000
LIABILITIES		
Shareholder's equity		
General reserve	- 437	634
Investment reserve	454	454
Tariffs reserve	952	219
Formation expenses capitalisation reserve	163	245
	1,132	**1,552**
Provisions		
Provision for appeals	185	630
	185	**630**
Long-term liabilities		
Loans extended by Ministry of Economic Affairs	163	327
	163	**327**
Current liabilities		
Debt to Ministry of Economic Affairs	964	6,337
Debts to suppliers	1,311	1,361
Taxes and social insurance premiums	248	234
Other liabilities	1,705	1,780
	4,228	**9,712**
TOTAL LIABILITIES	**5,708**	**12,221**

Striking is the significant decline in the balance sheet total as compared to 2003. The primary cause of this was the repayment in 2004 of the short-term interest-free liquidity loan to the amount of € 6,174,000 to the Ministry of Economic Affairs.

Profit and loss account

	Realised 2004 x € 1,000	Budget incl. spam 2004 x € 1,000	Realised 2003 x € 1,000
INCOME			
Revenues from market categories	15,779	15,116	14,999
Other income	3,032	3,790	2,787
TOTAL INCOME	**18,811**	**18,906**	**17,786**
EXPENDITURE			
Personnel costs			
Salaries and social insurance charges	9,104	9,816	8,257
Other personnel costs	1,737	1,531	1,546
	10,841	**11,347**	**9,803**
Third-party assignments	2,343	2,393	3,145
Cost of equipment	3,297	3,597	3,437
Depreciation	1,597	1,741	1,024
Extraordinary liabilities	1,287	-	-
TOTAL LIABILITIES	**19,365**	**19,078**	**17,409**
OPERATING RESULT	**- 554**	**- 172**	**377**
Interest income	134	-	77
RESULT	**- 420**	**- 172**	**454**

In 2004, a total loss was incurred of € 420,000. In particular, this loss is a result of the extraordinary liabilities to the amount of € 1,287,000

During 2004, OPTA's original cost estimate for 2004 with reference to combating spam was increased by € 280,000 to a total of € 19,078,000[1]. This also means that the originally budgeted positive results to the amount of € 151,000 have been changed into a budgeted loss of € 172,000. The actual additional costs of spam combating will be passed on to market parties in later years by means of the rate appropriation reserve.

[1] Letter Ministry of Economic Affairs, 13 April 2004, reference number 4023574.

Capital expenditure and income account

	Realised 2004 x € 1,000	Realised 2003 x € 1,000
Capital goods expenditure	2,701	766
Repayments	163	163
Result	420	-
TOTAL CAPITAL EXPENDITURE	**3,284**	**929**
Result	-	454
Depreciation	1,597	1,024
TOTAL CAPITAL INCOME	**1,597**	**1,478**
NET CAPITAL EXPENDITURE AND INCOME	**- 1,687**	**549**

Cash flow statement

	Realised 2004 x € 1,000	Realised 2003 x € 1,000
Result	- 420	454
Depreciation	1,597	1,024
Decrease in debtors and other receivables	816	4.488
Decrease in provisions	- 445	- 125
Decrease short-term debts	- 5,484	- 1,087
NET CASH FLOW FROM OPERATIONAL ACTIVITIES	**- 3,936**	**4,754**
Investments in tangible fixed assets	- 2,701	- 766
NET CASH FLOW FROM INVESTMENT ACTIVITIES	**- 2,701**	**- 766**
Decrease in long-term liabilities	- 164	- 163
NET CASH FLOW FROM FINANCING ACTIVITIES	**- 164**	**- 163**
NET CASH FLOW	**- 6,801**	**3,825**
Liquid assets as at 1 January	8,429	4,604
Liquid assets as at 31 December	1,628	8,429
MOVEMENTS IN LIQUID ASSETS	**- 6,801**	**3,825**

Notes

to the OPTA balance sheet as at 31 December 2004 and the results for 2004

1. Principles of valuation

General

The amounts in the balance sheet as at 31 December 2004 are shown in the balance sheet as at 31 December 2003 for the purpose of comparison. The profit and loss account includes the budgeted amounts for 2004 and the amounts realised in 2003.
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 2004. Depreciation is on a straight-line basis over a period of ten years. Based on the agreements made with the Ministry of Transport, Public Works and Water Management made at the time when OPTA became independent, depreciation costs are passed on to the market parties in the tariffs.

Tangible fixed assets

The tangible fixed assets are shown in the balance sheet at cost, less depreciation to year-end 2004. 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)	10 years
Equipment (=equipment and office machines)	5 years
Computer hardware and software	3 years

Receivables

The 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 for appeals and objections and for implementation evaluations, and the extraordinary liabilities.

Revenues from and costs of market categories

The grounds for market parties' tariffs are laid down in the Telecommunications Act, the Telecommunication 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 Economic Affairs, and are published annually in the State Gazette as the 'OPTA fees regulation'. Tariffs are determined on the basis of the profit principle. The costs of objections and appeals and the costs of implementation evaluations are borne by the Ministry of Economic Affairs 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:

	Formation expenses (x € 1,000)
Acquisition value to year-end 2003	817
Depreciation to year-end 2003	- 572
Book value as at 31 December 2003	**245**
Depreciation 2004	- 82
Book value as at 31 December 2004	**163**

3. Tangible fixed assets

Movements in tangible fixed assets can be analysed as follows:

	Tenant's property (x € 1,000)	Equipment (x € 1,000)	Computer hardware and software (x € 1,000)	Total tangible fixed assets (x € 1,000)
Acquisition value to year-end 2003	1,144	744	3,902	5,790
Depreciation to year-end 2003	- 639	- 601	- 2,770	- 4,010
Book value as at 31 December 2003	**505**	**143**	**1,132**	**1,780**
Investments 2004	1,268	272	1,161	2,701
Depreciation 2004	- 570	- 174	- 771	- 1,515
Disinvestments	- 1,144	- 115	- 2,184	- 3,443
Cumulative depreciations and disinvestments	1,144	115	2,184	3,443
Total changes 2004	**698**	**98**	**390**	**1,186**
Acquisition value to year-end 2004	1,268	901	2,879	5,048
Depreciation to year-end 2004	65	660	1,357	2,082
Book value as at 31 December 2004	**1,203**	**241**	**1,522**	**2,966**

An amount of € 530,000 was entered in 2004 as accelerated depreciation due to the relocation to the Zurichtoren in 2004. In 2003, € 198,000 had already been depreciated in this respect, bringing the total accelerated depreciation to € 728,000.

4. Current assets

Receivable from Ministry of Economic Affairs
Receivables can be analysed as follows:

	31 December 2004 (x € 1,000)	31 December 2003 (x € 1,000)
Settlement advance payments Ministry:		
Appeals	-	806
Implementation evaluations	-	- 50
	-	**756**

Receivables from debtors
Receivables can be analysed as follows:

	31 December 2004 (x € 1,000)	31 December 2003 (x € 1,000)
Receivables from debtors	1,156	1.284
Provision for doubtful debtors	- 439	- 523
	717	**761**

The provision for doubtful debtors[2] is composed as follows: claims older than 12 months are provided for at 100%; claims younger than 12 months against bankrupt debtors are also provided for at 100%; and claims between 2 and 12 months old in excess of € 4,500 were evaluated separately and provided for where necessary.

