



PO Box 90420
2509 LK The Hague
Telephone +31 70 315 35 00
Telefax +31 70 315 35 01

Visiting address:
Zurichtoren
Muzenstraat 41
2511 WB The Hague
The Netherlands

Summary notification form relating to a draft decisions of the commission of the Independent Post and Telecommunications Authority in the Netherlands with respect to the relevant markets for voice call termination on individual mobile networks (market 16).

This summary notification form relates to a draft decision of the commission of the Independent Post and Telecommunications Authority in the Netherlands (hereafter: the commission) with respect to the relevant markets for voice call termination on individual mobile networks (market 16).

In accordance with article 6b.2 of the Telecommunications Act the commission notifies draft measures which would affect trade between Member States to the Commission of the European Communities and to the national regulatory authorities. The commission gives both to the Commission of the European Communities and to the national regulatory authorities the opportunity to make comments to the draft measure.

Comments to this draft measure are due to be sent to Marnix de Meij at Mobi-el-MA@opta.nl by 4 August 2005.

The Hague, 4 July 2005

Section 1

Market definition

1.1 *The affected relevant product/service market.*

The relevant product market consists of the wholesale market for voice call termination on individual public mobile networks. The market comprises voice call termination on both 2G and 3G networks.

1.2 *The affected relevant geographic market.*

The relevant geographic market for the provision of voice call termination on individual public mobile networks is the Netherlands.

1.3 *Summary of the opinion of the Netherlands Competition Authority*

The Netherlands Competition Authority (NMa) agrees with the conclusions drawn by the commission, as confirmed in a letter to the commission dated 8 March 2005. The conclusions of the commission are in line with an analysis of the relevant market by the NMa, published on 1 August 2002.¹

1.4 *Overview of the results of the public consultation to date on the proposed market definition*

See separate chapter 8, '*Consultatie ontwerpbesluit gespreksafgifte op afzonderlijke mobiele netwerken*'. In this chapter the results of the public consultation are described, as well as the way in which the consultation will lead to changes in the draft decision '*De markt voor gespreksafgifte op afzonderlijke mobiele netwerken*' published by the commission on 17 March 2005.

The public consultation has not given the commission cause to make material changes in the proposed market definition.

1.5 *Differences with the Commission Recommendation on relevant markets*

None.

¹ NMa, Rapportage over de marktdefinitie van het afwickelen van gesprekken op mobiele netten, The Hague, 1 August 2002. The report can be found on the NMa website:
http://www.nmanet.nl/nederlands/home/actueel/publicaties/onderzoeksrapportage_van_de_nma_over_de_markt_definitie_van_het_afwickelen_van_gesprekken_op_mobiele_netten.asp

Section 2

Designation of undertakings with significant market power

- 2.1 *Name(s) of the undertaking(s) designated as having individually or jointly significant market power or where applicable, the name(s) of the undertaking(s) which is (are) considered to no longer have significant market power.*

All Mobile Network Operators (MNOs) – KPN Mobile, Vodafone, T-Mobile, Orange and Telfort – and also the Mobile Virtual Network Operator (MVNO) – Tele2 Mobiel – are considered to have significant market power on their own (virtual) mobile networks.

- 2.2 *Criteria relied upon for deciding to designate or not an undertaking as having individually or jointly with others significant market power.*

- market share (100%);
- barriers to entry;
- lack of countervailing buying power.

- 2.3 *Name of the main undertakings (competitors) present / active in the relevant market.*

All MNOs – KPN Mobile, Vodafone, T-Mobile, Orange and Telfort – and also the MVNO – Tele2 Mobiel – provide mobile termination on their respective networks.

- 2.4 *Market shares of the undertakings mentioned above and the basis of their calculation (e.g., turnover, number of subscribers).*

Each MNO, and also the MVNO, is monopolist for call termination on its own network, and has a market share of 100%.

- 2.5 *Summary of the opinion of the national competition authority where provided.*

The Netherlands Competition Authority agrees with the conclusions drawn by the commission, as confirmed in a letter to the commission dated 8 March 2005, which is also sent to the Commission. The conclusions of the commission are in line with the analysis of the NMa published on 1 August 2002.²

² NMa, Rapportage over de marktdefinitie van het afwickelen van gesprekken op mobiele netten, The Hague, 1 August 2002. The report can be found on the NMa website:
http://www.nmanet.nl/nederlands/home/actueel/publicaties/onderzoeksrapportage_van_de_nma_over_de_markt_definitie_van_het_afwickelen_van_gesprekken_op_mobiele_netten.asp

2.6 *Summary of the results of the public consultation to date on the proposed designation(s) as undertaking(s) having significant market power (e.g., total number of comments received, numbers agreeing/disagreeing).*

See separate chapter 8, '*Consultatie ontwerpbesluit gespreksafgifte op afzonderlijke mobiele netwerken*'. In this chapter the results of the public consultation are described, as well as the way in which the consultation will lead to changes in the draft decision '*De markt voor gespreksafgifte op afzonderlijke mobiele netwerken*' published by the commission on 17 March 2005.

The public consultation has not given the commission cause to make material changes in the conclusions regarding undertakings with significant market power.

Section 3

Regulatory obligations

3.1 *Legal basis for the obligations to be imposed, maintained, amended or withdrawn*

The commission imposes the following obligations:

- Access regulation, based on article 6a.6 (1 and 2, sub g) of the Telecommunications Act and article 12 of the Access Directive;

- Tariff regulation (regarding off net supply), based on article 6a.7 (1 and 2) of the Telecommunications Act and article 13 of the Access Directive;

Policy rules: The Ministry of Economic Affairs has published policy rules for OPTA. One of these rules concerns (the level of) quality of services. Regarding tariff regulation, the rule implies that when a cost based tariff is calculated, differences in quality must be taken into account if these quality levels are actually a factor in competition between different providers. Since the quality levels of mobile services are high throughout the mobile sector, quality differences do not play an important role in competition. Therefore, and in accordance with this policy rule, OPTA will not take into account quality differences at the retail level in the design of the cost orientation method. This consideration will be part of the final decision.

- Non discrimination (regarding off net supply), based on article 6a.8 of the Telecommunications Act and article 10 of the Access Directive;
- Transparency, based on article 6a.9 (1) of the Telecommunications Act and article 9 of the Access Directive.

3.2 *Reasons for the imposition, maintenance or amendment of the obligations*

The obligations are imposed to prevent/counteract competitive problems:

- excessive tariffs to the detriment of end users, in particular fixed end users;
- refusal of access/refusal to deal.

3.3 *Exceptional measures*

Not applicable.

Section 4

Compliance with International obligations

4.1 *Imposition, amendment or withdrawal of obligations provided for in Article 8(5) of Directive 2002/19/EC (Access Directive)*

Not applicable.

4.2 *Name(s) of the undertaking(s) concerned*

Not applicable.

4.3 *International commitments entered by the Community and its Member States that need to be respected.*

Not applicable.