

0050

Contents

Foreword	5
Reading instructions	6
Annual report	7
Top priorities 2005	8
Introduction	12
1. Market supervision	13
1.1 Market analyses	13
1.1.1 Transparent process	14
1.1.2 Cooperation	14
1.1.3 Decisions market analyses	15
1.2 Regular activities	21
1.2.1 Regulation of wholesale tariffs	21
1.2.2 Regulation of end-user tariffs	22
1.2.3 Dispute resolution	23
1.2.4 Enforcement and regulation	24
1.2.5 Numbering	25
1.2.6 Registration of market parties	28
1.2.7 Post regulation	29
2. Consumer protection	31
2.1 Internet security	31
2.1.1 Spam	31
2.1.2 Autodialers	32
2.1.3 Trusted Third Parties	33
2.2 Privacy	33
2.3 Public information	36
2.3.1 Questions and complaints	36
2.3.2 Comparison sites	36
2.3.3 Information desk	37
2.4 Knowledge of costly numbers	37
2.5 International roaming	37
2.6 General conditions	38

3. Operations	39
3.1 Organisation	39
3.1.1 Reorganisation	39
3.1.2 Evaluation follow-up	39
3.2 Finance & control	44
3.2.1 Planning & control cycle	44
3.2.2 Fee system	45
3.3 Personnel affairs	45
3.3.1 Commission change	45
3.3.2 Personnel	45
3.3.3 Works council	46
3.3.4 Professionalisation	46
3.4 Communication and information	47
3.4.1 Press information	48
3.4.2 Publications	48
3.4.3 Website	48
3.5 Information technology	49
3.5.1 Digital investigation network	49
3.5.2 Digital files	49
3.5.3 Internal knowledge sharing	49
Abridged annual accounts	53
Market Monitor Electronic Communications and Post	63
1. Introduction	64
2. Bundles	64
3. Fixed telephony	65
4. Mobile telephony	70
5. Broadband and leased lines	72
6. Broadcasting	78
7. Internet security and other consumer affairs	79
8. Postal market	81
Appendices	87
I. Organisation	88
II. Tasks and competencies	89
III. National and international cooperation	91
IV. Summary market analyses: markets, SMP parties and obligations	94
V. Key figures	98
VI. Terminology list	101

Foreword

2005 was a year of transition. As prescribed by the OPTA Act, OPTA's working methods were evaluated for the second time in its eight years of existence. The conclusion is that OPTA generally functions well as regulatory authority. The cabinet emphasised this fact in its response to Parliament to the evaluation. This is good news not only for us, but also for the market and consumers. Because those are the parties we work for. Our job is to stimulate the development of better and less-expensive products and services in the sectors for electronic communications and post by means of effective market mechanisms.

Naturally, every evaluation brings recommendations. OPTA needs to improve on a number of points. Our working methods should be made more transparent; we must listen to the market and work on increasing support, make decisions more quickly with improved argumentation, and work more cost-effectively. The Commission is emphatically addressing these areas of improvement, enthusiastically accepting this challenge together with the people in our organisation. You, too, will be noticing a difference. Our efforts should result in the lowest possible budget and more decisive and transparent actions.

Nearly all of the market analyses were concluded in the past year, followed by consultation and finalisation. Some markets desperately need regulation, to stimulate a level playing field, for example. Regulation has been diminished or removed altogether on other markets. OPTA strives to achieve deregulation where possible, always based on the premise: mild regulation where possible, strict where necessary.

Technological advancements continued in every field in 2005, as the market monitor will explain. Internet tele-

phony appears to have made a definite breakthrough, like the competition involved in the provision of bundled services, known as triple play. This offers the potential of consumer advantages, but OPTA is keeping a close eye on developments to ensure that positions of power cannot disrupt market competition.

2005 was the first full calendar year that OPTA worked in accordance with the new Telecommunications Act. OPTA also underwent a metamorphosis with a reorganisation in order to align its organisational structure with the markets it regulates. This will improve our effectiveness and stimulate continued improvement of the quality of our decisions and operations. Last but not least, the first OPTA Commission handed over the reigns after eight years of governance. Let me express once again our heartfelt gratitude to Mr. Jens Arnbak, Ms. Lilian Gonçalves-Ho Kang You and Mr. Herman van Karnebeek for their excellent work and the excellent position in which they have left OPTA.

This publication contains the annual report and the market monitor; in the autumn we will be presenting our vision and agenda for 2007. Market consultation on the latter will take place this summer. Now we are accounting for the past year; in the autumn we will look to the future. We hope this document improves our transparency and accounts externally for our responsibilities. This annual report should be viewed from that perspective. Criticism from various OPTA stakeholders will also be addressed, based on the conviction that this will be beneficial for us, now and in the future. ●

C.A. Fonteijn
Commission chairman

Reading instructions

This publication consists of two parts; the annual report (with the annual accounts) and the market monitor.

In the annual report, OPTA accounts for its activities and results in the year 2005 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 OPTA wanted to achieve in 2005, what has been achieved and how it was achieved. The question of what OPTA's activities cost is answered in the annual accounts. The annual accounts give insight into OPTA's financial housekeeping. This publication contains summarised annual accounts. The complete accounts can be viewed on the OPTA website: www.opta.nl.

OPTA places great store on feedback regarding its functioning from companies, organisations and the people it deals with. It is for this reason that interviews have been included in this annual report with individuals inside and outside of OPTA. They offer their views on how OPTA functions, specifically in the areas of processes, transparency and OPTA's contacts with the outside world.

Communication markets are a dynamic playing field in which many changes can occur each year. The market monitor offers insight into developments in the markets involving telephony, broadband, leased lines, broadcasting, internet security and post in 2005. Emphasis is placed on trends, competition developments, and consequences for the end-user in terms of price and quality.

Vision and Annual Plan

The annual report is part of the cycle that OPTA follows to keep the outside world informed of market developments, its views of those developments and its operations, while accounting for its activities. This cycle has been revised as of 2006.

The most important difference as compared to 2005 is that our vision will henceforth be published in the autumn together with the annual plan for the coming year. Also new is the fact that we will be consulting the market prior to the publication of our Vision and Annual Plan. Thus in the spring we will look back on the past year (Annual Report and Market Monitor), and in the fall we will look ahead to the coming year (Vision and Annual Plan).

Publications in 2006:

- Publication Annual Report and Market Monitor 2005: May 2006
- Consultation Vision and Annual Plan 2007: July 2006
- Publication Vision and Annual Plan 2007: November 2006
- Publication Budget 2007: December 2006

All publications are available free of charge from OPTA (info@opta.nl) and can be perused on the OPTA website – www.opta.nl - after publication.

Disclaimer

These documents have been compiled on the basis of Section 17 of the Independent Post and Telecommunications Authority Act. No rights may be derived from the contents of this publication. This publication may include printing or typing errors. ●

Annual report

0050

Top priorities 2005

During the past year, OPTA strove to achieve the objectives listed below. OPTA undertook successful action with reference to most of these priorities. The results are

listed below, together with a brief explanation. For more information, the summary refers to the relevant text of the annual report.

Priority and objective	Result
Market analysis	OPTA finalised all but three of the 19 market analysis decisions in 2005. The premise applied to regulation is: mild regulation where possible, strict where necessary. The broadcasting retail market, the market for broadcasting frequencies and international roaming will be concluded early in 2006. See Chapter 1 and Appendix V.
Objective: Finalise the market analysis decisions for all markets.	
Future of retail regulation fixed telephony and consequences on numbering plan	Clarity with reference to retail regulation is included in the market analysis fixed telephony, and a solution has been created for the use of numbers for internet telephony. See Chapter 1 sections 1.1.3 and 1.2.5.
Objective: 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	Clarity has been given in the market analysis fixed telephony. OPTA includes VoIP in the market for fixed telephone services. For KPN, a milder set of obligations applies for VoIP than for traditional telephony. See Chapter 1 section 1.1.3.
Objective: 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	Bundling is included in the tariff regulation of KPN's retail services in the market analysis fixed telephony. The market analysis framework has been declared explicitly applicable in the evaluation of bundling. OPTA has introduced what is called the traffic light model for this purpose. See Chapter 1 section 1.1.3.
Objective: Establish clarity in 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	A discussion paper on emerging markets was discussed with the market (see Chapter 3 section 3.3.4, box). The importance of emerging markets was also considered in the various market analyses, e.g. fixed telephony and broadband. Where possible,
Objective: Establish clarity in the market regarding what OPTA considers to be an emerging market; OPTA will preferably attune this viewpoint internationally (ERG).	

Priority and objective	Result
	for instance with respect to Voice over Broadband (VoB), OPTA strives to be mild and refrain from regulation. See Chapter 1 section 1.1.3.
Dialers	By taking measures and providing information,
Objective: Fewer problems with dialers and fewer complaints through an effective approach (information, investigation and legislative process).	OPTA has emphatically addressed and partially reduced the problem of dialers. See Chapter 2 section 2.1.2.
Follow-up on improvement points OPTA evaluation 2005	OPTA has actively addressed the improvement points and started to improve the transparency and
Objective: OPTA will follow up on the improvement points identified during the OPTA evaluation in 2004 – 2005.	continued to improve process rationality, argumentation, operations and contacts with stakeholders. See Chapter 3 section 3.1.2.
Enforcement policy	OPTA published the Procedure Regulations Enforcement and Disputes OPTA (see Chapter 1 section 1.2.3). OPTA also emphatically effectuated enforcement with activities including a large-scale discount study, resulting in a fine of 17 million euros for KPN (see Chapter 1 section 1.2.4), and active enforcement of the spam prohibition (see Chapter 2 section 2.1.1).
Discount investigation KPN	OPTA fined KPN and insisted upon structural measures. KPN made a concession to the market with reimbursement for damages and a compliance program. See Chapter 1 section 1.2.4.
Objective: 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 the future in so far as possible.	





“OPTA should normalise ICT. The Consumers' Association believes that companies in this sector tend to believe that they are so special that they need not adhere to the normal code of conduct in the market. That is particularly evident in their successful attempts to convince consumers that they suffer from a stupidity complex: it is their own fault if a product or service does not work, not the supplier's!

Our experience with OPTA goes like the tide. We are extremely happy with some of their initiatives, like the way they are dealing with dialers on the internet, the problem of spam, and telemarketing. Our contact with the people at OPTA is pleasant: they keep their word. OPTA is doing its best to improve its transparency in accordance with the recommendations in the four-year evaluation. Of course we welcome that.

But as far as we concerned, OPTA should devote more attention to consumer interests in the time to come. As the referee, OPTA has primarily focused on the players in the field, the companies. They need to keep a closer eye on the public, for example by making their interpretation of regulations clear in advance, for instance by compiling policy rules.

When OPTA reaches the limits of its authority, it could also sound a louder agenda-setting warning. Of course we understand that OPTA is bound by a complicated set of legal rules. But their attitude is often somewhat passive – waiting for the market parties to request mediation, for example. The Consumers' Association is then usually no more than a spectator. More pro-activity would suit

OPTA. In combating unfair trading practices, for example, like failing to provide the promised performance, unilateral changes in terms of business, or reporting on the quality of the infrastructure. Transition barriers obstruct or even block market mechanisms. If consumers cannot respond fast enough to attractive offers being made by companies, the market grinds to a halt. And that is exactly where our organisations share interests.

“OPTA should pay more attention to consumer interests.”

We are glad that OPTA looks beyond the horizon of today, e.g. by publishing articles, as long as they continue to be in touch with actual practice. Last year OPTA rightly pointed out the disadvantages of triple play offers that are now manifesting themselves. In some occasions, OPTA could do more to prepare itself for problems that occur in actual practice.

We believe that 2006 will be an interesting year for OPTA, for example because of the cooperation with the Consumer Authority and the opening of the Consumer Information desk. The contribution of OPTA's extensive expertise to both developments is extremely important!” ●

Introduction

OPTA regulates compliance with legislation and regulations in the markets for electronic communications and post. OPTA takes action if competition issues occur on these markets, and can impose obligations on market parties in order to stimulate sustainable competition or protect the interests of end-users. OPTA always applies the premise of mild regulation where possible, strict where necessary (the principle of proportionality). Thus OPTA places focus on deregulation, with emphasis on customisation and mildness.

Tasks

One specific task is to identify markets for electronic communications and to determine which parties hold a position of significant market power (SMP). OPTA determines whether and which obligations should be imposed on the parties in advance (ex ante) in order to prevent behaviour that disrupts competition.


OPTA also has the task of protecting consumers and internet security. These aspects are becoming increasingly important to market development. In addition to market analyses, regulation, enforcement and consumer protection, OPTA has a number of other tasks, including dispute resolution, party registration and issuance of numbers. A summary of OPTA's responsibilities and authority is included in Appendix II.

Framework

OPTA is an independent executive body that effectuates the laws and rules determined by the legislators. This pertains to the Telecommunications Act, the Postal Act, the relevant European regulations, and regulations at lower levels associated with these Acts. Political responsibility for OPTA resides with the Minister of Economic Affairs, but OPTA is independent and makes its decisions independent of political or business interests. The minister can give general directions, but cannot intervene in individual cases.

Mission

OPTA's mission is to stimulate market mechanisms in electronic communications and post, in the ultimate interest of the consumer. The mission directs the execution of all of OPTA's responsibilities:

“OPTA stimulates sustainable competition in the electronic communications and postal markets. This 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.” 

1. Market supervision

The year 2005 was a year of transition from old to new regulation. The normal on-going supervision consisted of assessing wholesale and end-user tariffs, resolving disputes, law enforcement, issuance of numbers and registration of providers. Finalisation of the market analyses was another area of primary interest. Electronic communications markets were analysed for the first time by virtue of the new Telecommunications Act, and it was determined whether obligations should be imposed. Obligations are rules that can be imposed to regulate the behaviour of parties with significant market power. Within the market supervision activities, the most important results were a fine for KPN of 17 million euros for offering unjustified discounts, the finalisation of the market analysis decisions, and dispute resolution resulting in improved market mechanisms in the broadband sector.

1.1 Market analyses

One of OPTA's main responsibilities is determining obligations in advance (ex ante) for parties with significant market power (SMP). OPTA does this on the basis of an analysis of the competitive situation on the electronic communications markets. The obligations are intended to prevent anti-competitive behaviour. Supervision and regulation mean customisation: mild regulation where possible, strict where necessary. OPTA will only intervene where necessary to promote sustainable competition. Where possible, OPTA has deregulated, striving for milder, less-extensive regulation. However, OPTA took strong action on markets characterised by little or no competition. OPTA must perform these market analyses at least once every three years.

Accountability

The obligations imposed by OPTA must be appropriate and may never surpass their objective, namely: stimulating competition and protecting the interests of end-users where necessary. The basic consideration is that market parties must have as much room and freedom as possible to align with the market dynamics and new

technological possibilities. This requires customised regulation and continual alertness for excess regulation. The Telecommunications Act requires OPTA to provide both qualitative and quantitative argumentation for the measures it imposes. This means that OPTA must thoroughly account for the motivation behind and consequences of the choices it makes.

Demand for information

The market analysis decisions had significant impact on market parties. Not only because of the results, but also because of OPTA's extensive requests for data and information required to perform the analyses. In the

“Market parties must have as much room as possible to accommodate the market dynamics.”

process of the market analysis, OPTA is extraordinarily dependent on the input and cooperation of the market parties. Without detailed information about aspects such as turnover, market positions and entry barriers, adequate analyses could not be made. OPTA is aware of the administrative pressures this caused. It did everything within its power to address the demand for information as efficiently and smartly as possible. Sadly, this was not always successful. The strong criticism given by market parties in response to OPTA's initial lists of questions distributed in March 2004 taught OPTA an important lesson.

Results

OPTA can now look back on an intensive, lengthy decision making process. The long duration of this process justifiably caused the market parties to complain. This long duration was partly caused by the fact that market parties needed much more time to collect the necessary information than initially expected. Furthermore, additional time was needed to supplement answers that were

sometimes incomplete or of insufficient quality. The fact that this was the first time that OPTA performed these analyses was another influencing factor. After a period of more than one and a half years during which all interested parties in the Netherlands, the European Commission and other European regulators could respond to the draft market analysis decisions, OPTA finalised the decisions for most of the markets late in 2005.

1.1.1 Transparent process

OPTA devoted significant attention to transparency and involving the market parties in the market analysis process. The law prescribes specific moments in the process at which interested parties could respond to the draft decisions:

- National consultation procedures in March (mobile), May (broadcasting) and July (fixed telephony, leased lines and broadband)
- European consultation (“notification”) of the draft decisions with the European Commission and other national regulatory authorities in the Member States of the European Union in July (mobile), September (broadcasting) and November (fixed telephony, leased lines and broadband)

OPTA also works with an expert group of market parties active in the various markets being analysed. This offers a platform in which OPTA can listen to the parties and hear how the market parties are experiencing the process, and thus learn from this. The sounding board group led OPTA to decide, for example, to extend the consultation period for the draft decisions on fixed telephony, leased lines and broadband by a number of weeks. OPTA furthermore organised additional meetings with market parties to discuss matters such as the proportionality of obligations and the proposed retail and wholesale tariff regulation. A variety of discussions also took place with interested parties about the development of policy frameworks and communications about the planning. Moreover, each day of publication of a draft deci-

sion, OPTA organised a meeting with market parties in which it explained the decisions and gave the parties the opportunity to pose questions. Finally, OPTA held sessions with interested parties during which it explained how considerations had been processed and which modifications OPTA had made.

Results

OPTA believes that all the moments of consultation made a major contribution to improving transparency in the market analyses and establishing support for its decisions. However, the market emphasised that it had little appreciation for the lengthy process and the many questions about details, although the parties understand the importance of careful, high quality decisions. In turn, OPTA takes this criticism very serious and will strive to ensure that future market analyses are faster and more flexible. With the experience gained in dealing with such analysis, OPTA is convinced that subsequent analyses procedures will be both shorter and more efficient.

1.1.2 Cooperation

An important factor in the market analysis process was cooperation with the Netherlands Competition Authority NMa and the European Commission. The NMa advises OPTA on the draft decisions; the European Commission must approve them. Before publishing the draft decisions, OPTA asked the NMa advise on the relevant markets as defined and the assessment of significant market power. OPTA also discussed a number of times with the European Commission prior to the consultation so that the Commission would be informed of OPTA’s ideas at an early stage. OPTA is convinced that as a result, support for the decisions has grown and that the decisions themselves are more robust.

Regulatory framework

Within a European framework, OPTA regularly consults on market supervision and regulation. This is primarily a result of the fact that the regulatory framework originated on a European level, focusing on harmonisation of the

European internal market. International cooperation is useful not only for exchanging know-how and experience, but also for collectively drafting workable, effective regulatory instruments. Under the auspices of the European Regulators Group (ERG) and the International Regulators Group (IRG), in which all European regulators in electronic communications are united, study groups are working on issues such as tariffs for fixed telephony, international roaming, mobile termination tariffs and regulatory accounting. These cooperative frameworks generate working documents and principles that guide individual countries in their regulation, including the market analyses. These products enable the market parties to better predict the practical effects of the European regulatory framework.

1.1.3 Decisions market analyses

In a number of important markets, the analysis process resulted in milder, more flexible regulation. In its regulation of the retail services in the consumer market, OPTA deregulated and gave KPN much more freedom. The origination of mobile calls is now completely free. OPTA is also striving to establish long-term tariff regulation, giving the market parties more certainty and lower transaction costs. Due to a lack of competitive pressure and market discipline, OPTA forcefully regulates the market for mobile call termination. The tariffs for calling from a fixed connection to a mobile connection must be reduced. OPTA will also be keeping a close eye on the level of the cable tariffs. A complete summary of the markets analysed and the obligations imposed by OPTA is given in the table in Appendix IV. A brief description of the results of the various market analyses is given below.

Fixed telephony

The premise of mild regulation where possible and strict regulation where necessary was an important aspect in the market analyses for fixed telephony. Not only because these markets have been strictly regulated in the past by virtue of the Telecommunications Act, but also because of the emergence of Voice over Broadband (VoB). The

significant market dynamics and migration to internet telephony have led OPTA to determine that the regulation of KPN's traditional telephony on the fixed network can be drastically reduced. This gives KPN more freedom of movement, thus reducing the number of times KPN needs to request OPTA's advance approval of tariffs. Because of the lack of effective market mechanisms, in general the regulatory pressure on most of the wholesale markets has been maintained. Where possible, OPTA also reduced its regulation on these markets.

Wholesale

An important difference in the regulation preceding the market analyses is the fact that in principle, tariff regulation on the fixed wholesale markets is now determined on the basis of long-term tariff regulation. Market parties now know for a number of years in advance what maximum tariffs apply. As a result, companies are better able to estimate their position, transaction costs remain lower and investment certainty is safeguarded better. Under the previous system, KPN was required to submit its tariffs to OPTA for approval every year.

"In a number of markets, the analyses resulted in milder, more flexible regulation."

In the wholesale market for interregional call transfers, one of the three markets for call transfer services, OPTA believes that obligations are no longer necessary, with the exception of a retail price floor. There is sufficient infrastructure competition. In other wholesale segments, however, OPTA imposed more strict or new obligations on the provider with significant market power. The market analysis of transit call transfers, for example, indicated that obligations are needed that are stricter than those imposed in the past. An important reason for this

is the fact that OPTA believes that the volume discounts applied by KPN obstruct the continued development of competition.

New is the fact that end-users can now acquire telephone subscriptions from providers other than KPN. This company is required to provide wholesale line rental (WLR) so that CPS providers can offer consumers not only call minutes but also a telephone subscription. In determining the tariff for WLR, OPTA listened closely to the comments given by market parties, opting for a cost method (retail minus) that is aligned with the market's competition potential as much as possible.

Retail

In the analysis of the retail markets and estimating the risk of anti-competitive prices, the fact that consumers are switching to internet telephony (Voice over Broadband) played an important part. Following a careful consideration of all facts, in which the risk of predatory prices was ultimately estimated to be lower, OPTA decided that Voice over Broadband would be regulated more mildly than KPN's traditional telephone service. If the price is too low, KPN would be competing with itself, cannibalising its own telephone services. The innovative nature of the service also played a role. The details of the price squeeze test were adjusted to give KPN more freedom in setting its tariffs and allowing price reductions. This test is intended to ensure that sufficient margin is maintained between the wholesale and retail prices for other market parties. Before the market analysis was finalised, OPTA had notified the market parties that the previous Telecommunications Act did not allow it to specify rules for KPN's plans for Voice over Broadband. This was due to the fact that the service could not be included in the legal definition of telephony applicable at that time. OPTA did indicate, however, that in determining its tariffs, KPN should take the intended regulation into account.

Considering the strong market dynamics, the rise of Voice over Broadband and the expected significant volume

reduction on the fixed telephony network, regulation in the traditional telephone market – via the copper access network – was made significantly milder. In evaluating the tariffs for calls on the fixed network, OPTA developed the traffic light model, making regulation both milder and more effective. KPN is no longer required to request OPTA's advance approval for all tariff proposals or discounts. Based on this system, certain tariff proposals from KPN are absolutely unacceptable (red), some will always be accepted (green), and other proposals may only be implemented after approval by OPTA (yellow). This traffic light model also gives OPTA an instrument for addressing the danger of margin squeeze and competition issues involving bundled services (offering multiple services in a single package).

Finally, the obligations imposed on the retail market for international calls have been removed because KPN no longer holds significant market power in that segment.

Mobile telephony

On the market for access and call origination on public mobile telephone networks, competition was sufficient to allow OPTA to lift obligations. The earlier designation of KPN Mobile as party with significant market power was therefore withdrawn. The services available on the retail level are supplied by four providers with their own networks: KPN (including Telfort), Orange, T-Mobile and Vodafone. Dozens of independent service providers are also active along with one, so-called Mobile Virtual Network Operator (MVNO): Tele2. The independent service providers and the MVNO purchase from the network providers on a commercial wholesale level. None of the providers of mobile telephony is able to behave independently of competitors, customers and ultimately consumers, meaning that there is no longer a need to impose obligations.

OPTA's calculations indicate that each year end-users pay at least 145 million euros too much for fixed to mobile calls. With respect to the market for call termination on

mobile telephone networks, OPTA concludes that each individual mobile network is a relevant market. All providers have such a degree of significant market power that they are able to charge exorbitantly high tariffs to their end-users. KPN, Orange, T-Mobile, Vodafone and Tele2 were therefore required to reduce their tariffs for mobile call termination in stages to a cost-oriented level.

Broadcasting

OPTA has determined that each cable company has significant market power in its coverage area. This means that they can increase their tariffs without being disciplined by the market and could even charge tariffs so high that they are no longer proportionate to the costs. OPTA wants to perform a further investigation of the tariffs applied by the largest cable companies and assess their reasonability. In anticipation of possible regulation, the cable companies have since decided to freeze their tariffs after urgent requests to that effect from OPTA and the Ministry of Economic Affairs. The largest cable companies also hold market power with reference to the program providers and are therefore subject to OPTA obligations. A decision regarding the transmission of radio signals via the ether will be made in the course of 2006.

Cable tariffs

The media, the market parties and politicians showed significant interest in OPTA's proposals for cable tariffs, partly based on the cable companies' initial announcement that they would be raising their tariffs even further. Particular attention was given to the manner in which OPTA intended to deal with costs related to the modernisation and digitisation of cable networks. The question whether it was reasonable to charge consumers for some of these costs and particularly whether cable tariffs were already much too high in the Netherlands was the subject of heated discussions. Parliament also debated this issue, inviting OPTA to explain the matter to the Parliamentary Committee of Economic Affairs.

Based on OPTA's intention to regulate end-user tariffs, the European Commission expressed serious doubts on the need for intervention. Ultimately, Brussels has final say in cable regulation in the Netherlands. The Commission's estimation of the development and importance of alternative offers, e.g. Digitenne, satellite television and IP-TV, differs from that of OPTA. Based on the emergence of alternatives and the promise made by the large cable operators in the course of this process to increase their tariffs by no more than the rate of inflation, the European Commission has determined that intervention is not necessary at this time. OPTA believed that these alternatives did not exert sufficient competitive pressure.

