

06

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Foreword

2006 was the year of the consumer. Consumers switched from 'traditional' telephone calls to Internet *calling en masse*. Bundled services have become popular. A growing number of consumers can see the benefits of procuring various telecommunications services, such as telephony, Internet access and/or television from a single provider. They allowed themselves to be seduced by lower tariffs, more broadcasting channels and faster online speeds. This is what competition is ultimately all about: lower prices and greater choice. OPTA is working hard to promote competition by looking after consumers. Last year we again saw that switching inevitably involves difficulties. In addition, bundles create new switching thresholds. It is important that consumers are well-informed and are capable of acting independently in an increasingly deregulated market. It is for this reason that OPTA has established an information centre together with the Dutch Consumer Authority (Consumentenautoriteit) and Netherlands Competition Authority (NMa, Nederlandse Mededingingsautoriteit), known as the ConsuWijzer. This centre provides consumers with practical advice about their rights through a website and a telephone information service.

Providers resorted to substantial investments in 2006 in an effort to gain favour with consumers. Investments were channelled into new services and networks. Fibre-optic cable is especially popular. Apart from fibre-optic projects undertaken by mainly local businesses, KPN has announced that it will be upgrading a substantial part of the telephone network to fibre-optic

cable. OPTA welcomes these developments, although it is monitoring competition closely. Thanks in part to the access which market parties have to KPN's network, the Netherlands has one of the most competitive broadband markets in the world. Any negative effect which KPN's introduction of this new network may have on competition must be avoided as far as possible. This is why OPTA constantly pursued dialogue with KPN and market players during the past year in an effort to achieve the best solutions.

During the past year OPTA was closely involved in a review of the European regulatory framework as part of the association of European post and telecommunication regulatory authorities, the European Regulators Group (ERG). In this forum OPTA advocated a more coherent harmonisation of European regulation coupled with sufficient flexibility to take national differences into account. At the end of 2006, the ERG announced the establishment of a European office for the purposes of achieving its harmonisation objectives. The centre of gravity of regulation must remain with the national regulatory authorities, which are more familiar with the local situation prevailing than anyone else, and which have now acquired expertise over many years. Consequently, tailored solutions remain possible. This is crucial to OPTA's regulatory principle: flexible regulation where possible, strict where necessary.

After Dr. Mark de Jong took office at the beginning of 2006 and Prof. Ad Geelhoed in the autumn, the Commission returned to full strength during the year under

review. In the person of Prof. Geelhoed, a lawyer who hails from the European Court of Justice and public administration, and Dr. De Jong, an economist with years of experience in the telecommunications sector, the Commission possesses the economic, legal and administrative competencies which are required for the complex field in which OPTA operates. Dr. Annetje Ottow was appointed to serve as an associate member of the Commission during the year. Through her appointment I wanted to stress that OPTA feels that the legal quality of her work is important. She can provide the Commission and OPTA's staff with legal advice in her capacity as a leading telecommunications lawyer. The effectiveness of our regulatory work is central to this.

I remain utterly critical when examining the needs and benefits of OPTA's regulatory work and its organisation, as an assertive regulatory authority. After all, OPTA is largely financed by the market parties. The reduction of its budget, which OPTA initiated in 2006, will continue in the years ahead, although in this respect I do not wish to make any concessions with regard to the quality of our work. As such, OPTA is the only regulatory authority that is reducing its budget in spite of performing additional duties. I take pleasure in accounting for OPTA's work over the past year in this annual report. Several members of OPTA's staff also use this report to reveal the dilemmas OPTA faces in its everyday practice (regulatory and otherwise). In this way it will become clear to you how OPTA weighs up various interests and make decisions. ●

C.A. Fonteijn
Commission Chairman

Reader's guide

This document consists of two parts: an annual report (and the annual accounts) and a market monitor. In its annual accounts OPTA reports on its operations and results in 2006 based on its most important work and various occurrences. These accounts are structured in accordance with the principle of *from policy-based budget to policy-based accounting*: what OPTA sought to achieve in 2006, what it did achieve, and what it did to achieve this. The annual accounts answer the question as to how much expenditure is required to perform OPTA's workload and provide an insight into the organisation's financial affairs. Abbreviated annual accounts are included in the printed version of the report. OPTA refers you to its website – www.opta.nl – for the full version.

This annual report contains interviews with OPTA staff. Whereas OPTA allowed the outside world to comment on aspects requiring improvement in its four-yearly evaluation (the 2005 Annual Report) and developments affecting its regulatory work (*Vision 2007*), this year it is the turn of OPTA's staff. Their stories show how OPTA commits itself to qualitatively superior regulatory work, that it frequently has to contend with dilemmas when performing this work, and how in tackling these dilemmas it seeks to achieve an ideal solution together with the market.

Communications markets constitute a highly dynamic playing field in which much can change each year. OPTA's market monitor surveys developments in the markets encompassing telephony, broadband, leased lines, broadcasting, Internet safety and postal matters in 2006. The emphasis is placed on trends, developments affecting competition and the implications for end users in terms of price and quality.

OPTA's website www.opta.nl contains an explanation of frequently used terms and abbreviations (accessed through *Woordenboek*) as well as a breakdown of OPTA's powers and duties.

Vision and annual plan

This annual report constitutes part of the cycle of accountability which OPTA traverses during the year in order to keep the outside world informed about market developments, its view of them and its operations. OPTA publishes its outlook together with its annual plan in the autumn. This vision and annual plan are first debated in the market prior to publication. This means that OPTA reviews the past year (annual report and market monitor) in the spring and look ahead to the coming year (vision and annual plan) in the autumn.

Publication dates in 2007

- Publication of the *Annual Report and Market Monitor 2006*: May 2007
- Consultations on *Vision and Annual Plan 2008*: July 2007
- Publication of *Vision and Annual Plan 2008*: November 2007
- Publication of *Budget 2008*: December 2007

All of these publications can be obtained free of charge from OPTA (info@opta.nl) and can be found on OPTA's website – www.opta.nl – after they have been published.

Disclaimer

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Annual Report

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Top priorities 2006

In the past year OPTA strove to achieve the following objectives. OPTA has successfully undertaken action in relation to most of these priorities. OPTA's achievements

are summarised below along with a brief explanation. References are provided in the table to relevant parts of this annual report for further explanation.

Priorities and Objectives	Achievements
Implementation of market analysis decisions Aims: <ul style="list-style-type: none"> • OPTA will be responsible for the implementation and effectiveness of any obligations that are imposed. • OPTA will determine the nature of the obligations stipulated in its market analysis decisions. • OPTA will constantly monitor market developments in order to assess these decisions and to determine whether new market analyses need to be conducted. • OPTA will make a major contribution towards the European Commission's evaluation of recommendations concerning relevant markets. 	<ul style="list-style-type: none"> • OPTA adopted a number of executive decisions (concerning WPC and WLR, amongst other things) in order to implement market analysis decisions (see Chapter 1 and Section 1.1.3). • OPTA introduced a structural market monitor. The relevant information serves as the basis for new market analysis decisions and is supposed to reduce administrative expenses (see Section 1.1). • As part of the European Regulators Group OPTA is working hard on the review of the European regulatory framework, the presentation of a new recommendation concerning relevant markets, and greater harmonisation of regulation in Europe (see Section 1.2).
Implementation of legal procedures Aim: OPTA will deal with a large number of appeals and to a lesser extent provides provisional relief based on market analysis decisions and a revised system of fees.	<ul style="list-style-type: none"> • OPTA carried out thorough preparations for 58 appeals which market parties had filed against market analysis decisions (see Sections 1.1.1 and 1.3.2). • The revised system of fees occasioned a very limited number of objections (see Section 3.1.3).
Dispute arbitration Aim: OPTA will adjudicate disputes which market parties file with it in accordance with the law.	In 2006 market parties filed 12 disputes with OPTA, of which nine have since been adjudicated (see Section 1.3.1).
Conduct of economic and legal sector studies Aim: OPTA will conduct various sectoral studies to ensure a firm basis for its decisions. OPTA's Economic Analysis Team (EAT) will structure these activities in the form of substantive consideration and discussions with stakeholders (internal and external) concerning economic, legal and technical issues and principles. OPTA is also to establish a Legal Analysis Team (LAT).	<ul style="list-style-type: none"> • The Economic Analysis Team published an economic policy paper entitled <i>Is Two Enough?</i>, which deals with the conditions subject to which a market containing only two vertically integrated suppliers can exhibit effective competition. The EAT also conducted studies into issues relating to KPN's all-IP plans and into competitive relationships between copper and cable networks (see Section 3.2.1).

Priorities and Objectives	Achievements
	<ul style="list-style-type: none"> • OPTA established a Legal Analysis Team. This LAT analysed OPTA's dispute arbitration track record over the past eight years along with the judgments handed down by the District Court of Rotterdam and the Trade and Industry Appeals Tribunal (CBB) in this respect, so as to benefit from this in relation to future dispute arbitration decisions (see Section 3.2.1).
Enforcement of imposed obligations Aim: More explicitly than in the past, OPTA will be exercising its powers to enforce obligations that it has imposed, for example, in relation to its regulation of compliance with obligations based on market analyses.	<ul style="list-style-type: none"> • OPTA was involved in enforcement and regulatory work relating to the traffic light model for the regulation of KPN's retail services (see Section 1.1.3). • OPTA investigated and assessed the structure, existence and operation of KPN's compliance programme (see Section 1.3.2).
Promotion of Internet safety Aim: OPTA is committed to tackling spyware and will investigate how consumers and businesses can protect themselves against it.	<p>OPTA developed a usable method for tracking down and dealing with spyware. It was used in major investigations, which will result in the imposition of punitive measures in 2007 (see Section 2.3).</p>
Improvement of internal organisation Aim: OPTA is to develop adequate performance indicators and will fine-tune its administrative and accounting tools to enable management to guide the organisation on the basis of effectiveness and the relationship between direct and indirect expenditure.	<ul style="list-style-type: none"> • OPTA implemented improvements based on a legal evaluation and selected cases covering a series of pilot projects in which it worked precisely on improving transparency and process rationality (see Section 3.2.3). • OPTA's operations have been structured more effectively (see Chapter 3 and Section 3.1). • The budgeting and accountability system has been changed, cost-awareness has been raised, and indirect expenditure has been reduced. An interim evaluation of OPTA's internal organisation's effectiveness and operations produced a positive conclusion (see Sections 3.1 and 3.2).