Other receivables
Other receivables can be analysed as follows:

	31 December 2004 (x € 1,000)	31 December 2003 (x € 1,000)
Pre-paid amounts	149	168
Miscellaneous	85	82
	234	**250**

[2] Fines and legal penalties are not included.

Liquid assets
Liquid assets can be analysed as follows:

	31 December 2004 (x € 1,000)	31 December 2003 (x € 1,000)
Cash	2	1
ING-bank	157	84
Postbank	1,469	8,344
	1,628	**8,429**

The significant decrease in the balance of liquid assets as compared to 2003 was caused by the repayment in 2004 of the short-term interest free liquidity loan to the amount of € 6,174,000 to the Ministry of Economic Affairs.

5. Shareholder's equity

Shareholder's equity can be analysed as follows:

	31 December 2004 (x € 1,000)	31 December 2003 (x € 1,000)
General reserves		
Balance as at 1 January	634	429
Withdrawal from or appropriation to	- 1,071	205
Balance as at 31 December	**- 437**	**634**
Investment reserve		
Balance as at 1 January	454	342
Allocation	-	112
Balance as at 31 December	**454**	**454**
Tariffs reserve		
Balance as at 1 January	219	-
Allocation	733	219
Balance as at 31 December	**952**	**219**
Formation expenses capitalisation reserve		
Balance as at 1 January	245	327
Release	- 82	- 82
Balance as at 31 December	**163**	**245**
Balance	**1,132**	**1,552**

The principles for the formation of OPTA's shareholder's equity were laid down in the memorandum 'Financial principles of privatisation of the Supervision, Networks and Services management.' OPTA and the Ministry of Transport, Public Works and Water Management (and taken over by the Ministry of Economic Affairs) 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.

General reserves
The policy document 'Financial principles of privatisation of the 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.
The release in 2004 from the reserve for activation of establishment costs to the sum of € 82,000 has been allocated to the general reserve. Against this is a withdrawal from the general reserve of € 1,153,000. This amount is the sum of the extraordinary liabilities to the amount of € 1,287,000 and the interest income to the amount of € 134,000.
In total, € 1,071,000 was withdrawn from the general reserve, which showed a negative balance at the end of 2004 of € 437,000.

Investment reserve
As at then end of 2003, the investment reserve had the maximum size of € 454,000. This reserve did not change in 2004.

Tariffs reserve
The balance of € 952,000 established as at 31 December 2004 will flow back to the market categories in future years. In 2004 an amount of € 733,000 was allocated to the tariffs reserve. This amount equals that actual results over the market categories in 2004.

The following table indicates the division of the tariffs reserve over the various market categories:

	31 December 2004	31 December 2003
Public telecommunications networks	620	364
Broadcasting networks	- 61	262
Public electronic communication networks	**559**	**626**
Public telecommunications services	- 288	-339
Leased lines	- 214	- 151
Public electronic communication services	**- 502**	**- 490**
Systems for conditional access	96	- 26
Electronic communication networks per license	196	375
Electronic Communication	**349**	**485**
TTP certificate service providers	7	- 23
Numbers	459	- 733
Post	137	490
	952	**219**

Formation expenses capitalisation reserve
OPTA's formation expenses capitalisation reserve was still € 163,000 at year-end 2004. This reserve is maintained at the level of the capitalised formation expenses. In 2004 there was a release of € 82,000 to the general reserve.

6. Provisions

Provision for appeals
Provisions can be analysed as follows:

	31 December 2004 (x € 1,000)	31 December 2003 (x € 1,000)
Balance 1 January	630	755
Allocation	94	116
Release	- 455	- 226
Write off	- 84	- 15
Balance 31 December	**185**	**630**

This provision pertains to objection and appeal cases concerning contested invoices for annual supervision, registration/ licenses and allocation or reserving.

The allocation is composed of one unforeseen invoice written off in 2004 and newly included invoices, the objections and/or appeals to which have not yet been concluded in 2004.
The release consists of invoices to which the objections and/or appeals have been deemed unfounded and invoices to which the objections and/or appeals have been withdrawn.
The write-off comprises invoices to which the objections and/or appeals have been deemed permissible and invoices to which the objections and/or appeal have been deemed unfounded but that cannot be collected.

7. Long-term liabilities

Upon OPTA's formation, the Ministry of Transport and Public Works extended two interest-free loans, each amounting to € 817,000, in order to finance the transfer of fixed assets. The loans are repayable in ten equal annual instalments, the eighth of which – amounting to € 163,000 – was effected in 2004. This loan has been transferred to the Ministry of Economic Affairs.

8. Current liabilities

Debt to Ministry of Economic Affairs
Debts can be analysed as follows:

	31 December 2004 (x € 1,000)	31December 2003 (x € 1,000)
Redemption instalment interest-free loan	163	163
Settlement advance payments Ministry:		
Appeals	623	-
Implementation evaluations	178	-
Short-term interest-free loan ministry	-	6,174
	964	**6,337**

The annual instalment to the sum of € 163,000 pertains to the ninth instalment for the long-term interest-free loan to be paid in 2005.

The interest-free loan of € 6,174,000 was issued to OPTA by the Ministry of Economic Affairs because OPTA cannot collect the annual regulation costs for significant market power (SMP), in anticipation of a decision on the appeal submitted by OPTA to the Trade and Industry Appeals Tribunal. After OPTA won this appeal, the amounts due were collected in 2003. Subsequently, the entire loan was repaid in 2004.

Other liabilities
Other liabilities can be analysed as follows:

	31 December 2004 (x € 1,000)	31 December 2003 (x € 1,000)
Reserve reorganisation	560	-
Fines imposed	348	35
Reserve holiday allowance	306	290
Reserve holiday entitlement	207	123
Invoices still to be received	195	598
Reservation remuneration business numbers	67	-
Reserve relocation costs	-	727
Miscellaneous	22	7
	1,705	**1,780**

When the imposed fines and/or legal penalties have been collected, the sums are passed on to the Ministry of Economic Affairs.

The specification of the imposed fines and/or legal penalties is as follows:

	31 December 2004 (x € 1,000)	31 December 2003 (x € 1,000)
Party		
KPN Telecom B.V.	225	-
M.R. Bossini	43	-
Groenendaal Uitgeverij B.V.	25	-
Stichting Yellow Monday, h.o.d.n. Purple Friday	20	-
Low Cost Linking Inc.	20	20
Lijbrandt Telecom	15	15
	348	**35**

No fines or legal penalties were passed on to the Ministry in 2004.

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 2004, which had not been received prior to the balance sheet date.