“OPTA is pleased that the cable sector opted for self-regulation, which meant that intervention by the regulator was unnecessary.”

Based on the doubts expressed by the European Commission and the promise from the cable operators that tariffs would not be increased by more than the rate of inflation in 2006, OPTA modified and lessened the obligations it intended to impose. This accommodated the doubts expressed by the European Commission: Brussels approved the OPTA decision. OPTA is pleased that the cable sector opted for self-regulation. This meant that the market arrived at a solution without intervention by the regulator. In 2006, OPTA will monitor compliance of the promise made by the cable companies and determine whether this market is in fact developing towards competition.

The European Commission had no objection to the intention of requiring the large cable companies to provide access to program providers against reasonable condi-

(Proceed on page 20)

tions. This means that a large part of the cable sector is now subject to fewer obligations because not all cable companies are required to provide access to program providers. This regulation is milder than the preceding regime based on both the previous Telecommunications Act and the Media Act. Here OPTA has provided the customisation as intended in the revised Telecommunications Act.

Broadcasting transmission services

In 2005, OPTA published its Draft Decision on the Wholesale Markets for Terrestrial Transmission of Analogue Radio Signals. This market analysis especially focuses on shared use of broadcasting masts and antenna si-

time to completely end regulation has not yet arrived. The obligations are milder in comparison to the previous Telecommunications Act because KPN is only subject to a price cap; the heavier obligation of cost orientation no longer applies.

Considering the limited competition, however, KPN is still designated as a party with significant market power for leased lines with a low capacity (< 2 Mbit/s). For leased lines with a higher capacity (> 2 Mbit/s), no obligations are applied because there are alternative providers in this segment with their own fibre-optic network. The medium segment (2 Mbit/s leased lines) is competitive, but regulation still applies. Unlike the market for leased lines with high capacity (> 2 Mbit/s), the alternative providers in this segment are dependent on access to KPN's connection network. KPN is required to give these providers access. Finally, the international leased line market has effective competition, and no obligations needed to be imposed by OPTA. An exception is the market for analogue international leased lines, which are only available from KPN.

“OPTA provides customisation as intended in the revised Telecommunications Act.”

tes and masts needed to broadcast radio (FM, AM and medium wave). Late in 2005 it became evident that the government plans to sell Nozema Services to KPN. Because this takeover affects the market structure and requires approval by the NMa, OPTA postponed notifying the European Commission of its draft decision. The NMa approved the merger in March 2006. It has imposed the condition that within two years, KPN must sell a number of broadcasting masts to an independent party. The market analysis for this market will be concluded in the course of 2006.

Leased lines

The need for higher bandwidths is growing, with customers tending to migrate on a large scale from leased lines to less expensive alternative data communication services that have sufficient bandwidth. The market importance of leased lines is therefore decreasing, but the

Broadband

The broadband market in the Netherlands is one of the most competitive markets in Europe. Although the market is highly dynamic, KPN's market share is growing. OPTA believes that the market for unbundled access to the local loop – the copper wire leading to the individual households – is not yet sufficiently competitive to remove all regulation. Using unbundled access to KPN's local loop, alternative providers can offer broadband internet access via DSL and internet telephony. A milder set of obligations is not yet called for because KPN continues to hold a strong and growing position, in particular in comparison to cable. However, heavier obligations are also unnecessary.

There are two separate relevant markets for wholesale broadband access. One market is for high quality wholesale broadband access and is especially used for data

communication services for business users and expensive internet products. This market is not sufficiently competitive; OPTA has imposed a limited set of obligations on KPN but has withdrawn the heavy requirement of cost orientation. There is also a market for low-quality wholesale broadband access primarily intended for consumer internet access. OPTA believes this market is effectively competitive. Obligations are therefore unnecessary. The European Commission initially doubted the level of competition on the internet market for consumers and was considering regulation, but ultimately saw no reason to obstruct OPTA's decision. OPTA was urged to keep a close eye on the competitive situation on the broadband market and to report accordingly at the end of 2006.

For measurements of the economic effects of regulation in the market for high quality wholesale broadband access, see box at pages 18 and 19.

1.2 Regular activities

OPTA's regular activities in 2005 took place in a situation in which the old obligations still applied despite the effectuation of the revised Telecommunications Act. As the conclusion of the various market analyses drew nearer, the new regulatory framework took shape. At the same time, OPTA was required to continue to resolve disputes, regulate tariffs and exert enforcement by virtue of the stipulations of the previous Telecommunications Act, sometimes forcing it to apply dual considerations.

Results

The market analyses made high demands on OPTA's capacity and manpower. The collection and analysis of all the data required much more time than originally estimated. Nevertheless, OPTA did everything it could to continue its regular activities.

Because of the priority placed on the market analyses, OPTA was sometimes forced to prioritise its regular activities. This meant that work in progress sometimes had

to be stopped, fixed processing times were not satisfied and cases were postponed. In choosing the activities to be performed, OPTA did apply a careful and thorough approach.

1.2.1 Regulation of wholesale tariffs

In regulating interconnection tariffs for the wholesale purchase by other telephony companies of capacity on KPN's network, OPTA had already taken the transition situation from the old to the new regulation into account. The tariffs were already determined in 2004 for a longer period (2003 through 2005) instead of the regular one-year regulation. This established a transition regime that applies until the obligations ensuing from the market analyses have been operationalised and applied. This multiple-year span creates the tariff certainty that market parties need in terms of their willingness to invest in the communications sector in the Netherlands.

“Tariff certainty for market parties is important for the willingness to invest in the communications sector.”

Collocation tariffs

When providing high-speed internet services (DSL) over KPN's local loop, parties must be able to install equipment in KPN's local exchanges. This is called collocation and OPTA regulates the applicable prices. In 2005, OPTA determined the level of certain tariff elements for collocation. Progress was achieved by breaking through a legal stalemate with reference to an on-going appeals procedure (decision expected in the summer of 2006), and OPTA decided to distinguish between two components: one set of tariffs that can be assessed normally and another set for which the court's decision is needed. The first set includes project-related and operational costs for the supply, management and invoicing of

collocation. In order to actually assess and determine these tariffs, OPTA consulted intensively with interested market parties during the year. The second set pertains to housing costs: the price for the number of square meters used.

Broadband switching

When an end-user switches from one DSL provider to another, this is called telco-telco migration. In a dispute between Tiscali and bbned on the one hand and KPN on the other, OPTA ordered KPN to perform these migrations and submit a proposal for a cost-oriented tariff. OPTA approved KPN's proposal early in March 2005. This provided insight into the costs to be incurred by a DSL provider to take over another DSL provider's customer. Based on the tariff proposal, OPTA determined that KPN may not charge the DSL providers migration costs when an end-user terminates a telephone subscription, resulting in a shared unbundled loop line being changed into a fully unbundled loop. OPTA has received many complaints about problems encountered by consumers when changing DSL providers and has now started a negotiation process with the market parties so that workable solutions can be formulated.

Terminating tariffs fixed telephony

In June 2005, the Trade and Industry Appeals Tribunal announced its initial decision on OPTA's decisions based on the policy rules compiled in 2003 regarding the reasonability of terminating tariffs on fixed networks. The decision regarding the tariffs Casema charged KPN for termination of fixed telephony (Fixed Terminating Access – FTA) withstood the court's evaluation. This put an end to the unbridled rise of terminating tariffs on the fixed network. OPTA believes that an excessive difference between KPN's tariffs (regulated by law) and those of the other providers is detrimental to KPN. The Appeals Tribunal overruled OPTA's decision in the dispute between Versatel and KPN regarding Versatel's terminating tariffs. The Appeals Tribunal agrees with the manner in which OPTA evaluates the reasonability of these tariffs,

but found that OPTA did not provide sufficient argumentation for its decision that Versatel's appeal based on the exemption clause in the policy rules for terminating tariffs could not succeed. OPTA must therefore make a new decision in this dispute.

1.2.2 Regulation of end-user tariffs

Flat-fee tariffs

The former price squeeze policy prevented KPN from introducing flat-fee packages: unlimited calling for a fixed fee per month. This was done to ensure that providers who purchased from KPN were not placed in a price squeeze because there was too little margin between their wholesale price and the retail price paid by consumers. In a number of tariff cases (Block of Time 06760, BelPlus XL and BelPlus 250), the court determined that in its application of the price squeeze test, OPTA had failed to take into account the realistic, average caller profiles as estimated by KPN. Because of these court decisions, after consulting with the market, OPTA modified the price squeeze policy, giving KPN more possibilities to introduce bundled tariff packages of this type. This gave KPN's competitors more competition and consumers more choices.

After the market consultation on flat-fee packages, in September 2005 OPTA approved KPN's tariff proposal for BelVrij. This made KPN's first flat-free offer a reality. The approval meant significantly milder regulation of consumer tariffs applicable to KPN in 2005, enabling this company to follow those competitors who had already introduced flat-free offers on the market. Consultation with the entire market preceded this approval.

1.2.3 Dispute resolution

The number of disputes between market parties submitted to OPTA for mediation has been decreasing in recent years. This downward trend is caused by a number of factors. One of these is the fact that OPTA is more critical in its acceptance of disputes. In doing so, it applies

the revised Procedure Regulations Enforcement and Disputes OPTA (PHGO). These regulations apply to all requests for resolution of disputes or enforcement by virtue of the Telecommunications Act. The PHGO specifies matters including the material and formal conditions to be satisfied by a request for mediation.

Another important factor is the influence exerted by OPTA itself as to whether a dispute is submitted and the manner in which that should be done. OPTA stimulates the market parties involved to consult with one another and to prevent potential disputes. Market parties could also have been reticent in submitting disputes because of the uncertainty of the outcome of the market analyses.

Results

While 82 disputes were submitted to OPTA for mediation in 2002, this number decreased to 31 in 2003, 23 in 2004 and only 14 in 2005. Eight of these new disputes pertained to rights of way, three to antenna site sharing, two to requests from radio broadcasters for cable access, and one to interconnection. A number of these disputes were supplemented later. Three of the disputes were subsequently withdrawn, and in eight of the cases OPTA has not yet decided on the requests. The three remaining disputes were concluded in 2005: one within the period determined by law, and two beyond that period after consultation with the parties involved.

A number of the 2005 disputes are explained below.

Antenna site and mast sharing

In the area of the distribution of radio signals, OPTA determined in June 2005 that Nozema Services, as provider of a broadcasting transmission network, must open its network to its competitor Broadcast Newco Two. The latter had requested use of Nozema Services' antenna sites based on the fact that any other solution using its own antenna sites and masts was either inefficient or technically unfeasible on the desired term. Nozema Services appealed OPTA's decision with the Trade and In-

dustry Appeals Tribunal, but the Tribunal concurred with OPTA. The OPTA decision expands the possibilities for competition on the market for radio signal transmission. As a result, networks can be used more efficiently and the prices that radio broadcasters pay to antenna site and mast operators for putting their programs on the air can be decreased.

Mediation high-speed internet

Opposing interests need not always result in a dispute between market parties. In the spring of 2005, two market parties each wanted to implement a different technique for broadband connections on KPN's copper connection network. These two techniques, known as ADSL2+ and

“OPTA stimulates market parties to consult with one another and to prevent potential disputes.”

VDSL, are crucial for television over internet, but can interfere with one another. Because the two market parties involved had a substantial conflict of interests, the matter threatened to evolve into a lengthy and complicated dispute. In order to optimally serve the potential of competition, OPTA initiated intensive collective consultation with the two parties. This ultimately resulted in a solution that satisfied both parties. One party could commence its national roll-out of the ADSL2+ technique; the other was able to start testing the new VDSL technique. By resolving the impending dispute in a timely manner, the development of the new techniques was not unnecessarily delayed, to the benefit of competition on the broadband market.

Rights of way

Late in 2005 the Rotterdam court rendered its decisions in a number of cases involving rights of way. Important is the court's agreement that the period preceding

a potential dispute is essential for the parties. They are obliged to negotiate with one another and provide complete openness so that the question of who should bear the costs of a relocation of cables can be properly considered. It is therefore the responsibility of the parties to provide all facts. This ultimately limits OPTA's obligation to investigate. The court referred the two cases back to OPTA for a complete reconsideration of one aspect of the necessity to relocate the cables involved.

1.2.4 Enforcement and regulation

In addition to evaluating tariffs and resolving disputes, OPTA is also responsible for actively ensuring that parties comply with the law and OPTA's decisions. Two examples of how OPTA addressed this compliance with the law in 2005 are explained below.

Investigation KPN discount scheme

OPTA charged KPN a fine of 17 million euros in November 2005. For a number of years and in a large number of cases (371), KPN had violated the Telecommunications Act by giving improper discounts to customers in the business market segment for fixed telephony and leased lines. The law was systematically violated on a large scale, as a result of which it can be reasonably assumed that competition was significantly hampered for a long period of time. In determining the level of the fine (in accordance with OPTA's Fine Policy Rules), OPTA considered factors including the fact that KPN had offered the alternative providers involved a total of 18 million euros in reimbursement for damages. Neither KPN nor the other market parties have appealed this decision.

The fine is the highest imposed by OPTA to date. A party with significant market power that arranges individual discounts without submitting these to OPTA for advance approval commits an extremely serious violation of the Telecommunications Act. The discounts offered were not in keeping with the tariff regulation OPTA had imposed on KPN in order to promote competition on the market. As a result of the fine investigation, KPN immediately

ceased offering discounts of this type and also implemented structural measures - a compliance program – to avoid repeating the violation.

The providers detrimentally affected by the discounts expressed their satisfaction with the manner in which OPTA concluded the investigation, in part based on the fact that KPN reimbursed their damages to a total of 18 million euros.

KPN's gift program

In 2005, in a number of its telephony offers in the (business) market KPN gave free gifts. Customers with new subscriptions received an Iris Cheque or a DVD. OPTA considered these gifts to be improper discounts with which the tariff limits as specified by OPTA were violated. Although a gift program appeals to consumers, when offered by a party with significant market power it has the potential of threatening market mechanisms and opportunities for other players. It was for this reason that OPTA imposed two threats of judicially imposed penalties. KPN has requested the court for temporary injunctions against both of these decisions. KPN's request was granted in the DVD case. The court determined that consumers consider the DVD to be a small gift for switching to KPN, not a discount. However, the court did not grant KPN's other request because it failed to recognise its urgency. OPTA has included the court's decision in its market analysis fixed telephony. In every tariff offered, KPN must include and recoup a cost component for gifts of this type, but more room has been created for special tariffs and offering small gifts to customers.

Objections and appeals

The number of objections decreased significantly in 2005. A "mountain of objections" had already been dealt with in 2004, and the revised Telecommunications Act allows a large number of cases to be submitted directly to the Trade and Industry Appeals Tribunal, making the objection phase redundant. OPTA concluded 122 objections in 2005. Of the 90 new objections received in 2005,

OPTA concluded 41 percent within the period prescribed by law. Of the objections not concluded within this period, the margin varied from one day to a few months.

To a significant degree, this low score was caused by the large number of objections to invoices pertaining to what OPTA charges the market parties for its market regulation. OPTA consciously postponed dealing with this contingent until the Appeals Tribunal had rendered a directive decision. OPTA subsequently concluded this series of objections collectively around the summer. The low percentage is also a result of the extensive capacity devoted to the market analyses, leaving OPTA with insufficient capacity to conclude objections within the period prescribed by law. OPTA did, however, consider the nature of the objections and their seriousness, and consciously considered adequate priorities at all times.

For quite some time, OPTA was plagued by lengthy throughput periods due to the pile up of old, not-yet concluded objections (MTA, EDC and invoice cases) from previous years. OPTA is glad that this contingent of “polluting” objections has been drastically diminished and that the average throughput periods have decreased significantly: from 370 days in 2004 to 262 days in 2005. The throughput time of objections both submitted and concluded in 2005 is considerably lower: i.e. 90 days on average.

The court of Rotterdam and the Trade and Industry Appeals Tribunal concluded 95 appeals procedures in 2005. Striking is that the number of appeals filed with the Appeals Tribunal increased significantly as compared to 2004: from 13 to 53. The number of appeals filed with the court of Rotterdam decreased at the same time from 113 in 2004 to 13 in 2005. These shifts demonstrate that the market parties are utilising their new legal option of directly appealing OPTA decisions with the Appeals Tribunal. Because the objection phase and the appeal with the court can be skipped, market parties gain a considerable amount of time.

1.2.5 Numbering

Numbers for internet telephony

Assigning the correct telephone numbers for internet telephony is not easy. After all, internet is not limited to country or number area borders, making it difficult to issue regular numbers, such as geographical numbers, for internet telephony. OPTA has attempted to clarify to the market when numbers can be used for internet telephony and which numbers these will be. After OPTA organised consultation regarding its proposed number policy in 2004, this policy was published in the spring of 2005. The policy is intended to avoid obstructing the development of new services in so far as possible and will apply until the Minister of Economic Affairs has modified the numbering plan, proposing a structural, future-proof solution for internet telephony. Responses to the consultation were varied and contradictory, leading OPTA to refrain from incorporating all of the recommendations received.

“The number of objections and their average processing time has decreased significantly.”

OPTA and Economic Affairs are stimulating interaction between policy and implementation. The two organisations therefore consult intensively on the intended numbering plan modifications for internet telephony as well as other future numbering plan modifications. The result was a well-attuned draft numbering plan that can be better implemented by OPTA.

Corporate numbers

Making corporate numbers that were released in 2004 (088) accessible took longer than expected due to connection difficulties. These numbers are intended for

(Proceed on page 28)



“A brutally hard pattern can be seen in social development: jobs are relentlessly going to where they are least expensive. As administrator there is no point in fighting this. Your genetic passport – are you smart, are you skilled? – actually determines your opportunities in society and what you have to offer. The backward position of women and ethnic minorities is temporary.

It is crucial for OPTA to operate truly independently – apart from business and political interests. OPTA is part of a chain of institutions in the Netherlands that provides checks and balances. These ensure that there is no civil war. In calibrating its decisions, OPTA must feel its way. There is no clear path forward: it is more trial and error. What is reasonable, what is right? Continually searching for a goal. Above all, OPTA should not attempt to direct or define objectives. Reticence is primary, working towards self sufficiency; with a preference for inaction if possible. It must ensure that its judgment is considered wise, and must be clear about what it does not want. The importance of the government is not its makability.

You do not want to end up in a discourse of calculations. OPTA should not strive to be quantitatively measurable and dependent on the amount of prosperity profit it generates. That erodes legitimacy. Institutions are sustain-

able; they don't need to be popular. By definition, there is a distance between administration and society. What I believe is important is that an administrative body is not a subject of controversy and public debate. It is peaceful around OPTA: that is a much better indicator. Moreover, there is no division in the Netherlands in that respect, and OPTA has not played a negative role.

“OPTA should not be made dependent on the amount of prosperity profit it generates. That erodes its legitimacy.”

As an administrative body, how you account to your stakeholders is important. You must continuously visit them and invite them to judge you. Together with your stakeholders you must organise the answer to the question of what is reasonable and what is clear normativity? Let it be clear: being independent does not mean not communicating! You must confront your environment with difficult dilemmas, such as speed versus accuracy. At the end of a process of this type, the institution makes a decision. The very last phase of consideration should still be slightly mysterious.”

companies and institutions that can provide their offices and employees with numbers that are not region-related. OPTA received many questions from providers regarding the relevant conditions and tariffs. This induced OPTA to organise a meeting for providers early in 2005. OPTA ultimately approved KPN's end-user tariffs for calls to 088 numbers in July 2005, after which these numbers were interconnected.

OPTA actively enforced the accessibility of the corporate numbers. As a result, these numbers could be reached from the connections of all major telephony providers as from the end of 2005. The corporate numbers can now be considered a regular number range accepted in the market.

“Frugal use of numbers will ensure that providers will not be required to invest in costly renumbering procedures.”

Many companies complained to OPTA that it was taking much too long to connect 088 numbers while they were already being charged for the regulation of these numbers. OPTA therefore reimbursed the number holders for the 088 number regulation costs over 2004. While more than 400,000 numbers were issued to 233 companies in 2004, in 2005 more than 250,000 numbers were issued to 323 companies. OPTA's tentative conclusion based on these figures is that to an increasing extent, smaller companies appear to be switching to the use of corporate numbers.

Telephony provider Edutel submitted a dispute with the request that KPN be required to make Edutel customers with 088 numbers accessible in a manner that is economically appealing for Edutel. Edutel wants a payment model in which this company transfers payments to KPN rather than vice versa. OPTA ruled that KPN could not be obligated to cooperate in this matter. This decision is

in keeping with the market analysis decisions for fixed telephony. OPTA will not intervene in a market that it believes to be sufficiently competitive.

Number scarcity

In the period under review OPTA's regulation focused on two number categories in particular: mobile numbers and numbers for international exchanges not visible to consumers. The most important reason for OPTA to regulate the stock of numbers is because the stock of numbers is limited.

Partly thanks to OPTA's regulation, the number of mobile numbers issued to existing market parties was limited. OPTA thus may have avoided the need of having to open a new series of 06 numbers (mobile market) in 2006.

OPTA also manages numbers that are less well-known, e.g. extremely scarce numbers that network providers assign to telephone exchanges for routing cross-border telephone traffic. A total of fourteen percent of the numbers were returned to stock thanks to OPTA's activities, because providers were incorrectly or no longer using these numbers. As a result, on the short term OPTA will not need to apply for new numbers from the scarce international stock. On the longer term, frugal international use of these numbers will ensure that telecommunications network providers throughout the world will not be required to invest in costly renumbering procedures.

1.2.6 Registration of market parties

Market parties active in the market for electronic communications are required to officially inform OPTA of these activities. These companies are included in a register that forms the basis for OPTA's regulation. In 2005, OPTA's goal was to induce market parties still registered in accordance with the previous Telecommunications Act to report to OPTA in accordance with the new Act. This process of cleaning up the register has been virtually completed.

Fee system

As from 2006, OPTA will apply a revised fee system aimed at a feasible and more reasonable allocation of costs charged to the parties within the market category electronic communications. In the past, the costs in this market were allocated to the various sub-markets. If a sub-market had parties with significant market power, they were charged eighty percent of the regulation costs. The remaining twenty percent was charged to the other market parties. If a sub-market had no party with significant market power, the regulation costs were divided over all of the parties.

The new system makes the funding more just and more transparent because the costs within electronic communications market are divided proportionate to the parties' turnover. The fee system divides the market into three categories (see box).

OPTA has prepared and attuned its systems and procedures to the implementation of the new fee system. All registered providers were informed of the consequences of this new system by OPTA in the fall of 2005. This gave these providers the opportunity to prepare for the request for turnover data that was sent by OPTA late in December.

New fee system

- Companies with a turnover of less than € 2 million pay no fee to OPTA.
- Companies with a turnover of more than € 2 million and less than € 20 million pay a pre-determined fee.
- The remaining costs are divided over the rest of the market parties with a turnover of more than € 20 million proportionate to their turnover components.

1.2.7 Post regulation

Each year OPTA checks the financial and quality reports compiled by TPG Post regarding the universal post service. OPTA also evaluates the tariff proposals for post delivery submitted by TPG and advises the Minister of Economic Affairs regarding proposed post regulation.

Results

The reports indicate that TPG satisfied the legal requirements for the quality of the universal service as defined in 2004. Because TPG Post was late in submitting the concession reports for 2004, the evaluation of these reports will take place in the course of 2006.

“The new fee system makes funding of market supervision more just and transparent.”

In 2005 OPTA received once tariff proposal from TPG regarding a change in a number of tariffs for assigned post transport as of 1 January 2006. OPTA concluded that the proposed tariff change was in keeping with the regulations.

OPTA also received three requests to enforce the Postal Act. One request pertained to TPG Post's tariffs for bulk post. This request was withdrawn after the parties entered into renegotiations. Two requests pertained to violations of TPG Post's letter monopoly. OPTA is currently investigating these two enforcement requests, after which a decision will be made.

Finally, OPTA filed an appeal in 2005 against a decision of the Court of Rotterdam regarding OPTA's authority in a case in which OPTA had requested contracts from TPG Post. The court concluded that TPG Post is only required to supply OPTA with information that pertains to the transport of post as required by law. OPTA believes that this makes it impossible to perform its regulation

task because it needs the information in the integral contracts in order to determine whether the Postal Act has been violated.

New Postal Act

As of 1 January 2006, the weight limit for the legal monopoly on letters was reduced from 100 grams to 50 grams. OPTA performed an implementation evaluation for this purpose in 2005 on the necessary legislative amendments. The Ministry of Economic Affairs was also

“In a significant number of markets, regulation was lessened and supervision made milder.”

advised regarding the new draft Postal Act by means of an implementation evaluation; the new Act regulates the complete liberalisation of the postal market in the Netherlands in 2007. Parliament is scheduled to discuss the new Postal Act in 2006.

Conclusion

In many ways, 2005 was a year of transition for both OPTA and the market parties. With the market analyses, OPTA had to reconsider most of the existing obligations and re-evaluate their usefulness and necessity. All in all, this was a lengthy, complicated process. OPTA's long-anticipated regulation proposals were clarified in 2005 and all parties involved were able to respond and provide input. The year was concluded with finalised decisions for most of the market clusters and clarity regarding the obligations to be applied in the coming regulation period. Regulation was lessened and made milder in a significant number of markets. Now that the regulatory framework has been erected, 2006 and subsequent years will be characterised by appeals procedures, dispute resolution and enforcement. The regular activities continued, albeit at a slightly lower speed. However, OPTA made significant progress by investigating law violations that resulted in a large fine for KPN for unjustified discounts. ●

2. Consumer protection

Since the effectuation of the revised Telecommunications Act, OPTA has been assigned new tasks, including safeguarding internet security. Aspects such as the security of services and consumer trust play an increasingly important part in the development of the market. This is the reason why OPTA is devoting significantly more attention to these issues. OPTA has always stimulated consumer protection on the communications markets when market mechanisms proved insufficient, for example by enforcing the obligation of number portability and by answering consumers' questions. These topics are discussed in this section.