Introduction

OPTA regulates compliance with the legislation and regulations applicable in the electronic communications and postal markets. OPTA acts when problems pertaining to competition occur in these markets and may impose obligations on market parties to promote ongoing competition or to protect the interests of end users. In this respect OPTA's motto is *flexible where possible, strict where necessary* (the principle of proportionality). OPTA focuses on deregulation and considers customised solutions and flexibility to be paramount. OPTA's mission dictates the performance of its duties:


"OPTA stimulates sustainable competition in the electronic communications and postal markets".

Duties

One of OPTA's specific duties is to delineate electronic communications markets and to determine which parties exercise significant market power (SMP). OPTA determines whether any obligations should be imposed on such parties in advance (*ex ante*) in order to prohibit conduct which inhibits competition.

OPTA also performs duties in relation to the protection of consumers and Internet safety. These aspects are becoming increasingly important for the development of the market. In addition to market analyses, regulation, enforcement and consumer protection, OPTA also performs a number of other duties, such as dispute arbitration, the registration of parties and the issuing of numbers.

Framework

OPTA is an independent executive body (IEB), which enforces legislation and regulations enacted by the legislature. These are the Telecommunications Act (*Telecommunicatiewet*), the Postal Act (*Postwet*) and relevant European and subordinate regulations. Political responsibility for OPTA is vested in the Minister of Economic Affairs, although OPTA is independent and makes its own decisions irrespective of any political or business interests. The Minister may issue general directives but may not intervene in individual cases. 

1. Market regulation

The bulk of the year under review was dominated by action taken to follow up market analysis decisions made in 2005. OPTA conducted analyses of a total of 19 different markets (those of mobile telephony, broadband and broadcasting, for example). Top priority was accorded to preparations for 58 appeals against market analysis decisions. In addition, emphasis was placed on the practical implications of the obligations which followed from these decisions. Examples of these are the precise determination of tariff ceilings, which KPN is required to observe or the conditions subject to which consumers can procure both telephone subscriptions and calls from a single provider.

Rapid developments in the electronic communications sector also played a crucial role in guiding OPTA's work in 2006. This was reflected in the manner in which OPTA regulated the market. For instance, OPTA devoted considerable attention to KPN's extensive restructuring plan, which has far-reaching implications for other market parties. Starting in 2010 it wishes to restructure its network and base its operations on the Internet protocol. As part of this all-IP plan KPN will replace its copper wire with fibre-optic cable right up to the street cabinets. This operation means that 1,350 telephone exchanges will be decommissioned, as will the point at which other broadband suppliers connect to the KPN network to provide their own services to customers. All in all, OPTA estimates that market conditions and the technological situation will change so fast, that it will need to conduct new market analyses already at the beginning of 2007.

Finally, OPTA was involved in its normal activities, such as enforcement in the electronic communications and postal markets, dispute arbitration, the issuing of numbers and the registration of suppliers.

1.1 Market analyses

One of OPTA's primary duties is to stipulate obligations for companies which hold significant market power (SMP) in advance (*ex ante*). It does this on the basis of market

analyses: research into the competitive relations prevailing in the various electronic communications markets. The obligations which it imposes, such as price regulation, non-discrimination and transparency, are designed to prevent a disruption of the market and any conduct which restricts competition. In OPTA's view, regulation is always synonymous with tailored-made measures: flexible where possible, strict where necessary. Whereas the emphasis had been placed on the finalisation of a series of market analysis decisions in 2005, 2006 was dominated by the further implementation of these decisions and more than 50 appeals which market parties filed against them.

“Regulation is tailor-made: flexible where possible, strict where necessary.”

A so-called structural market monitor commenced operation halfway through the year under review. OPTA identified the key information which it periodically needs to request from market players, while simultaneously allowing companies to keep their administrative workload to a minimum. The centralised and ongoing monitoring of key data is better able to ensure that OPTA is capable of keeping close track of market developments. In this way OPTA also has access to the information which it requires to serve as the basis for new market analysis decisions. The structural market monitor is expected to reduce the administrative workload. Because of the dynamics of the market and KPN's all-IP plans, OPTA had already introduced such a market monitor specifically for the broadband markets.

During the year under review OPTA already began to conduct a series of studies to obtain an explicit understanding of specific issues and dilemmas by way of preparation for the new market analyses which it will be performing in 2007. Examples of this include a study of the extent to and ease with which users switch providers,

one into the impact of bundled telecommunications services and another into competition in the broadcasting market and the need for regulation.

1.1.1 Appeals against market analyses

Appeals were filed against all of the market analyses: a total of 58. These market analysis decisions are vitally important to market parties, because they have a direct impact on business cases and market positions. Consequently, the relevant market interests are substantial: a minor change made to a decision taken by OPTA, such as an increase or reduction of tariffs, or an amendment of terms and conditions ordered by a court of law, can have

a significant impact on a business. Although OPTA does all in its power to consider all interests when weighing up matters, ultimately it has to come to its own conclusions based on the law. The importance of competition is paramount to OPTA and not the interests of an individual business. For this reason it is seldom able to satisfy all market parties. The latter have an interest in filing an appeal in an effort to secure a more favourable outcome for themselves. Moreover, any delay involved in an appeal is not always detrimental to market players. There are and will continue to be conflicting interests wherever electronic communications markets are regulated. After all, companies compete with each other. It is within the context

All IP: KPN's proposed network restructuring

KPN is planning to restructure its network so as to ensure that the entire network will be based on the Internet protocol by 2010. It estimates that this All IP operation will require investments of close to €1 billion. Once this has been completed, KPN envisages having a single broadband fibre-optic cable infrastructure which will enable KPN and other providers to offer all sorts of services, such as e-mail, voice mail, telephony and television.

All IP means that KPN's transmission network will be entirely based on Ethernet (the underlying IP network through which computers communicate with each other), through which exceedingly huge amounts of data can be transmitted. In this respect KPN will be replacing part of the copper wire remaining in the local loop with fibre-optic cable. In addition, KPN wishes to 'flatten' its current network by removing a functional layer from it. This layer comprises 1,350 local telephone exchanges. In this way KPN expects to cut its operating expenses and, in addition, the sale of various centres (buildings and infrastructure) will yield a substantial sum. In addition, all 28,000 street cabinets will need to be converted

and have equipment installed in them. KPN will then be able to use VDSL2 technology to offer consumers broadband connections of 50 Mb per second from the new street cabinets.

Once All IP has been fully implemented, alternative broadband providers will no longer be able to offer their services to consumers and companies through their current normal interface with KPN's telephone exchanges (unbundled access to KPN's local loop, also referred to as MDF access). This connection method has always been one of the pillars supporting OPTA's efforts to achieve infrastructure competition. Instead, these providers would be able to opt for KPN's open wholesale model, which would see the latter provide the entire infrastructure, while the alternative providers would only compete in relation to services (there would no longer be any infrastructure competition). Another option is for them to connect their networks to that of KPN at the level of the street cabinets (SDF access). The latter option would require them to invest heavily in expanding their networks, whether this takes the form of leasing infrastructure from KPN (backhaul) or not.

of this divergence that OPTA endeavours to guide the market, where necessary. In addition, it leaves as much as possible to the market itself and only intervenes as a last resort.

Not one of the parties filed an appeal against OPTA's far-reaching decision concerning wholesale tariffs for obtaining access to and using KPN's network, a decision that is valid for three years (WPC decision – [see also Section 1.1.3](#)). KPN and the market parties agreed with each other to refrain from any appeal, so as to ensure future certainty for a lengthy period of time. In this case security and clarity were ultimately more important to the various stakeholders, than the uncertain outcome of legal proceedings.

The Trade and Industry Appeals Tribunal (*College van Beroep voor het Bedrijfsleven*) handed down rulings in a number of cases in 2006. In some instances the Tribunal upheld OPTA's ruling but in other cases it did not. For instance, OPTA's decision to allow market parties to offer telephone subscriptions through KPN's fixed network in their own name was upheld, while its intervention in relation to expensive calls from landline to mobile phones was quashed by the Tribunal. However, most Tribunal rulings are only expected in 2007 and only then will it be clear which obligations will apply and which ones will not. Both OPTA and the market parties are required to spend lengthy periods awaiting such rulings, which inevitably causes uncertainty in the market. This has also occasioned uncertainty for OPTA when initiating market analyses in 2007.

1.1.2 All IP

In November 2005 KPN announced plans for a large-scale restructuring of its network. This process entails that its entire network will be based on the Internet protocol (IP) technology, that the move towards a fibre-optic network will continue and that all telephone exchanges will disappear. The proposed changes with a potentially far-reaching impact on the operation of market forces in

the electronic communications sector and on OPTA's regulatory work ([see the box](#)). Those broadband providers which compete with KPN will see one of their important gateways to the KPN local loop become redundant as a result: the main distribution frame (MDF) in the local exchange, also referred to as MDF access. To date, KPN's competitors have been exceptionally critical of these proposals. OPTA has to contend with a worrisome dilemma: should it accept technological innovation at any cost and approve the loss of a significant aspect of infrastructure competition due to the fact that KPN's competitors will lose their normal interface with its network?

“OPTA leaves as much as possible to the market itself and only intervenes as a last resort.”

OPTA has viewed it as its most important duty to provide clarity to the market parties and KPN as soon as possible, as to whether these plans are permitted under existing regulations. OPTA also wished to indicate what implications these plans would have for existing legal obligations. As long as the market parties face uncertainty in this respect, it will be difficult for them to draw up business plans or make decisions on investments. OPTA has invested a great deal of energy in developing a vision and position in relation to the All IP issue. It has closely involved those market parties with a vested interest in its work in this respect, and has engaged in frequent consultations with KPN, other providers, the Ministry of Economic Affairs and the European Commission. In addition, OPTA published two consultation papers as well as a constant stream of interim results and information about new developments on its website.