A reservation is included for reimbursement of business numbers to the sum of € 67,000, because the Modified Remuneration Scheme OPTA 2004 'Wijziging Regeling vergoedingen OPTA 2004[3]' erroneously determined the fee for business numbers for the entire year instead of proportionately.

[3] Staatscourant, 8 September 2004, no. 172 / page 23.

9. Commitments not shown in the balance sheet

OPTA rents office space in the Zurichtoren on the Muzenstraat in The Hague. The ten-year lease expires on 31 January 2014. The total lease fee (including service fees) is € 1,680,000 for 2005.

Other commitments entered into as at the balance sheet date concern € 193,000 for research and consultancy assignments, € 294,000 for temporary personnel and € 283,000 for the costs of the state advocate. Commitments also existed regarding lease and maintenance of printers and copiers to the sum of € 99,000.

Parties with significant market power have submitted objections to invoices for the annual costs of regulation over 2000, 2001, 2002 and 2003 for a total of € 19,414,000. Market parties with significant market power submitted objections to invoices for annual regulation over 2004 to a total of € 5,903,000.

There are also two court cases in which OPTA runs some risk due to the fact that the market parties will submit claims for reimbursement of damages.

10. Average number of employees

The average number of employees in 2004 was 147 (2003: 140).

Costs for salaries, retirement reserves and social insurance charges can be analysed as follows:

	31 December 2004 (x € 1,000)	31 December 2003 (x € 1,000)
Salaries	7,523	6,932
Retirement reserves	1,046	795
Social insurance charges	535	530
	9,104	**8,257**

11. Remuneration of Commission members

The remuneration of the Commission for 2004 can be analysed as follows:

	J.C. Arnbak (x € 1,000)	L.Y. Gonçalves-Ho Kang You (x € 1,000)	H.A. van Karnebeek (x € 1,000)	**Total** (x € 1,000)
Salaries[4]	146	110	40	296
Fixed expense allowance	16	10	-	26
Allowance representation expenses	7	3	2	12
Travel expenses	-	3	-	3
Retirement reserves	23	15	-	38
Social insurance charges	4	2	-	6
	196	**143**	**42**	**381**

The remuneration of the Commission for 2003 can be analysed as follows:

	J.C. Arnbak (x € 1,000)	L.Y. Gonçalves-Ho Kang You (x € 1,000)	H.A. van Karnebeek (x € 1,000)	**Total** (x € 1,000)
Salaries[4]	147	110	40	297
Fixed expense allowance	16	10	-	26
Allowance representation expenses	7	3	2	12
Travel expenses	-	3	-	3
Retirement reserves	19	13	-	32
Social insurance charges	5	3	-	8
	194	**142**	**42**	**378**

12. Extraordinary liabilities

The extraordinary liabilities total € 1,287.000. These pertain to the on-going OPTA reorganisation.

[4] This consists of salaries and fixed expenses (see the Integral text Regulation legal position of OPTA permanent members, State Gazette 31 October 2001, no. 211 / page 12).

13. Revenues from and costs of market categories and other categories

OPTA's revenues come from the legal obligations to charge market parties for the annual supervision, registration/ licenses, allocation or reservation, modification and urgent processing. The fees are charged to the market parties on the basis of the Modified Remuneration Scheme OPTA 2004 'Regeling vergoeding OPTA 2004'[5].
In 2004 the fee system was modified twice[6].

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. The actual results were calculated on a subsequent costing basis.

Income and expenditure by market categories is analysed as follows:

	Realised 2004 (x € 1,000)	Budget incl. spam 2004 (x € 1,000)	Realised 2003 (x € 1,000)
INCOME			
Revenues from market categories:			
Public telecommunications networks	4,341	4,269	3,660
Broadcasting networks	1,339	1,300	945
Public electronic communication communication networks	**5,680**	**5,569**	**4,605**
Public telecommunications services	3,460	3,370	4,671
Leased lines	1,268	1,330	949
Public electronic communication communication services	**4,728**	**4,700**	**5,620**
Systems for conditional access	484	290	312
Electronic communication networks per license	1,206	1,206	1,014
Electronic Communication	**12,098**	**11,765**	**11,551**
TTP certificate service providers	72	160	139
Numbers	3,353	2,935	2,384
Post	256	256	925
Subtotal of market categories	**15,779**	**15,116**	**14,999**
Other income:			
Objections and appeals	2,825	3,410	2,630
Implementation evaluations	207	380	94
Other income	-	-	63
Subtotal of other income	**3,032**	**3,790**	**2,787**
TOTAL INCOME	**18,811**	**18,906**	**17,786**

[6] Staatscourant, 24 December 2003, no. 249 / page 9.
[7] Staatscourant, 14 May 2004, no. 92 / page 15 and Staatscourant, 8 September 2004, no. 172 / page 23.

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	Realised 2004 (x € 1,000)	Budget incl. spam 2004 (x € 1,000)	Realised 2003 (x € 1,000)
EXPENDITURE			
Expenditure on market categories:			
Public telecommunications networks	4,085	4,140	2,925
Broadcasting networks	1,662	1,558	965
Public electronic communication networks	**5,747**	**5,698**	**3,890**
Public telecommunications services	3,409	3,277	4,702
Leased lines	1,331	1,154	945
Public electronic communication services	**4,740**	**4,431**	**5,647**
Systems for conditional access	362	445	499
Electronic communication networks per license	1,385	1,502	969
Electronic Communication	**12,234**	**12,076**	**11,005**
TTP certificate service providers	42	144	147
Numbers	2,161	2,369	2,582
Post	609	699	895
Subtotal of market categories	**15,046**	**15,288**	**14,629**
Other expenditure:			
Objections and appeals	2,825	3,410	2,630
Implementation evaluations	207	380	94
Extraordinary liabilities	1,287	-	-
Other expenditure	-	-	56
Subtotal of other expenditures	**4,319**	**3,790**	**2,780**
TOTAL EXPENDITURE	**19,365**	**19,078**	**17,409**
OPERATING RESULT	**- 554**	**- 172**	**377**

Due to the effectuation of the new Telecommunications Act, a modification was made to the Modified Remuneration Scheme OPTA 2004 'Regeling Vergoedingen OPTA 2004' on 10 May 2004. This modification involved a change in the names of the categories. The market category Leased lines is now included in the category Public electronic communication services and Broadcasting networks is included in the category Public electronic communication networks. The allocation of costs to market categories over the entire year 2004, however, did not change as a result.
In accordance with the new Telecommunications Act, the categories Public electronic communication networks, Public electronic communication services, Systems for conditional access and Electronic communication networks per license will be combined in the future in the category 'Electronic Communication'.

Notes revenues
In general, the budget estimate and final figures do not deviate significantly. Exceptions are the market categories Numbers, Systems for conditional access and TTP. For Numbers, the final figures realised were significantly higher as a result of an invoicing for assignment and regulation of business numbers not included in the budget estimate. In Systems for conditional access, the figures realised are higher because the number of registered parties is higher than estimated. In TTP, the figures are significantly lower because only two market parties are registered instead of the estimated five. The revenues from objections and appeals and implementation evaluations are equal to the relevant expenditures.