2.1 Internet security

2.1.1 Spam

Everyone knows the e-mail messages advertising Viagra or low-interest mortgages. Unsolicited electronic messages for which no permission has been given in advance – known as spam – is a serious problem (see the graphs in Market Monitor, Chapter 7). Although figures calculated by a number of researchers (often companies that combat spam) indicate that 2005 brought stabilisation, estimates still indicate that 70 percent of all e-mail traffic in the world consists of spam. That amounts to billions of unwanted messages each day. Although a large share of these messages are caught in spam filters, the damage incurred by internet service providers and users as a result of these messages runs into billions of euros each year. These costs are incurred, for example, to create more capacity and better spam filters and to continually delete e-mails. What is more, and in time this may prove the most damaging aspect of spam, developments of this type erode consumer trust in the internet as a communications and trade instrument.

Activities

Combating spam was one of OPTA's top priorities in 2005. The team of employees involved in this topic worked on 41 investigations in that year. Four of these per-

tained to sms spam, two to fax spam and four to automatic messages without human intervention; the other 31 involved e-mail spam.

In these cases, OPTA investigates possible violations of the prohibition of spam and identifies the party in violation. These investigations are sometimes initiated by complaints from recipients filed through the website www.spamklacht.nl and other times by tips received by OPTA from other parties. In investigating alleged violations, the spam team searches the internet, requests information from third parties, performs on-site investigations and interviews the individuals involved. In 2005 the spam team was assisted by the police during three on-site investigations. In addition to a number of business locations, various homes were searched. Considering the serious nature of these "invasions", this instrument is only used for the largest cases.

"International cooperation is essential to identifying and tracking down spam perpetrators."

Because spam cases often cross country borders, international cooperation is essential to identifying and tracking down perpetrators. It is for this reason that OPTA contributed significantly in the period under review to initiating and streamlining this cooperation. For instance, OPTA has accepted responsibility as the secretariat of the Contact Network of Spam Authorities (CNSA) within the EU. Members of this study group are the organisations involved in spam prohibition enforcement in the EU Member States. These members also met with regulators from countries including England and the United States in November 2005 when they organised a major international conference, during which workshops were held that explained enforcement in the Netherlands. This conference was organised within the framework of the London Action Plan: an international cooperative association of private spam fighters and government or-

organisations. OPTA also contributed to the creation of a standardised international form to facilitate the transfer of investigations to other authorities. Last but not least, the Organisation for Economic Cooperation and Development (OECD), as international think tank for economic policy, compiled a toolkit for combating spam for government organisations and companies to which OPTA made a large number of contributions.

Results

OPTA imposed six fines in 2005 ranging from 2,000.00 to 27,500.00 euros. An additional 21 written warnings were issued. These warnings are not public: they are the last warning issued to “small” violators that they must cease these activities. OPTA transferred six cases to foreign regulators that are now investigating these cases. Seven studies were closed with no visible results because it was determined that no law was being violated. Although this cannot be supported by concrete figures, sources

international numbers without their knowledge. A computer only dials in to these numbers if special software has been downloaded. The user may have consciously or unconsciously downloaded the software. This is only permitted if the consumer is given clear and proper information at the time of the download and is given the opportunity to refuse the installation. Otherwise this violates the law.

Activities

Many hundreds of complaints about large telephone bills were submitted this year not only to OPTA, but also to telephony companies. OPTA studied the extent to which these cases involved breaches of the law. In the cases in which the large telephone bill was caused by calls to a 090x number in the Netherlands, no law was violated. The software installation proved to have taken place after permission was given by the complainant and after information had been given about aspects including the tariffs. This meant that OPTA could not take any action. Complaints involving international numbers, however, often proved to be caused by viruses that invaded the computer without the user's knowledge. In all of these cases the source proved to be outside of the country, making it impossible for OPTA to thoroughly investigate and fine the perpetrators of these violations.

“Since the spam prohibition was effectuated, the quantity of Dutch spam has decreased by 85 percent.”

indicate that the amount of spam from the Netherlands has decreased significantly. Figures compiled by the private organisation spamvrij.nl, for example, indicate that since the spam prohibition was effectuated in 2004, the quantity of Dutch spam has decreased by 85 percent. This low level continued in 2005. Moreover, the Netherlands is no longer included on international lists such as Sophos, naming the top ten countries from which spam originates.

2.1.2 Autodialers

The problem caused by autodialers is large telephone bills sent to consumers because their computers are dialling in to premium rate numbers in the Netherlands or to

Blacklist To combat problems with autodialers, OPTA initiated intensive consultation with telephony companies and the Ministry of Economic Affairs in 2005. This resulted in improved awareness of the problem among companies. The Ministry is now preparing regulations that will help in combating the problem. OPTA also took the initiative of compiling a blacklist of foreign numbers that can be proven to be improperly used by viruses. Telephony providers block the numbers on this list. OPTA publishes this list on its website, making it available to all for reference purposes. In order to expedite the investigations, OPTA worked in close cooperation with KPN. As soon as KPN observes an extraordinarily large amount of traffic with one customer and an autodialer appears to

be involved, OPTA and KPN collectively investigate to determine if there is evidence to justify using the blacklist.

Contribution to information OPTA actively used the media and its own website to provide information on the risks of dialers and how consumers can protect themselves from them. The Ministry of Economic Affairs also launched an information campaign via the website Surfopsafe.nl, to which OPTA made a significant contribution.

International consultation International consultation commenced with regulators throughout the world, including the United States, Australia and EU countries, to discuss the problem of dealing with autodialers. Throughout the world people are aware that the problem is costly and must be addressed.

Results

More than sixty numbers are now included in OPTA's blacklist of improperly used international numbers. Most of these numbers belong to islands like Tuvalu and Diego Garcia. The telephony companies have blocked these numbers so that they can no longer be improperly used in the Netherlands.

2.1.3 Trusted Third Parties

For the purpose of reliable, safe electronic communications, Trusted Third Parties (TTPs – certification service providers) offer electronic signatures. An electronic signature accompanied by a qualified certificate has the same legal status as a handwritten signature. OPTA regulates the certification service providers. OPTA's regulation enhances trust in the use of electronic signatures.

The use of electronic signatures is gradually increasing. The government plans to introduce the e-NIK (electronic Netherlands identification card) late in 2006. This is an electronic passport accompanied by a qualified certificate that individuals can use for identification and to place electronic signatures.

Activities

Since the effectuation of the Electronic Signature Act, OPTA has registered three providers of qualified certificates. In 2005 OPTA registered the Central Information Unit on Healthcare Professions (CIBG).

International and national consultation

OPTA participates in the FESA – the Forum of European Supervisory Authorities for Electronic Signatures. European regulators are represented in the FESA. This group meets three times each year to discuss possibilities for cooperation and developments. On the national level, OPTA has close contact with PKI Government. This organisation is responsible for enabling trustworthy electronic communication with and within the government.

2.2 Privacy

2005 was a year of special activities for OPTA in the area of the protection of privacy. Public debate in the media and the political arena was dominated by the European Commission's proposals to expand mandatory storage periods for traffic data for the purpose of combating terrorism. OPTA took no specific stance in this debate because its tasks are limited to regulating compliance with a storage period once it has been defined.

A cooperation protocol was compiled in 2005 by OPTA and the Dutch Data Protection Authority (DPA). This protocol regulates the collective actions of these organisations and consultation regarding important concepts in the legislation. It is a continuation of the cooperation agreements already made in 2004 regarding enforcement of the spam prohibition, one of the areas in which both OPTA and the DPA bear authority.

2.3 Public information

In 2005 there was a large amount of contact between OPTA and the public, via OPTA's front office as well as

(Proceed on page 36)



“We addressed a number of the improvement points in the evaluation in 2005. One of these – improving process rationality – is difficult because this can only be done by being aware of it in everything you do. Commission, management and employees must constantly reflect on how to guide processes.

That awareness starts by knowing what is happening in our markets. We consulted more regularly with external parties on the administrative level to determine whether the things that were expected from OPTA were actually happening. We also visit companies more often. Thus we are trying to bring OPTA more to the parties and give them room to respond.

Each individual process is characterised by the conflicting importance of speed, results and transparency. Transparency is essential: you need input from the parties to form an opinion. As an administrative body, you are faced with the question of how transparent you can be about on-going cases.

That was difficult, for example, with reference to KPN's fine for improper discounts. The injured parties complained that we were not involving them in the matter sufficiently. We explained that when we are in the process of imposing a fine, we cannot be as open as we were in the early phase. They ultimately agreed with the out-

come and understood the procedural considerations, but did not agree with OPTA on them. We also understood that. Important lesson: each time a process is applied it should be reviewed. I believe that is what process rationality is all about: carefully opting for a certain course of events and continually determining whether expectations are being properly managed.

OPTA was also often accused of not listening properly to the outside world during consultations. To address that complaint, during the market analysis decision consultation we explicitly explained what we did with the input from parties. We will be doing this henceforth in other consultations. Not only are we obliged to do so: it strengthens our position.

“We are trying to bring OPTA closer to the market parties and give them room to respond.”

Another initiative was more actively preventing disputes and legal proceedings. The parties want us to do that. We were successful in doing so in 2005, for example, when a heated discussion evolved about the rapid roll-out of ADSL2+. We prevented a dispute from occurring by sitting down with the parties involved: a good example of how things can be.

We will be continuing to work with the areas of improvement: being consistent and constant in structuring processes and managing expectations. Above all: opening the channels of communication and being accessible. If OPTA is a professional authority, it has nothing to fear from openness.” ●

its website. Consumers and companies could turn to OPTA's front office for questions and complaints about the post and telecommunications markets. The front office is accessible by telephone on working days. Questions and complaints can also be submitted by e-mail or by letter. The front office employees receive support in answering questions and complaints submitted by telephone from back office employees. The back office staff members also process e-mails and questions received in writing. In addition to helping end-users, the front office has an important task in informing the rest of the OPTA organisation about current issues in the market.

2.3.1 Questions and complaints

In the reporting year 2005, OPTA received a total of 6412 questions and complaints via its front office. Of these, 3393 were submitted by telephone, 2488 by e-mail and 531 by letter. The top five complaints in 2005 pertained to the following subjects:

A topic on which many complaints continued to be received in 2005 was switching to a different DSL provider. Despite OPTA's 2004 decision requiring a switch to be effectuated within two weeks, in actual practice switching did not proceed smoothly in many cases in 2005. Many of these complaints stem from the (lack of) cooperation between the new and old ADSL provider and communication with end-users. It was for this reason that OPTA actively devoted effort in 2005 in a FIST (Forum Interconnection and Special Access) study group in which providers strive to collectively arrive at solutions to ADSL switching problems. Because these problems have not

yet been solved, OPTA will continue to participate in this study group in 2006.

OPTA intensively informed the general public in 2005 via the frequently asked questions (FAQs) on its website. These FAQs are regularly updated and supplemented with new topics on which the front office is receiving many questions. OPTA also contributed content for folders available from Surfopsafe.nl dealing with matters including dialers and spam. What is more, OPTA provided input for the Ministry of Economic Affairs' www.staaksterk.nl website that discusses consumer rights.

2.3.2 Comparison sites

The revised Telecommunications Act authorises OPTA to publish comparative information in order to stimulate an open and competitive market. It was OPTA's opinion that consumers had access to a sufficient number of commercial comparison sites in 2005. OPTA therefore did not publish any comparative information. Moreover, the Ministry of Economic Affairs announced late in 2005 that it would be developing an e-rating for consumer websites. E-rates for websites allow users to gain insight into aspects such as the reliability and currency of the various comparison sites. In doing so, the Ministry is stimulating initiatives from the market and is offering financial support to the development of a rating model. OPTA will be advising the Ministry in this matter. It is partly for this reason that OPTA is considering putting an end to the development of its own OPTA benchmark for websites.

2.3.3 Information desk

In 2005 OPTA devoted a substantial amount of energy to its participation in an information desk under construction. This information desk is being collectively developed by the Consumer Authority, the NMa (including DTe) and OPTA. The purpose of the desk is to bundle the front offices of all market regulators related to the Ministry of Economic Affairs. Thus consumers will be able to turn to a single point with their questions and complaints, including those pertaining to telecommunications and post.

Top 5 Complaints 2005

1 Autodialers	1284
2 Fixed telephony	1111
3 Internet	1053
4 Mobile telephony	959
5 Spam	684

The information desk will be operationalised in mid-2006; many preparatory activities were performed in 2005.

In addition to contact with the parties listed above, in 2005 OPTA also regularly consulted with the Consumers' Association to attune consumer-oriented activities in advance, e.g. activities pertaining to autodialers and internet security.

Results

In the 2005 reporting period, OPTA assisted many consumers with their questions and complaints in the areas of telecommunications and post. OPTA was able to answer numerous questions before they were posed via the FAQs on its website. In addition to helping end-users, the front office has an important task in informing the rest of the OPTA organisation about current issues in the market. Thanks to the preparatory activities for the information desk in 2005, consumer ease will be enhanced in 2006 because consumers can turn to a single point of information for all questions and complaints.

2.4 Knowledge of costly numbers

OPTA regularly receives complaints from consumers confronted with unexpectedly large telephone bills. Consumers were consciously or unconsciously calling expensive numbers. The tariffs that apply to these numbers are often unclear to consumers, as is the fact that they are connecting to them. This often involves numbers with extraordinarily high tariffs, such as information numbers and international numbers. The existing regulations do not offer sufficient protection to these consumers because a modus is needed with which they can be protected "against themselves". Types of user restrictions could be a solution. The Ministry of Economic Affairs formulated a policy for better protection of consumers from unexpectedly large telephone bills. This policy will be translated into legislation and regulations in 2006. Based on its practical experience, OPTA has contributed to these new legislation and regulations.

Results

The proposed regulations introduce a number of obligations in the areas of transparency and manageability of tariffs and numbers. This pertains to informing consumers of tariffs and numbers of specific categories, offering usage restrictions and continuation of the telephone service in specific circumstances. Moreover, consumers will have the option of suspending payment if they object to the telephone bill. Consumers can use the provider's information to make an informed choice, and will no longer be surprised by large telephone bills.

"OPTA's front office assisted many consumers with their questions and complaints, and reported on current issues in the market."

2.5 International roaming

The high costs of mobile calls outside of the country have worried regulators and the European Commission for quite some time. When an end-user uses a mobile telephone to make or receive calls in other countries, s/he uses a mobile network other than the network to which s/he is connected at home. This is called international roaming. To make this possible, mobile operators establish roaming agreements. Operators charge one another for the use of their networks. These costs are ultimately charged to the end-user. The level of the end-user tariffs for international roaming is primarily determined by the tariffs that the operators charge one another.

Results

Like the other European regulators, OPTA is required to perform a market analysis for the wholesale market for international roaming. Because of the international nature of the service, in 2005 OPTA worked in close cooperation with the other regulators to arrive at a harmonised approach to this market analysis. The European regulatory framework upon which the Telecommunicati-


ons Act in the Netherlands is based, offers only limited means for addressing the problems on this market. It is extremely difficult, for example, to identify dominant parties. Late in 2005 the European regulators brought these problems to the attention of the European Commission and requested a collective search for alternative solutions. The Commission has been studying the possibilities ever since.

“OPTA worked in close cooperation with the other regulators to arrive at a harmonised approach to the market analysis International Roaming.”

2.6 General conditions

The Telecommunications Act requires that providers announce changes in their conditions at least four weeks in advance. The relevant section also indicates that in the event of a change, subscribers can terminate the agreement with their provider free of charge. If a change is disadvantageous for the consumer in any way, the consumer may terminate the agreement without further cost. This termination right also applies if the provider has included a term in the agreement specifying that it may unilaterally change the conditions, meaning without the customer's approval. Based on this stipulation, in 2005 OPTA started to describe the criteria that it can apply in specific cases to determine whether a provider has complied with these rules. OPTA thus hopes to achieve more adequate effectuation of this type of consumer protection prescribed by the Telecommunications Act.

Conclusion

Top priority in this reporting year was assigned to combating threats to internet security, including spam and autodialers. Considering the importance of the security of internet services and consumer trust for development of the market and for society as a whole, OPTA will continue to devote a large amount of energy to this responsibility. Other consumer affairs, e.g. removing obstacles to switching to a different provider, are also extremely important to OPTA. 

3. Operations

OPTA is funded by the market parties and the government, and must account for the policy it effectuates. Listening to the market is important; anticipating and responding to the market is even more important. This was also evident in the four-year OPTA evaluation concluded in the spring of 2005. In addition to addressing the improvement points uncovered by this evaluation, OPTA's operations in 2005 were characterised by the market analyses, the implementation of a new fee system and an internal reorganisation. Last but not least, OPTA communicated these developments, its decisions and the measures imposed with its stakeholders via a variety of channels.

3.1 Organisation

OPTA's evaluation and reorganisation were important topics in 2005. Both offered ample points for optimising and improving the organisation and its staff, as a result of which OPTA's activities will be more professional and more efficient in the future.

3.1.1 Reorganisation

OPTA's large-scale reorganisation was concluded in 2005. This process was started in 2004 with the objective of better alignment of the organisational structure with the activities in keeping with the revised Telecommunications Act. OPTA's structure had remained basically the same since its establishment in 1997. With the new structure, OPTA also took a closer look at its working methods and culture.

Activities

The new organisation is divided into the sub-markets regulated by OPTA (see also the organisation structure diagram in Appendix I). The departments Legal Affairs and Strategy & Communication no longer exist. The legal, strategic and communication functions have been assigned to the new line departments. This ensures that the legal professionals, economic and technical regulation staff are involved in on-going cases from their very

beginnings and that competition issues are addressed with a multi-disciplinary approach by all departments.

The effectuation of a new structure was accompanied by the introduction of a new working method. The market sectors and departments bear integral responsibility for their fields, attuning of the relevant internal and external activities and the management aspects. They maintain close contact with the markets they regulate and ensure that responses to developments in those markets are adequate.

“Listening to the market is important; anticipating and responding to the market is even more important.”

In addition to the effectuated structure changes, OPTA devoted much attention to improving the organisational culture. OPTA strives to establish a culture in which premises such as open communication, knowledge sharing and professional growth are self-evident parts of the employees' profiles.

Results

Nearly all OPTA employees were assigned to new positions as a result of the reorganisation. No mandatory terminations were needed. In the course of 2006, OPTA will evaluate the change in structure to determine whether it has been successful in contributing to a more efficient market-oriented organisation.

3.1.2 Evaluation follow-up

The law requires OPTA to evaluate its functioning once every four years. In 2005 OPTA was evaluated for the second time by order of the Ministry of Economic Affairs. The evaluation and comments from the market noted by OPTA gave cause to take a critical look at OPTA's position as an authority. OPTA is working on concrete improvements to demonstrate its self-critical attitude and ability to adjust.

Points for improvement

The evaluation study in 2005 was performed by the research agencies Berenschot, TNO and Ecorys, focusing on four areas of attention:

1. satisfaction of the legal responsibilities and use of authority (score: satisfactory to good)
2. internal organisation and operations (score: satisfactory)
3. policy-oriented alignment with Economic Affairs (score: satisfactory to good)
4. relation management with other organisations and market parties (score: good to excellent)

The evaluation brought a number of concrete improvement points to light:

- OPTA must provide better quantitative and qualitative argumentation for its decisions.

the market parties. This will enable OPTA to establish support for the decisions and choices being made.

- OPTA must improve the effectiveness and efficiency of its operations, implement a quality system and bring the ratio between direct and indirect costs into balance. The share of indirect costs in OPTA's total costs is too high and needs to be reduced.
- OPTA must continue to devote effort to managing its relations with Economic Affairs, NMa and other parties.

After the evaluation, OPTA started implementing the possible improvements in 2005. The measures taken per improvement point are explained below. These examples constitute a first step in optimising OPTA's functioning. The improvement points will justifiably receive OPTA's continuous attention and work on them will continue in 2006.

“OPTA needs to enhance its transparency and communicate more openly with its environment about its working methods and approach.”

- OPTA needs to enhance its transparency in a number of areas:
 - motivation for choices made and argumentation supporting decisions made
 - the process to be followed and determination of priorities
 - the organisation's funding
- OPTA must communicate more openly with its environment about its working methods and approach as well as the manner in which choices are made. Transparency therefore focuses not so much on the what of decisions, processes, choices and costs, but especially on the how and why.
- OPTA needs to improve its process rationality: not only convincing based on argumentation content, but also reflecting upon its own behaviour and obtaining a clearer picture of the effects its decisions have on

Motivation and argumentation for decisions

OPTA is striving to explain its decisions better in terms of quantity as well as quality, for instance in the motivation and argumentation behind the market analysis decisions. Not only has OPTA focused on explaining the reasons for the decisions themselves, but it also devoted significant attention to addressing market party responses to its draft decisions.

Transparency

In order to improve transparency on every aspect, OPTA has taken numerous measures. Some of these were initiated specifically for this purpose, others were already on-going. A number of examples contributing to improved insight into OPTA's working methods are given below.

Budget standards: Starting with the budgeting process in the year 2006, OPTA will devote more specific attention to compiling budget standards. A budget standard reflects the standardised estimate of the costs of OPTA's products and services (e.g. resolution of disputes) and contributes to the transparency of OPTA's costs.

Process improvement: An improved system for monitoring the legal processing periods for objection and appeals cases was implemented in 2005. This system will be further expanded in 2006 in order to gain insight into the decision making process. In 2006 OPTA will also compile a process description indicating how it will approach the coming round of market analyses.

Interaction with stakeholders: A complaint heard very often is that OPTA does not truly listen to its stakeholders. OPTA will specifically put top priority on communication with market parties. This is done not only on the bilateral level, but also in sounding board groups, industry groups, theme sessions, round table conferences and hearings on topics that are a part of decision making.

Digital files: The complete files involved in the market analyses decisions were made available on OPTA's website in 2005. The structure of this information aims to create maximum transparency and accessibility for all market parties. OPTA will be studying the extent to which these digital files can also be provided for other projects in 2006.

Process rationality

In order to better consider its own processes and gain insight into the effects of its decisions, OPTA set up a sounding board group of market parties for the Market Analyses project. This group met four times in the course of the project to discuss the progress and process of the market analyses. Based on the responses from this group, OPTA also organised information meetings and extended the response period. In addition, OPTA involved market parties in the development of the tariff models for fixed and mobile telephony in what were called industry groups.

Operations

OPTA started to drastically revise its processes and administrative working methods in 2005. It also started to

balance its direct and indirect costs. These measures are intended to ultimately result in more efficient and effective operations.

Effectiveness and efficiency: In order to properly assess effectiveness, OPTA will develop indicators. These indicators are to improve insight into the relationship between the devoted efforts and the results achieved. OPTA also reduced the number of employees responsible for compiling reports. Moreover, a critical assessment of OPTA's processes and working methods was started to enhance their cohesion.

Ratio direct and indirect costs: OPTA hopes to improve the ratio between its direct and indirect costs in the coming years and started to address this issue in 2005.

“At all levels, OPTA wants to assign top priority to communication with market parties.”

The 2005 budget showed a direct/indirect cost ratio of 40/60. Based on the critical comments on this ratio included in the evaluation, OPTA is striving to achieve a direct/indirect cost ratio of about 50/50 in its 2006 budget.

A number of events affected the ultimate total costs and the cost structure in 2005. OPTA remained well within budget, spending a total of 400,000.00 euros less than planned not including extraordinary liabilities. However, this amount consists entirely of budgeted direct costs that were not incurred. This can be explained partly by the reorganisation, as a result of which employees spent more indirect hours on organisational activities, and the fact that more employees responsible for direct activities left OPTA's employment. As a result, the direct/indirect cost ratio for 2005 was 38/62. For both the cost ratio and the total absolute expenditures, OPTA will strive to achieve significant improvements in 2006.

(Proceed on page 44)



“Evaluating OPTA proved to be a special undertaking, because OPTA itself also evaluates and is critical. But that also makes it vulnerable. The outcome of the evaluation, after all, is of strategic and market-technical importance to the market parties involved with OPTA. That requires prudence from not only OPTA but also the evaluating parties: Berenschot, Ecorys and TNO. What is more, OPTA must be able to professionally deal with the results. They are not without consequence, after all, and can influence OPTA's functioning and even its right of existence.

Process rationality, transparency and contact with stakeholders are lofty concepts in the report. The test will be OPTA's ability to give them true content: they will only have meaning if they are put into practice. Take a look at actual cases every now and then, and take the time to reflect. Has the desired effect or process actually been achieved, and can you explain why or why not? Process rationality means being right not only in terms of content, but also tactically and strategically. Market parties often blame the process if they are not happy with the outcome in terms of content. They complain of insufficient time or a sloppy procedure. The regulator must be able to subtly respond without detriment to the content. This does not suddenly lessen the conflict, but strengthens the regulator's position.

OPTA is more of a regulator than an enforcer. Because it is a market regulator, the market interests are substantial and the evaluation was strategically interesting for the market parties. OPTA was therefore able and willing to influence the evaluation process: in the selection of cases and information, in the discussion of draft texts.

Logically, heavy standards are applied to the evaluation of an organisation that is also critical and that evaluates others. Thus the evaluation must be careful and well founded. Neither did we forget that the context is sensitive: there was an on-going reorganisation that caused much uncertainty, on top of which came the evaluation. This is not a mitigating factor, but we understood that OPTA had a lot to deal with simultaneously.

“A smart organisation learns from an evaluation, utilising it to improve. And the results are impressive.”

Certainly in the beginning, OPTA's attitude towards the evaluation was extremely critical. Saying “Yes, but...” is one of OPTA's strengths, but it is also its vulnerable spot if it stems from a defensive routine. OPTA's initial reaction was strongly “We are different”; it asked many questions about the nuances, validity and actuality of the benchmark. Ultimately, the point came in which this changed and OPTA was able to take a critical look at itself. A smart organisation learns from an evaluation, utilising it to improve.

And the results are impressive. We know that OPTA is addressing issues from the evaluation: relationship management with Economic Affairs is better and more flexible, and OPTA can professionally deal with differences of opinion. Being able to be critical of yourself and elegantly dealing with criticism is an art that requires both willingness and ability. OPTA has now mastered that art.” ●

Budget: OPTA also critically assesses its total costs. Its budget has been virtually constant for a number of years at about 18 million euros. In the multiple-year budget for 2006 and beyond, OPTA has indicated that it will continue to cut costs despite its expanded responsibilities and price increases. In the new budget OPTA has also attempted to provide more insight into its priorities for 2006 and the costs involved.