In its first consultation document, the Position Paper All IP, OPTA surveyed all of the relevant regulatory issues and dilemmas concerning All IP. Based on this OPTA asked stakeholders to assess whether its view

of the regulatory problems and provisional views were correct.¹ OPTA indicated that, in principle, it felt that KPN's innovation represents a major, favourable development, because it allowed a wider range of services and reduced prices. The most prominent regulatory issue which emerged was the need for a workable, fully fledged alternative for those providers who depend on MDF access (access at the network level which will disappear with the introduction of All IP) for the provision of broadband Internet services, amongst others. OPTA outlined how it currently envisaged the contours of such a fully fledged alternative and also dealt with those points requiring attention for the purposes of a transitional stage. All of the responses to this position paper and ongoing close contact with stakeholders clarified the dilemmas and issues to such an extent that OPTA was able to publish a second consultation paper in the autumn of 2006.

“All IP should not be allowed to produce a situation in which infrastructure competition actually ceases to exist.”

In its Position Paper All IP,² OPTA presented its latest views to the market along with the follow-up steps that it had fleshed out further. OPTA concluded that KPN's all-IP project and, in more concrete terms, the proposal to phase out MDF access constituted grounds for conducting a number of new market analyses in 2007. This would involve a new analysis of the market for unbundled access to KPN's local loop and the wholesale broadband access markets, as well as an analysis of the relevant market for transmission to the street cabinets. This position paper outlined a view of what form a fully fledged alternative to MDF access could take. By sketching the outcome of these market analyses OPTA wished to provide the market with some direction for its internal decision-making and consultations.

As far as a fully fledged alternative is concerned, OPTA indicated that the route which KPN itself proposed, namely, that parties only be provided with access through a so-called open wholesale model, would not suffice. It is through this open wholesale model that KPN envisages opening an all-IP network to other market parties at a later stage, but in such a manner that KPN would become the network company for all alternative providers and all that would remain in the way of competition between them would be confined to services. However, All IP should not be allowed to produce a situation in which infrastructure competition actually ceases to exist. According to OPTA, the type of fully fledged alternative which KPN has to offer market parties must therefore take the form of the provision of unbundled access to KPN's local loop at the level of the 28,000 street cabinets. After all, the all-IP plan provides for the removal of the network layer and the 1,350 local exchanges through which other market parties still connect to KPN's network. If the latter's competitors are to retain a fully fledged network, they will have to extend it to these 28,000 street cabinets (or some of them). Consequently, KPN will need to make provision for transmission to all of these 28,000 street cabinets (backhaul) as part of such a worthwhile alternative. In this respect OPTA would like to study the business case for and costs involved in the roll-out to the street cabinets by KPN's competitors. In addition, OPTA feels that the current 1,350 MDF access interfaces may only be phased out after a reasonable migration period of approximately two years. OPTA will also make this conditional on the depreciation of these competitors' initial investments in these locations based on a depreciation term of five years. The position paper mentions a number of courses of action and follow-up studies which are required in order to resolve the issues that have been identified.

Stakeholders also had the opportunity to present their views on the position paper. What was highly indicative in their response was that they strongly doubted whether

¹ Issue Paper, *KPN's Next Generation Network: All IP* of 22 May 2006.

² Position Paper, *KPN's Next Generation Network: All IP* of 3 October 2006.

the nature of the worthwhile alternative which OPTA had formulated would adequately address the consequences of phasing out the telephone exchanges.

KPN's all-IP plans and OPTA's position paper are receiving a great deal of attention in other European countries and from the European Commission. This is because the Netherlands seems to be one of the pioneers in this respect and similar developments are also expected to occur in other countries in the near future. Consequently, the Netherlands may be considered to be a test case as to how Europe is to deal with these new types of regulatory issues.

With regard to All IP see also the interview with Martijn Meijers on [page 18-21](#).

1.1.3 Market analysis decisions

A concise description follows below of the activities undertaken by OPTA in each market in 2006 for the purposes of conducting market analyses. As part of this, attention is devoted to the specific implementation of obligations in various executive decisions following the market analyses. This section also deals in greater detail with substantive issues, and with any dilemmas and considerations relating to them.

Broadband

Market parties have contested a number of different aspects of the two market analysis decisions on wholesale broadband access (WBA) and unbundled access at the wholesale level (ULL) before the Trade and Industry Appeals Tribunal. WBA concerns the relationship between providers and KPN in relation to the use of the latter's broadband network for the provision of ADSL. ULL involves unbundling (acquisition of) the local loop, which refers to the copper wire from the local exchange to every house through which broadband services can be provided.

The grounds for appeals filed by KPN, the Associatie van Competitieve Telecomoperators (ACT, Association of Competitive Telecommunications Operators) and

Tele2 against the ULL market analysis decision concern a difference of opinion with regard to the nature of the obligations imposed on KPN. One party feels that an obligation is not strict enough, whereas KPN considers it to be excessively so. For example, this is the case in relation to the minimum term of six months which KPN is required to observe before it can implement any change to the services it provides to a competitor. KPN feels that six months is too long and too inflexible, whereas ACT and Tele2 feel that this period is too short and argue that they require a longer period of time for preparations.

“The Netherlands may be considered to be a test case as to how Europe is to deal with these new types of regulatory issues.”

Only ACT and Tele2 have filed an appeal against the wholesale broadband access market decision, in respect of which they have contested the delineation of the market, the analysis of dominance and the obligations imposed. As such, both ACT and Tele2 concur with OPTA that KPN does not have significant market power in the market for low quality wholesale broadband access and consequently does not need to be regulated in this respect. The Trade and Industry Appeals Tribunal is expected to rule on both matters in the first half of 2007.

Leased lines

Market parties also contested the leased line market analysis decision on various grounds. Whereas KPN mainly contested the nature of the obligations, because it was dissatisfied with the fact that it was not permitted to grant some types of discounts in the retail market for low-capacity leased lines (< 2Mbit/s) for reasons concerning competition, the appeal filed by ACT was also directed against the delineation of the market and the analysis of dominance. According to ACT, a separate market for wholesale Ethernet connections needs to be defined. Another grievance raised by ACT concerned OPTA's move to base its mar-

ket analysis decision on the use of a so-called 'fibre map', which ACT believes does not paint an accurate picture of the potential supply of fibre-optic connections. The Tribunal is expected to hand down a ruling in the first half of 2007.

OPTA monitored KPN's obligation to observe a reasonable term of notice for its high-capacity leased line customers. A term of nine months was stipulated in order to provide its competitors with enough time to switch to an alternative. Based on information provided by market parties, it appeared that KPN was complying with its obligations. OPTA therefore assumes that the obligation which it has imposed is effective and gives KPN's competitors sufficient time to search for alternative solutions, if required.

Fixed telephony

Market parties filed appeals with the Trade and Industry Appeals Tribunal against all of the fixed telephony market analysis decisions. On 30 November 2006 the Trade and Industry Appeals Tribunal handed down a ruling on access to the fixed public telephone network, which was favourable to OPTA. This market analysis decision remained intact. Thanks to this ruling, KPN's obligation to lease fixed telephone connections to its competitors (wholesale line rental) remained unaffected, with the result that other market parties were able to present consumers with a single comprehensive telephony offer (both subscription and calls).

The Trade and Industry Appeals Tribunal is expected to rule on the wholesale markets for originating calls, call transit and terminating calls on the fixed public telephone network in the first half of 2007. This also applies to its ruling on fixed telephony retail markets. What follows below deals with a number of OPTA's executive decisions which further flesh out the obligations stipulated in the market analyses.

Wholesale line rental (WLR)

In its market analysis decision on access to the fixed public telephone network, OPTA makes it compulsory for KPN to enable carrier preselect providers (CPS providers)

to sell telephone subscriptions to end users in their own right in addition to calls, which is referred to as 'wholesale line rental' (WLR). CPS providers are telecommunications companies which utilise KPN's fixed network to offer calls to consumers. Thanks to this decision, consumers are able to procure a comprehensive fixed telephony product from a CPS provider and only receive a single invoice for this from now on. Until now consumers have always been required to take out a KPN subscription as well.

Considerable changes will need to be made to KPN's administrative system to allow the resale of subscriptions. Experience in other countries has shown that such changes are frequently underestimated and that the implementation of WLR can require a great deal of time and money. OPTA therefore decided to devote attention to this specifically during all the stages of the implementation process. Market parties have been closely involved in this process. Amongst other things, OPTA established an industry group and discussions have regularly been held with market parties about the implementation of WLR under the auspices of the business umbrella association, FIST (Dutch Forum for Interconnection and Special Access). At the end of August 2006 OPTA made a decision setting out the precise requirements which WLR needs to satisfy, based on a proposal submitted by KPN and input from other market parties. At the end of December, OPTA set the tariffs which KPN is required to charge for the supply of WLR. A decision was taken on the maximum lead time to the actual implementation of WLR. As a result of this, it was possible to process the first orders for WLR at the end of 2006, thereby enabling consumers to benefit from this decision. KPN needs to streamline the ordering process further, if it is to cope with the anticipated influx of WLR orders. OPTA will be watching closely to ensure that this occurs. Nevertheless, KPN filed an appeal against this WLR obligation on grounds of principle, because it does not agree that it should have to accept such an obligation. The other market parties also filed appeals against the same decision,

because they felt that it did not go far enough. At the end of 2006, the Trade and Industry Appeals Tribunal held that OPTA was in the right and ruled that the WLR obligation should remain in effect.

With regard to WLR, see also the interview with Jorn van Steenis on [page 36-39](#).

