



To  
Market Parties

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<b>Date</b>	<b>Subject</b>		<b>Enclosure(s)</b>
24 January 2007	All-IP: current situation and the future		1

Dear Sir/Madam

On 3 October the Commission (referred to throughout as the Commission) of the Independent Post and Telecommunications Authority of the Netherlands (OPTA) published its *All-IP Position Paper*.<sup>1</sup> This position paper announces the following future steps:

1. a start is to be made as soon as possible on new analyses for the market for unbundled access to the KPN's local loop network, the markets for wholesale broadband access and the market which is relevant for the provision of SDF backhaul;
2. the commencement of research into the business case for SLU;
3. the publication of a letter on the future steps which the Commission will definitely be taking as soon as possible following the expiry of the consultation period for the position paper;
4. the formulation of policy rules for the terms and conditions which KPN is required to satisfy, before it may proceed with the actual phasing out of MDF access;
5. the initiation of research within the framework of these policy rules into those activities which need to be carried out for the purposes of migration to SLU, and the timelines associated with these activities;
6. the assessment of the SLU reference offer (referred to throughout as the SLU RO) partly within the context of consultations held in the SLU industry group (referred to throughout as the SLU IG), which the Commission established, and in which KPN and other market parties are involved;
7. the commencement of research into the British regulatory model and its possible implementation in the situation prevailing in the Netherlands;
8. the Commission's investigation – in which the Ministry of Economic Affairs will be involved – of the

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<sup>1</sup> Reference: OPTA/BO/2006/202771. This position paper can be found on the OPTA website at [www.opta.nl](http://www.opta.nl) (subject: All-IP). A translation is available in the English section of the website.

possibility of market parties making arrangements with each other for the purposes of laying cables together when excavations are made.

The Commission wishes to use this letter to provide clarity about the situation pertaining to these future steps.

## **1. New market analyses**

The new market analyses that have been announced are being attended to. In a letter dated 20 December (reference: OPTA/BO/2006/203334) the market parties were informed about the process established by OPTA in this respect.<sup>2</sup> That letter stated that the Commission expects draft decisions to be published in the second quarter of 2007.

## **2. Examination of the business case for SLU**

Analysys Consulting examined the business case for SLU on OPTA's behalf. A number of market parties were also involved in this study. In view of the confidential business information contained in Analysys' final report, the Commission is still investigating how and when this report could be published possibly together with its underlying models. In anticipation of this please find enclosed an executive summary of this report.

## **3 and 4. Letter setting out future steps and policy rules**

### *A potential fully fledged alternative*

In its position paper the Commission presents what could be a fully fledged alternative for MDF access in view of analyses sourced from current market decisions, namely, the regulated provision by KPN of unbundled access to its sub-network (including related facilities, such as co-location) and SDF backhaul, and the temporary regulated provision by WBT to facilitate the further roll-out in those areas in which KPN does not yet offer SLU and/or SDF backhaul.<sup>3</sup>

### *Responses to the position paper*

In response to the position paper a large number of market parties have stated that the regulated provision of SLU and SDF backhaul cannot be expected to have such a major economic impact in the market, that it would present a fully fledged alternative for MDF access. As far as these parties are concerned, a significant roll-out to the sub-loop is not a realistic business proposition mainly because of the limited economies of scale that are to be achieved in relation to unbundling at the level of the

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<sup>2</sup> This letter may be found under *Marktanalyses breedband* after selecting *Update marktanalyses* on the OPTA website.

<sup>3</sup> See Section 4.3 of the position paper for a comprehensive description of this fully fledged alternative.

main distribution frame, and the additional investments which are required for any further roll-out.<sup>4</sup>

#### *Analysys' examination of the business case*

The study conducted by Analysys confirms what these parties are saying: for the time being the business case for SLU is of such a nature that the regulated provision of SLU and SDF backhaul cannot be expected to replace MDF access. In this respect Analysys acknowledges that a business case could be made for a more limited roll-out to the sub-loop with a view to connecting business end users, in particular. However, this would not in itself amount to a *fully fledged* alternative for MDF access.