Relationship management

OPTA continually strives for flexible and timely harmonisation with Economic Affairs and the NMa. Consultation between Economic Affairs and OPTA is regularly held on

“The conclusion of the evaluation was satisfactory to good, and OPTA is actively addressing the improvement points.”

all levels, and the cooperation between Economic Affairs' Directorate General Energy and Telecommunications (DGET) and OPTA has been intensified. OPTA has an exchange program with the NMa. OPTA also maintains close contact with other parties. For example, in 2005 OPTA signed a cooperation protocol with the Dutch Data Protection Authority to facilitate both the exchange of information and collective activities. A summary of OPTA's cooperative relationships is given in Appendix III

Results

Briefly summarised, the assessment of the evaluation was satisfactory to good. OPTA is actively addressing the improvement points in every layer of its organisation and will be supplementing the activities referred to above in 2006. In 2006 and beyond, OPTA will continue to strive to maintain critical self-reflection, take into account the effects of its activities on others, provide more insight into its activities and its working methods, and accelerate decision making.

2 Finance & control

OPTA also continued to critically assess its financial housekeeping in 2005. Working with a new fee system helps OPTA to make its operations transparent and clear. OPTA is also placing more emphasis on the cohesion and interaction between its accounting products, and requests responses from the market in order to carefully determine priorities.

3.2.1 Planning & control cycle

OPTA's governance has the nature of a cycle, consisting of two parts: an externally-oriented cycle in which objectives are determined, communicated and accounted for, and an internally-oriented cycle in which the activities are performed, progress is monitored and adjustments are made where necessary. Instruments used for the external cycle include budget, annual report, annual accounts, market monitor and vision.

In 2004, the planning & control cycle was reviewed, modified and described in the control cycle. In its evaluation Berenschot reviewed the cycle and noted that it was complete, that the internal and external cycles are well-aligned, and that the cycle consists of the necessary budget, management and accounting information.

Results

As from 2005, OPTA is making the external cycle more transparent by more explicitly establishing the relationships between the instruments referred to above, by organising consultation and publishing these instruments at pre-determined points in time (see also the Reading Instructions). For the first time in 2005, for example, OPTA organised consultation with the market regarding its strategic agenda. The responses received were included and helped form the basis for the budget.

3.2.2 Fee system

OPTA is partially financed by the telecommunications and postal markets. As from 2006, OPTA will apply a revised fee system for charging costs to parties within the market category electronic communications with a

division that is more just. Financing of objections and appeals and for implementation evaluations by the Ministry will not change. The costs for number issuing and for registration of electronic signatures (TTP) will also continue to be covered by the applicants.

Results

The new fee system for the electronic communications market makes the funding more just and more transparent because the costs within that sub-market are divided proportionate to the parties' turnover. The fee system divides the market into three categories (see box in Section 1.2.6 Registration of market parties). The principle upon which costs are divided in the other market categories will remain unchanged.

3.3 Personnel affairs

2005 was a dynamic year for our work force. Not only some of the Commission members changed, but the reorganisation strongly reduced our work force. The Works Council played an important part in safeguarding the progress of the reorganisation process. Moreover, OPTA made progress in professionalising its personnel.

3.3.1 Commission change

The Commission had indicated that after eight years it would not be seeking another term, wanting to make room for new members. The external farewell to the Commission was held as a symposium in October (see also Section 3.3.4 Professionalisation).

The reorganisation also brought a change to the Commission's working methods. The Chairman's responsibilities include integral management responsibility. He receives assistance from two members of the Commission who function as non-executive commissioners functioning at a larger distance from the organisation.

Results

On 1 September 2005 the Minister of Economic Affairs appointed OPTA's new Commission Chairman Mr. Chris Fonteijn as Dr. Jens Arnbak's successor. The departing Chairman served two four-year terms as OPTA's Commission Chairman. Mr. Herman van Karnebeek and Ms. Lilian Gonçalves-Ho Kang You were reappointed and continued to hold their positions until new candidates were appointed. Early in 2006 Mr. Mark de Jong was appointed as Mr. Van Karnebeek's successor. OPTA expects that Ms. Gonçalves-Ho Kang You's successor will be appointed in the course of 2006.

3.3.2 Personnel

A relatively large number of personnel members left OPTA's employment in 2005 due to the transition to the new structure. Many employees received new job descriptions and were transferred to new departments after the reorganisation.

In keeping with the reorganisation, OPTA's evaluation system concentrates on five core competencies. OPTA thus creates improved focus on essential aspects such as cooperation and awareness of one's environment that are included in the ideal employee profile. This ultimately contributes to improving the organisational culture and the professionalisation of OPTA's employees.

Results

A total of eleven individuals have left OPTA's workforce since the reorganisation in 2005. Most of these individuals decided not to wait for the new structure and relevant new position, and looked for other opportunities. OPTA held a large-scale recruitment campaign in the fall of 2005. This campaign was in full swing at the end of 2005, at which time the first vacancy had been filled. OPTA will continue to bring its workforce back up to the desired level in 2006.

The new formation is specified as 150 FTE, more than 2 FTE less than the formation to date. Absenteeism due to illness at OPTA was virtually constant in 2005,

amounting to nearly six percent – which is lower than the government average (6.3 percent). Generally speaking, half of this absenteeism can be attributed to long-term illnesses. OPTA has improved the electronic processing and accessibility of personnel information. This facilitates proper employee guidance.

3.3.3 Works council

OPTA's Works Council consists of seven employees and an independent civilian secretary. It is the body through which the employees contribute input to OPTA's organisational policy. For this purpose, the Works Council regularly consults with the Commission Chairman and the head of the personnel department. When desired, it organises employee meetings to discuss current themes.

Results

The Works Council played an important role in OPTA's reorganisation in 2005, and was intensively involved in consulting on the draft structure and reorganisation process. The Works Council emphasised aspects such as the fact that in addition to the new structure, OPTA must devote sufficient attention to culture, systems and work processes. It also safeguarded the conclusion of the outplacement procedures. Matters other than the reorganisation process addressed by the Works Council included competency management and personnel schemes. The Works Council reports on its activities and results on an annual basis.

3.3.4 Professionalisation

OPTA is a knowledge intensive and information intensive organisation that operates in a rapidly changing environment. Its employees must therefore devote significant attention to acquiring, updating, sharing and consolidating knowledge and information. OPTA's complicated internal and external environments also demand that its employees continue to develop their skills.

Training

In addition to the normal, employee-specific training possibilities, in 2005 organised a number of internal courses for the entire organisation. The course New Telecommunications Act anchored the relevant basic legal knowledge throughout the width of the OPTA organisation. The training course Professional Listening was intended to professionalise the appeals processes through which OPTA progresses to listen to market parties in preparation for decisions and during the objection procedures. A number of the members of the legal staff followed additional courses with the Grotius College. This strengthens the basis, ensuring that employees have an even broader perspective.

A number of employees also utilised the courses offered by ENCORE: the Economics Network for Competition and Regulation, established by OPTA in 2002 in cooperation with the NMa and Economic Affairs. This network's focus includes studying market order issues. OPTA stimulates employee participation in profession-oriented initiatives of this type.

Professional technique platforms

After the reorganisation, OPTA established three profession-oriented platforms that surpass the department level: Economy, Law and Technology. The objectives of these platforms are to stimulate knowledge sharing among the employees and to improve the knowledge levels of their professions. Combined with working in mixed teams of legal, economic and technical specialists, this results in improved quality of decision making.

Economic Analysis Team

OPTA's Economic Analysis Team (EAT) was established to improve the (consistency and effectiveness of the) economic argumentation for OPTA products. EAT also initiates early and open discussions with external parties in order to stimulate the transparency of OPTA's working methods and to give parties the opportunity to express their views. EAT's core activity is publishing and discussing Economic Policy Notes (EPNs) and Regulatory Po-

licy Notes (RPNs). EPNs interpret the relevant economic (academic) literature and are general by nature. RPNs interpret the economic theory into concrete policy issues. Activities related to EAT are external studies, vision and monitoring for the accounting cycle, trend letters, and monitoring and participating in the external economic research network ENCORE (see also the section Training above).

In the two years of its existence, EAT has booked excellent results. A large amount of information has been published (see box), and EAT has made its presence known on national as well as international levels. Large numbers of external parties attend round table discussions, not only indicating their appreciation of these discussions but also expressing a desire for more understanding of the effect of these discussions on OPTA's decisions. To stimulate the absorption and effectuation of EAT products by OPTA employees even further, EAT will be reshaped in 2006.

EAT publications

EAT published the following papers in 2005.

A list of all of published papers can be found on www.opta.nl.

- EPN05: *Regulating Emerging Markets?*
- RPN04: *International Mobile Roaming*

Commission symposium

The external departure of the Commission was expressed in October with a symposium on the theme Opportunities and Threats in Liberalised Markets: Regulate according to Growth? Guests included prominent speakers (European Commissioner Neelie Kroes, Minister of Economic Affairs Laurens Jan Brinkhorst, and BT CEO Ben Verwaayen) as well as individuals and parties involved both inside and outside of OPTA. With the symposium, OPTA hoped to cast a broad view on the market together with its environment and to take a critical look at the

desirability of (de-) regulation. The level of discussions illustrated the broader communication OPTA strives to achieve with the market with reference to future-oriented topics, as well as the development level that OPTA strives to achieve as an organisation.

Results

OPTA devoted significant attention in 2005 to the aspects of improving knowledge, education and skills training, taking an extra step in the professionalisation of its employees. Study groups based on content, training opportunities and a new assessment system are intended to contribute to a more professional, more knowledge-intensive organisation with a stronger professional content.

“The Economic Analysis Team holds open discussions with external parties in order to exchange viewpoints and increase transparency.”

3.4 Communication and information

Much attention was devoted in 2005 to communication with reference to the market analyses, combating spam and dialers, and regarding internal matters including the reorganisation and the farewell to OPTA's first Commission. A variety of media channels were approached and used for this purpose. OPTA made multiple contributions to items in television programs on dialers and spam, and its website devoted special attention to information on these topics. In OPTA's magazine *Connecties*, room was made for background articles as well as responses and visions from the market itself.

3.4.1 Press information

OPTA has one press officer who is the central point of contact for all requests for information, interviews and speeches. Numerous requests for information were re-

ceived from the press via the telephone. In addition to its press conferences, OPTA had more radio and television appearances while the number of interviews increased significantly. 2005 saw more press contact than in the previous year, in particular as a result of the various market analyses presentations and the Commission change.

“The digital information desk and the digital files on the website improve OPTA’s service and customer orientation.”

OPTA regularly has its external communication evaluated to monitor how it is viewed by the media. The report on the reputation study performed by Meines & Partners is expected in 2006, and OPTA will adjust its external communication if and where necessary.

3.4.2 Publications

Connecties, OPTA’s news and publication magazine, was completely revised in 2005 in terms of both appearance and content. The objective of this restyling was to be more transparent about OPTA’s own organisation and to give the outside world more space. Connecties is thus striving to be a platform for discussion and interaction between OPTA and the market.

On the occasion of the departure of the first Commission, OPTA published a booklet: *Beelden over OPTA* (Views of OPTA). External parties summed up OPTA’s first eight years in this booklet. In addition to publications based on content by EAT (see Section 3.3.4 Professionalisation), in 2005 OPTA also published its Annual Report, Market Monitor and Market Vision, a strategic agenda and a budget.

3.4.3 Website

OPTA tested the effectiveness and transparency of its website late in 2005 by means of a user survey among journalists, consumers and market party employees. The results of this survey were positive and identified a number of points for improvement.

The first modifications based on this survey were implemented late in 2005 and early in 2006. One significant change being worked on is setting up a digital information desk on the website so that forms can be completed and sent electronically. The objective is to improve OPTA’s service and customer orientation for market parties. OPTA is also working on improving the cohesion in the presentation of published documents. This has already resulted in more clarity regarding documents published with reference to the market analysis decisions, and other information will also be made more user friendly.

Results

In all of its communication, publications and other expressions in 2005 OPTA devoted significant attention to correct argumentation and a more detailed explanation of decisions, developments and activities. In doing so OPTA also left maximum room and opportunities for responses.

All OPTA’s publications, speeches and press releases can be requested free of charge or found on its website: www.opta.nl.

3.5 Information technology

Automating processes and tasks supports the organisation in working more efficiently and in the provision of customer-oriented, prompt services for external parties. Improving this support was the objective for establishing a digital investigation network, creating digital files and improving knowledge sharing among personnel.

3.5.1 Digital investigation network

OPTA constructed a digital investigation network in 2005. With the network OPTA is better able to exercise its authority and perform its legal responsibilities. The network is intended for purposes including combating spam, spyware and autodialers. Following on-site investigations, investigators can retrieve data from confiscated equipment and save it on the network for further analysis.

3.5.2 Digital files


Market parties and legal professionals within and outside of OPTA proved to need more and clearer cohesion between on-going cases (disputes, appeals and objections) and the relevant documents and files. These documents can often be found on the website, but the search system is unclear. OPTA started using a system for bundling the documents per on-going case early in 2006.

3.5.3 Internal knowledge sharing

For faster, more efficient and more flexible cooperation, OPTA employees were given a number of new resources in 2005. Those employees who are often on the road and need to be able to access the network from external sites can now work with Blackberries, introduced in the period under review, to which remote access will be added in 2006.

OPTA's intranet was also equipped with more relevant information sources for external and internal news. The intranet provides an increasingly important amount of the information employees need. Moreover, it provides information on the organisation's departments as well as the OPTA-wide knowledge structures (EAT and the profession platforms, for example; see also Section 3.3.4 Professionalisation).

Conclusion

2005 was a year of significant change for OPTA. A number of internal personnel situations were implemented and OPTA coped well with the extensive administrative changes that come with a reorganisation. Not all of the intended results have been achieved as yet. OPTA's objective is to continue to develop in 2006 in the areas of reporting, efficiency and accountability. 



“Late in 2004 the Commission decided to initiate a complete reorganisation, and OPTA has been completely revised since 1 September 2005. The reorganisation was necessary, but it took a long time. Logically, things have changed internally: we have grown from 50 to about 150 employees, our outside world has drastically changed and we are now working with the revised Telecommunications Act.

As recommended by the Andersson Elffers Felix agency, the market model has been introduced. The markets being regulated determine the organisation of the employees. The Works Council is positive about the new organisation model. The legal function is no longer organisationally separate, but is directly involved in the line activities, which ensures that we use a more holistic approach. We work together better, share knowledge more effectively, and are better able to safeguard the continuity of cases, giving us more of a feeling that we are all working in the same direction. Area of attention is the interdependence between the sectors.

The reorganisation increases OPTA's focus on integral management, and decision making authority is now on a lower level. We are faster and more effective. The outside world will also be noticing the difference. OPTA threatened to become extremely bureaucratic, and we wanted to put an end to that. We have since put a ritual end to co-signing for approval! More independent thinking and more owning responsibility. OPTA has changed: the atmosphere is more light-hearted and people are motiva-

ted. Although the reorganisation did not cost any jobs, a lot of people were faced with uncertainty. I can feel new dynamics, and believe that employees have regained confidence.

“We have quite a way to go yet, but OPTA has changed. The outside world will also be noticing the difference.”

It was determined in advance that the reorganisation would not cost jobs. As Works Council, we are glad that the reorganisation could proceed without stress as a result. The number of employees is not sacred. You have to be able to regularly take a critical look at and account for yourself and your costs. You cannot simply ignore the ongoing discussion on the usefulness of autonomous administrative authorities. But when you start cutting back, it must be clear what you will no longer be doing.

We have quite a way to go yet. We have to learn to listen more and be more open to feedback. Both internally and externally. We can certainly invest more in our relationships with others. I believe there is absolutely no danger of regulatory capture: there are too many critical people working here. OPTA must be able to respond promptly to major stimuli. We have to ensure that potential problems remain potential.” ●

Abridged annual accounts

0050

This part of the document contains an abridged version of the annual accounts, followed by a brief explanation. The complete annual accounts with an elaborate explanation can be consulted on www.opta.nl.

Balance sheet

	31 December 2005 x € 1.000	31 December 2004 x € 1.000
Assets		
Fixed assets		
Intangible fixed assets		
Formation expenses	82	163
Tangible fixed assets		
Tenant's property	1.129	1.203
Equipment	215	241
Computer hardware and software	1.577	1.522
	3.003	3.129
Current assets		
Receivables from debtors	1.290	717
Other receivables	477	234
Liquid assets ¹	17.875	1.628
	19.642	2.579
Total assets	22.645	5.708

¹ The high balance results from the receipt of a fine to the amount of seventeen million euros from Koninklijke KPN N.V. on 30 December 2005.

² This includes imposed fines that were received in December 2005. These fines will be passed on to the Ministry of Economic Affairs in 2006. See also the explanation under the heading "Current liabilities".

	31 December 2005 x € 1.000	31 December 2004 x € 1.000
Liabilities		
Shareholder's equity		
General reserve	112	- 437
Formation expenses capitalisation reserve	82	163
Investment reserve	-	454
	194	180
Provisions		
Provision for appeals	94	185
	94	185
Long-term liabilities		
Loans extended by Ministry of Economic Affairs	-	163
	-	163
Current liabilities		
Payable to the market	1.192	952
Debts to suppliers	1.169	1.311
Debt to Ministry of Economic Affairs	476	964
Taxes and social insurance premiums	243	248
Other liabilities ²	19.277	1.705
	22.357	5.180
Total liabilities	22.645	5.708

System modification Shareholders' equity

The principles for the formation of OPTA's shareholders equity were laid down in the memorandum 'Financial principles of privatisation of the Supervision, Networks and Services Management' of 22 July 1997. These regulations were changed in 2005 in order to achieve a more adequate and feasible system for the formation of OPTA's shareholder equity.

One of the results of this change is that the balance of the provision for tariffs (part of the shareholders' equity) to the amount of € 952,000.00 at the end of 2005 was transferred to the item "Payable to market" under Current Liabilities. The tariff provision no longer exists as a result. The comparative figures were changed in keeping with this system modification. The system modification does not affect the result.

Profit and loss account

	Realised 2005 x € 1.000	Budget 2005 x € 1.000	Realised 2004 x € 1.000
Income			
Revenues from market categories	15.816	15.058	15.779
Other income	2.160	2.572	3.032
Total income	17.976	17.630	18.811
Expenditure			
Personnel costs			
Salaries and social insurance charges	9.407	9.699	9.104
Other personnel costs	1.320	998	1.737
	10.727	10.697	10.841
Third-party assignments	2.313	2.326	2.343
Cost of equipment	3.447	3.720	3.297
Depreciation	1.122	1.257	1.597
Extraordinary liabilities ³	202	-	1.287
Total expenditure	17.811	18.000	19.365
Operating results	165	- 370	- 554
Interest income	89	-	134
Result	254	- 370	- 420

Proposed appropriation of the result

The Commission has decided to appropriate the positive results over 2005 to the amount of € 254,000 as follows:

1. € 14,000 is to be added to the general reserve;
2. € 240,000 is to be added to the item "Payable to the market".

This decision is incorporated in the annual accounts.

³ These pertain to OPTA's reorganisation, which was concluded on 31 August 2005.

Notes to the abridget annual accounts

Current liabilities

Payable to the market

This item serves to process the result of the various market categories for settlement in future tariffs. As at the end of 2005, € 240,000 was added to the item "Payable to the market". This amount is part of the result that was not allocated to the general re-

serve (€ 254,000 minus € 14,000). The following table shows how the item "Payable to the market" is divided over the various market categories (x € 1,000):

	31 December 2005	31 December 2004
Public electronic communications networks	- 392	559
Public electronic communications services	- 154	- 502
Systems for conditional access	317	96
Electronic communications networks per license	271	196
Electronic Communications	42	349
TTP certificate service providers	- 13	7
Numbers	1.065	459
Post	98	137
	1.192	952

Fines and/or legal penalties

The specification of the imposed fines and/or legal penalties is as follows: (x € 1,000):

Party	31 December 2005	31 December 2004
Koninklijke KPN N.V.	17.450	-
Van Leerdam's Verkoopmaatschappij B.V.	27	-
Speko B.V.	23	-
Zmart B.V.	10	-
Private individual	2	-
Vitamins Direct B.V.	2	-
KPN Telecom B.V.	225	225
Private individual	43	43
Groenendaal Uitgeverij B.V.	25	25
Stichting Yellow Monday, h.o.d.n. Purple Friday	20	20
Low Cost Linking Inc.	20	20
Lijbrandt Telecom	15	15
	17.862	348

When the imposed fines and/or legal penalties have been collected, the amounts are passed on to the Ministry of Economic Affairs. No fines or legal penalties were passed on to the Ministry in 2005. Fines of € 17.0 million and € 0.45 million were imposed on Koninklijke KPN N.V.

The fine imposed on Koninklijke KPN N.V. to the amount of € 17.0 million was received on 30 December 2005; the fine from Vitamins Direct B.V. on 20 December. Both of these amounts will be passed on to the Ministry in 2006.

Salaries and social insurance charges

Salaries and social insurance charges

Costs for salaries, pension scheme contributions and social insurance charges can be analysed as follows (x € 1,000):

	31 December 2005	31 December 2004
Salaries	7.593	7.523
Pension scheme contributions	1.168	1.046
Social insurance charges	646	535
	9.407	9.104

Average number of employees

The average number of employees in 2005 was 145 (2004: 147).

Remuneration of Commission members

The remuneration of the Commission for 2005 can be analysed as follows (x € 1,000):

	J.C. Arnbak 1 Jan - 31 Aug	C.A. Fonteijn 1 Sep - 31 Dec	L.Y. Gonçalves- Ho Kang You	H.A. van Karnebeek	Total
Salaries ⁴	98	38	135	40	311
Fixed expense allowance	11	13	10	-	34
Allowance repres. expenses	4	2	3	2	11
Pension scheme contributions	16	7	20	-	43
Social insurance charges	4	1	2	-	7
	133	61	170	42	406

The remuneration of the Commission for 2004 can be analysed as follows (x € 1,000):

	J.C. Arnbak	L.Y. Gonçalves- Ho Kang You	H.A. van Karnebeek	Total
Salaries ⁵	146	110	40	296
Fixed expense allowance	16	10	-	26
Allowance repres. expenses	7	3	2	12
Travel expenses	-	3	-	3
Retirement reserves	23	15	-	38
Social insurance charges	4	2	-	6
	196	143	42	381

Mr. C.A. Fonteijn succeeded Mr. J.C. Arnbak as Chairman of OPTA's Commission as of 1 September. The increase in the remuneration for Ms. L.Y. Gonçalves-Ho Kang You stems from an increase in her appointed duties.

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 and State Gazette, 31 August 2005, no. 168 / page 10).

⁵ 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).

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 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".⁶ In 2005 the fee system was modified once.⁷

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.

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.

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.

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.

	Realised 2005	Budget 2005	Realised 2004
Income			
Revenues from market categories:			
Public electronic communications networks	4.560	4.552	5.680
Public electronic communications services	6.750	6.511	4.728
Systems for conditional access	496	651	484
Electronic communications networks per license	505	505	1.206
Electronic Communications	12.311	12.219	12.098
TTP – certification serv providers incl contribution E A	36	140	72
Numbers	2.981	2.211	3.353
Post	488	488	256
Subtotal market categories	15.816	15.058	15.779
Other income:			
Objections and appeals	1.985	2.204	2.825
Implementation evaluation	174	368	207
Other income	1	-	-
Subtotaal overige baten	2.160	2.572	3.032
Total income	17.976	17.630	18.811

⁶ Staatscourant, 24 December 2004, nr. 249 / pag. 14.

⁷ Staatscourant, 14 December 2005, nr. 243 / pag. 11.

The significantly higher figure achieved for numbers was caused in particular by the higher income from the annual invoices for information numbers and number blocking. However, revenue from systems for conditional access and TTP was lower due to disappointing market developments. The revenue from TTP to the amount of € 36,000 consists of € 1,000 from amounts received from market parties and € 35,000 from a contribution paid by the Ministry of Economic Affairs.

Notes expenses

The expenses for public electronic communication networks were higher due to the market analyses. OPTA employees devoted more time to these than initially planned (for an explanation see Chapter 1, section 1.2 of

the Annual Report). This also explains the relatively low revenue from the other market categories under electronic communication.

The costs for objections, appeals and implementation evaluation, other than the market categories, are settled each year with the Ministry of Economic Affairs on the basis of subsequent costing.

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

	Realised 2005	Budget 2005	Realised 2004
Expenditure			
Expenditure on market categories:			
Public electronic communications networks	6.011	5.355	5.747
Public electronic communications services	6.219	6.396	4.740
Systems for conditional access	159	464	362
Electronic communications networks per license	390	550	1.385
Electronic Communications	12.779	12.765	12.234
TTP certificate service providers	67	132	42
Nummers	2.057	2.013	2.161
Post	547	518	609
Subtotal of market categories	15.450	15.428	15.046
Other expenditure:			
Objections and appeals	1.985	2.204	2.825
Implementation evaluations	174	368	207
Extraordinary liabilities	202	-	1.287
Subtotal of other expenditures	2.361	2.572	4.319
Total expenditure	17.811	18.000	19.365
Operating result	165	- 370	- 554

Auditor's report

In accordance with article 2..395, section 2 BW (Dutch Civil Code)

We have audited the annual accounts for 2005 of OPTA in The Hague as included on pages 54 through 61 of this report. The abridged version of the annual accounts was compiled on the basis of the annual accounts for 2005 of OPTA as audited by us. We issued an unqualified audit opinion for these annual accounts on 22 March 2006.

The abridged annual accounts were drawn up under the responsibility of OPTA's Commission. It is our responsibility to express an opinion on these abridged annual accounts.

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 in the annual accounts 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.

In our opinion, the abridged annual accounts provide a true and fair view of the size and composition of OPTA's capital and results as required in the given circumstances.