Regulation of wholesale tariffs (WPC decision)

In the autumn OPTA adopted a wholesale price cap (WPC) decision, a top priority in the year under review. This decision governs the tariffs which other market parties are required to pay for access to KPN's network. It sets a tariff ceiling for the next three years in relation to virtually all those of KPN's wholesale services in respect of which an obligation for tariff regulation has been imposed on KPN in the market analyses. A long-term decision seeks to provide market parties with the greatest possible certainty (in relation to investments and otherwise). This measure constitutes an executive decision within the context of those market analysis decisions concerning the wholesale markets for originating calls on, call transit on, terminating calls on, and access to the fixed public telephone network, unbundled access (ULL) and leased lines. This decision deals with wholesale tariffs for fixed telephone calls, MDF services, interconnecting leased lines, collocation and facilities accompanying these services. OPTA has set price caps for these services on the basis of KPN's cost prices with the aid of the latter's embedded direct cost (EDC) allocation system, which is based on the actual expenditure that KPN incurs. The tariff determined in this manner is then adjusted to accommodate efficiency. This adjustment is determined by comparing KPN's overall costs for a large number of fixed network services with the overall expenditure incurred by 67 American providers of identical services. These American providers are generally regarded as efficient.

Market parties were closely involved in the process of preparing the WPC decision through a round of consultations held within an industry group. An assessment of KPN's cost prices revealed that the new tariff ceil-

ings had declined slightly compared with the preceding period. There was an exception in the form of the tariffs for wholesale telephone calls, which appeared to have risen sharply compared with the past owing to an exodus from KPN's fixed network. Since this increase could have had a disastrous effect on the development of competition, OPTA sought to prevent it from occurring by deciding to regulate tariffs for one year. Based on a proposal which KPN ultimately presented to keep tariffs unchanged, OPTA nevertheless set a price cap for three years in the WPC decision. By doing so, OPTA satisfied the explicit requirements of the market to continue to regulate tariffs for several years, which would provide greater certainty when deciding on investments. No appeal was filed against the WPC decision. KPN and the Associatie van Competitieve Telecomoperators (ACT) agreed with each other not to file an appeal, so as to ensure future certainty for a longer period of time. In addition, they concurred with the decision.

“OPTA satisfied the market's need for a long-term decision to provide certainty in relation to investments.”

Retail regulation and the traffic light model

A traffic light model developed by OPTA came into effect in the year under review for the purposes of regulating KPN's end user tariffs for fixed telephony and OPTA's regulatory work in this respect. This model provides for a more relaxed regulatory regime for KPN but also ensures effective regulation by OPTA. The introduction of this traffic light model was to a large extent prompted by pronounced market dynamism and the development of competition, for example, due to the growth of Internet telephony. This model has its formal basis in the fixed telephony retail market analysis decision. The essence of this model is that KPN will no longer require OPTA's approval for every change of its tariffs or any new service (as it did prior to 2006).

(Proceed on [page 22](#))

“You must know when
it is better for you to
do nothing.”





This is going to happen and this is what KPN informed us of at the end of 2005 in the course of consultations about the whole-sale tariffs that market parties were to pay for access to KPN's network. This was how we heard of KPN's All IP plan for the first time. In order to ready itself for the future KPN wishes to upgrade its network on a large scale and replace its copper wire with fibre-optic cable. This is certainly a good development but at the same time this plan entails that the network layer through which KPN's

how do you deal with the costs involved? We have been busy with this right up until today.

This All IP plan contains all of the ingredients to make it a litmus test for regulation. We explicitly sought communication with the market parties in an effort to find the appropriate balance between KPN's interests and those of its competitors. KPN has made the effort required to present its plans not only to OPTA but also to the other market parties, precisely because it also wants its competitors to be involved in All IP. Part of this



“All IP is a laudable development, but may not occur at the expense of the need for further infrastructure competition.”

broadband competitors obtain access to its network (so-called MDF access) will be removed. It is precisely in this that parties such as Versatel, Orange and bbned have invested for three years. As the regulatory authority we were required to respond to this plan. It was soon clear that KPN would need to present a worthwhile alternative to the market parties to compensate them for the loss of MDF access. But how should this be done precisely and

plan entails that KPN will also be providing the network through which the other market parties will be able to offer services to their customers. Only it is regrettable that this approach means that its competitors' own networks will cease to exist, with the result that they will again become somewhat more dependent on a major party. Infrastructure competition has always been a cornerstone of OPTA's regulatory work but it will be limited by All IP. At such a point in time are you supposed to conclude that, apart from KPN's network, cable provides enough infrastructure competition? For the moment we do not think so, but how far may a worthwhile alternative for MDF go?

‘OPTA is taking its time and in the meantime KPN will simply go ahead.’ Although this is never said aloud, I have sometimes had the feeling that this is what market parties sometimes thought. We really wanted to find a solution quickly but, ultimately, this solution will have to follow from new market analyses and we started to conduct them in October 2006 but not before, because you do not want to start with those types of analysis before it is sufficiently clear that All IP is more than just a plan on KPN’s drawing board.

is temporary by definition. Within OPTA our thoughts on the matter are also constantly being revised.

An issue such as All IP forces you to consider carefully when you as a regulatory authority need to intervene very proactively and at what point in time it is better

“Regulation is temporary by definition. Within OPTA our thoughts on the matter are also constantly being revised.”



A significant part of 2006 was devoted to clarifying what All IP means for the market and for our regulatory work. Here at OPTA I think that we have made a contribution towards this and have ensured that the debate and the interests at stake have become somewhat more transparent to everyone. We also clearly indicated where OPTA was coming from: All IP is a laudable development but may not occur at the expense of the need for further infrastructure competition. We wanted to help KPN’s competitors view their own position. The market parties need to try to look further than their own current business case. What will happen if I look beyond the protected confines of our regulatory domain? Regulation

for you to do nothing. This is always a delicate balance which involves a close understanding of process and a sense of timing. In general, I feel that intervention is second best. I am working towards having a market which can function without you in the end. Yet it is precisely this goal that can make it necessary to intervene. In our capacity as OPTA, I think that what we stand for is to create a basic situation within which the various parties can make their own decisions. I hope that the market parties can show some understanding of our quest and our approach towards it. ●

This is an example of deregulation. Through this model KPN will acquire greater commercial freedom to introduce new services and tariffs. In view of the fact that as part of this traffic light model KPN is first to assess itself whether or not it complies with the provisions of the retail decision, it also involves greater self-responsibility to ensure proper compliance with the Telecommunications Act.

The traffic light model works as follows. KPN's range of services can be broken down into those that are green, red and amber. The green services are those which comply with all of the obligations governing KPN in relation to the regulation of retail tariffs, non-discrimination and transparency in order to ensure that KPN's competitors do not encounter difficulties in the market. KPN may market these services without OPTA having to assess them beforehand. The red services, on the other hand, do not comply with these obligations by definition and are therefore prohibited. If there is any doubt, or if KPN is of the opinion that a specific service is not anti-competitive, it is considered to be amber. These services must be presented to OPTA for its approval beforehand.

This traffic light model enabled OPTA to focus more closely on monitoring KPN's retail services than it had done in 2005. In the past OPTA had to assess every tariff proposal on its own in advance, which inevitably entailed delay and an administrative workload. There is no longer any need for this. Given the increased freedom which KPN enjoys when setting tariffs, the greater emphasis placed on it taking the initiative, and the new allocation of roles to KPN and the regulatory authority, OPTA has explicitly opted in favour of actively involving other market parties in operationalising this model from the outset. Enhancing transparency and clarifying the impact of the traffic light model were important motives in this respect. OPTA has launched a separate section on its website which features periodic reports about this model, amongst other things. In this way OPTA keeps market parties informed about the manner in which it monitors

developments in concrete terms. In general, market parties are sceptical about the traffic light model, because they feel that it gives KPN too much scope for abuse. Practice will have to show whether these competitors will ultimately acquire greater confidence in the operation of this model.

Apart from operationalising the traffic light model, regulation and enforcement in relation to it constituted OPTA's top priorities in 2006. OPTA's regulatory activities were directed towards the wholesale, business and consumer segments of the fixed telephony market. In particular, OPTA's regulatory work focused on the question whether all of the services offered by KPN in the market had been reported to OPTA in accordance with the retail decision, and whether all of these retail services comply with the other obligations stipulated in this decision (the regulation of tariffs, transparency and non-discrimination).

Policy rules on fixed telephony terminating tariffs

Service providers charge each other a fee for terminating telephone calls between their electronic communication networks. At the end of 2005, OPTA announced in a market analysis decision governing terminating calls on fixed networks that the tariff regulation method for termination on geographical numbers also applied to those beginning with 084, 087 and 088. In concrete terms, this revolves around the question as to what tariffs telephone service providers may charge each other for terminating calls on fixed networks. In mid-2006 OPTA received questions from fixed telephone service providers who wished to finalise their terminating charges, but still did not have any guidelines concerning the maximum tariffs that they were entitled to charge. OPTA therefore formulated policy rules and presented them for consultation. These new policy rules embody the obligations stipulated in the market analysis decision and contain regulations governing calculations and examples of the latter for terminating tariffs applicable in respect of geographical numbers and those beginning with 084, 087 and 088. OPTA finalised these policy rules at the beginning of 2007.

Mobile telephony

In OPTA's opinion consumers pay approximately €145 million too much each year for calls from fixed to mobile phones. Consequently, in the market for terminating calls on individual mobile networks OPTA determined at the end of 2005 that KPN (including Telfort), Vodafone, T-Mobile, Orange and Tele2 each held significant market power (SMP) when it came to terminating calls on their mobile networks. OPTA stipulated rules for these parties governing access for terminating calls, transparency, non-discrimination and tariff regulation based on cost orientation. This is supposed to produce cost-oriented tariffs in stages by 1 July 2008 and consequently to lead to considerably reduced charges for calls from fixed to mobile phones.

At the end of August, the Trade and Industry Appeals Tribunal overturned OPTA's mobile telephony market analysis decision. This ruling also dispensed with the basis for tariff regulation for the time being. The Trade and Industry Appeals Tribunal ordered OPTA to adopt new decisions and to conduct further research into the competitive relations prevailing in the mobile telephony market. In its ruling the Tribunal concluded that, amongst other things, OPTA had failed to conduct adequate research into buyer power and the impact of the regulation of mobile terminating calls on prosperity. In the period that followed OPTA conducted extensive consultations with mobile and fixed telephony market parties and the European Commission, amongst others, about what should follow the mobile telephony market analysis. OPTA also explored the possibility of conducting a new market analysis. In this respect OPTA hosted a meeting in the autumn of 2006 to inform market parties about the process leading to a new decision. At the end of 2006, OPTA also initiated two studies into buyer power and the impact of regulation. It is anticipated that OPTA will publish a new market analysis decision in mid-2007.