Notes expenses
In general, the estimated and realised expenses do not differ significantly. An exception is TTP, with lower realised figures. This is a result of the fact that, based on consultation with the Ministry of Economic Affairs, OPTA devoted little time to TTP.

The costs for objections and appeals and implementation evaluations, other than the market categories, are settled each year with the Ministry of Economic Affairs on the basis of subsequent costing. In the category objections and appeals, the realised figures are lower than estimated because OPTA staff devoted relatively few hours to objection cases.

For implementation evaluations, the realised figures are also proportionately lower than estimated. This is because the Ministry requested fewer implementation evaluations than estimated.

Other information

1. Auditor's report
For the auditor's report, please refer to page 55 of the Annual Account.

2. Proposed appropriation of the results
The commission has decided to allocate the negative result over 2004 to the sum of € 420,000 as follows:
1. € 1,153,000 is to be withdrawn from the general reserve;
2. € 733,000 is added to the tariff reserve;

This decision is incorporated in the annual accounts.

7. OTHER INFORMATION

Appendix 1
OPTA: Legistative tasks and competencies

OPTA as independent regulator and referee

OPTA supervises compliance with legislation and regulations in the markets for electronic communications and post. This pertains to the Telecommunications Act, the Postal Act, the relevant regulations at lower levels associated with these Acts, and European regulations. OPTA is an independent executive body that effectuates the laws and rules determined by the politicians. Political responsibility for OPTA lies with the Minister of Economic Affairs, but OPTA is independent and makes its decisions independent of political or business interests. The minister can impose general directions but cannot intervene in individual cases. The OPTA management consists of a Commission with three members. OPTA takes measures when competition problems occur in markets. OPTA also mediates in disputes between market parties. When repeated similar disputes occur, OPTA can formulate general regulations with which the parties must comply. By law, OPTA also has the task of protecting consumers.

OPTA's most important tasks in 2004

Market analyses, market definition and proportionality as premises for regulation

The revised Telecommunications Act, based on European directives, introduced a new system for OPTA in 2004 in imposing obligations on market parties with significant market power. All European regulators must perform market analyses prior to imposing obligations on parties with significant market power. The law prescribes the following system in imposing measures on market parties.
First, OPTA must define the 'relevant market'. Next OPTA must determine on the relevant markets whether parties are active that hold an economic position of dominance, or in other words significant market power. A large market share can indicate the existence of an economic position of power, but is not in itself definitive. If a company is active on the market that holds an economic position of power and the market is therefore not effectively competitive, OPTA can impose obligations. The obligations imposed by OPTA must offer a solution to the competition problems as identified on the analysed market.
In the course of 2005 OPTA will submit its draft decisions to the market parties for consultation. The decision will also be submitted to the European Commission and other European regulators. The European Commission monitors effectuation of the directives in a uniform manner throughout the Member States of the European Union.

Mediating in disputes between companies

In virtue of the Telecommunications Act, OPTA is authorised to settle disputes between providers. These are primarily conflicts in the area of access to networks, interoperability, interconnection as well as the conditions and tariffs to be agreed upon by the parties..

Regulation and enforcement

OPTA monitors compliance with the Telecommunications Act and intervenes where necessary. OPTA has a variety of ways to force parties to comply with the rules. The measures most commonly taken by OPTA are warning parties, imposing judicial penalties, issuing actual fines and withdrawing telephone numbers. If necessary, OPTA can impose customised enforcement and alternative punishments.

Regulation of prices and imposing tariff measures

In virtue of transitional law, in 2004 the stipulations in the old Telecommunications Act applied for price regulation and tariff measures. 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 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.

Issuing telephone numbers

OPTA is responsible for issuing numbers. For example, OPTA issues regular telephone numbers as well as what are known as information numbers. This is done on the basis of number plans that indicate the designated use of each telephone number. Existing and new providers can request these numbers from OPTA, often by the thousands. OPTA also reserves and manages numbers for longer-term number requirements. The revised Telecommunications Act makes it possible to auction numbers. OPTA registers all numbers issued. This register is public and can be perused via OPTA's website. This makes it possible to determine which numbers have been issued and which numbers are still available.

Registration of market parties

Parties that are active on the market for electronic communications must register with OPTA and report their activities. OPTA uses the registration and the requested data in the effectuation of the Telecommunications Act. For example to acquire information for the market analyses prescribed by law. The better OPTA knows which services a provider offers, the more specifically and thus briefly OPTA can ask the relevant parties in the market questions. The list of registered companies can be perused via the OPTA website.

Protecting privacy

OPTA enforces the specific obligations providers have in the area of privacy. It must be possible for a caller to prevent his or her telephone number being made known to the party he or she is calling, for example. That party would then be able to approach the caller with unrequested services. OPTA also ensures that private numbers are not used for commercial purposes without the consumer's permission.

Electronic signature

The Electronic Signatures Act regulates the legal consequences of electronic signatures, including their equation with handwritten signatures. Organisations need certificates in order to use electronic signatures. In virtue of the Telecommunications Act, OPTA regulates all organisations located in the Netherlands that want to provide these certificates to the public or issue them. As part of this regulation, the law requires that these certificate service providers be registered with OPTA.

Regulating the post concession

In virtue of the Postal Act, OPTA is responsible for regulating the execution of the tasks allocated to the concession holder TNT N.V. (formerly TPG N.V.). In particular, this involves regulating the tariffs and the quality of services assigned to TNT (the Universal Postal Services), which includes the monopoly on letters (the concession). OPTA also regulates the administrative separation within TNT between activities that are performed in competition and activities in which TPG holds a monopoly position.

In order to exercise its regulation, OPTA's authorities include:

- requesting that companies supply certain information, for example the costs incurred for a certain service;
- determining the rules on the basis of which disputes between companies are to be settled; these consist of dispute settlement and imposing obligations;
- imposing fines to a maximum of € 450,000 for violation of the Telecommunications Act, or 10 percent of the relevant turnover;
- imposing judicial penalties to force compliance with the law;
- withdrawing (telephone) numbers.

Appendix 2
The organisation in 2004

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 has seven departments as well as the Market Analysis project. The OPTA commission and bureau are briefly described in this section.

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 and J.C. Arnbak, chair.
The Ministry of Economic Affairs is now OPTA's parent department.

The Bureau

The OPTA bureau's seven departments are: End-user market (EGM), Interconnection and Special Access (IBT), Numbers & Registration (N&R), Strategy & Communication (SandC), Legal Affairs (JZ) and Business Operations (B). The bureau is directed by the Commission and managed by the Management Team (MT), which consists of two Commission members and all heads of departments. The Commission chairperson chairs the MT. In 2004 the Market Analysis project was added to the bureau within the framework of effectuation of the new Telecommunications Act. Among others the team consists of representatives of the departments End-user Market and Interconnection & Special Access.