In order to gain the insight that is required for a sound assessment regarding the financial position and the results of the Commission and for adequate insight into the scope of our audit, the abridged annual accounts should be read in combination with the complete annual accounts from which the abridged version was derived, as well as the unqualified audit opinion issued by us on 22 March 2006. ●

The Hague, 21 April 2006

BDO CampsObers Accountants

Drs. W.J. Laman RA

J.J. Herst RA

Market Monitor

Electronic Communications and Post

0050

1. Introduction

The Market Monitor Electronic Communications and Post 2005 provides a summary of competitive developments on the markets for telephony, broadband, leased lines, broadcasting and internet security. It also includes a section on the postal market. OPTA publishes this monitor each year in compliance with the OPTA Act. The purpose of the market monitor is to provide interested parties with an objective view of developments on these dynamic and innovative markets.

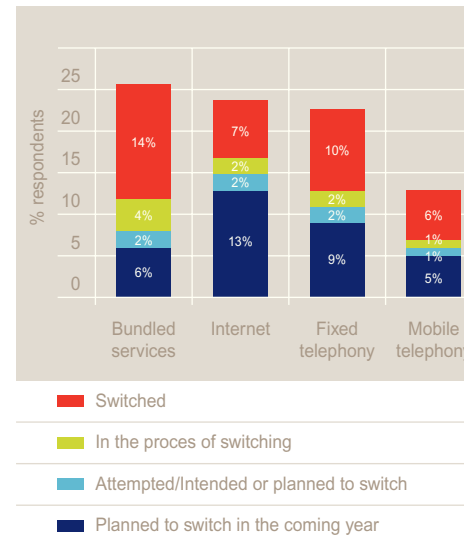
“Consumers are benefiting from the increasing infrastructure competition on the electronic communications markets.”

The monitor starts with a review of the increase in convergence and bundling. This development is seen in large parts of the electronic communications market. The next section describes the most important developments in the markets for telephony, broadband, leased lines and broadcasting. Separate attention is devoted to internet security and consumer affairs. The monitor closes with a review of developments on the postal market.

2. Bundles

Consumers benefit from the increasing infrastructure competition on the electronic communications markets. The market for broadband internet access stands out in this respect. Consumers can opt for a single connection (primarily telephone or cable) and subsequently have various services provided over this line, e.g. broadband internet, telephony and television. This convergence is increasing competitive pressure among the providers. In turn this results in lower prices and improved services for consumers. Figure 1, for example, shows that large numbers of consumers are switching. This indicates that the market dynamics are healthy.

Figure 1:
Switching behaviour of consumers in the Netherlands 2005.



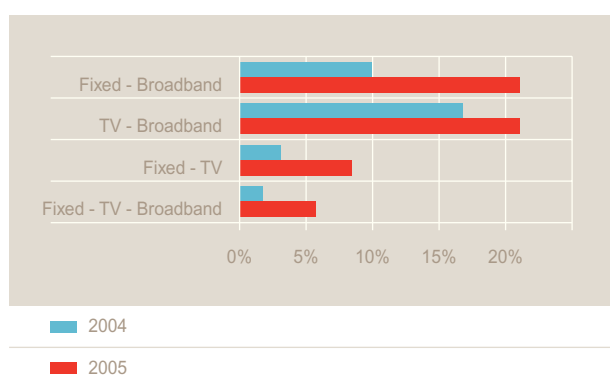
Source: Heliview, Survey reports: Switching barriers and invoice specification for Electronic Communications services, on behalf of the Ministry of Economic Affairs and OPTA, 23 December 2005.

More and more triple play bundles were available in 2005: a combination of broadband, telephony and television. Bundling can be beneficial for consumers because an increasing number of services are purchased from a single provider. This can result in discounts or improved user friendliness (e.g. one bill, one customer service desk, etc.).

As in the previous year, a survey was carried out for OPTA measuring the extent to which households purchase bundled communications products. Consumers were asked to indicate whether they purchased two or more of the products fixed telephony, mobile telephony, broadband internet and television from a single provider. As shown in Figure 2, in 2005 more households purchased product combinations from a single provider than in 2004. For instance, the number of households that purchased fixed telephony and broadband internet from a single provider and the number of households

¹ EIM, *Consumer survey purchase of bundled communications products in the Netherlands, 2nd measurement, 27 February 2006.*

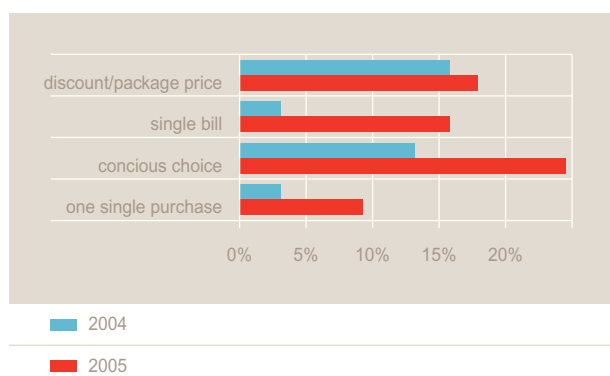
Figure 2:
Households with products from a single provider.



Source: Consumer survey purchase of bundled communications products in the Netherlands, 2nd measurement 2006.

with fixed telephony, broadband internet and telephony from a single provider doubled. This can be primarily explained by the fact that cable providers offered internet telephony and triple play bundles on a larger scale in 2005.

Figure 3:
Households per type of bundle.



Source: EIM.

These households were then asked whether the products they purchased from a single provider 1) were purchased at a discount or package price, 2) were invoiced on a single bill, 3) were purchased on the basis of a conscious choice in order to purchase the products from a single provider, or 4) were purchased at the same time. Figure 3 indicates that the single invoice was an

increasingly important factor in 2005. Conscious choice and single purchase also appeared to be more important considerations in 2005 than in 2004.

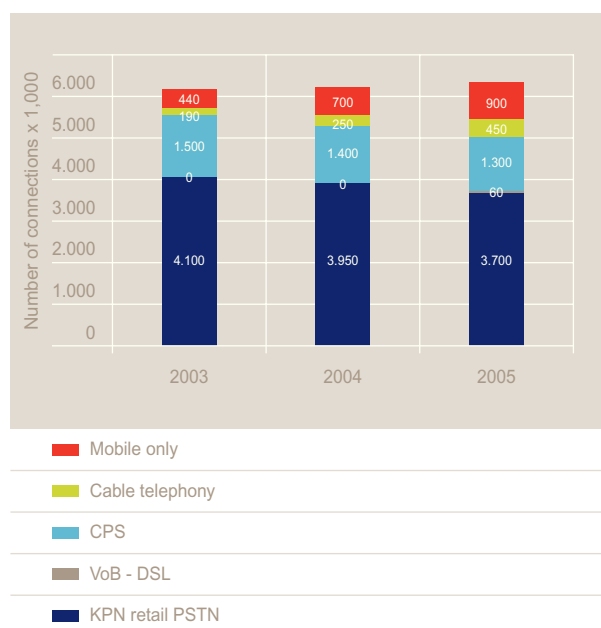
3. Fixed telephony

In 2005 fixed telephony via the cable experienced a high rate of uptake. Voice over IP telephony also emerged. KPN's standard tariffs for fixed telephony remained unchanged in 2005. However, the tariffs for calls from fixed to mobile decreased significantly.

Emergence of cable telephony and VoIP

The number of households with fixed telephony via the cable providers increased significantly, from 240,000 to 450,000. This increase was the strongest during the second half of 2005, when various large providers, including UPC, Casema and Multikabel, started offering internet telephony services (hereafter referred to as cable telephony).

Figure 4:
Number of households with different types of connections for fixed telephony.



Source: KPN quarterly report, Vecai, Trouw.

Other telephone services based on the internet protocol (IP) via a broadband internet connection were also launched. These are often referred to as VoIP: Voice over Internet Protocol, or VoB: Voice over Broadband. VoB has been a promising development for years that was only

continued to rise, totalling about 14 percent. These households are often referred to as 'mobile only' because it is assumed that they do use mobile services.

Because of these developments, the number of households with fixed telephony via KPN decreased by about 360,000. The same applied to the number of households that use Carrier Preselection (CPS) via KPN connections. A survey by Heliview² indicated that each year about ten percent of households switch to a different telephony provider. More than half of these switch from KPN and the CPS providers to cable telephony and VoB providers. Because more and more use is being made of broadband internet, the number of internet dial-up minutes also decreased. The number of dial-up minutes on KPN's network therefore showed a further decrease, as it did in the past two years (see Figure 5).

An important development in this respect is the takeover of Versatel by Tele2. The largest CPS provider in the Netherlands appears to have commenced making the transition to a service provider with its own infrastructure.

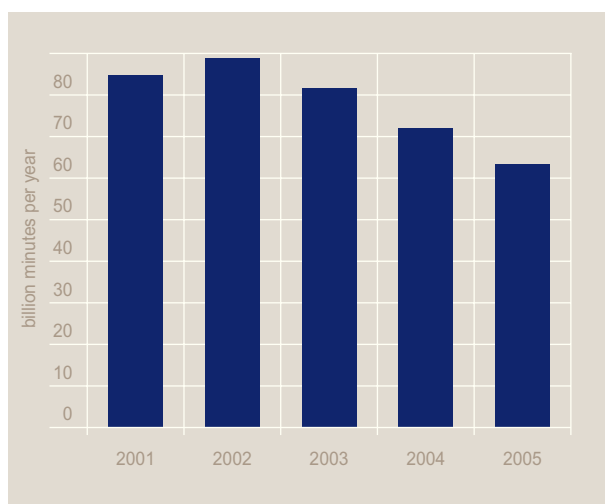
Tariffs unchanged

KPN's standard retail tariffs for fixed telephony via KPN were not changed in 2005. The standard tariffs of the largest CPS provider, Tele2, also remained virtually the same. An exception to this is seen in the tariffs for calling from a fixed connection to mobile, which decreased by an average of about thirteen percent. This is a direct result of the agreements reached between the mobile providers at the demand of OPTA and the NMa in 2003. In November KPN introduced its first flat-free offer with which subscribers can make an unlimited number of calls during non-peak hours at a single monthly fee. In response, Tele2 also reduced its existing flat-free offer, keeping it below the KPN price.

"Tariffs for calling from fixed to mobile decreased by an average of 13 percent because of the agreed reduction of mobile terminating tariffs."

used and supplied on a small scale by providers such as Skype and Pilmo. Other companies also introduced VoB services in 2005, including Scarlet, Tiscali, Wanadoo, Versatel and also KPN. An estimated 60,000 households had a VoB subscription as at the end of 2005. The number of households without a fixed telephony connection

Figure 5:
Development of total number of call minutes on the KPN network. This includes both retail (consumer and business) and wholesale, including internet dial-ups.



Source: KPN Quarterly reports.

² Survey report: *Switching barriers and invoice specification for Electronic Communications services*, on behalf of the Ministry of Economic Affairs and OPTA, 23 December 2005.

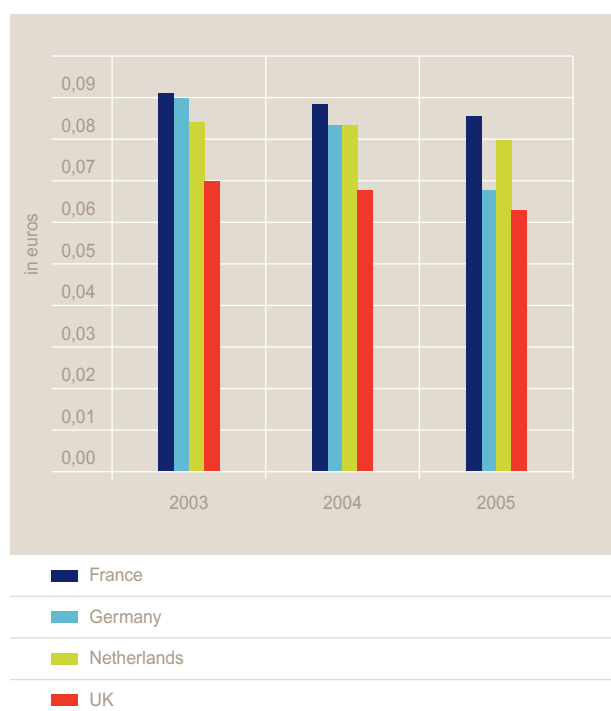
Another important new development with reference to tariffs was the availability of cable telephony and triple-play offers, the price of which is lower than the sum of the individual services.

Figure 6 shows the costs for fixed telephony in the Netherlands between 2003 and 2005 as compared to other countries. The figure demonstrates that tariffs showed a stronger decrease elsewhere, especially in Germany.

The wholesale tariffs (the purchase price for other market parties) for KPN's telephony services also remained unchanged in 2005. These tariffs were approved for a number of years by OPTA in 2004. The tariffs will not be revised until 2006, when the market analyses are concluded.

Figure 6:

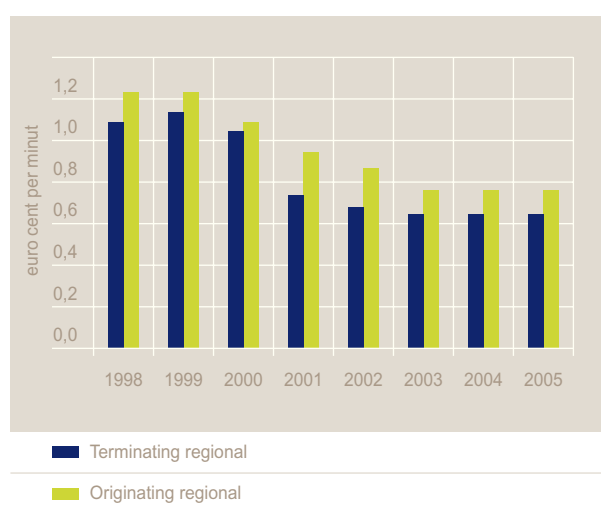
Residential telephony basket, average price per minute in € PPP (not including fixed-to-mobile calls).



Source: Teligen T Basket.

Figure 7:

Development of KPN's average wholesale tariffs (originating and terminating) for interconnection at the regional level. Interconnection at the regional level means that the parties interconnect with KPN at twenty regional intersections. These are the weighted averages of peak, non-peak and weekend/night tariffs with a surcharge for call establishment.



Source: OPTA.

“Consciously choosing the least expensive network can reduce mobile calling costs abroad by an average of about fifteen percent.”

Figure 7 shows the development of KPN's wholesale tariffs from the time regulation by OPTA began. The margin between wholesale and retail tariffs has remained virtually constant. This is an indication of the relationship between the purchase costs from KPN and the revenue from the CPS providers' own retail services.

(Proceed on page 70)



“OPTA has the tendency to wrap itself in a cloak of alleged caution. By asking many questions and writing thick decisions, they are kidding themselves that they have done everything within their power to properly consider the various interests involved. Of course I understand that this is inherent to an organisation like OPTA. That should simply be accepted, I believe. An organisation of civil servants plays a different role than a company in a democratic society. However, the actual regulation issues can also be defined and addressed in a much smaller number of questions.

Then you say “What is the extent of dominance and what do you want to do about it?”, “Do you want to regulate or not?” and “How does society profit from regulation?”. As regulator, you should never take action unless there is truly a problem instead of assuming in advance that the problem exists. In my estimation, the worry about OPTA’s process rationality, a key phrase in the OPTA evaluation, reflects that cloak of alleged caution. I believe OPTA could take more chances, even if that does diminish the caution.

OPTA is doing good work and has competent employees. Jens Arnbak really accomplished something, and I have high expectations for Chris Fontein. I am really unafraid of a lawyer legalising the sector! There is no reason,

however, for OPTA to continue to be an independent body for much longer. It could function just as well as a separate part of the NMa, for example. More in general, in the Netherlands the life expectancy of institutions has never truly been discussed. When the OPTA was established, they said it would also be quickly disbanded. Now we are into the third Commission’s term! There is no talk whatsoever of disbanding it, and that is not right.

“OPTA could take more chances, even if that does diminish caution.”

In my view, the cable companies are the Davids and KPN is Goliath. The battle is actually a battle of technology. The parties hound one another with innovations in terms of technology and services. Exactly how that process will proceed is impossible to predict. These are simply market mechanisms at work: the outcome cannot be determined by administrative rulings. That will render the greatest social profit by far. Especially the pressure on tariffs. And that is how it should be. At most, a regulator can correct a problem after the fact. But that is as far as it goes in my view!” ●

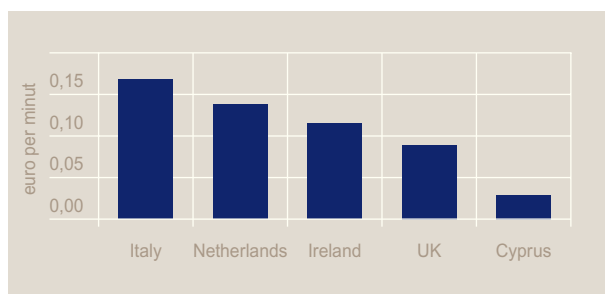
4. Mobile telephony

Although mobile terminating tariffs are relatively high in the Netherlands, the step-by-step decreases continued in 2005. International roaming continued to be expensive in 2005. The number of mobile connections in the Netherlands increased yet again, and the share of pre-paid connections is still more than fifty percent. KPN acquired Telfort, thus increasing KPN's market share to about 50 percent. The number of mobile service providers increased in 2005.

Mobile call termination relatively expensive

An important part of the costs of mobile calling consists of the mobile call termination tariffs (MTA tariffs); this is the tariff charged by a network provider for terminating a call originating from a different network. Figure 8 summarises the MTA tariffs in the Netherlands and in a number of other EU Member States. The tariffs in the Netherlands are relatively high, despite decreases in recent years.

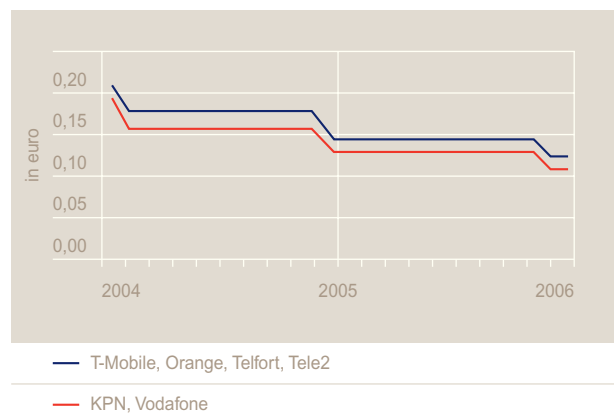
Figure 8:
Mobile call termination tariffs.



Source: IRG, Quick survey on regulatory status mobile termination rates, July 2005

The mobile network providers took the third step in reducing the MTA tariffs on 1 December 2005. As compared to 2003, these tariffs have decreased by an average of about 15 percent.

Figuur 9:
Tariff steps MTA.



Source: OPTA.

Figuur 10:
Average price for receiving a four-minute call in a different country than the Netherlands. Based on peak tariffs, September 2005.



Source: http://www.europa.eu.int/information_society/activities/roaming/.

International roaming expensive

Using a Dutch cell phone to make and receive calls in other countries – international roaming – is expensive. Consciously choosing the least expensive network (discount network) can save Dutch consumers calling costs. In 2005, the European Commission launched a website³ intended to improve consumer awareness in this area.

³ http://www.europa.eu.int/information_society/activities/roaming/

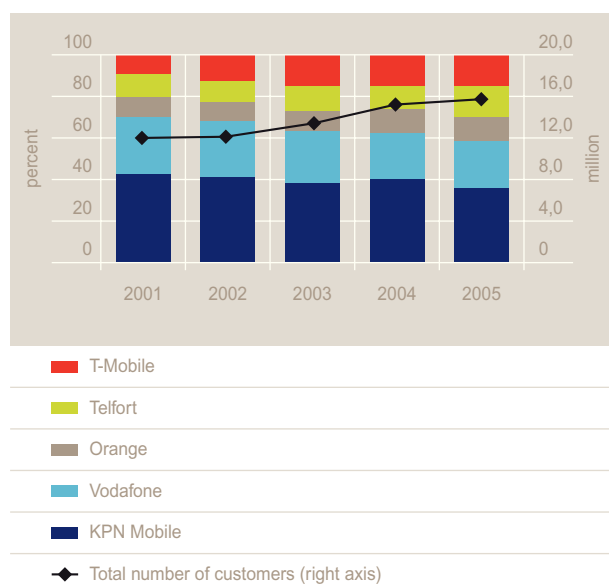
Figure 10 shows that a conscious consumer choice can reduce calling costs by an average of about fifteen per cent. In order to achieve these savings, however, the consumer must find out himself which foreign network offers the best deal.

The high international roaming tariffs cannot be regulated separately by the Member States, which is why the European Commission plays a leading role in this respect.

Number of mobile still increasing

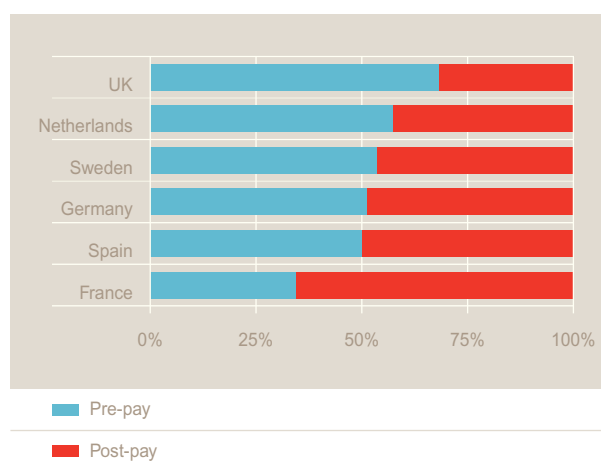
The number of mobile connections continued to increase in 2005, now totalling about 16 million. Figure 11 shows the progress in the number of connections along with the market shares of the various mobile network providers. The figures should be compared carefully because not all providers apply the same definitions for their customer data.

Figure 11:
Market shares held by mobile network providers and total number of customers in millions, 2001 – 2005.



Source: Oxera

Figure 12:
Post-pay and pre-pay users in 2005.

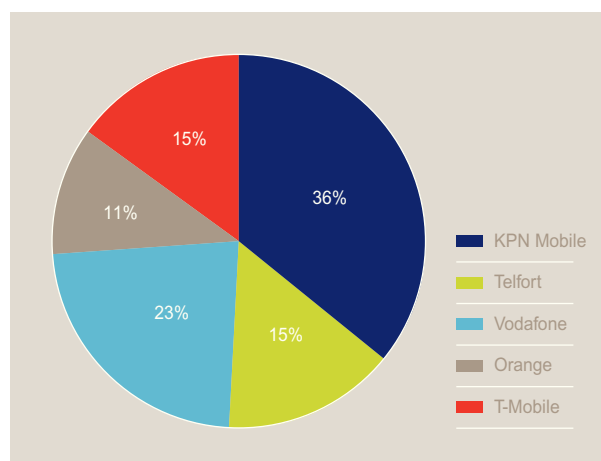


Source: Oxera.

Use of pre-pay continues to be high

More than half of the mobile callers have a pre-paid subscription. From the European perspective, this is a relatively high number.

Figure 13:
Market shares in total number of connections 2005. After acquiring Telfort, KPN holds a market share of 51%.



Source: Oxera

KPN acquires Telfort

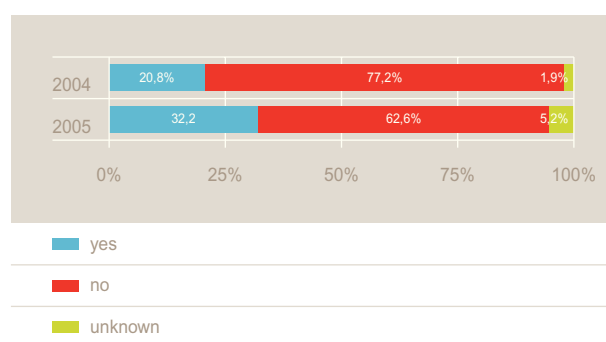
KPN acquired Telfort in October 2005 after the NMa approved the transaction. NMA's approval was partly based on OPTA's recommendations. The market analysis for mobile telephony indicated that this would not give KPN Mobile a position with significant market power.

“With a coverage of 57 percent of all Dutch households, the Netherlands has the highest broadband penetration in the European Union.”

More mobile service providers

By acquiring Telfort, KPN became the largest provider of wholesale access for mobile parties with little or no own infrastructure. A few dozen mobile service providers are now active. Well-known providers include Albert Heijn (on KPN's network), Debitel (on KPN's and Vodafone's networks), Easy Mobile (KPN), Hema (KPN), Scarlet (Orange), Tele2 (KPN), UPC (Orange) and Versatel (KPN). OPTA believes there is no reason to regulate this market.

Figure 14:
Possibility of sending MMS, pictures, images and internet access.



Source: EIM.

Cautious start of mobile broadband

Third generation mobile telephony (UMTS) offers faster mobile internet than the existing second generation system GSM/GPRS. As a result, broadband-based services such as video telephony can be offered. Vodafone, KPN and T-Mobile have since launched their third-generation networks. To date they serve about half of the inhabitants of the Netherlands, primarily in large cities and along major road and railroad routes. Where there is no coverage, consumers are automatically switched back to the GSM/GPRS network. KPN Mobile and T-Mobile are also expanding their network of WiFi hotspots.⁴

About twenty percent of all European mobile callers use the internet function on their cellular phones at least once each month. In the Netherlands, about 30 percent of the users are able to do so and about 25 percent actually utilise this.

5. Broadband and leased lines

The Netherlands has the highest broadband penetration in the European Union. Many competitive broadband providers are active, with a relatively high level of owned infrastructure. The speed of the internet connections is increasing. In 2005, KPN announced that it would roll out its fibre-optic network closer to consumers, enabling further speed increases and multiple simultaneous services.

Netherlands highest broadband penetration

Broadband internet access (broadband) can be provided to end-users via various infrastructures. In the Netherlands, KPN's copper network⁵ (via xDSL) and the cable companies' coax network are the infrastructures most commonly used. KPN has a connection network that covers the entire country, reaching 99 percent of the homes. The collective cable companies reach a total of about 90 percent.