International roaming

Making mobile phone calls in another country is still far too expensive. In the case of international roaming, end users who make calls from mobile phones in another

country use a foreign mobile network as a guest. Mobile phone operators charge each other high wholesale tariffs to use their respective mobile networks. They then pass on these tariffs to consumers, who then have to contend with substantially higher call charges than those applicable when making mobile phone calls in their own country. At the end of 2005 the European regulatory authorities expressed their dissatisfaction to the European Commission concerning these higher call charges, which are partly due to the fact that the European regulatory framework does not offer enough scope for determining that market parties hold significant market power. As a result the regulatory authorities are unable to impose any obligations in the above-mentioned wholesale market for international roaming. Complaints have also repeatedly been made about these high tariffs by end users through the various national parliaments and consumer organisations.

“In OPTA's opinion, consumers pay approximately €145 million too much each year for calls from fixed to mobile phones.”

At the beginning of 2006 Viviane Reding, the relevant European Commissioner (Information Society and Media), decided to introduce regulations to tackle high international roaming charges. The European Commission held a round of consultations in Europe for this purpose, which involved all of OPTA's European counterparts united in the European Regulators Group (ERG), market parties, and consumer organisations, amongst others. OPTA made substantial contributions to the production of various ERG papers dealing with international roaming for the European Commission. OPTA and its European counterparts support the Commission's efforts to tackle international roaming tariffs. Resistance against intervention can largely be found in those countries which serve many interna-

tional roaming end users (countries bordering on the Mediterranean Sea). They are concerned that they will not be able to recoup their investments. OPTA has indicated together with its French and British counterparts, amongst others, that intervention is sorely needed but that it would be more effective in economic terms to regulate wholesale tariffs before intervening in respect of consumer charges. After all, OPTA is a proponent of the regulatory principle that direct intervention in relation to consumer charges should only occur as a last resort.

However, the European Commission appears to support the regulation of consumer charges for the time being. Commissioner Reding suggested that a tariff ceiling be decided on and enforced in order to protect consumers, on the one hand, and to prevent profiteering from international roaming. Nevertheless, the European Commission did not present any concrete proposals to the European Parliament for its approval in 2006. Decision-making on the regulation of international roaming tariffs has now been postponed until 2007. This means that end users will not be able to benefit from reduced charges until that time. OPTA considers it important that consumer prices fall soon.

Broadcasting

In 2005 OPTA concluded that every cable operator held significant market power in its own field of operations. This is the essence of the analysis of the wholesale market for broadcasting transmission services, which supply broadcasting content to end users. Various market parties filed appeals against these market analysis decisions, which are to be considered in 2007. According to OPTA, if they are not regulated, cable companies are potentially able to set consumer fees so high that they do not bear any relationship to the costs involved. OPTA was therefore also of the opinion that it was logical to examine these charges specifically to assess the need

for retail regulation. It should be clear that OPTA has not yet drawn any conclusions as to whether cable tariffs in the Netherlands are actually excessive or not. All OPTA has done is announce in its market analysis decision that it will be studying this. Nevertheless, in the course of its efforts OPTA was faced with the threat of a veto by the European Commission, which does not see any virtue in retail regulation.

The Commission had a more favourable assessment of market dynamics in the broadcasting sector than OPTA and saw no grounds for ex ante regulation (in respect of tariffs or otherwise) in the retail market for the moment. Amongst other things, Brussels drew OPTA's attention to the potential for competition from IP-TV, satellite and DVB-T, and unlike OPTA, held that general competition law would suffice in the event of any problems in the market. At the beginning of 2006, OPTA declined to regulate consumer fees in response to this. In addition, this occurred after the cable operators had undertaken not to raise their tariffs by more than the equivalent of inflation and, based on this, the European Commission had ceased to entertain "serious doubts" about the need to intervene in respect of consumer charges. Nevertheless, in March 2006 OPTA did impose other obligations in the retail broadcasting market for a period of one year, namely, in relation to transparency and unbundling. OPTA has since concluded that the cable operators complied with their undertaking in 2006, and the increase in their tariffs has been confined to the equivalent of the price index figure. OPTA expects to be able to issue an announcement in the third quarter of 2007 as to the form regulation will take in the broadcasting sector in the period ahead.³

Following the imposition of an obligation in the wholesale broadcasting market to charge cost-oriented access tariffs to programme providers, each of the three large cable operators established its own relevant cost-allo-

³ See also *Mededeling van het college inzake analyse markten omroep*, 14 February 2007 at www.opta.nl.

cation system in the course of 2006 at the request of OPTA, which they presented to the latter for its assessment. The assessment procedure was completed in the first quarter of 2007.

Analysis of the analogue terrestrial radio transmission services market

Simultaneously with its analysis of the wholesale market for broadcasting transmission services, OPTA concluded that a wholesale market also exists for the terrestrial radio transmission. A distinction may be drawn between two relevant markets for this purpose, namely, one for medium wave and another for FM transmission services. Given the muted dynamics anticipated during the regulatory period (frequency licences are always issued for a lengthy period of time) and the rather limited degree of vertical integration in respect of antenna locations, OPTA was unable to conclude that any party holds significant market power either on its own or together with other parties. In addition, OPTA concluded that the Telecommunications Act in itself contains provisions (Section 3.11 of this legislation) which regulate the joint use of antenna locations and systems, and which offer adequate relief for the resolution of any difficulties pertaining to competition. The European Commission concurred with this analysis and conclusion. Appeals against this decision are also currently being heard and are likely to be resolved by mid-2007.

1.2 Review European framework

In 2006 the European Commission commenced a review of the European directives dating from 2002, which constitute the basis of the current Dutch Telecommunications Act 2004. A review is necessary owing to the extensive dynamics at play in the electronic communication sector and because a great deal has changed in the interim with regard to broadband, Internet telephony and new network technologies (for example, All IP). In addition, the Commission wishes to identify areas in which regulation could be diminished. In February the Com-

mission asked the European regulatory authorities for input for the purposes of this review of the directives. In order to give greater weight to their submissions, all of these European regulatory authorities formulated a single joint response under the auspices of the European Regulators Group (ERG). Following this, in the summer the Commission published a consultation paper setting out proposals for the review. The Commission simultaneously discussed its proposal to reduce the number of regulated markets for the purposes of the review of the Relevant Markets Recommendation (*Aanbeveling relevante markten*). In particular, Brussels estimates that it will be possible to reduce the regulation of retail markets thanks to ongoing market developments. OPTA chaired the ERG steering committee which drew up the response to the review of the recommendation, and also played an active role in the steering committee which drew up a response to the review of the directives.

“Insufficient room for national factors may prejudice the interests of Dutch consumers and providers.”

One crucial point which OPTA wanted to achieve through its active participation is to ensure that there is sufficient flexibility at the national level to make allowances for specific market conditions. There must be scope for tailored regulation and deregulation depending on the national situation prevailing. For example, this is important in the case of the broadcasting and broadband markets, because copper and cable networks with virtually national coverage exist alongside each other in the Netherlands – unlike other EU countries – through which it is possible to provide the same services. If a harmonised European framework does not offer sufficient scope to make allowances for national factors such as this, it may prejudice the interests of consumers and providers in the Netherlands. The European regulatory authorities support Brussels in its efforts to achieve greater harmonisation but feel

that the emphasis in regulation should remain with the national regulators. They are more familiar with the local situation, have acquired extensive expertise through all of the market analyses and are therefore able to perform the precision work that is required. During the year under review the Commission hinted at the introduction of a so-called Euroregulator that would limit national powers. There was also talk of the Commission extending its veto to cover the imposition of obligations in relation to market analyses. Under the current regime, Brussels has a more limited veto, which only extends to the delimitation of markets and the analyses of dominance conducted by the national regulators. The ERG recognises the need for a more effective and more coordinated pan-European approach to the market, but prefers to achieve this through a different avenue. Together with the British and Italians, amongst others, OPTA was part of a steering committee which presented proposals to strengthen the ERG. As such, OPTA played a pioneering role in an effort to achieve closer collaboration between the European regulatory authorities.

Nevertheless, reforms are required, if the regulatory authorities are actually to realise the pan-European goal of harmonisation together. At the end of 2006 the European regulators announced their intention to establish an authoritative centralised ERG secretariat in 2007, which would have the duty to ensure the continued streamlining of market regulation. This is because in a number of key areas, such as broadband and Internet telephony, harmonisation really demands a single European approach, which could be coordinated by this centralised secretariat. The European regulatory authorities would like to make greater use of joint declarations of principle and regulatory premises which actually provide direction. It is anticipated that a centralised secretariat will also be better able to facilitate the debate that is required between the ERG countries, when a Member State wishes to abandon a common regulatory approach for national reasons. In addition, as part of the new structure more work will be performed

in small project teams in order to boost efficiency. The establishment of an ERG secretariat will also make it easier to communicate any common position to the European Commission.

1.3 Regulatory activities

Apart from its involvement in market analyses, OPTA undertook various regular activities, such as dispute arbitration, supervision, enforcement and the issue of numbers. This section describes a number of concrete activities and provides some statistical details and provides an explanation of disputes, objections and appeals. OPTA's regulation of the postal market is also dealt with here.

1.3.1 Dispute arbitration

The number of disputes which market parties filed with OPTA in 2006 remained virtually the same as in 2005. In 2006, 12 disputes were filed with OPTA, as opposed to 14 in 2005 and 23 in 2004. Of these 12 disputes three concerned cable switching and the rules governing it, two dealt with access to networks to provide services, one involved the transmission of programmes in the case of a cable operator and six had to do with the regulation of the use and transfer of numbers. In 2006 OPTA rounded off nine of the 12 disputes which were filed with it that year. Of these seven were completed within the legally stipulated term and two were not. Of the latter two, one dispute was withdrawn at the parties' request. In the second case (*Venus & Mercury v Telfort*), the legally stipulated deadline was missed by 10 days. In addition, one dispute was adjourned at the request of the relevant market parties, and two are still being dealt with. More concrete details of the actual dispute arbitration process are provided below.