Mid-2004 it was decided that OPTA's top structure would be modified to suit the changes in activities involved in the effectuation of the revised Telecommunications Act. In continuation of the modified top structure, the internal organisation will also be reorganised to suit the new activities. An internal reorganisation commenced in the autumn of 2004 that will be concluded in mid-2005.

The End-user Market department

regulates the end-user rates (including discount regulations and regional tariff differentiation), obligations for fixed connections and telephony, general rules of service, privacy, Universal Service, permit conditions, mobile telephony and post. The department also monitors compliance with the spam prohibition and the recognisability obligation with reference to auto dialers.

The department Interconnection and Special Access

is responsible for dealing with interconnection or interoperability disputes, disputes about special access and disputes about cable access. This department regulates various aspects of interconnection and special access as well as infrastructure issues, such as 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 and Registrations department

is responsible for issuing numbers and enforcing correct use of number series. Some numbers are issued in series, such as mobile 06 numbers, and some numbers - e.g. 0800 and 0900 numbers - are issued individually. The department also maintains the public number registries. These registries can be perused via OPTA's website. The department maintains registries of all providers that are active on the markets for public electronic communication. A relatively new task is regulating providers of electronic signatures (TTPs) that are legally equated with hand-written signatures.

The Market Analysis project

performs market analyses on 19 markets in the electronic communications sector, in the clusters: broadband, leased lines, broadcasting, mobile telephony and fixed telephony. The market analyses are performed in three stages. First the relevant markets are defined; next the extent to which those markets are truly competitive is determined, and then any dominant market parties in the relevant markets are identified. The market analyses form the basis for possible designation and the imposition of obligations on parties with significant market power.

The Strategy and Communication department

coordinates in matters that go beyond the level of the departments, cohesion of OPTA policy, and consultation with external organisations. This department also develops OPTA's internal and external communication policy. Strategy and Communication also serves as a think tank for the organisation and develops long term strategic insights. The department is responsible for ensuring that decision making by the OPTA Commission is properly prepared and organised.

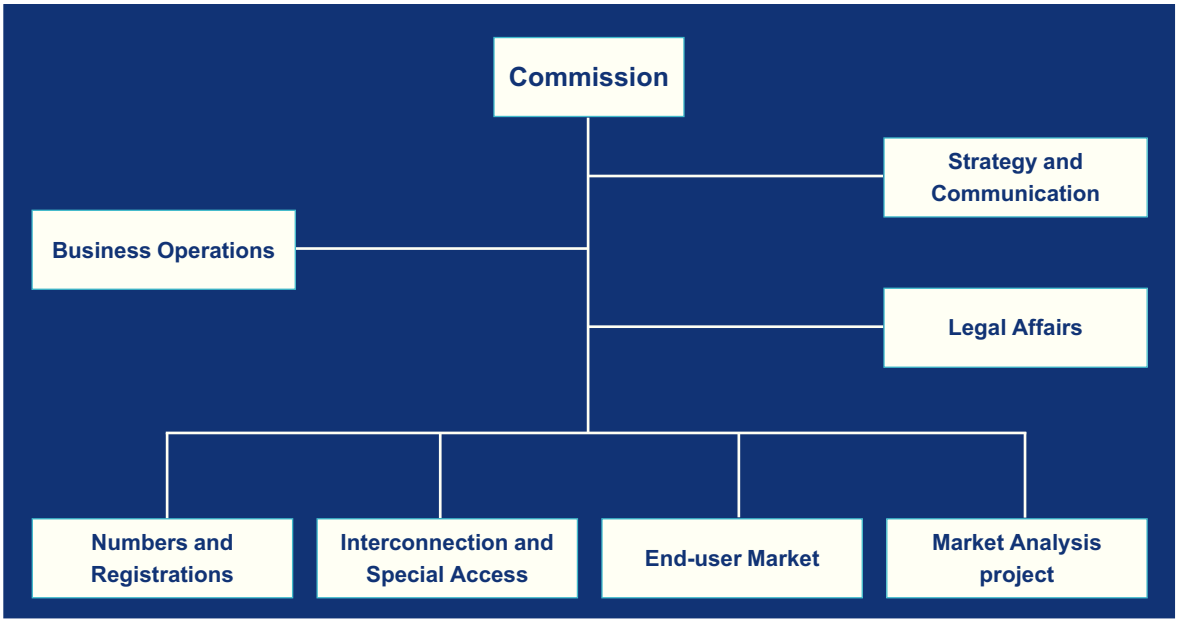
The Legal Affairs department

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. In essence, Legal Affairs serves as OPTA's internal law firm.

The Business Operations department
is responsible for stimulating an organisation that functions optimally and does so with a wide range of supportive and advisory tasks. These include activities in the areas of finance, personnel and organisation, automation and facility management. This department supports OPTA's management and develops activities aimed at managing and controlling the operational processes.

Organisation structure



Appendix 3
Key figures Annual Report 2004

Appeals

	Being processed per 1-1-2004	Submitted	Concluded	Being processed per 31-12-2004
Objections	141	135	233	41
Appeals	61	126	87	100
Provisions	4	11	14	1
Fine decisions	0	6	5	1

Explanation: Following the decisions on the 135 notices of objection submitted, 6 claims were brought.

Appeals concluded

Withdrawn	29
Accepted with grounds	1
Rejected without grounds	91
Inadmissable	58
Partly with, partly without grounds	42
Partly without grounds, partly inadmissable	3
Other	0
Not processed	9
Total	**233**

A hearing was held for 116 notices of objection. Following the decisions on the 126 claims that were brought, 13 appeals were lodged.

Appeals submitted and concluded

	Submitted	Concluded (received in 2004)	Concluded (received prior to 2004)
Interconnection	5	5	4
Special access	5	5	3
Site sharing	1	1	0
Tolerance	4	2	1
Cable access	1	1	4

Enforcement in 2004

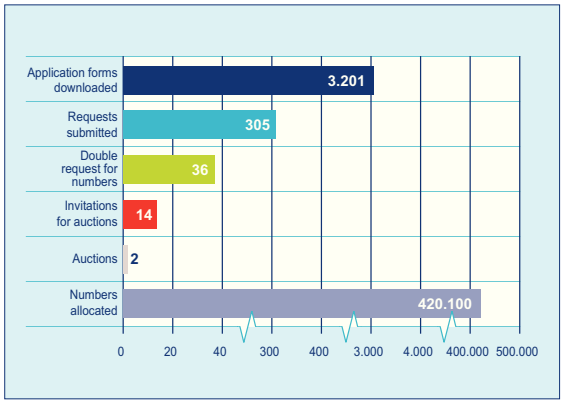
Fines imposed	4
Judicial penalties imposed	2

Allocated telephone numbers

	Situation as at 31-12-2004	Situation as at 01-01-2004	Percentage of total number stock allocated on 31/12
0900 short	1.186	1.170	49%
Other short	1.908	1.861	21%
Long information numbers	47.514	47.466	<1%
Total	**50.608**	**50.497**	**<1%**