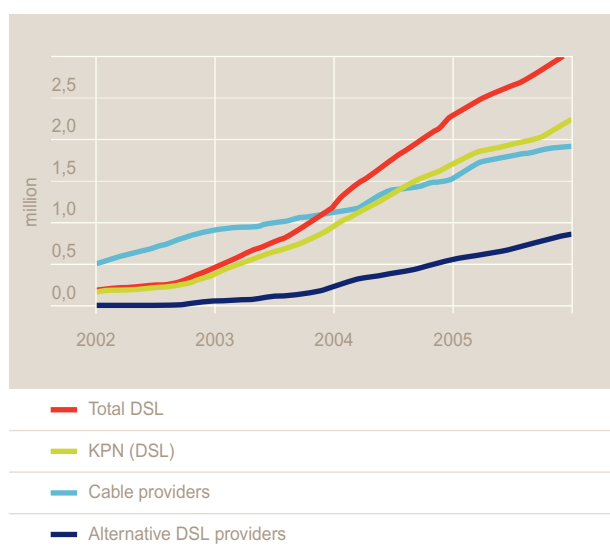
⁴ WiFi-hotspots: sites with rapid wireless internet connections.

⁵ This refers to the network used to establish the connection between the local exchange and the homes.

The growth in the number of broadband connections slowed in 2005. Each month some 75,000 new connections were established; in 2004 this number was approximately 100,000. The number of xDSL connections grew from 1.9 million at the end of 2004 to 2.5 million at the end of 2005. The number of cable modem connections increased in the same period from 1.2 million to 1.6 million. The ratio between xDSL and cable remained virtually the same: 60 percent xDSL and 40 percent cable (see Figure 15).

At the end of 2005, 57 percent of all households in the Netherlands used broadband.⁶ This represents an increase of 12 percent as compared to the previous year. It

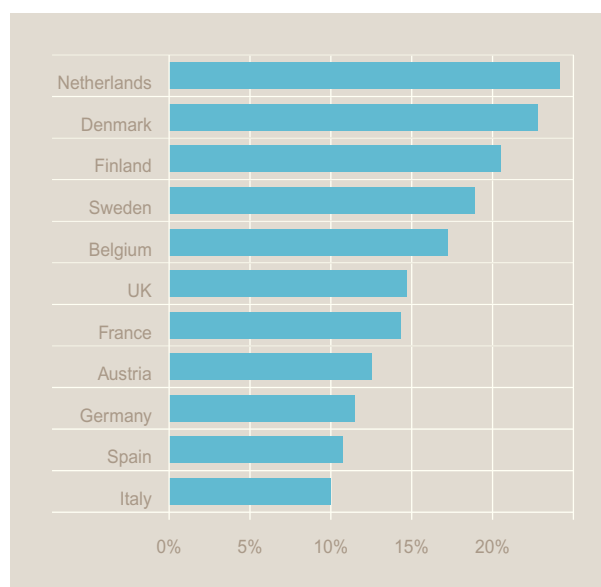
Figure 15:
Number of xDSL and cable modem connection lines, 2002 – 2005.



Source: KPN, Platform Nederland Breedband and Telecom paper.

means that there are 23 broadband connections per 100 inhabitants in the Netherlands (see figure 16): the highest broadband penetration in the European Union. Another 16 percent of internet users dial up to connect to the in-

Figure 16:
Degree of penetration of broadband internet per inhabitant in European perspective, 1 October 2005.



Source: European Commission, 11th Implementation report.

ternet, the traditional method also referred to as narrow-band.⁶ In 2004 this was more than 30 percent. The main difference between narrowband and broadband is the speed at which data can be sent and received. All in all, nearly 70 percent of households had internet access in 2005. Nearly every household with a computer also has an internet connection.⁷

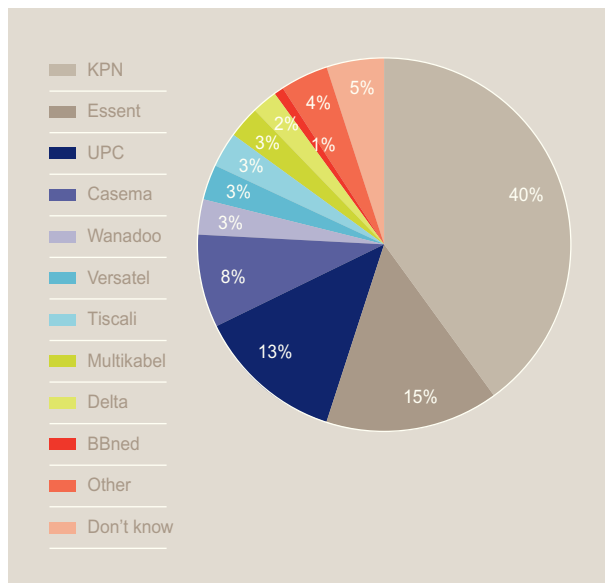
Broadband market effectively competitive

Figure 17 reflects the fact that many competitive broadband providers are active in the market. The largest provider of xDSL connections is KPN. KPN offers its own internet services (Direct ADSL) as well as services through its ISPs Planet Internet, Het Net and XS4ALL. Its primary competitors are the cable companies, especially UPC (via Chello), Essent (@home) and Casema. There are also ISPs that offer services through other xDSL access providers, including Versatel, BBned, Tis-

⁶ EIM, *Consumer survey bundled communications products in the Netherlands*, 27 February 2006.

⁷ KPMG, *Triple Play a whole different ball game*, January 2006. The 'Heliview Consumer Monitor' of February 2006 (www.heliview.nl) shows that by the end of 2005, approximately 8 percent of PC users had no internet connection.

Figure 17:
Market shares of individual broadband internet access providers at the network level, total market 2005.



Source: EIM

“Broadband subscribers tend to opt for a lower price than for increased speed.”

cali and Wanadoo. The individual cable companies have only regional coverage. KPN's market share on the national level is therefore a slight underestimation of the competitive pressure experienced by KPN in the various regions, especially from UPC, Essent and Casema.

New opportunity for competition?

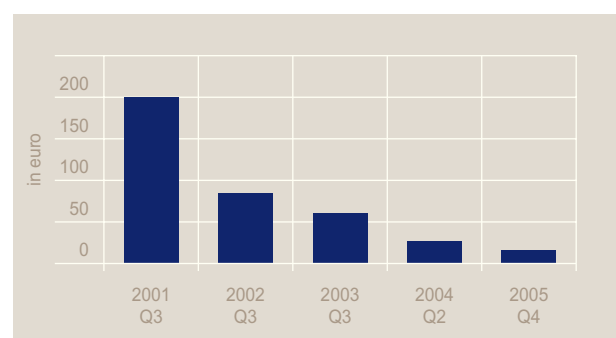
In recent years, internet service providers (ISPs) primarily competed on the basis of price and connection speed. During the first half of 2005, the broadband market showed a significant increase in the number of subscriptions for lower speeds, while the number of subscriptions for

higher speeds remained relatively stable.⁸ There are two important reasons for this. Consumers switching from narrowband to broadband tend to opt for subscriptions with a lower speed; broadband subscribers often opt for the same speed at a lower price when their ISP offers increased speeds. Although the larger bandwidth is important, price is still often the primary concern.

As in previous years, DSL providers invested in speed-increasing technology such as ADSL2+. As a result, services requiring a higher bandwidth can be offered. Examples include digital television (IPTV), video on demand services, and gaming. However, the services available in 2005 were still limited. Increasingly higher speeds are also available via the cable networks, currently up to approximately 20Mbit/s. Figure 18 reflects the fact that households are receiving increasing connection speeds at the same price levels.

Competition between providers appears to be gradually expanding to the provision of more added value, e.g. via bundling. Or by offering (exclusive) content, as was the case when Versatel acquired the exclusive right to broadcast live top division soccer games.

Figure 18:
Average price per megabit per second download speed, in euros per month.⁹



⁸ Source: TNO, Marktrapportage elektronische communicatie (Market Report electronic communications), February 2006, based on 1st half-year.

⁹ Based on subscriptions from KPN, Planet, XS4ALL, Wanadoo (cable and DSL) and Chello.

Switching problems continue to exist

In general, households in the Netherlands are satisfied with their internet connections.¹⁰ Seven percent of all consumers using the internet switched to a different provider during the past twelve months.¹¹ The connection speed was said to be the most important reason for switching, followed by the subscription fees and the quality of service. Most people (83 percent) expected no difficulty in switching, although OPTA still receives complaints. Some consumers, for example, are left with no internet access for certain periods. They are told that switching is not possible because the line is “kept busy” by the former provider. OPTA is consulting with the market parties about these and other switching problems. If parties fail to reach an agreement, OPTA can mediate resolve a dispute upon request. However, no such requests were received in 2005.

Competitors high on the investment ladder

New entrants do not have their own connection networks. They can use KPN's network or that of the cable companies in various ways to offer broadband to end-users: by resale, bitstream access and unbundling of the local loop. Collectively, these steps are called the investment ladder. Each step up the ladder requires additional investments in the provider's own infrastructure and equipment.

The first step on the investment ladder is resale. Resale of the DSL connection does not occur in the Netherlands, however.

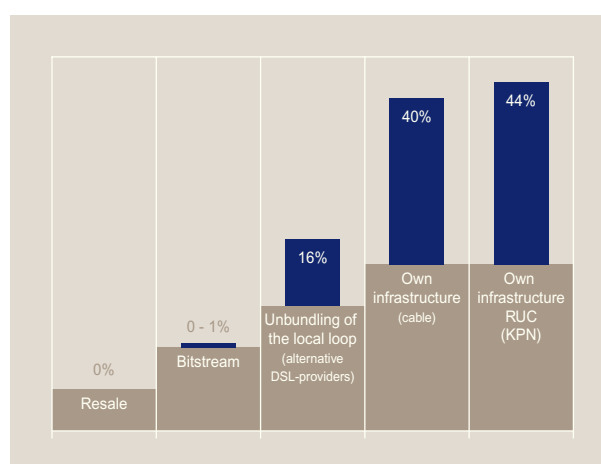
The second step is bitstream access. A new entrant needs relatively little infrastructure for this service because a connection only needs to be made to the existing network (belonging to KPN or the cable company) at one or a few locations in the Netherlands. No single party holds a dominant position on the market for bitstream access, which explains why there are no access obligations.¹²

The third step is unbundling of the local loop. With this type of access, the new entrant rolls out its own network to locations close to the consumer, using the existing network for the local loop. KPN is dominant on the market for unbundled access and is required to provide access to other parties at cost-oriented rates. The cable providers do not offer any type of unbundled services.

“New entrants in the Dutch broadband market have already climbed far up the investment ladder.”

Figure 19 shows that KPN provides 44 percent of all broadband internet connections. Thus KPN's competitors collective hold a market share of 56 percent. Of this 56 percent, 40 percent provides internet access via their own networks (the cable providers) and 16 percent uses

Figure 19:
Investment ladder for providing broadband internet access.



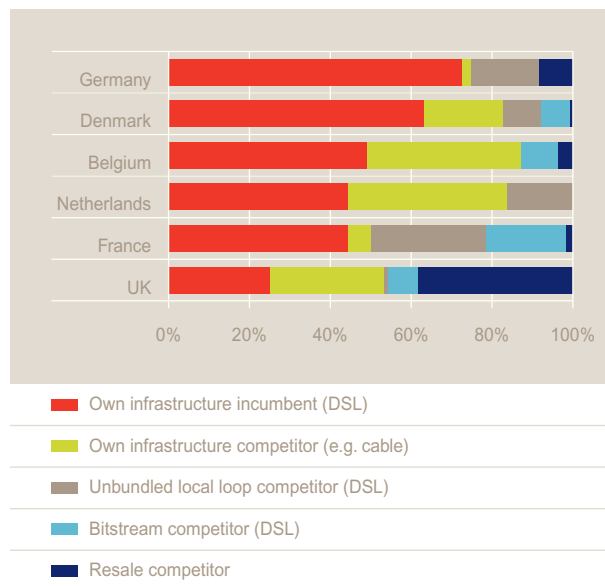
Source: OPTA.

¹⁰ KPMG, Triple Play: a whole different ball game, January 2006.

¹¹ Heliview, *Switching barriers and invoice specification for Electronic Communications services*, on behalf of the Ministry of Economic Affairs and OPTA, 23 December 2005.

¹² This is the market for low-quality wholesale broadband access

Figure 20:
Investment ladder in European perspective 2005.



Source: European Commission, 11th Implementation report.

unbundled KPN connections (alternative DSL providers). The largest alternative DSL providers are BBned, Tiscali, Versatel and Wanadoo. These DSL providers can reach 50 to more than 70 percent of all households in the Netherlands via unbundling. Only a small percentage (less

“KPN announced that it would make its entire network in the Netherlands fibre-optic up to the local exchange boxes.”

than 1 percent) of KPN’s competitors offer broadband internet access via bitstream access. The above indicates that new entrants in the Netherlands have already climbed far up the investment ladder.

Viewed from an international perspective, competitors in the Netherlands have also climbed far up the investment ladder. Figure 20 shows the degree to which broadband connections are provided over the various steps on the

investment ladder for the five countries with high broadband penetration in the EU. The Netherlands distinguishes itself from other countries in terms of both fierce infrastructure competition from the cable providers and competition from competitors with unbundled access to the local loop, making them less dependent on KPN than would be the case with bitstream access or resale.

Alternative infrastructures play minor role

In addition to KPN’s copper network and the coax network owned by the cable providers, there are other networks over which broadband internet access can be provided, such as fibre-optic networks, wireless networks and mobile networks. At this time, these networks play only a minor role in terms of competition.

Fibre-optic

Fibre-optic networks offer much faster connections. Both the cable operators’ networks and KPN’s telephony network are completely fibre-optic excluding the local loop. Other providers also have fibre-optic networks. KPN announced in 2005 that it would make its entire network in the Netherlands fibre-optic up to the local exchange boxes, and all the way to the houses in new subdivisions. KPN will be offering broadband internet access based on VDSL from the local exchange boxes.¹³ The separate KPN networks for telephony, leased lines, data communication services and broadband internet will therefore disappear, resulting in one, single integrated network based on IP.

Some 25 municipalities in the Netherlands are currently involved in or making preparations for broadband projects that provide companies and homes with fibre to the home. In the third quarter of 2005, some 50,000 homes were connected to a fibre-optic network,¹⁴ a coverage of about 1 percent.

¹³ VDSL: Very high bit-rate DSL.

¹⁴ Source: Telecompaper, 20 July 2005. The number of households actually using the connection is lower.

WiFi, WLL and UMTS

Wireless Fidelity or WiFi is a standard for wireless networks, primarily for internet access. WiFi uses a frequency band for which no official permit is required. WiFi is used to create a network within a certain radius of the transmitter, known as a hotspot. WiFi hotspots are usually located in public sites, including hotels, conference centres and airports. There were a total of 1600 WiFi hotspots¹⁵ in the Netherlands in the third quarter of 2005. The largest providers are KPN and T-Mobile.

A number of frequency bands for Wireless Local Loop (WLL) were auctioned in recent years. WLL can be used to establish multiple wireless connections for both telephony and data traffic from an antenna site. To date, providers have made only limited use of their WLL frequencies. OPTA does not expect this to change in the next two to three years.

Broadband internet access is also available via third generation mobile telephony (UMTS). About two percent of all households in the Netherlands had a UMTS telephone in 2005.¹⁶

From leased lines to data communication

Leased lines are connections with a fixed capacity used by companies, e.g. to connect their branch offices. Leased lines are used for both data communication and telephony services. Two major trends can be seen on the market for leased lines. Since 2003, a relatively large percentage of companies have been switching from leased lines to data communication services.¹⁷ As a result, the use of classical analogue leased lines and digital leased lines with a capacity of less than 2 Mbit/s is decreasing. Cost considerations are primarily the reason for switching to virtual private networks based on the internet protocol (IP-VPN). These are networks protecting the traffic of a company, ensuring a guaranteed capacity level.

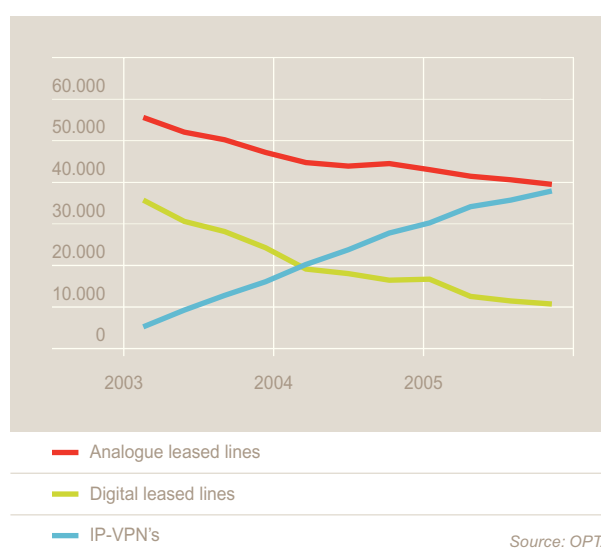
The demand of companies for faster connections is increasing. This involves connections ranging from 10 Mbit/s to 100 Gbit/s: speeds that cannot be achieved at this time over a standard copper network. These locations are connected to fibre-optic lines. The retail markets for leased lines of 2 Mbit/s and faster than 2 Mbit/s are competitive, especially due to the competitive pressure from the fibre-optic networks owned by cable operators.

“Viewed from a European perspective, the cable penetration of 93 percent in the Netherlands is extremely high.”

The retail markets for leased lines with a capacity of less than 2 Mbit/s and for analogue leased lines will continue to be regulated because KPN holds high shares of these markets.

Figure 21:

Use of leased lines and analogue/digital leased lines and data communication services.



¹⁵ Source: Telecompaper, 3 October 2005.

¹⁶ Source: Telecompaper, 26 January 2006.

¹⁷ Based on the published quarterly figures of KPN (first quarter 2003 up to and including third quarter 2005).

6. Broadcasting

Nine out of every ten households in the Netherlands have a cable connection. UPC, Essent and Casema are the largest cable providers in the Netherlands. There are alternatives to cable, e.g. satellite, digital terrestrial tv and tv via broadband. The penetration of digital tv increased in 2005.

Cable dominant

The cable infrastructure in the Netherlands is by far the most frequently used channel for transmitting broadcasting signals (television and radio). As was the case in 2004, in 2005 there were 6.4 million connections, meaning 93 percent of the total number of households. From a European perspective, this is extremely high (see Figure 22). Of all cable companies, UPC, Essent and Casema have the largest numbers of subscribers. The market relationships have scarcely changed in recent years (see Figure 23).

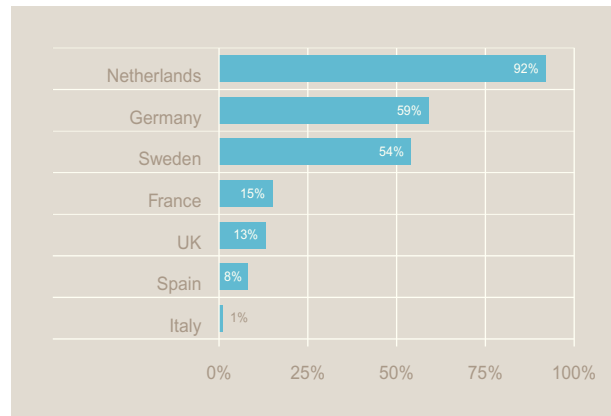
IPTV

In 2005, 35 thousand households received television via broadband,¹⁸ known as IPTV. Versatel (since acquired by Tele2) is the largest provider.

Digital terrestrial television¹⁹

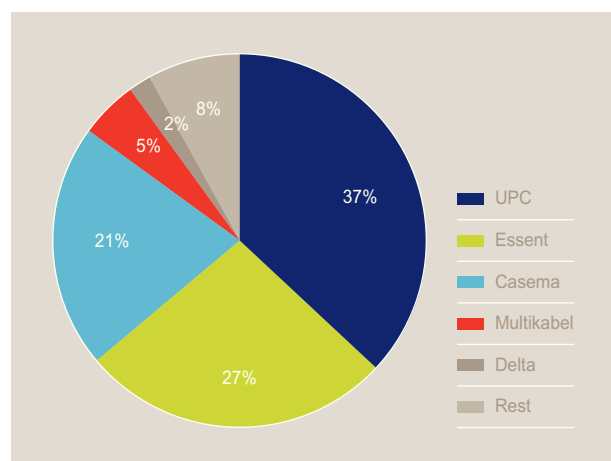
Digitenne (a cooperative venture between Nozema Services (40%), KPN (40%), NOB (10%) and the public and commercial broadcasting companies) was the most active party on the market for digital terrestrial television in 2005.¹⁸ Research has indicated that the number of subscribers has increased to 114 thousand: almost twice the 2004 number; this constitutes about 1.5 percent of the households. About sixty percent of the country has coverage at this time. Digital terrestrial television offers fewer channels than the cable companies. For consumers this is an important obstacle to switching to a different provider.²⁰

Figure 22:
Penetration of cable television as a percentage of the total number of households with television.



Source: Observatory Statistical Yearbook 2005.

Figure 23:
Market shares held by large cable companies.



Source: OPTA Market analysis 2004.

Satellite

The number of satellite television connections was about 350,000 in 2005, an increase of about 15 percent as compared to the previous year. Satellite television is used by six percent of the households. The product offer is similar to that of cable television.

¹⁸ Dialogic, Schakelen we om? (Are we switching?) September 2005.

¹⁹ Digital terrestrial television: television by means of digital signals transmitted and received via the ether.

²⁰ Dialogic, are we switching? September 2005.

Cable tariffs increased

In recent years, the larger cable operators in particular have increased their tariffs several times. The average rate for the standard package was € 10.32 in 2001 as compared to an average of € 13.62 in 2004. That is an increase of 32 percent. The larger cable companies further increased their tariffs in 2005. The average tariff for the standard package among the largest five (UPC, Essent, Casema, Multikabel and Delta N.V.) rose to € 15.16.²¹

Digital tv customers double

Most cable companies have prepared their networks for digital transmission of broadcasting signals. As a result, more and more service regions allow the standard package to be transmitted as both analogue and digital signals. The number of digital cable subscribers nearly doubled in comparison to 2004²⁰, meaning that the number of digital television viewers rose to about 17 percent.²³ Digitisation enables more efficient use of the networks. What is more, cable companies can offer innovative interactive services. The decoder needed for these services has become less expensive for consumers. Despite this growth, OPTA expects that analogue transmission of cable television will

continue for a number of years because not all consumers are readily willing to switch.

7. Internet security and other consumer affairs

In addition to stimulating competition, OPTA's tasks in the areas of internet security and various types of consumer protection are becoming increasingly important.

Quantity of spam stable

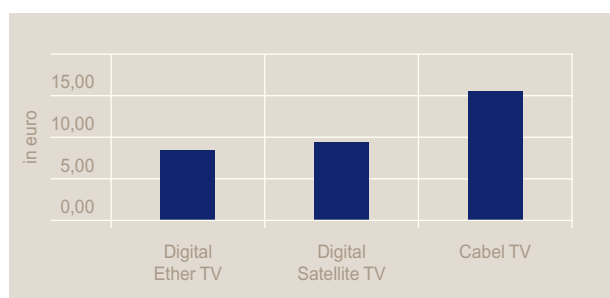
From an international perspective, the quantity of e-mail spam being sent appears to have stabilised. Exact figures vary from about 50 percent in the Netherlands to about 77 percent in the United States (see Figure 25).

The quantity of e-mail spam sent to the Netherlands has clearly decreased since mid-2004 (see Figure 26). This is partly a result of OPTA's activities in combating spam, for which it has been authorised since May 2004.

SMS spam is far less common, as are fax spam and spam via automatic call systems. A relatively new trend is spam with criminal intent such as phishing. This spam

Figure 24:

Average subscription costs in 2005 for standard package via various networks.²²



Source: Dialogic, *Are we switching?* September 2005 and OPTA Market analysis decision Broadcasting.

“The number of digital cable subscribers nearly doubled to 17 percent in comparison to 2004.”

is used in an attempt to obtain personal data such as bank account numbers. Striking is the increase in e-mail spam containing viruses.

Many parties that send spam are active on an international basis. Thus enforcement increasingly requires working together with various institutions and organisations in different countries.

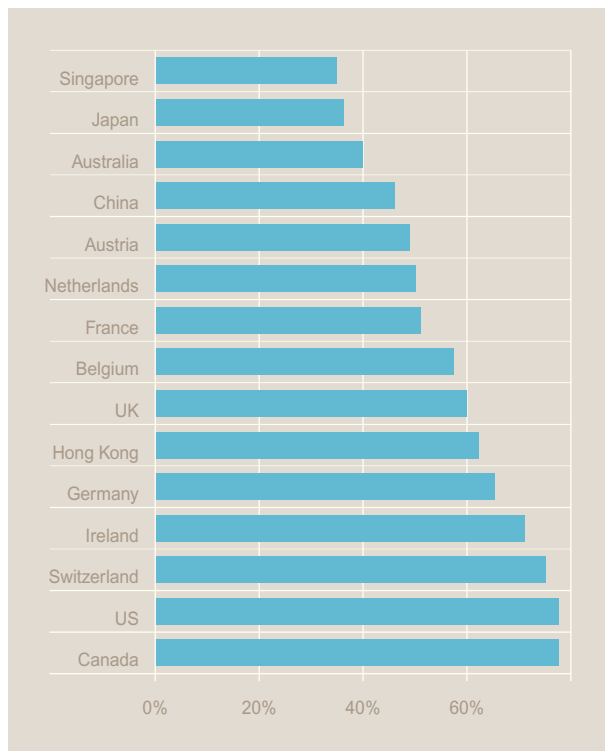
²⁰ Dialogic, *are we switching?* September 2005.

²¹ Dialogic, *Schakelen we om? (Are we switching?)* September 2005.

²² Market analysis decision for UPC's region of service.

²³ Ether: KPN, Digitenne and Scarlet; satellite: CanalDigital set top box plus basis; cable: only five largest cable companies.

Figure 25:
Average annual percentage of spam in e-mail.



Source: Message Labs, End of the year intelligence report, 2005.

“Since OPTA was authorised to combat spam, the quantity of e-mail spam sent to the Netherlands has clearly decreased.”