Access to the GSM network

Venus & Mercury (V&M) is a company which wishes to provide mobile phone services, amongst other things. Since V&M does not have its own GSM frequencies, it asked Telfort for access to the latter's GSM wireless

network. Telfort refused. V&M then applied to OPTA to compel Telfort to present it with a contract for the use of its wireless network. However, OPTA rejected V&M's application under the terms of the Telecommunications Act, which stipulates that the applicant, in this case V&M, can only submit such an application, if it has a public electronic communications network. This was not the case in relation to V&M. The latter filed an appeal with the Trade and Industry Appeals Tribunal against OPTA's rejection of its application and also submitted three applications for provisional relief to the Tribunal. The Trade and Industry Appeals Tribunal concurred with OPTA and denied the applications for provisional relief.

Rights of way

There is a danger of disputes regularly occurring between municipalities and cable-laying firms, when it comes to laying and maintaining electronic communications cables. This is because excavations usually occur on municipal land. As part of the policy it pursues OPTA focuses on avoiding these types of disputes as far as possible. Evidence of the success of this approach may be found in the fact that only three of a potential total of 24 disputes were filed in this respect. OPTA achieved this by actively providing those involved with comprehensive information. As a result, the parties acquired a better understanding of both their own position (legal and otherwise) and that of others, which facilitated negotiations between them. As it happens, those market parties involved in the three disputes which were ultimately filed with OPTA have requested the suspension of the stipulated term for dealing with them, so as to give them time for negotiations with each other. At the end of 2006, only one of the three disputes was still under consideration. The second had been withdrawn and the third has been adjourned at the request of the parties concerned.

Number transfer tariffs

Acting under the terms of the former Telecommunications Act (in force up until May 2004), OPTA had approved the

tariffs which KPN was entitled to charge other providers for transferring telephone numbers, and they were valid until 1 January 2006. In accordance with the Telecommunications Act, which has since been amended, OPTA no longer has the power to determine these tariffs. The various providers are now required to negotiate a reasonable price with each other. This change in the regime led to uncertainty in the market. In order to help market parties, OPTA announced at the beginning of the year that it would not deem the tariff of €2.00, which KPN had proposed, to be unreasonable in the event of any dispute. During the year various parties initially filed six disputes concerning the precise date on which these tariffs were to come into effect. However, by consulting these market parties OPTA encouraged them to enter into negotiations with each other again. Ultimately, five of the six disputes were withdrawn and a lengthy period of uncertainty was avoided.

1.3.2 Supervision and enforcement

OPTA's supervisory activities include, amongst other things, enforcing the obligations imposed in its market analysis decisions and, in a more general context, monitoring developments and conditions in the market under the terms of the Telecommunications Act. For several years now, OPTA has had a supervisory team for this purpose, amongst others. This team has the task of collecting external information, conducting investigations and tackling problems or irregularities in the market where necessary, often on its own initiative. Below are several examples of OPTA's actively monitoring compliance with the relevant legislation and regulations.

KPN's compliance programme

At the end of 2005, OPTA fined KPN for unlawfully offering discounts to business customers. OPTA then entered into consultations with KPN concerning the question as to the manner in which KPN could avoid repeating this offence. Amongst other things, KPN stated that it had drawn up and implemented a programme

with the aim of ensuring that it would systematically act in accordance with the applicable telecommunications regulations. As agreed with KPN, in the year under review OPTA examined the existence, structure and operation of this programme. OPTA concluded that a number of aspects of the structure and operation of KPN's programme needed to be improved. Consequently, OPTA has not yet been able to assess the operation of this programme, although it is vitally important that it function properly. KPN has since indicated in a concrete proposal that it would be modifying this programme and it undertook to do so as a priority. OPTA will be closely assessing the existence, structure and operation of this programme in 2007.

Investigation of Zeus Telecom B.V.

Zeus Telecom B.V. (Zeus) is a joint venture equally owned by KPN and Detron, which was established in 2005 and which provides telecommunications services to business users. As such, Zeus is active in a number of the same markets as KPN but, because it is a joint venture, it is not simply required to comply with the same regulations as KPN. In the second half of 2005, OPTA launched an investigation into Zeus and KPN's role in relation to this company. Based on this, OPTA informed KPN in September 2006 that it was critical in its view of structures such as this owing to their inherent risk that a regulated party could use them as a vehicle to avoid or evade regulation. In response, KPN indicated that it would proceed to liquidate Zeus. OPTA is monitoring the liquidation process at present.

Fine for SNT / KPN

In December 2006 OPTA imposed a fine of €360,000.00 on KPN, in its capacity as the legal successor to SNT, for offences (a total of 29) committed by the latter in the form of unlawful individual discounts given to wholesale customers for 0800 and 090x services in the period from 2003 to 2005. The offences covered by this fine had already been discovered in a large-scale investigation into discounts, which had been conducted

at KPN in 2004 and 2005. At that time, however, OPTA decided to investigate the offences committed by SNT separately from the above-mentioned investigation into discounts owing to the vast scale of the latter investigation. The severity of this fine is partly based on the fact that the actions that were found to have occurred were ultimately deemed to constitute less serious offences committed when the former Telecommunications Act was applicable. In addition, KPN itself indicated that it would accept the fine and would refrain from taking any legal action.

Supervision of KPN's combination sales

OPTA took action against KPN for the purposes of enforcement, because the latter had been responsible for certain combination offers. They involved bundles of unregulated (broadband and television) and regulated services (telephony) provided to end users. KPN provided discounts on its unregulated services, but made this conditional on the purchase of regulated services. OPTA demanded that KPN report any such offers to it in accordance with the retail decision subject to payment of a penalty in the event of non-compliance. However, KPN disputes whether OPTA has the power to assess such combination offers on the basis of fixed telephony retail regulation.

Objections and appeals

OPTA dealt with 99 objections in 2006, compared with 122 in 2005. This decline is partly due to the fact that market parties are making use of the opportunity to skip the objections stage in order to appeal directly to the courts so as to save time. Since 2004 the Telecommunications Act no longer provides for an objections stage in the case of a large number of decisions, and this makes it possible to file an appeal directly with the Trade and Industry Appeals Tribunal. OPTA has explicitly sought to comply with legally stipulated deadlines as far as possible. A great deal has been done to make the organisation more aware and to ensure that OPTA's deadline monitoring system is entirely adequate. The relevant figures have since improved greatly.

Of 62 new objections which were received and 24 dating from previous years, which were reopened, 73 were dealt with.⁴ Of these 84% were dealt with by the legally stipulated deadline. Of the 16% of objections which went beyond the legally stipulated deadline, a significant number involved cases dating from 2002 that were reopened (EDC cases). Before making any decision in these EDC cases (the Trade and Industry Appeals Tribunal ordered the regulation of KPN's transit and conveyance services) OPTA deliberately created time for wide-ranging consultations with the stakeholders, with the result that it failed to make the deadline. Despite the fact that some objections were not dealt with on time, OPTA has noticed a remarkable improvement compared with a year prior to that, when 41% of cases were dealt with within the prescribed time. OPTA anticipates that all of the measures which it has adopted, will produce further improvement and that it will sooner be an exception if it fails to meet the legally stipulated deadline. This differs from those cases in which OPTA deliberately decides against meeting the deadline, as in the above-mentioned EDC cases.

Since the market analysis decisions for broadband, leased lines and fixed telephony were only published at the end of 2005, as many as 58 of the appeals filed with the Trade and Industry Appeals Tribunal in 2006 concerned market analysis decisions. A total of 128 appeals were filed in the year under review, of which 108 with the Trade and Industry Appeals Tribunal and 20 with the District Court of Rotterdam. The number of appeals dealt with by the Trade and Industry Appeals Tribunal and the District Court of Rotterdam rose from 95 in 2005 to 123 in 2006. Of the 74 appeals dealt with by the Trade and Industry Appeals Tribunal, 40% were declared to be well-founded and 31% were found to be without grounds.

Nine applications were made for provisional relief in 2006. Of these, only one was allowed, six were denied by the Tribunal and two were withdrawn. An explanation of a number of concrete appeals is provided below.

Periodic collocation tariffs

The Trade and Industry Appeals Tribunal handed down two concurrent, identical rulings concerning the settlement of periodic collocation tariffs between Versatel and KPN, and between the latter and MCI. Collocation involves all types of shared use and the availability of facilities for other market parties, for example, in KPN local exchanges. By imposing five conditional penalties on KPN in these cases, OPTA sought to ensure that KPN would charge Versatel and MCI cost-oriented tariffs for collocation. OPTA stipulated that KPN was required to credit them for the excess sums they had paid with retrospective effect. The rulings handed down by the Trade and Industry Appeals Tribunal amounted to a finding by this Tribunal that OPTA did not have the power to act for the purposes of enforcement, because there was no specific legal basis allowing for the crediting which OPTA sought to order. The principle of legal certainty had been violated, because OPTA had not made it clear that KPN was failing to comply with cost-orientation and subsequently non-discrimination before issuing its primary decision in the dispute involving KPN and BabyXL. In the end, the Trade and Industry Appeals Tribunal held that it had not been established that KPN had committed an offence and, for this reason, the conditional penalty decisions could not be upheld.

Transit still subject to regulation

At the beginning of April the Trade and Industry Appeals Tribunal decided that KPN's transit and conveyance services must be deemed to be interconnection services and need to be regulated anyway. OPTA had initially viewed the matter differently but is now required to ensure that the tariffs for the services that were applicable in the period from 1999 to 2003 are cost-oriented with retrospective effect under the terms of the former Telecommunications Act predating 19 May 2004. This ruling put an end to years of debate involving OPTA, KPN and other market parties concerning the question as to

⁴ Reopened is to say that a court of law has ordered OPTA to make a new decision in response to an objection.

whether transit and conveyance services should be covered by KPN's cost-oriented system. The Tribunal consequently answered this question in the affirmative and ruled that OPTA was required to make a new decision based on a cost-allocation system which includes transit and conveyance services, the details of which KPN is to present to it. At the end of June, OPTA prepared draft decisions based on the Tribunal's ruling, which it presented to the parties involved for consultation. In the months that followed, extensive consultations ensued between the relevant parties and OPTA for the purposes of the transit billings. In December a settlement was reached with KPN on the amounts to be paid for transit. All current objections were then withdrawn.