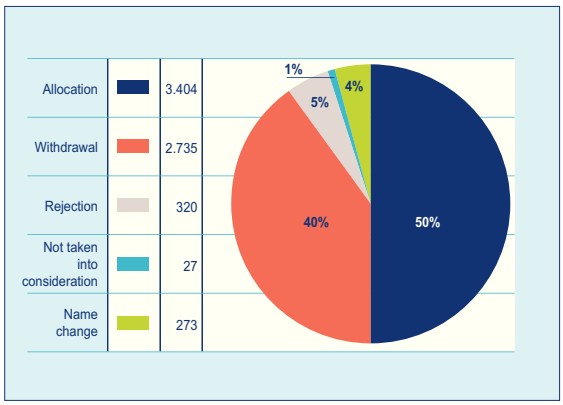
Numbers	Destination	Allocated	%
16xy	Carrier selection numbers, 4 digits	55	55%
06	Mobile numbers (x 1mln)	39,25	85%
06760	Internet access	463	<1%

Numbers for access to companies and institutions (088 company numbers)



For an explanation, see page 49 of the Annual Report.

Number decisions between 1-1-2004 and 31-12-2004



In 2004, 56 urgent requests were received. This is <1% of the total. 51 of these requests are for information numbers. Seven requests were received that resulted in drawing lots. Lots were drawn a total of three times.

Registrations of market parties in compliance with Section 2 Telecommunications Act (Stb 1998, 610)

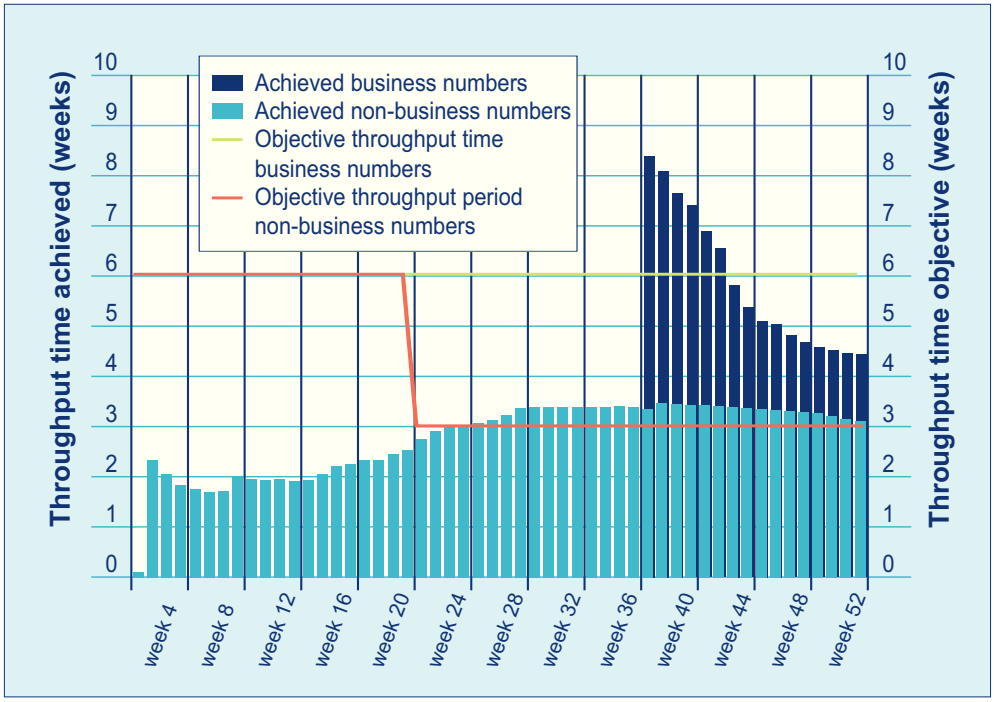
Category	Situation as at 1 Januari 2004	Registration in 2004	Situation as at 31 December 2004
Provider of a public telecommunication network	99	20	18
Provider of a public telecommunication service	213	60	44
Provider of a system for conditional access	7	3	-
Provider of qualified certificates	1	-	-
Provider of leased lines	49	9	10
Provider of a broadcasting network	73	5	8
Registration network coonection points	39	6	6
Total	**481**	**103**	**86**

Registrations of market parties in compliance with Section 2 Telecommunications Act (Stb 2004, 189)

Category	Situation as at 1 Januari 2004	Registration in 2004	Situation as at 31 December 2004
Provider of a public electronic communication network	-	221	218
Provider of a public electronic communication service	-	225	213
Provider of relevant facilities	-	9	8
Provider of qualified certificates	-	2	2
Total	**-**	**457**	**441**

For additional information, please refer to page 49 of the annual report.

Throughput time number processing



Explanation: The revised Telecommunications Act has halved the throughput time for number allocation. In most cases, OPTA remained within the maximum terms as prescribed by law.

Annual review complaints and queries via OPTA front office

	Total		Letters		Telefone		Fax		E-mail	
	Number	%	Number	%	Number	%	Number	%	Number	%
Mobile telephony (general conditions; number portability)	946	28%	80	25%	511	29%	12	28%	343	27%
Fixed telephony and carrier selection (including general conditions,CPS not with BelBudget)	856	25%	56	18%	467	27%	15	35%	318	25%
Internet and ADSL (delivery period, conditions, changing providers)	543	16%	30	10%	214	12%	3	7%	296	23%
Auto dialers	368	11%	53	17%	237	13%	1	2%	77	6%
Spam	144	4%	9	3%	44	3%	4	9%	87	7%
Tariffs (Transparancy / publicity / roaming)	108	3%	25	8%	45	3%	1	2%	37	3%
Post	48	1%	6	2%	22	1%	0	0%	20	2%
Cable matters	103	3%	13	4%	58	3%	2	5%	30	2%
Privacy	89	3%	6	2%	47	3%	0	0%	36	3%
Cable matters	197	6%	37	12%	113	6%	5	12%	42	3%
Total	**3402**	**100%**	**315**	**100%**	**1758**	**100%**	**43**	**100%**	**1286**	**100%**

Explanation: As compared to last year, the number of complaints and queries has increased significantly. New is the large number of queries and complaints (primarily complaints) about auto dialers. These were primarily expressed via the telephone. The number of complaints listed under spam does not include the complaints submitted via www.spamklacht.nl

Spam complaints 2004 via www.spamklacht.nl

	Number	%
E-mail complaints	3968	85%
SMS complaints	319	7%
Fax complaints	154	3%
Telephony complaints	39	1%
Other complaints	195	4%
Total	**4675**	**100%**

For an explanation, please refer to the relevant text starting on page 44 of the Annual Report.

Communication

Product	number
Connections	6
Press releases	9
Press conference	1

Explanation: The year was characterised by the transition to the revised Telecommunications Act and preparations for the draft market analysis decisions. At the end of the year, the first results in the battle against spam were published. In comparison to previous years, OPTA issued fewer press releases and only one press conference was organised. This was partly due to the transition to implementation of the new act, and partly a conscious choice to be less active in the front lines in the press. However, the number of completed press contacts and queries increased to 450.