Dialers: unexpectedly high bills

Although more and more people have broadband internet, there are still a few million consumers using analogue modems. This makes them susceptible to dialers that tag along on internet downloads or originate in viruses that infest the computer. The dialers then have the PC dial an expensive number, resulting in unexpectedly

high telephone bills. Following consultation with the market parties, OPTA has compiled a black list of numbers used by dialers. Telecom companies are authorised to cancel service of these numbers.

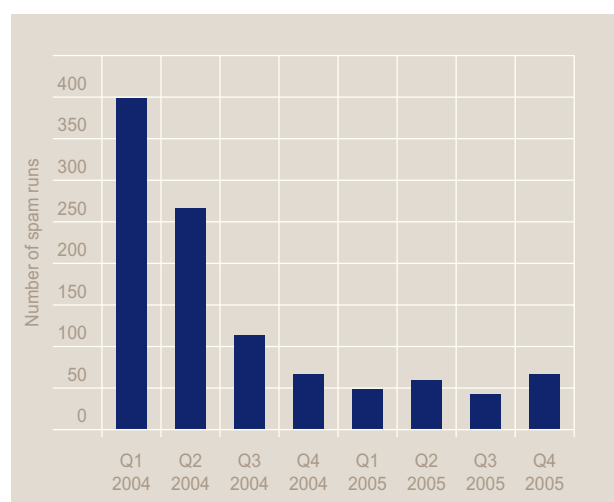
Emergence of electronic signatures

In 2005 OPTA registered a third certification service provider. This Trusted Third Party or TTP is a market party that issues qualified certificates, also known as electronic signatures. Although this market has developed slowly in recent years, OPTA expects the growth to accelerate within a few years when the anticipated implementation of electronic identity cards is launched by the government.

Spyware and viruses take enormous flight

The distribution of spyware and viruses has taken enormous flight. Some ten to forty percent of all PCs are estimated to be infected. Spyware takes information from the infected PC and passes it on. Other viruses turn a PC into a remotely-controlled zombie that is used in a “bot net” without the owner’s knowledge. It is estimated that at least 75 million PCs throughout the world are thus

Figure 26:
Spam runs in the Netherlands per quarter.



Source: spamvrij.nl.

infected.²⁴ It is forbidden to install software without providing the proper relevant information and without the user's permission. OPTA will therefore be tackling this problem in 2006.

The Netherlands has the third-largest number of websites that attempt to install spyware in the world – see Figure 27.

8. Postal market

In 2005, the postal market was still primarily regulated by law. TNT N.V. (former TPG N.V.) held a legal monopoly for the delivery of letters up to 100 grams. TNT is also required to provide a number of postal services to all inhabitants of the Netherlands via its subsidiary TPG Post, known as the universal service. This service includes the delivery of letters and printed matter up to 2 kg, the delivery of packages up to 10 kg and registered shipments.

Market share competitors still small

The scope of the total postal market for addressed mail totals some 5.5 billion pieces each year. The legal monopoly covered about 70 percent of the letter market in

2005, in terms of both numbers and turnover. Consumer mail constitutes eight percent of the total mail flow. Consumer mail pertains to the delivery of consumer-to-consumer (C2C) and consumer-to-business (C2B). Business mail pertains to the delivery of business-to-consumer (B2C) and business-to-business (B2B) – see Figure 28.

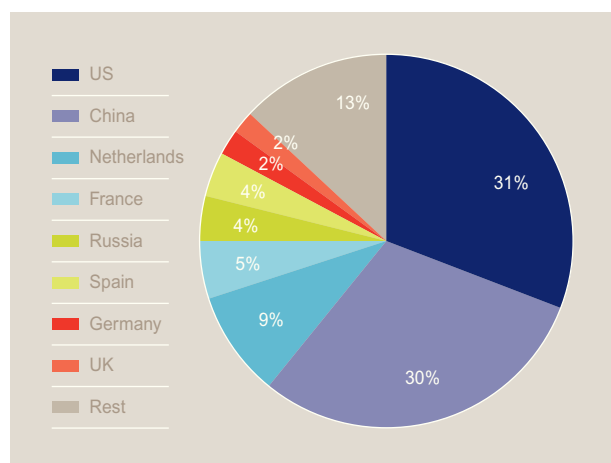
In the free market segment (letters more than 100 grams and printed matter), there are two prominent alternative providers: Sandd and Selekt Mail Nederland. Both

“The Netherlands has the third-largest number of websites that attempt to install spyware in the world.”

of these are active in the largest segment: the business market. They have their own national delivery network totalling 8500 and 8000 employees, with deliveries twice each week. TPG Post delivers throughout the country six times each week and has about 42,000 employees

Figure 27:

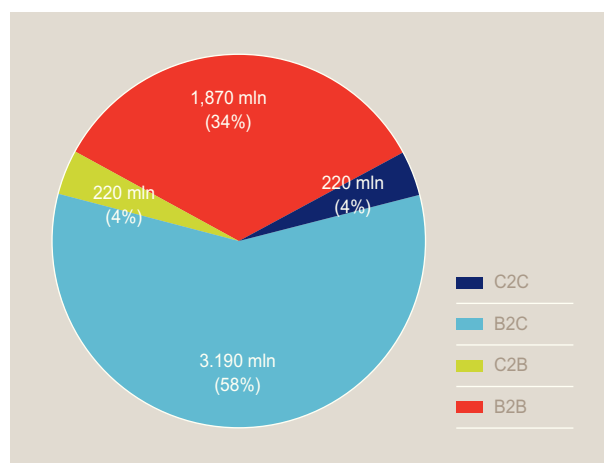
Share of spyware from websites per country.



Source: Webroot, State of Spyware 2005.

Figure 28:

Market segments postal market.



Source: EIM 2005, based on SEO 2003; estimated market size 5.5 billion pieces of mail.

²⁴ Red Herring, Q&A: Bot-Buster Merrick Furst, 27 January 2006. <http://www.redherring.com/>.

delivering mail. The total volume of the two competitors doubled in 2005, totalling 460 million pieces of mail. With a stable total market size of 5.5 billion pieces of mail, this amounts to a market share of eight percent.

Regulated tariffs unchanged

The regulated postal tariffs have not changed since 2003. TPG Post agreed with the Minister of Economic Affairs that consumer rates would not increase until the end of 2006.

Figure 29 shows that the tariff for a 20 gram letter in the Netherlands is one of the lowest in Europe. Delivery of a letter weighing 100 grams is relatively more expensive.

Mail to foreign addresses more expensive

The tariffs for letters with an international destination are not regulated. These rates have increased significantly since 2002; see Figure 30.

Legal reporting obligation

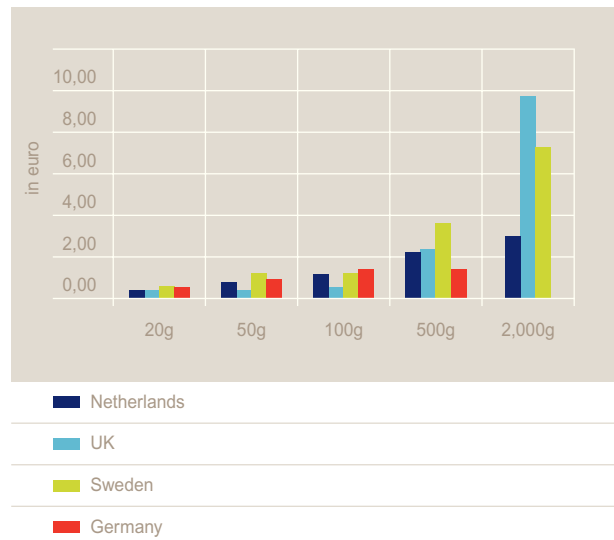
TPG is required to report to OPTA regarding the quality of the services it provides and the financial results from the universal service.

The profitability of the monopoly decreased from 17.3 percent in 2001 to 9 percent in 2004 (TPG Post had not yet reported on 2005 at the time this Monitor was published). This decrease was primarily a result of the new accounting method used by TPG Post since 2002. According to the previous accounting method, profitability would have remained virtually unchanged (17.1 percent in 2004). The profitability of other services required by law increased from 15.6 percent in 2001 to 16.5 percent in 2004 (21.1 percent in 2004 according to the previous accounting method).

TPG satisfies requirements

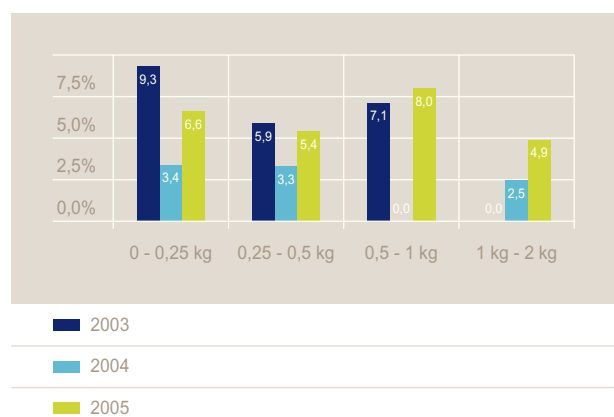
The quality of the postal services is expressed in factors including the number of post offices and the range of products available. TPG amply satisfied these requirements in 2004.

Figure 29:
Tariffs for individual pieces of mail as of
1 January 2005



Source: National postal company websites

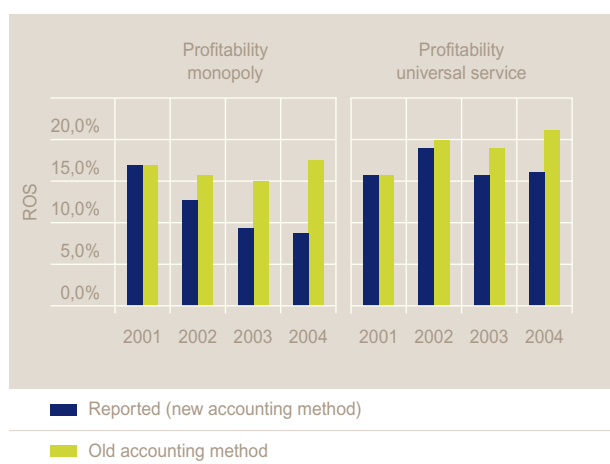
Figure 30:
Rates for priority mail within Europe charged by
TPG Post; percentage increase as compared to
previous year.



Source: Tarievenboek TPG Post (TPG Post Tariff book).

Figure 31:

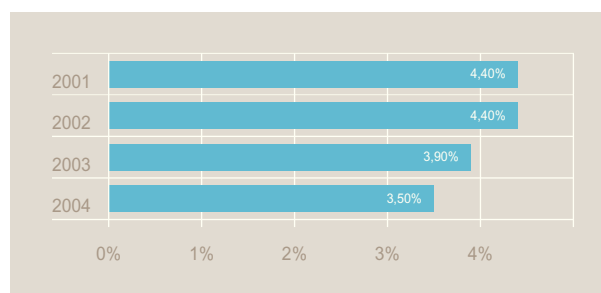
Development TPG Post's profitability.



Source: Concession reports TPG Post and OPTA calculations

Figure 32:

Percentage of delayed letters in the Netherlands (standard overnight service) by TPG Post.



Source: Concession reports TPG Post.

Little mail delivered late

Another quality parameter is the period of time required for the delivery of individual letters and bulk mail up to 100 grams. An average of 95 percent of the letters must be delivered by the next day. In 2004 this average was 96.5 percent, once again an improvement over the previous years. ●

Table 1:

Number of post offices with complete, virtually complete and limited concession range.

	Reported			Legal minimum requirement per 1 Jan 2006
	2002	2003	2004	
Complete mail concession range	1239	1169	1133	902
Virtually complete mail concession range	599	763	916	-
Limited mail concession range	264	167	63	-
Total	2102	2099	2112	2000

Source: TPG Post reports.



“OPTA tends to stare too long at information and figures from one party, and then things go wrong. Stop those exclusive KPN consultations and invite all market parties for informal discussions! We should be able to talk and think at the same time and in the same manner as KPN. The results of negotiations with KPN should not be presented as the starting point for discussions with market parties. In that case views have already been pretty definitely formed and there is no turning back. It is difficult to sow in pastures made of nearly hardened concrete. The alleged business confidentiality at KPN is considered more important than it should be. What we want are more relaxed talks with OPTA. We are glad that Commission chairman Fonteijn is agreeable and has already planned a series of talks. But we have quite a way to go yet.

We can clearly see that OPTA is trying harder to be more transparent. I also think OPTA has become faster than ever before. Minister Brinkhorst was right in my view when he said he preferred one decision to indecision. Speed is of eminent importance. Who benefits from postponements? That should be an important indicator for OPTA. Market parties do not start legal proceedings

just for fun, however. Quality of decisions will improve if OPTA does more to obtain information from all parties involved. That will mean there is less need for legal proceedings. Why doesn't OPTA present draft decisions

“OPTA has become faster and more transparent, but it needs to demonstrate more clearly that it has listened to the market.”

to the market before making a formal decision? Evident errors and misunderstandings could be immediately remedied and aspects they forgot to include could be identified. That is how the Belgian OPTA works, and it works well. I believe it would make decision making more effective.

OPTA is not making sufficient use of its feelers. During consultation rounds you need to show that you have listened to the market. Preferably, of course, by including contributions from the market in the decision making, but they could also issue memoranda of findings clearly explaining all of the arguments presented and the importance they have been assigned. OPTA's business economic level should also be improved. It would be wise for OPTA to appoint a Chief Economist in keeping with the recent NMa appointment. Misunderstandings with disastrous consequences are often simply caused by a lack of consulted expertise.”

Appendices

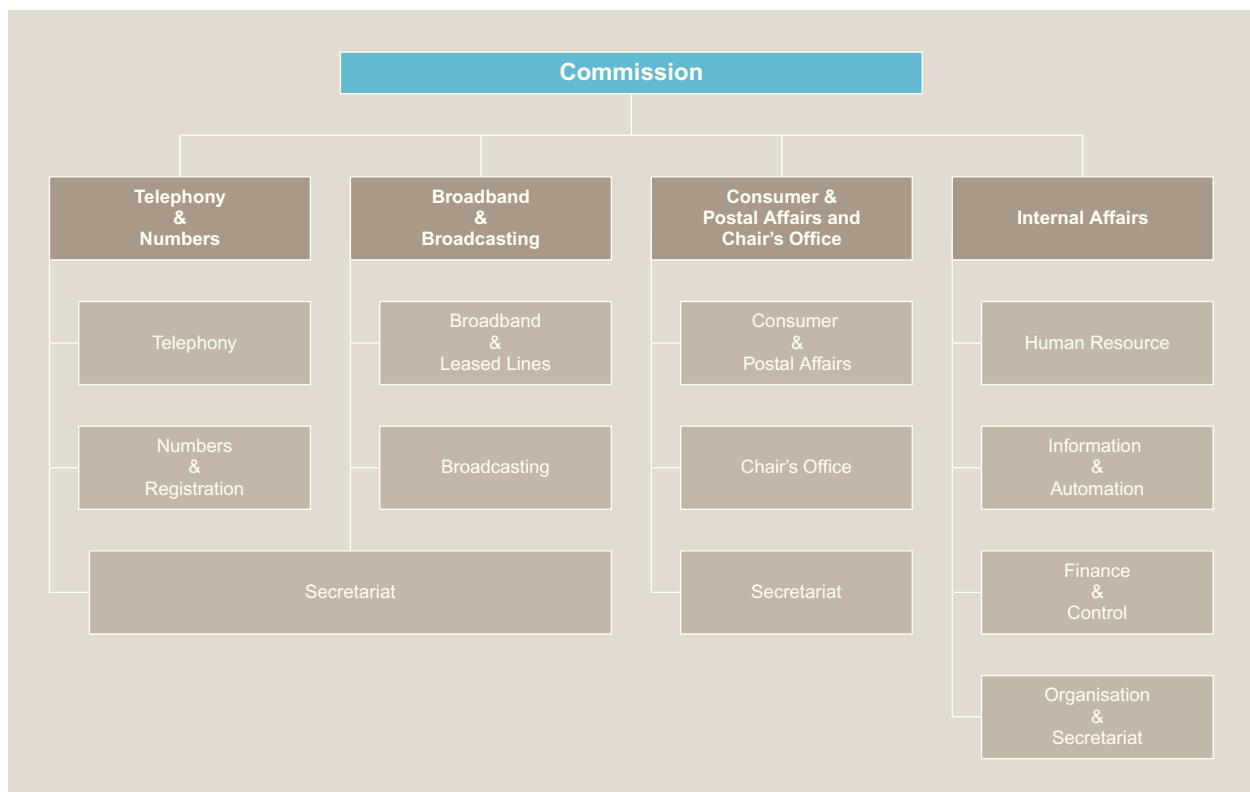
0050

Organisation

In performing their tasks and exercising the authority assigned by law, the OPTA Commission members are assisted by content experts and other support personnel. OPTA's internal organisation was extensively modified in September 2005 to ensure better alignment with the market dynamics and the revised regulatory framework. OPTA's former structure had existed since its establishment in 1997 and no longer sufficed. The organisational structure is now based on a market model and the departments are divided according to market sectors. This

means that most of the tasks formerly assigned to the departments Strategy & Communication and Legal Affairs are now assigned to line departments. As a result, the legal professionals, economic and technical regulation staff are involved in on-going cases from their very beginnings and competition problems are addressed with a multi-disciplinary approach by all departments. The Ministry of Economic Affairs is OPTA's parent department.

Organisation structure diagram



Supervisory board

In 2005 the OPTA Commission consisted of three independent experts from various disciplines: L.Y. Gonçalves – Ho Kang You, H.A. van Karnebeek, vice-chairman and J.C. Arnbak, chairman. On 1 September 2005 Mr. C.A. Fonteijn succeeded Mr. Arnbak as Commission chairman. The other two Commission members will pass on their positions in 2006. ●

Tasks and competencies

OPTA is an independent executive body that effectuates laws and rules determined by the politicians. This pertains to the Telecommunications Act, the Postal Act, the relevant regulations at lower levels associated with these Acts, and European regulations. 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. A summary of OPTA's legal tasks and competencies is given below.

Market analyses and proportionality

OPTA is required to define markets, assess whether there are parties with significant market power (SMP) on a particular market, and determine whether - and if so, which - ex ante (advance) obligations should be imposed on such parties to prevent abuse of market power. OPTA's premise in these activities is mild regulation where possible, strict where necessary (the principle of proportionality). Thus OPTA places focus on deregulation, with emphasis on customisation and mildness.

In determining significant market power, OPTA considers not only the market share, but also price developments, opportunities for entrants to the market and shifts in market shares. All national regulatory bodies in the European Union Member States (European OPTAs) are to perform market analyses prior to assigning obligations to parties with significant market power.

Resolving disputes between market players

OPTA is authorised to settle disputes between market players. These are primarily disputes in the area of access to networks, interoperability and interconnection as well as the conditions and tariffs to be agreed upon by the parties.

Regulation and law enforcement

OPTA monitors compliance with the Telecommunications Act and the obligations imposed on market parties, taking action in the event of non-compliance. 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. OPTA can also apply customised enforcement and impose alternative measures where necessary.

Price regulation and tariff measures

Providers with significant market power are often required to apply cost-oriented interconnection tariffs. This means that the tariffs must be based on the underlying costs. In order to demonstrate that the tariffs are in fact cost-oriented, these companies must compile a cost allocation system. OPTA approves these systems. In some markets (voice telephony and leased lines), OPTA also moderately regulates the end-user tariffs. This ensures that providers with SMP do not exercise that power at the expense of the end-user.

Issuing telephone numbers

OPTA is responsible for issuing numbers, both all regular telephone numbers as well as what are known as information numbers. This is done on the basis of numbering plans that indicate the designated use of each telephone number. Existing and new providers can request these numbers from OPTA, often in blocks of a thousand numbers. OPTA also reserves and manages numbers for longer-term number requirements and can auction numbers. OPTA keeps a public register of the numbers issued (can be consulted via www.opta.nl). This is how OPTA provides insight into the numbers that have been issued and those still available.

Registration of market parties

Parties that are active on the market for electronic communications must report their activities to OPTA and OPTA registers these parties. OPTA uses this registration and the information requested to effectuate the Telecommunications Act, e.g. to collect information for its market analyses. The list of registered companies can be consulted via the OPTA website.

Privacy protection

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. 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. Electronic signatures are a secure method for formally signing digital documents and forms. Organisations need certificates in order to use electronic signatures. To guarantee the safety of electronic signatures, OPTA regulates all organisations located in the Netherlands that want to provide these certificates to the public or issue them. These certification providers must register with OPTA.

Universal service provision

In the postal market, OPTA must safeguard the provision of a certain minimum amount of services (the universal service). In doing so, OPTA regulates the tasks performed by concession holder TNT Post Groep (TPG). In particular, this involves regulation of the tariffs and quality of TPG services on markets in which it holds a monopoly (the concession). OPTA also regulates the administrative separation within TPG between activities that are performed in competition and activities in which TPG holds a monopoly position. For fixed telephony, OPTA regulates compliance with certain minimum obligations assigned to KPN, e.g. the supply of connections for fixed public telephony, the availability of selective number blocking, the provision of an itemised telephone bill and the supply of a subscriber information service.


Internet security and consumer protection

OPTA regulates the security of internet services and is responsible for consumer protection. To safeguard consumer trust in the internet, OPTA takes action against undesirable practices such as spam and auto dialers. To increase consumer awareness, OPTA provides information and recommendations.

OPTA stimulates consumer protection on communications markets if the market mechanisms are insufficient, for example by responding to consumer queries.

Authorities

In exercising its tasks, OPTA's authorities include the following:

- Requesting that companies supply certain information, for example the costs incurred for a certain service.
- Dispute resolution and imposing obligations in order to resolve disputes between companies.
- Imposing fines to a maximum of € 450,000.00 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. 

National and international cooperation

In exercising regulation and enforcement on the telecommunications and postal markets, cooperation with other institutions, organisations and authorities inside and outside the Netherlands is essential. OPTA participates in a large number of cooperative and consultative organisations in order to contribute to regulation and enforcement on the national, European and global levels. This appendix specifically explains a number of cooperative relationships and summarises related organisations.

National

Ministry of Economic Affairs

Cooperation with the Ministry of Economic Affairs is vital. As a regulator, OPTA is responsible for the 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 issue general policy directives for OPTA. The Ministry does not deal with individual disputes 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.

Netherlands Competition Authority (NMa)

The NMa and OPTA continually maintain intensive contact. Partly with the objective of limiting double requests and ensuring that NMa and OPTA do not both address the same matters without one another's knowledge, a cooperation protocol applies. The premise is that OPTA takes responsibility as long as the dispute can be resolved within the Telecommunications Act. In addition to clear guidelines for the division of tasks, this protocol also ensures that the two parties can utilise one another's expertise and involve one another in relevant merger and takeover cases, market definition issues and the definition of positions of power in the areas of post and telecommunications. Prior to the publication of its draft market analysis decisions in electronic communi-

cations, OPTA requested advice from the NMa regarding its definition of markets and the existence of market power.

Data Protection Authority

The Data Protection Authority regulates the use of personal data and safeguards the privacy of citizens based on legislation such as the Personal Data Protection Act. Both OPTA and the Data Protection Authority are authorised to protect personal life and the processing of personal data within the electronic communications sector. It is for this reason that the two regulators have made agreements regarding their authority in this area. The cooperation protocol addresses all privacy-related issues in the Telecommunications Act and includes agreements on how to deal with spam. The two regulators uniformly interpret the relevant legal concepts from the Personal Data Protection Act and the Telecommunications Act. Where necessary, they take collective action against violations of the privacy stipulations in the Telecommunications Act.

International

OPTA consults intensively on regulation within an international, especially European framework. The European regulatory framework focuses on harmonisation of the European internal market. International cooperation is useful not only for exchanging know-how and experience, but also for collectively drafting workable, effective regulatory instruments.

European Commission

An important factor in the market analysis process was cooperation with the European Commission. The Commission must approve OPTA's draft decisions, market definitions and designation of market power. Each year the European Commission publishes an implementation report on the stage of regulation in the European Union Member States. The Commission commenced revision of the European regulatory framework in 2005.

European Regulators Group

The European Regulators Group (ERG) is a cooperative organisation of national regulators within the European Union and the European Commission in the area of electronic communications. The ERG advises and assists the Commission in achieving the European internal market for electronic communications. The ERG has steering groups for fixed telephony, mobile telephony, international roaming, regulatory accounting (including separate accounting and cost allocation systems), significant market power (SMP), end-user topics and market statistics. These cooperative frameworks generate working documents and principle statements that direct the individual countries in their regulation, including in the market analyses.

Combating spam

Specifically in the area of combating spam, OPTA collaborates intensively with other European combatants. In most countries, this is not the regulator with which OPTA already cooperates within the ERG. OPTA also exchanges information with the Federal Communications Commission and the Federal Trade Commission in the United States.

Cooperation in the postal market

OPTA informally consults with the post regulators in the United Kingdom, Germany, Sweden and Norway in the Informal Post Regulators Group with reference to promoting the liberalisation of the European market. In this consultation, problems and expertise are exchanged regarding matters such as entry barriers for newcomers on the market. In 2006 the European Commission will finalise policy premises for the liberalisation of the postal market in 2009, which will probably result in more necessary alignment in Europe with reference to post matters.

Numbering and numbers

Other countries in Europe are addressing the same numbering issues as the Netherlands. Together with the Ministry of Economic Affairs, OPTA therefore participates in the Steering Group Naming, Numbering and Addressing (NNA), part of the European Conference of Postal and Telecommunications Administrations (CEPT). All 45 European countries are members of the CEPT. NNA plays an advisory role for the European Commission and the ERG. In the discussions on numbering for VoIP, for example, the ERG integrally adopted the NNA's viewpoint. ●

Related organisations

The following list summarises related organisations and their acronyms.

Contact Network of Spam Authorities (CNSA): European steering group of organisations that enforce spam prohibitions in EU countries.

Data Protection Authority (CBP/DPA): independent administrative body that regulates the use of personal data and safeguards the privacy of citizens.