Shared use of broadcasting infrastructure

An appeal brought before the District Court of Rotterdam concerning OPTA's decision in the dispute between Broadcast Partners and Nozema, which dealt with the question whether tariffs may be charged for the shared use of broadcasting infrastructure, revolved around the significance of those provisions of the Telecommunications Act relating to the shared use of antenna locations (Section 3.11). The court handed down its judgment in the summer and upheld OPTA's view that tariffs for shared use must be based on the actual underlying costs involved plus a reasonable profit. In this way it is possible to create a level playing field for all of the parties involved. An appeal has been filed against this judgment.

1.3.3 Numbers

The Ministry of Economic Affairs has made four new series of telephone numbers available. It is OPTA's duty to assume responsibility for issuing these numbers. Two of these new series are designed to respond to rapid technological developments in the telephony market, which the former numbering regime did not adequately provide for. For instance, a series of numbers was made available, which will presumably be utilised mainly for Internet telephone services (VoIP).

The third series of numbers appear to be necessary in order to promote competition between subscriber information services. Finally, the fourth new series was made available at the instigation of public authorities, which wish to have separate short numbers for their contact centres. For instance, residents of those municipalities which are covered by the 020 area code can contact their municipal council by dialling the short number, 14020. OPTA was closely involved in preparing these changes to the numbering plan and in drawing up policy for the issue and supervision.

Subscriber information services (18xy)

The availability of new numbers for information services has produced greater scope for competition. Providers of subscriber information services had indicated that they were experiencing difficulties and felt that the greatest obstacle lay in the fact that there was only one short number (118) available for the service. These providers had to make do with a number that was part of the 0800 or 0900 series. However, short telephone numbers offer greater commercial benefits than long ones, because consumers are better able to recognise and remember them. With the introduction of a four-digit series there is scope for a total of 99 providers to offer subscriber information services using a short number (18xy).

At the same time that the numbering plan was changed, OPTA released regulations for the auction of these numbers. An auction was required, because the numbers concerned were of exceptional economic value. This is because the more attractive a number is, the easier consumers will remember it and consequently providers would wish to apply for the same numbers en masse on the first day following their issue. In the case of simultaneous applications for the same number, a normal issuing procedure (first come, first served) or drawing lots would not be acceptable for those parties that missed out. Following a lengthy registration period the auction was held on 24 July 2006 and 10 parties participated in it. Vodafone presented the highest bid: €1.5 million for the

1800 number. In accordance with the rules governing the auction it had to pay a price for this number equivalent to that offered by the second highest bidder, namely, €0.5 million. This rule was supposed to avoid any undesirable ancillary effects of prices that were driven (too) high. Following the auction of 10 numbers, OPTA granted a further 19 applications for 18y numbers in 2006.

Problems were encountered with the dialability or actual usability of the special numbers. Together with the Ministry of Economic Affairs, OPTA organised a round table with providers and potential buyers of an 18xy number. The aim was to ensure that the new numbers would become dialable as soon as possible. OPTA actively anticipated in two meetings with the market parties in which the usability of the new numbers was discussed. Developments since then have not given OPTA any grounds to expect further problems in relation to dialability.

Numbers for Internet telephone services

In the summer, the Minister made two new series of numbers available in the light of new developments in telecommunications, especially Internet telephone services (VoIP). At the same time, these changes to the numbering plan made it possible to use geographical numbers for this purpose subject to conditions, even if the relevant telephone service is not restricted to the home location of the subscriber concerned. Because of this change it was no longer possible to apply OPTA's 2005 policy rules governing the use of numbers for VoIP services. OPTA therefore published revised policy rules, in which it revealed its regulatory policy in respect of geographical numbers. In the months surrounding the change, OPTA imposed a conditional penalty on a provider that was using geographical numbers inappropriately. This turned out to be the case when some consumers were assigned a number by their provider which did not correspond to the place of residence they had specified. In addition, the provider was unable to show that he checked to ensure that the details of the places of residence which had been specified were cor-

rect. The provider in question objected to this conditional penalty and OPTA decided on the basis of this objection to revoke its previous enforcement measure, because it appeared that the provider had since decommissioned the numbers that had turned out to be incorrect.

Accessibility of 112

Since the accessibility of the emergency number, 112, can literally be a matter of life and death, the Telecommunications Act renders its accessibility mandatory in the case of all telephone service providers. OPTA is responsible for supervising this and in 2006 noticed that three telephone service providers (Internet telephony/VoIP) did not offer 112, with the result that the emergency centre could not be reached. Following OPTA's intervention, these providers' subscribers now have access to the emergency number.

“Based on the amended legislation, OPTA is better able to tackle the misuse of information numbers.”

National number day

On 28 September, OPTA organised a national number day together with the Ministry of Economic Affairs. The theme was *Information Numbers without Surprises: Towards the Safe Use of Numbers* and focused on new regulations which were designed to protect consumers better against the misuse of information numbers. Thanks in part to speakers from the market (KPN), the academic sector (University of Amsterdam), policy and regulation (the two organisers) the more than 30 organisations that participated were able to discuss the interests of consumers and providers, and the dilemmas of and alternatives available to policymakers and regulatory authorities. This consolidated the foundation for further joint work in the Netherlands on the provision of properly functioning services in relation to information numbers. Based on the amended legislation, OPTA is

better able to tackle the misuse of information numbers. OPTA can ask providers to decommission inappropriately used numbers immediately and it is easier for it to reject dubious applications for numbers.

Electronic services

In 2006 OPTA was involved in preparations for opening a digital office for number applications and the registration of service and network providers. This means that as of the beginning of 2007 providers are able to submit electronic applications for numbers and registration through OPTA's website, which is more efficient for both the providers and OPTA itself. OPTA is using e-Formulieren and DigiD, two government services which improve the provision of public services online. For the time being paper applications will simply continue to be accepted in the case of those providers that prefer this.

1.3.4 Registration

OPTA made an extra effort to ensure adequate supervision of registration. Every provider that is active in the area of electronic communication services or networks in the Netherlands has a duty to notify OPTA of this. The latter then registers these providers and they help pay for the regulation of the sector through a fee system. OPTA was responsible for 160 new registrations thanks to focused searches for specific categories of providers. Since OPTA is no longer obliged to charge a regulatory fee to any party which has a relatively modest turnover (see also [Chapter 3, Section 3.3](#) in this respect) since 1 January 2006, it did not need to resort frequently to judicial measures for the purposes of regulation in this respect.

1.3.5 Other activities

This section considers a number of other activities which demanded OPTA's attention. Given its close relations with the electronic communications markets, NMa asked OPTA to express its opinion in a series of concentration cases (mergers or acquisitions) which NMa was dealing with. This is based on a collaboration protocol which NMa and OPTA have agreed on with each other. In such

cases, OPTA provides NMa with advice concerning the extent of effective competition in a specific market and it expresses its opinion on the relevant dominant positions which need to be taken into account. This section also deals with summary proceedings instituted by KPN against the State on the grounds that it had violated the principle of equality.

KPN's summary proceedings

On 25 July 2006, the District Court of The Hague handed down its judgment in summary proceedings which KPN had instituted against the State (the Minister of Economic Affairs and NMa) and OPTA. KPN accused the State and OPTA of acting unlawfully in violation of the principle of equality, because KPN had been dealt with differently from other cable companies. Amongst other things, KPN sought that the State and/or OPTA be ordered to do all in their power to ensure that no new decisions were taken as a result of which KPN would be prejudiced in an unlawful and discriminatory manner. The State and OPTA argued that KPN's application should be declared to be inadmissible, because adequately guaranteed recourse to administrative law existed for challenging decisions made by OPTA and NMa, of which KPN also avails itself. Various appeals against OPTA's market analysis decisions are still pending before the Trade and Industry Appeals Tribunal, which are as yet unresolved. In addition, the State and OPTA argued that market analyses or other decisions concerning a specific relevant market deal extensively with aspects of and beyond that market, and that it is precisely the different conditions prevailing in each market which mean that each market party may have different obligations in the various markets.

The court ruled that for the time being the market analysis decisions must be deemed to be valid pending the proceedings before the Trade and Industry Appeals Tribunal. In this respect the court decided that it had not been shown that it was reasonable to assume that OPTA had adopted a fragmented approach towards the overall electronic communication services market. The court con-

cluded that part of KPN's claims would be declared inadmissible and that the remainder would be dismissed. KPN has filed an appeal against this, which is still pending.

KPN's acquisition of Nozema

At the end of 2005 KPN notified NMa of its intention to take over the broadcasting company, Nozema Services. The latter used to be owned by the State and also holds 40% of the shares of the broadcasting company Digitenne, in which KPN already has a 40% stake.

Based on the collaboration protocol to which OPTA and NMa are party, at the beginning of 2006 the latter asked the former to express its opinion about the proposed takeover. In its response OPTA indicated that KPN's acquisition of Nozema would create a vertically integrated company, which could have a negative impact on competition in the analogue terrestrial radio transmission services market. After all, following this acquisition KPN would own the concrete foundations of broadcasting masts, tall antenna locations, antenna systems and transmission services (Digitenne). According to OPTA, this acquisition would need to be made conditional on the partial unbundling or disposal of infrastructure. In addition, OPTA drew NMa's attention to the potential power inherent in the proprietary relations within Digitenne, the company which holds broadcasting licences for digital terrestrial television broadcasting (DVB-T). Following its acquisition of Nozema, KPN would hold 80% of the shares of Digitenne. With the licences which the latter holds, mobile data services can also be provided in addition to digital television broadcasts. The development of such services together with its acquisition of control over antenna systems and locations could disrupt competition in the mobile market in the future. OPTA therefore proposed further research into developments in the mobile market in order to avoid problems in the future.