Personnel

	As at 1 January 2004	As at 31 December 2004	Average in 2004
Number of employees	151	143	147
FTEs	147	138	142

Salary scale structure

Scale	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Number of employees	1	4	9	9	11	4	6	16	21	25	20	10	4	2

Personnel

	Jan thru Dec 2004 (amounts in euro x 1000)	Jan thru Dec 2003 (amounts in euro x 1000)
Total sum of salaries, including taxes paid, excluding allowances, excluding Commission	7.621,73	
Average salary	46,77	45,58
Official allowances (costs)	26,14	26,14
Official allowances (number)	2	2
Misc. personnel expenditures	455,49	347,58
Remuneration Commission and associated members	380,94	378,04

Explanation: the increase in the total sum of salaries is mainly caused by increased retirement expenses and the increase in the number of employees.

Appendix 4
Terminology list

Accounting separation
Separate accounting of costs and revenues from the end-user market (retail) on the one hand and the wholesale market on the other. Accounting separation is important to giving insight into costs that are charged to alternative providers, e.g. for access to electronic communication networks.

ADSL: Asymmetric Digital Subscriber Line
Technology that makes fast internet over a telephone line possible. The asymmetry pertains to the difference in speed between downloading and uploading. The user can download data faster than he can upload data.

ADSL2+
Consists of a technical standard with which a new, faster broadband generation (ADSL) can be introduced.

Alphanumeric numbers
Also referred to as name numbers. Alphanumeric numbers use letters to 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.

(Auto) dialers
An auto dialer or dialer is a software program that terminates the regular internet connection and establishes a different internet connection. The installed software then calls for long periods of time to a toll number or an expensive foreign number, often without the consumer's knowledge.

BARP: General Postal Guideline Decree
Regulations under the Postal Act in which the concession holder (TPG) is assigned certain obligations.

Bit stream access
Type of access for alternative providers to KPN's infrastructure in order to supply broadband internet connections.

Broadband (internet access)
Access to the internet via what are known as broadband infrastructures, such as cable, xDSL and fiber optic. An important characteristic of broadband is that it is faster in actual use than traditional types of internet access such as internet via the regular analogue telephone line (known as narrowband internet access). Broadband internet access also provides an 'always on' connection and is usually charged on the basis of a flat fee per period of time, irrespective of the use actually made. Of these three characteristics, the speed of data transport in particular (downloading and uploading) is the most distinctive factor as compared to another type of internet access, narrowband internet access.

BULRIC: Bottom Up-Long Range Incremental Cost system
System with which costs for terminating telephone traffic are calculated. The system is based on the costs incurred by an efficient operator. The system is applied in the assessment of the tariffs that KPN charges other providers for access to its fixed network. See also 'Embedded Direct Cost'

Bundling
The offer of multiple products or services as a single product: the bundle.

Business numbers (088 numbers)
088 business numbers are special telephone numbers intended for businesses and organisations with multiple locations in the Netherlands. The business numbers make it possible to call their various locations via a single series of extensions (088 x xxx xxx). The 088 series can be used to call both fixed and mobile connections.

Carrier selection/pre-selection (CS/CPS)
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. Companies that offer carrier (pre-)selection use KPN's fixed network to offer telephone services to their clients.

Churn rate
Percentage of consumers or users that switch to another provider in a certain period of time.

Circuit switched network
Physical connection between two points, the entire capacity of which is available for the connection. An example is a telephone call. See also 'packet switched network'.

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

Competency management
A system that provides insight into the skills and quality of staff members, so that they can be optimally developed.

Concession (holder)
The government has assigned a number of tasks to TNT. The assignment consists of reserved services (concession) and the other assigned services. The concession includes letters weighing no more than one hundred grams (from 2006 on: 50 grams). Letters and printed matter weighing no more than 2 kilograms and parcels no more than 10 kilograms are included in the other assigned services.

Consultation document
A document discussing an important communication 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
An example of convergence is that in the electronic communications sector, more and more services can be supplied over multiple types of networks using the same technology.

Cost-oriented prices
Prices based on actual costs plus a reasonable profit margin.

Cross subsidising:
With reference to post: subsidising of commercial activities with revenue from the monopoly.

DSL: Digital Subscriber Line
There are many types of DSL, the most important of which for the consumer market is ADSL. See also 'ADSL'.

Embedded Direct Cost (EDC) model
System with which the interconnection tariffs for collecting telephone traffic to be charged by KPN, the originating tariffs, are determined. In this respect, the costs actually incurred by KPN are determinant. See also 'BULRIC'.

Fee system
System for the determination of fees allocated to the market parties, partly for OPTA's regulation.

Fibre optic (network)
In a fibre-optic cable, information is not sent by means of electric pulses but as light flashes. Fibre optic connections offer an enormous data capacity. Fibre-optic networks have a higher bandwidth than coaxial or copper networks, which means that more information can be transmitted in a short period of time.

GPRS: General Packet Radio Service
GPRS is a technique used in the GSM network that makes it possible to send and receive more data than is normally possible using GSM telephones. This is because GPRS does not transmit the data as a single packet over the network, but in pieces. As a result, the network is used more efficiently, and it is possible to send other, larger pieces of information.

GSM: Global System Mobile
GSM was originally the abbreviation for Groupe Spéciale Mobile, the name of a study group that was formed in 1982 to develop a European (and later also North American) standard for a network for mobile telephony. The abbreviation GSM was later assigned a different meaning: Global System for Mobile Communications. See also 'UMTS'.

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

Interoperability
To stimulate competition between providers of telecommunication services, it is particularly important that consumers who use different providers be able to communicate with one another. In the new Telecommunications Act, the term interoperability has central focus with reference to the necessary relationships between services and networks. Players in the markets for electronic communications are obligated, if another player so requests, to negotiate regarding the interconnection between their networks. For telephony, there is even an obligation to establish interoperability.

ISDN: Integrated Services Digital Network
Public telecommunication network based on international standards. Enables a provider to simultaneously offer multiple telecommunication services over the network.

ISP: Internet Service Provider
Provider that supplies an internet service to consumers and other end-users.

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

Leased line
A leased line is a telecommunications service in which the subscriber receives access to a permanent line with a fixed capacity for a flat fee. The leased line can be used between two business locations, for example. For telephone lines that are used intensively, e.g. ATMs, it is worth the effort to use a leased line rather than a normally-switched telephony connection.

Letter monopoly
TNT's exclusive right (concession) to deliver letters weighing up to one hundred grams. From January 1st 2006: 50 grams.

Line sharing
See 'Unbundled access'.

Market analysis
The definition of relevant markets based on the principles of general competition law. If one or more parties on a market are so strong that they can act independently of its competitors, OPTA imposes fitting obligations on these parties to stimulate competition on the market. See also 'proportionality'.