Directorate General for Energy and Telecom (DGET): Directorate of the Ministry of Economic Affairs responsible for regulations and policy in the area of electronic communications and post. Stimulates matters including the availability and sound use of high quality electronic communications networks.

European Commission (EC): formulates policy and regulations for the European Union regarding electronic communications and post.

European Regulators Group (ERG): cooperative forum of the European Commission and national regulators within the European Union in the area of electronic communications.

Forum of Electronic Signatures Supervisory Authorities (FESA): forum of European regulators in the area of electronic signatures.

Forum for Interconnection and Special Access (FIST): forum established at OPTA's initiative for market parties for consultation on interconnection and special access.

Stichting Geschillencommissie voor Consumentenzaken (Foundation for Consumer Complaints Boards, SGC): umbrella organisation of appeals commissions for disputes between consumers and companies such as telecommunications providers, cable operators and post companies.

Stichting Onafhankelijke Commissie Informatienummers (Independent Commission Information Numbers Foundation, OCI): OCI deals with complaints, provides information about telephone information services (0800-/090x-numbers) and regulates the use of information numbers by providers of information services and platform providers.

Independent Regulators Group (IRG): cooperative group of European Regulators in the area of electronic communications in which non-EU member states also participate.

London Action Plan: international cooperative forum of private spam combatants and government institutions.
Dutch Media Authority: independent administrative body that regulates compliance with the Media Act.

Ministry of Economic Affairs (EZ): ministry that promotes sustainable economic growth in the Netherlands; its responsibilities include regulation in the area of electronic communications and post.


Netherlands Competition Authority (NMa): independent administrative body that regulates compliance with the Competition Act. Enforces the prohibition against cartels and abuse of positions of economic power, and evaluates mergers and takeovers.

Organisation for Economic Co-operation and Development (OECD): international think tank for economic policy.

PKI Overheid (Public Key Infrastructure for the government): government body that is to enable reliable electronic communication with and within the government.

Rotterdam District Court: after OPTA has rendered a decision on an objection, an interested party can submit an appeal to the District Court of Rotterdam.

Radiocommunications Agency (AT): responsible for effectuating and enforcing policy of the Ministry of Economic Affairs in the domain of wireless telecommunications. Responsible for the management of the spectrum of radio frequencies in the Netherlands.

Trade and Industry Appeals Tribunal (CBb): the highest judicial authority to which appeals can be submitted regarding OPTA decisions. 

Summary market analyses: markets, SMP parties and obligations

Cluster	Decision	Relevant market
Fixed telephony	Retail	Low capacity access to the fixed public telephone network
		High capacity access to the fixed public telephone network
		Local/national calls
		International calls
		Fixed to mobile calls
		Narrowband data traffic (dial-up Internet)
		Calls to information services
		Calls to personal assistant services
	Call origination	Carrier(Pre)Selection
		Call origination to 06760 numbers
		Call origination to information and entertainment numbers (0800/090x)
		Call origination to 082 numbers (Private Virtual Networks)
	Call transfers	Local call transfers
		Interregional call transfers
		Transit call transfers
	Call termination	Call termination on geographical numbers
		Call termination on 088
		Call termination on 084/087
		Call termination on 112
	Wholesale access	Low capacity access
		High capacity access
Mobile telephony	Access and call origination	
		Access and call origination on public mobile telephone networks
	Call termination	Call termination on the mobile network of KPN
		Call termination on the mobile network of Vodafone
		Call termination on the mobile network of T-Mobile
		Call termination on the mobile network of Orange
		Call termination on the mobile network of Tele2
Broadband	ULL	ULL
	Wholesale broadband access	Low quality wholesale broadband access
		High quality wholesale broadband access

SMP-party	Obligation(s)
KPN	Transparency / non-discrimination / cost orientation (upper limit) ¹
KPN	Transparency / non-discrimination / cost orientation (lower + upper limit) ¹
KPN	Transparency / non-discrimination / cost orientation (lower + upper limit) ¹ / CPS (not for VoB)
-	C(P)S (not for VoB)
KPN	Transparency / non-discrimination / cost orientation (lower + upper limit) ² / CPS (not for VoB)
KPN	Transparency / non-discrimination / cost orientation (lower + upper limit) ¹ / CPS (not for VoB)
KPN	Transparency / non-discrimination / cost orientation (lower + upper limit) ³ / CPS (not for VoB)
KPN	Transparency / non-discrimination / cost orientation (lower + upper limit) ¹ / CPS (not for VoB)
KPN	⁴
KPN	Access / reference offer / non-discrimination / cost orientation (cap) / separate accounting
KPN	Access / reference offer / non-discrimination / cost orientation (cap) / separate accounting
KPN	Access / reference offer / non-discrimination / cost orientation (cap) / separate accounting
KPN	Access / reference offer / non-discrimination / cost orientation (cap) / separate accounting
KPN	Cost orientation (lower limit)
KPN	Access / transparency / cost orientation (discount increments prohibited)
KPN	Access / reference offer / non-discrimination / cost orientation (cap) / separate accounting
Other parties	Access / transparency / cost orientation (delayed reciprocity)
KPN	Access / reference offer / non-discrimination / cost orientation (cap) / separate accounting
Other parties	Access / transparency / cost orientation (delayed reciprocity)
KPN	Reference offer / non-discrimination / cost orientation (cap) / separate accounting
Other parties	Transparency / cost orientation (delayed reciprocity)
KPN	Access / reference offer / non-discrimination / cost orientation (cap) / separate accounting
KPN	Access (WLR) ⁵ / reference offer / non-discrimination / retail minus / separate accounting
-	-
-	- ⁷
KPN	Access / transparency / non-discrimination / cost orientation (BULRIC)
Vodafone	Access / transparency / non-discrimination / cost orientation (BULRIC)
KPN Mobile	Access / transparency / non-discrimination / cost orientation (BULRIC)
Orange	Access / transparency / non-discrimination / cost orientation (BULRIC)
Tele2	Access / transparency / non-discrimination / cost orientation (host network tariff is the upper limit)
KPN	Access / reference offer / non-discrimination / cost orientation (cap) / separate accounting
-	-
KPN	Access / reference offer / non-discrimination

¹ No upper limit for VoB.² No upper limit for semaphony and VoB.³ No upper limit for VoB, no cost orientation for 0800.⁴ No CPS for VoB.⁵ No WLR limit for VoB.⁶ Cost orientation for services without retail tariff.⁷ Previous SMP-designation of KPN Mobile withdrawn.

Summary market analyses: markets, SMP parties and obligations

Cluster	Decision	Relevant market
Leased lines	Leased lines	Retail national analogue leased lines
		Retail national leased lines <2Mbit/s
		Retail national leased lines 2 Mbit/s
		Retail national leased lines >2Mbit/s
		Retail international analogue leased lines
		Retail international leased lines <2Mbit/s
		Retail international leased lines 2Mbit/s
		Wholesale terminating segments of leased lines <2Mbit/s
		Wholesale terminating segments of leased lines 2Mbit/s
		Wholesale terminating segments of leased lines >2Mbit
		Wholesale trunk segments of leased lines
Cluster	Draft decision	Relevant market
Broadcast (cable)	Wholesale	Wholesale market for free coverage area of UPC
		Wholesale market for free coverage area of Essent
		Wholesale market for free coverage area of Casema
		Wholesale market for free coverage area of Multikabel
		Wholesale market for free coverage area of Delta
		Wholesale market for services coverage area of UPC
		Wholesale market for services coverage area of Essent
		Wholesale market for services coverage area of Casema
		Wholesale market for services coverage area of Multikabel
		Wholesale market for services coverage area of Delta
Broadcast (ether)	Wholesale	Wholesale market for terrestrial transmission of frequencies
	Retail	Retail market for the supply of free transmission area of UPC
		Retail market for the supply cable transmission in the coverage area of Essent
		Retail market for the supply of free transmission area of Casema
		Retail market for the supply of free transmission area of Multikabel
		Retail market for the supply of free transmission area of Delta
		Retail market for the supply of free transmission area of other cable operators

SMP party	Obligation(s)
KPN	Service provision obligation / non-discrimination / transparency
KPN	Unbundling / non-discrimination / transparency / tariff regulation (upper limit / safety cap) ⁸
-	-
-	-
KPN	Service provision obligation / non-discrimination / transparency
-	
-	
KPN	Access / non-discrimination / reference offer / cost orientation (WPC variant 2) / separate accounting
KPN	Access / non-discrimination / reference offer / cost orientation (WPC variant 2) / separate accounting
KPN	Access ⁹
-	
SMP party	Proposed obligation(s)
UPC	Access / transparency / non-discrimination / cost orientation ¹⁰
Essent	Access / transparency / non-discrimination / cost orientation ¹⁰
Casema	Access / transparency / non-discrimination / cost orientation ¹⁰
Multikabel	Access / transparency / non-discrimination
Delta	Access / transparency / non-discrimination
UPC	Access / transparency / non-discrimination / cost orientation ¹⁰
Essent	Access / transparency / non-discrimination / cost orientation ¹⁰
Casema	Access / transparency / non-discrimination / cost orientation ¹⁰
Multikabel	Access / transparency / non-discrimination
Delta	Access / transparency / non-discrimination
To be determined	To be determined
UPC	Unbundling of the freely accessible package of other services / transparency ¹¹
Essent	Unbundling of the freely accessible package of other services / transparency ¹¹
Casema	Unbundling of the freely accessible package of other services / transparency ¹¹
Multikabel	Unbundling of the freely accessible package of other services / transparency ¹²
Delta	Unbundling of the freely accessible package of other services / transparency ¹²
Appr. 50	Unbundling of the freely accessible package of other services / transparency ¹³

⁸ Term discounts are also prohibited.

⁹ Special, customised remedy for the continued provision of MDF Backhaul (termination period of 9 months, current ILL tariffs).

¹⁰ Cost orientation based on standing charge model, roughly speaking only the fibre-optic component of the network is to be allocated to transmission.

¹¹ Transparency refers to the composition of the tariff in terms of the transmission component and the content component. Retail analysis and obligations apply for a period of one year. During this year the maximum increase is the CPI (not imposed by OPTA). If parties do not act in compliance with this, OPTA can initiate an accelerated notification procedure to notify the issue to the EC.

¹² Transparency refers to the composition of the tariff in terms of the transmission component and the content component. Retail analysis and obligations apply for a period of one year. During this year the maximum increase is the CPI (not imposed by OPTA). If parties do not act in compliance with this, OPTA can initiate an accelerated notification procedure to notify the issue to the EC.

¹³ Refers to the composition of the tariff in terms of the transmission component and the content component.

Key figures

Law enforcement

Fines	8
Judicial penalties	2

Disputes

	Submitted	Conclusion (received in 2005)	Submitted (received prior 2005)
Interconnection	1	1 concluded	1 suspended from '03
Antenna site sharing	3	2 concluded	
		1 suspended	
Rights of way	8	7 suspended	
		1 withdrawn	
Cable access	2	2 withdrawn	
Total	14	14	1

Objections and appeals

Received in 2005		Results concluded objections	
objections	90	Withdrawn	52
appeals	75 ¹	With grounds	0
temporary provisions	9	Without grounds	43
fine decisions	8	Inadmissible	12
Objections reopened after decision in (final) appeal	17	Partly with, partly without grounds	4
Appeals reopened after decision in final appeal	1	Partly without grounds, partly inadmissible	1
On-going objections	30	Not processed	6
On-going appeals	80	Other	4
On-going temporary provisions	1	Total	122
On-going fine decisions	1		
Concluded in 2005		Results concluded appeals	
objections	122	Withdrawn	22
appeals	95 ²	With grounds	31
temporary provisions	9	Without grounds	22
fine decisions	8	Partly with, partly without grounds	1
		Inadmissible	17
		Other	2
		Total	95

¹ 22 with the court, 53 with the Trade and Industry Appeals Tribunal

² 68 with the court, 27 with the Trade and Industry Appeals Tribunal

Registration of market parties

Category	Situation as of 1.1.2005	Registration	Registration withdrawn	Situation as of 31.12.2005
Provider of a public electronic communications network	218	64	29	253
Provider of a public electronic communications service	213	106	38	281
Provider of relevant facilities	8	2	1	9
Provider of qualified certificates	2	1	0	3
Total	441	173	68	546

Numbers

Number decisions – division over type of decision

assignment	3298
withdrawal	2108
rejection	347
name change	349
processing suspended	20
Total	6122

Assigned, reserved and withdrawn information numbers

	Assigned	Reserved	Withdrawn
0800	1.338	121	2.035
0900	2.451	192	2.358
0906	580	20	1.331
0909	367	8	331
Total	4.736	341	6.055

Number decisions – division over information numbers, corporate numbers and other numbers

information numbers	5572
corporate numbers	353
other numbers	197
Totaal	6122

Number lotteries and urgent requests

Lotteries	4
Urgent requests	77

On four occasions, lots were drawn in 2004 for simultaneous requests for numbers with the same preference. All of these involved numbers that had been assigned earlier but returned to the number stock after a cooling-off period of one year. A total of 77 urgent requests were processed.

Number scarcity of relevant series (including assigned, reserved and numbers in cooling-off stock)

Destination	Number series	Status as of 1.1.2005	Status as of 31.12.2005	Percentage free numbers on 31.12.2005
Information numbers (mass calling and media numbers not included)	0900 short	1195	1445	40%
	0800/0906/0909 short	1765	1818	79%
	0800/0900/0906/0909 long	52131	52205	> 99%
Mobile numbers (x 1 million)	06	39,25	40,50	12%
Carrier selection numbers 4 digits	16xy	55	58	42%

Personnel and budget**Employment termination**

Employments terminated	3
Net total sum termination payments	€ 28.000

Personnel expenses

	2005	2004
Total salary sum ³	8.698	8.367
Average salary	48	47
Misc. personnel expenditures	333	455

Salary scale structure and number of employees

(reference date 31 December 2005)

Scale	Employees	Scale	Employees
3	2	10	13
4	6	11	21
5	10	12	25
6	8	13	20
7	15	14	9
8	4	15	5
9	8	16	2

Number and costs of official allowances and remuneration of Commission and associated members are listed in the annual accounts on page 58 and 59.

Personnel

	Personnel	Formation (fte)
1.1.2005	141	153
31.12.2005	148	150
Gemiddeld 2005	145	152

Complaints about OPTA

(Based on General Administrative Law Act, section 9)

Processed and rejected	2
Processed and resolved	3
Concluded with apology (inaccuracy correspondence address)	1
Repeat complaint, processing not re-opened	1
Total	7

³ including taxes paid, excluding allowances, excluding Commission

Terminology list

ADSL (Asymmetric Digital Subscriber Line): technology for rapid internet traffic over the telephone line with a difference (asymmetry) in the speed for downloading and uploading. The user can download data faster than he can upload data.

ADSL 2+: technical standard for a new and faster generation of broadband (ADSL).

(Auto)dialer: software program that redirects the normal internet connection via a toll number or an expensive foreign number, often without the consumer's knowledge.

Bit stream access: type of access for alternative providers to KPN's infrastructure for the supply of broadband internet connections.

Broadband (internet access): access to the internet via broadband infrastructures, e.g. cable, xDSL, fibre-optic. With a minimum download speed of 128 kilobits per second, broadband is faster than traditional internet via the regular analogue telephone line (narrowband internet access). Offers an uninterrupted internet connection and payment of a fixed sum per period irrespective of the number of minutes used.

Bundling: offering multiple products or services as a single product: the bundle.

Cable telephony: fixed telephony via the cable.

Carrier selection/pre-selection (CS/CPS): by selecting four or more digits, a telephone subscriber can redirect the call via an alternative telecommunications provider. With Carrier pre-selection, this is done automatically. Companies that offer carrier (pre-)selection use KPN's fixed network for their telephone services.

Co-location: providing space in the local exchange allowing parties (other than KPN) to obtain access to the local loop to the subscribers.

Competence management: system that provides insight into the skills and quality of employees so that they can be optimally developed.

Compliance program: internal code of conduct and activities involving integrity and responsibility that is to ensure that the companies and employees act in accordance with the law.

Concession (holder): TPG is concession holder and has been assigned by the government to provide the preferred services (concession) and other assigned services. The concession includes letters weighing up to 100 grams (through 2006). 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 asks interested parties to respond, in which its views are made known, intended decisions are announced and the issues being considered are explained.

Convergence: coming together of sectors, for example in the electronic communications sector where an increasing number of services can be provided over multiple types of networks using the same technology.

Corporate numbers (088 numbers): special telephone numbers for companies and institutions with multiple locations in the Netherlands, allowing all locations to be called via a single series of extensions (088- x xxx xxx). For fixed as well as mobile connections.

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

Deregulation: reducing or eliminating regulation measures and obligations.

Dialers: see '(Auto)dialers'.

Digital investigation network: network in support of investigating and combating spam, spyware and (auto)dialers.

Digital terrestrial television: digital television via the ether.

Draft decisions: tentative market analysis decisions that are notified. See also 'Market analysis' and 'Notification'.

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

Economic Analysis Team (EAT): OPTA steering group for improving the economic justification of OPTA products. Publishes Economic Policy Notes (EPNs) and

Regulatory Policy Notes (RPNs) and organises internal and external discussions on various topics.

Economics Network for Competition and Regulation (ENCORE): economic research network of the Ministry of Economic Affairs, the NMa and OPTA that focuses on issues including market organisation problems and that offers educational programs for employees.

Electronic Netherlands Identity Card (e-NIK): electronic passport accompanied by a qualified certificate with which an individual can identify him/herself and include an electronic signature.

Emerging market: new market with new services, products and/or technology.

End-users: consumers or other individual (business) users of services.

E-rating of websites: grading scale that provides users insight into the reliability and currency of various comparison sites.

Ex ante regulation: regulation in advance.

Expert group: consultation set up by OPTA to discuss and monitor issues with market parties, including progress and process of the market analyses.

Fee system: system for the annual determination of the fees charged by OPTA to market parties for its regulatory activities.

Fibre-optic (network): transmits information not as electronic pulses but as light pulses. Fibre-optic connections offer an enormous data capacity and have a higher bandwidth than coaxial or copper networks, which means that more information can be transmitted in a short period of time.

Fibre to the home: see 'Fibre-optic network'.

Fixed Terminating Access (FTA): termination of fixed telephony on another network.

Flat fee package: bundled tariff package, e.g. unlimited calls for a fixed fee per month.

GPRS (General Packet Radio Service): technique in the GSM network that makes it possible to send and receive more data than with GSM telephones. GPRS transmits data over the network in pieces so that it is used

more efficiently and can also transmit larger pieces of information.

GSM (Global System for Mobile Communications): European and North American standard for the mobile telephony network.

Independent Administrative Body (ZBO): an external organisation that is not subordinate to a Minister and that performs a certain government task independently. The Minister does retain some authority.

Industry groups: type of consultation between OPTA and market parties for issues including the development of tariff models for fixed and mobile telephony.

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

International roaming: see 'Roaming'.

Internet telephony: see 'VoIP'.

Interoperability: alignment of various networks and services with one another. Market parties are obligated to negotiate the mutual interconnection of their networks and to make telephony interoperable.

IPTV: digital television via broadband.

IP-VPN (Virtual Private Networks): telephony networks in which the traffic of a party is protected so that guaranteed capacity is available.

ISP (Internet Service Provider): provider that provides an internet service to consumers and other end-users.

Leased line or WLR: A transparent communication connection between two points. A leased line can be used by companies to connect separate sites or offices. For telephone lines used extremely intensively (e.g. payment terminals) it can be useful to use a leased line rather than a telephone connection switched in the normal fashion.

Line sharing: see 'Unbundled access'.

Market analysis: the definition of relevant markets in accordance with the principles of general competition law. If one or more parties on a defined market are so strong that they can act independently of competitors, OPTA imposes fitting obligations in order

to stimulate competition on that market. See also 'SMP' and 'Proportionality'.

MMS (Multimedia Messaging Service): sending messages with text, photos, images and sound fragments from one (mobile) telephone to another. See also 'SMS'.

Mobile Terminating Access (MTA): termination of incoming traffic on a mobile network.

Mobile Virtual Network Operator (MVNO): independent mobile service provider without its own network that uses the network of another mobile provider to reach its customers.

Narrowband internet: traditional use of internet (dial-up) via the regular analogue telephone line. See also 'Broadband(internet access)'.

Notification: submission of a market analysis to the European Commission for comment before it makes a final decision. See also 'Market analysis'.

Numbering plan: plan by the Ministry of Economic Affairs indicating how (telephone) numbers are categorised, their intended use (e.g. geographic numbers) and which series of numbers are available. OPTA effectuates the numbering plans.

Number portability: taking a telephone number along when switching to a different provider.

Number retention: see 'Number portability'.

Obligations: rules defined to regulate behaviour of parties with significant market power, such as cost orientation, tariff regulation and price cap.

Originating tariffs: tariffs for the retrieval of a telephone call by one provider from a subscriber with a different provider. See also 'Terminating tariffs'.

Phishing: spam sent to fraudulently obtain personal data, e.g. bank account numbers.

Pre-paid subscription: mobile balance for calls that is paid for in advance and that makes a limited number of call minutes available, instead of a continuous subscription.

Price cap: regulation measure that defines an annual increase or decrease in the price of a certain service for a longer period.

Price squeeze: occurs when KPN's end-user tariff is lower than the price competitors must pay to KPN in order to provide the same service. When the difference is too small, the company does not make enough profit to compete with KPN: the competitor is literally caught in a squeeze.

Procedural regulations Enforcement and Disputes

OPTA (PHGO): regulation for all requests for dispute settlement or enforcement by virtue of the Telecommunications Act. Describes matters such as the material and formal conditions to be satisfied by a dispute request.

Proportionality: imposing fitting, justified and proportionate obligations on market parties by virtue of the Telecommunications Act. See also 'Market analysis'.

Retail: end-user market, e.g. the sale of services to consumers by market parties.

Roaming: mobile calling in another country from a foreign network to a network in the Netherlands. The various providers charge (high) costs for use of the various networks.

Satellite TV: television reception via the satellite (using an antenna dish).

Selectability: the availability of telephone numbers and the accessibility of services related to the use of telephone numbers, for some services not always self-evident. OPTA stimulates the selectability of services.

Service provider: see 'ISP'.

Significant market power (SMP): the economic position of power held by a market party giving it, alone or in combination with other companies, the power to act to a significant degree independently from its competitors, customers and ultimately the consumers. A large market share can indicate the existence of SMP. An SMP designation involves obligations.

SMS (Short Message Service): sending text messages from one (mobile) telephone to another. See also 'MMS'.

Spam: unrequested messages via e-mail, mobile telephone (SMS or MMS) or fax, often advertising

messages and messages for charity or based on an ideology.

Spyware: espionage software that makes information accessible to third parties or that sends data via the internet without the user's knowledge. Registers user data without permission.

Telco-telco-migration: switching by a customer from one DSL provider to another.

Terminating tariffs: tariffs that a provider charges for terminating a telephone call on its network.

Traffic light model: KPN is no longer required to request advance permission from OPTA for all tariff proposals or discounts, but can determine itself which tariff proposals are acceptable based on criteria. Based on this system, certain tariff proposals from KPN are absolutely unacceptable (red), some will always be accepted (green), and other proposals may only be implemented after approval by OPTA (yellow).

Transit tariff: tariff that may be charged by a telecommunications provider to parties wanting to use its network for traffic to a third provider.

Triple play: bundling three products – e.g. a broadband internet connection combined with fixed telephony (internet telephony) and television.

Trusted Third Party (TTP): certification service provider that issues electronic signatures for use in doing business via the internet. An electronic signature accompanied by a qualified certificate has the same legal status as a handwritten signature.

UMTS (Universal Mobile Telecommunication System): third generation mobile telephony that makes mobile broadband communication possible. See also 'GSM'.

Unbundled access: manner in which KPN enables other providers to offer telephony and broadband services via KPN's local loop network. The local loop (the copper wires from a home to the local exchange) is operated by one of KPN's competitors with unbundled access. With complete unbundling, the competitor takes over the entire connection; with shared access (line sharing) the competitor shares the connection line

with KPN and KPN continues to offer its telephone service.

Universal service: the bundle of services that politicians believe must be widely available to society at a certain price and quality, and that the former monopolist is required to supply.

VBTB system: from policy budget to policy accounting: system based on the formulation of clear policy objectives to be achieved in one 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.

VDSL: technical standard introducing a new and faster generation of broadband (ADSL).

Voice over IP/DSL (VoIP, VoB, internet telephony): calling via the internet protocol and types of voice telephony over data networks, e.g. the internet.

Wholesale: wholesale market, e.g. for the sale of services between market parties. KPN charges wholesale tariffs to its customers for the use of capacity on the KPN network for telephone traffic, data traffic and leased lines

Wholesale Line Rental (WLR): see 'Leased line'.

Wholesale tariffs: see 'Wholesale'.

WiFi: technology that allows end-users to make wireless use of the internet via local contact points called hotspots.

WiMAX: next generation of WLL with further reach than WiFi. See also 'WLL' and 'WiFi'.

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

xDSL: see 'ADSL'. 

Interviews

With gratitude to the persons who were willing to grant interviews.

Josée van de Berg, Tele2/Versatel

Paul Frissen, Universiteit van Tilburg

Jos Huigen, OPTA

Klaske de Jonge, Consumentenbond

Jos Molenkamp, Casema

Ellen Oltmann, OPTA

Mark van Twist, Berenschot Procesmanagement

Colophon

Editors

OPTA

Photography

Hans Oostrum Fotografie

Design

Rob Schouten & Christine van Dijk

Grafic design

rooduijn bureau voor communicatie & design,
Den Haag

Printing

Rooduijn Vorm & Druk, Den Haag

Translation

TechText, Amsterdam

OPTA

Office address

Zurichtoren

Muzenstraat 41

2511 WB The Hague

Correspondence address

PO Box 90420

2509 LK The Hague

The Netherlands

Telephone: 070 - 315 35 00

Fax : 070 - 315 35 01

E-mail: info@opta.nl

Internet: www.opta.nl

The Hague, May 2006

© Copyright OPTA 2006

Copying sections from this publication is permitted,
provided the source is acknowledged.