#### *Commission's conclusion*

By setting out a fully fledged alternative in its position paper the Commission has sought to help the market obtain an insight into the potential findings of new market analyses based on current market decisions. The combination of the parties' responses and the study conducted by Analysys have now led the Commission to conclude that the new analyses are not likely to produce findings in the form of a set of obligations comprising the fully fledged alternative described in the position paper.

#### *The policy rules governing the conditions for phasing out MDF access*

In its position paper the Commission states that the ULL market decision is based on the premise that, in principle, access to facilities (regulated or otherwise) cannot be revoked once it has been granted, and that KPN is required to accede to any reasonable request for access. In the light of this the Commission deems that there are grounds for imposing conditions on KPN in the interests of MDF access clients, which KPN is required to satisfy, if MDF access is actually to be phased out.

In its position paper the Commission then specifies the conditions subject to which it will no longer reasonably require KPN to continue to provide MDF access. Through its position paper the Commission has consulted provisional views in this respect with the aim of incorporating the terms and conditions that are ultimately to be determined in policy rules.

#### *The Commission's conclusions*

Viewed against the background of the conclusion that the new analyses are not likely to produce findings in the form of a set of obligations which comprise the fully fledged alternative set out in its position paper, for the time being the Commission has decided not to proceed with the formulation of any policy rules.

After all, it will only be possible to allow KPN – subject to conditions – to revoke access once it has been granted, if there are sufficient guarantees to ensure the potential entry, continuity and provision of services by current MDF access clients. However, there is currently insufficient clarity as to the conditions subject to which the latter is to occur having in mind the conclusion drawn in respect of this fully fledged alternative. For this reason the Commission is of the opinion that it is currently not

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<sup>4</sup> The market parties' responses to the position paper can be found by searching within the theme of All-IP after selecting *News and Publications* on the OPTA website.

opportune to determine policy rules for phasing out MDF access.

In the period ahead the Commission will obtain some idea of potential solutions. In this regard, it will also examine the alternatives suggested by the parties for maintaining access. The Commission will involve market parties in this process. It will then examine to what extent it is opportune to publish policy rules and, if it is, at which point in time. The Commission anticipates that it will be possible to provide clarity about this at the end of February.

## **5. Investigation of period required for migration**

TNO Telecom has conducted an investigation on OPTA's behalf into those activities that will need to be carried out for the purposes of migrating to SLU and the timelines associated with them. A number of market parties were involved in this study. The relevant report has been or will soon be published on the OPTA website.

## **6. Assessment of the SLU RO**

The SLU RO which KPN has published, is currently being assessed by the SLU IG, which the Commission has established and OPTA is chairing, and in which KPN and other market parties are involved. Depending on the pace at which this occurs and the extent to which the market parties are able to reach agreement, the Commission anticipates that this assessment will already be completed in the first half of 2007.

## **7. Equivalence study**

A study conducted on OPTA's behalf by the British firm NERA, of the British regulatory model and its possible use in the situation prevailing in the Netherlands, is currently nearing completion. The Commission anticipates that this report will be published in mid-February.

## **8. Arrangements concerning 'laying cables together'**

The responses received by market parties to the position paper setting out the Commission's intention to examine to what extent it would be possible for market parties to make market-wide arrangements for laying cables together when excavations are made, are of such a nature that the Commission has decided not to accord them priority.

**In conclusion**

The Commission trusts that it has provided you with sufficient information. Should you have any questions in response to this, may we ask you to contact the contact person referred to above.

Yours sincerely

THE COMMISSION OF THE INDEPENDENT POST AND TELECOMMUNICATIONS AUTHORITY OF THE NETHERLANDS  
on behalf of the Commission

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