MMS: Multimedia Messaging Service
Like with SMS, MMS allows a user to send messages from one (mobile) telephone to another. The main difference is that with MMS, photos, images, sound fragments, etc. can be sent along with text.

Mobile Terminating Access (MTA)
The termination of incoming traffic on a mobile network. MTA tariffs are the tariffs charged for terminating incoming traffic on a mobile network.

MVNO: Mobile Virtual Network Operator
Independent mobile services provider without its own network that uses the network of another mobile provider to reach its customers.

Number exchange / local exchange
The last section of telephone line runs from this exchange to consumers and other end-users.

Number plan
A number plan from the Ministry of Economic Affairs indicating how (telephone) numbers are divided, their intended use (e.g. geographic numbers) and which series of numbers are available. Number plans are effectuated by OPTA.

Number portability
Taking a telephone number along from one provider to another.

Originating access
Collecting a telephone call by one provider from the subscriber of another provider. Collection or originating tariffs apply to this service. An example is traffic from a carrier(pre-)selection provider. See also 'Embedded Direct Cost' and 'Terminating access'.

Packet switched network
Network over which the information transmitted is packaged in small packets, in which each packet contains not only the information itself but also information regarding the source and destination. The packet is transmitted until it has reached the desired destination. The advantage as compared to a circuit switched network is that no dedicated capacity exists, making it possible to make more efficient use of the available network capacity. An example of a packet switched network is the internet. See also 'circuit-switched network'.

Post office policy
Obligation imposed on TPG to satisfy requirements including a certain number of post offices in the Netherlands, as well as their distribution over the country.

Price squeeze
Occurs when KPN's end-user tariff is lower than the price that 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.

Proportionality
Imposing obligations on market parties in a fitting, just and proportionate manner, on the basis of the Telecommunications Act. See also 'market analysis'.

Roaming
Mobile calling in another country via a different (foreign) network to a network in the Netherlands. Thanks to international roaming agreements between mobile providers, international calls can be easily established. For use of the various networks, the various providers charge (high) costs.

Selectability
This term pertains to the ability to dial or select telephone numbers, and the accessibility of services related to the use of telephone numbers. Selectability is extremely important to the ability to offer services in the markets for electronic communication but is not always a matter of course for some services. OPTA stimulates the selectability of services.

Significant market power (SMP)
OPTA must determine on the relevant electronic communication markets whether parties are active that hold an economic position of dominance (significant market power). This term from the Telecommunications Act describes a company that, either alone or together with other companies, has an economic power that enables it to act to an important degree independently from its competitors, clients and ultimately consumers. A large market share can indicate the existence of significant market power.

Slamming
Phenomenon in which a subscriber suddenly calls via a different provider without asking to do so.

SMS: Short Messaging Service
A method for sending text messages from one (mobile) telephone to another.

Spam
Unrequested messages received via e-mail, mobile telephone (SMS or MMS) or fax. These may include advertising, charities or ideological messages.

Spyware
Espionage software that makes information accessible for third parties or that sends data via the internet without the user's knowledge. Spyware registers numerous user data: the websites visited, programs used, number of hours per day on the internet, amount of e-mail received.

Tariff control system
With reference to post: Mechanism that ensures that the postage rates do not increase more than a percentage that is related to the inflation.

Terminating access
Termination of a phone call to a subscriber on a fixed or mobile network. The term is often used in connection with terminating access tariffs that call providers charge one another for handling telephone traffic. These are the tariffs that a mobile or fixed operator charges other providers for terminating a call to its subscribers. See also ‘BULRIC’ and ‘Originating access’.

Terminating tariffs
Tariffs charged by a provider for delivering a telephone call on its network.

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

Triple Play
Bundling three products. For example: offering a broadband internet connection combined with fixed telephony (calling via the internet) and television.

TTP: Trusted Third Party
Issues an independent statement about the true identity of an electronic business partner. This is important if parties do business via the internet and work with electronic signatures.

UMTS: Universal Mobile Telecommunication System
Third generation mobile telephony that makes mobile broadband communication possible. See also ‘GSM’.

Unbundled access
Method by which KPN enables other providers to offer telephony and broadband services via the KPN local loop network. The local loop (the copper wires from a home to the local exchange) are operated by one of KPN's competitors with unbundled access. This may involve full unbundling, in which the competitor takes over the entire connection, or shared access, also known as line sharing, in which the competitor shares the local loop with KPN and KPN continues to supply telephone services.

Universal Services
The bundle of services that politicians believe must be made available to the general public and that a former monopolist is obliged to supply at a certain rate and of a certain quality.

VBTB system: From strategy budgeting to strategy accounting
This system is based on the formulation of clear policy objectives that are to be achieved within a year. At the end of the year, the policy must be accounted for. The government is to implement the system throughout its organisations no later than 2006.

Voice over IP/DSL/ATM (internet telephony)
Calling via the Internet Protocol. Types of voice telephony over data networks, e.g. the internet.

Wholesale tariffs
Wholesale tariffs that KPN charges to its customers for use of the KPN network for telephone traffic, data traffic and leased lines.

Wireless Local Loop (WLL)
Collective name for technology for wireless internet access.

WiFi/WiMAX
WiFi is a technique that allows end-users to establish wireless connections to the internet at certain public sites, called hot spots. WiMAX is the next generation of WLL and has a wider reach than WiFi.

Related national and international organisations

Data Protection Board
The Data Protection Board supervises the use of personal data and safeguards citizen privacy.

Disputes Committee for Consumer Affairs Foundation
Umbrella organisation of appeals commissions for conflicts between consumers and businesses, such as telecommunication providers, cable operators and postal companies.

European Commission (EC)
Policy and regulatory body of the European Union regarding electronic communications and post.

European Regulators Group (ERG)
A Forum of national regulators within the European Union in the area of electronic communications, in which the European Commission also participates.

Forum of Electronic Signatures Supervisory Authorities (FESA)
Organisation of European Regulators for electronic signatures.

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.

Independent Commission Information Numbers Foundation (OCI)
Regulates use of information numbers by providers of information services and platform providers. OCI deals with complaints and provides information about telephone information services
(0800 /090x numbers).

Independent Regulators Group (IRG)
Cooperative group of European regulators in the area of electronic communication in which non-EU Member States also participate.

Ministry of Economic Affairs (EZ)
Promotes sustainable economic growth in the Netherlands, with responsibilities including regulation in the areas of electronic communications and post.

Netherlands Competition Authority (NMa)
The Netherlands Competition Authority supervises compliance with the Competition Act, enforces the prohibition against cartels and abuse of an economic position of dominance, and evaluates mergers and takeovers.

Rotterdam District Court
Claims against certain decisions can be brought before the Rotterdam District Court. Appeals can be lodged at the Trade and Industry Appeals Tribunal.

Trade and Industry Appeals Tribunal
The highest judicial body to which an appeal can be submitted against OPTA decisions. Claims against certain decisions can be brought directly before the Trade and Industry Appeals Tribunal.

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