In March KPN received consent from NMa for its acquisition of Nozema on condition that it sold a number of tall broadcasting masts to an independent party approved

by NMa in order to avoid competition-related problems in the analogue terrestrial radio transmission services market. This accorded with OPTA's advice to NMa.

KPN's acquisition of Enertel

In the summer, NMa consented to KPN's acquisition of Enertel, because this concentration would not create or reinforce a dominant position in the telecommunications sector. This conclusion was in line with the advice which OPTA had provided to NMa in respect of this concentration case.

Merger of Essent and Casema-Multikabel

At the end of the year, NMa consented to the sale of Essent Kabelcom to the investment companies, Cinven and Warburg Pincus, which also own Casema and Multikabel. In its opinion, OPTA indicated that it did not expect this transaction to cause problems in relation to competition in end user markets. Partly on the basis of OPTA's advice NMa did, however, devote attention as part of its investigation of this merger specifically to any actions and/or effects on the relationship between the new cable company that was to be established and broadcasting programme providers, which could restrict competition.

KPN's acquisition of Tiscali

At the end of 2006 NMa announced that it would be investigating KPN's proposed acquisition of Tiscali further. OPTA advised NMa to initiate a so-called two-stage investigation, because there was a need to ascertain whether KPN would not hold an excessively dominant position in the retail and wholesale broadband markets following this takeover.

1.3.6 Post

Every year OPTA audits the financial and quality reports of TNT Post (TPG Post changed its name to TNT Post in October 2006) concerning universal postal services. In addition, OPTA assesses any tariff proposals submitted by TNT Post for postal deliveries and advises the Minister of Economic Affairs on any proposed regulations for

deregulating the postal market. OPTA also consults and fields questions from stakeholders, such as NMa, postal transport companies and consumers.

Proposed tariffs

In 2006 TNT Post presented OPTA with a proposal to raise the price of individual stamps from €0.39 to €0.44 as of 1 January 2007. OPTA can only assess such an increase based on the price cap stipulated in the Postal Decree (*Besluit algemene richtlijnen post*). The latter links the maximum permitted tariff increase to the wage index. TNT appeared to comply with this.

Concession and quality reports

Every year TNT Post is required to submit one concession and two quality reports to OPTA. The concession report takes the form of an annual report on its monopoly services and those duties that it is charged to perform, which OPTA regulates, including the relevant financial details. OPTA raised questions about the allocation of pension expenses in the 2004 report. In order to obtain clarity as to whether this allocation was accurate, OPTA asked an accountant to review the concession report (peer review) in accordance with the procedures stipulated for this in the relevant regulations. However, this peer review did not provide sufficient clarity and OPTA eventually reported to the Minister of Economic Affairs that it could not establish whether TNT's report complied with the relevant legal requirements. With regard to its quality reports, following an investigation OPTA concluded that TNT had complied with the relevant requirements. TNT has 2121 service points, whereas it is only required to have 2000. With regard to delivery times, at 96.6% TNT was above the requisite rate of 95% for delivery on the next working day.

Regulation and enforcement in the postal market

In 2005 TNT Post asked OPTA to take action against a postal company which was transporting letters of less

than 100 grams, in respect of which TNT Post had a concession.⁵ In 2006 OPTA established that this complaint was justified and issued a warning to the relevant postal company (its name has not been disclosed on the grounds of business confidentiality).

In response to complaints received from end users, OPTA investigated the availability and number of TNT Post postboxes. Because of the change in its name from TPG Post to TNT Post, it started to introduce orange postboxes in 2006 and also removed a number of postbox locations in the process. End users reported to OPTA that as a result of this the distance to the nearest postbox was too far in a number of situations. The legally stipulated standard is that there should be a postbox within a radius of 500 metres in residential areas with more than 50,000 inhabitants. In 2007 OPTA will be conducting random tests to establish whether TNT complies with this standard.

TNT has developed two new products called TNT Economy and Budget Mail, which it is marketing in the free market segment. Apart from these two products, TNT Post has a subsidiary, Netwerk VSP, for unaddressed advertising post, which it will also be using for addressed mail. TNT will be using these products when competing with Sandd and Selekt Mail for the delivery of unscheduled post. In response to indications received from the market and the press, OPTA wished to examine ex officio the extent to which the introduction of these new products complies with the Postal Act. However, OPTA came to the conclusion that it does not have the power to test these products, which are being offered in the free market segment, under the terms of the Postal Act.

Acting in its capacity as a regulatory authority, OPTA wishes to have the power to inspect all of TNT's contracts in order to determine whether the latter comply with the relevant provisions of the law. TNT's tariffs and conditions must be transparent, non-discriminatory and

⁵ TNT's concession has since (on 1 January 2006) been confined to letters of up to 50 grams.

uniform. OPTA feels that it is necessary to inspect all of its contracts for the purposes of regulating the transport of post mandated by law. TNT's contracts may include arrangements for discounts and conditions governing its free market services, which are interwoven with those for its mandated services. This is because a single comprehensive agreement is often concluded with a business, which covers the various services which the latter procures. Discounts provided to a particular customer are also often related to overall sales or those of a different service (or category of service). This does not mean that OPTA would actually be regulating the unregulated services in this way. In 2006 a court of law considering an appeal ruled that the possibility cannot be excluded that OPTA would demand information which does not relate directly to the transport of post mandated by law. According to the court, this is permissible only if there are concrete indications concerning TNT's actions which would render it necessary to demand such information for the purposes of effectively performing its regulatory duties. Consequently, the court has confined OPTA's right to demand information *ex officio* to those parts of TNT's contracts which provide for the transport of post mandated by law.

Amendment of the Postal Act

The new Postal Act had its first reading in the Lower House in mid-2006. This Act provides for the full liberalisation of the Dutch market in 2008. OPTA advised the Minister on the degree to which subordinate legislation could be implemented and enforced. Amongst other things, the new Postal Act confers on OPTA a duty to conduct an analysis of the postal market. At the end of 2006, OPTA therefore commenced a study to survey developments in the postal market. In 2007 this research is supposed to produce a design for a structural postal market monitor, so as to ensure that OPTA is ready for the introduction of the new legislation. In addition, OPTA will receive more dispute arbitration powers in relation to the provision of postal services by the various postal delivery companies.

OPTA provided advice on the feasibility of the new Postal Act to the Ministry of Economic Affairs. OPTA is of the opinion that liberalisation is essential for the further development of the postal market and therefore see no reason to postpone full liberalisation. Postponement will withhold the benefits of choice, lower prices, better quality and the promotion of efficiency and innovation from consumers and the market. In addition, access to the TNT network is essential for the further development of competition.

“The new Postal Act provides for the full liberalisation of the Dutch market in 2008.”

After it is fully liberalised, effective competition will not occur immediately in the market segment for 24-hour postal deliveries. This will partly depend on the question as to how business customers will respond to the new opportunities, and also on new developments such as switching to computerised coding and sorting of post. Nor does OPTA expect competition in the consumer postal segment in view of the difficulties involved in duplicating the networks required for this purpose. If competition is nevertheless to be promoted and innovation to be encouraged in these segments, it will be necessary to ensure the proper regulation of access to TNT's daily delivery network. Ultimately, TNT also has an interest in this, because this will ensure that its network is more effectively utilised.

Finally, liberalisation demands that the regulatory authority have effective powers. Through this Act the Dutch postal market has entered the initial stage of full liberalisation. However, it is anticipated that dominant parties will continue to exist in certain market segments, for example, that of 24-hour postal deliveries. In addition, TNT will continue to be charged with the provision of universal services. It is essential that the regulatory authority have clearly defined, adequate powers in such a stage of the development of the market. ●



“When to be strict and when to give parties the freedom to find their own solution?”



Ultimately, what is decisive is that wholesale line rental is something that KPN has no choice but to provide to its competitors. This obligation was imposed on KPN as part of OPTA's market analysis decisions on fixed telephony in December last year. Wholesale line rental (WLR) makes it possible for CPS providers to provide telephone subscriptions to consumers in addition to calls. CPS providers are telephone companies which use KPN's fixed network

CPS were impatiently awaiting WLR and we wanted to produce a solution which market parties could actually use. Although we inevitably had to contend with complexity and scepticism initially, we were resolute in our commitment to ensuring the availability of WLR by the end of 2006.

OPTA closely supervised matters to make sure that market parties made concrete arrangements and that



“Despite the inevitable complexity and scepticism, we were resolute in our commitment to ensuring the availability of WLR by the end of 2006.”

to provide consumers with calls. WLR enables them to compete with KPN more effectively. In the past consumers could procure calls from Tele2, for example, although they were still tied to a KPN subscription. We used 2006 to ensure that WLR actually became available together with KPN and the CPS market parties. This was quite a feat.

they then complied with them. In concrete terms, we agreed on how KPN's administrative systems needed to be altered in order to ensure that its competitors were able to send subscription invoices on their own. That may sound simple, but in practice you can encounter numerous questions which you need to resolve with each other.

A certain energy is released in these types of processes, which you need to channel properly, otherwise the various parties will simply be at each other's throats. Friction can be good at certain stages, because it is then that the real issues are raised. After this there is a

need to work towards a solution again, to make some effort to ensure that we are not simply allowing ourselves to be inundated but rather to direct and accelerate matters, otherwise there is a danger that you will succumb to the substantive issues. Timing and the ability to switch roles are also important. When should you be strict and go for it and when should you give parties the freedom to find their own solution? It remains a constant search. Ultimately, it will stand or fall on your

continue to make enquiries at the appropriate time and, ultimately, to be able to substantiate our suspicions.

Whatever you do, you will never satisfy everyone. That is an inseparable part of our work. In general, every

“A certain energy is released in these types of processes, which you need to channel properly.”



ability to make tough, concrete arrangements, to which you can hold each other.

I felt personally responsible for getting WLR up and running. You are busy finding solutions for very practical problems, while being bogged down in the mud. We try to ensure that we do not adopt the position of market parties but sometimes it is unavoidable. Certainly in the case of an impasse between KPN and the other parties we need to bite the bullet to get matters moving. In such a case you make decisions for other parties. It is important that we here at OPTA realise that we often suffer from an information lag. We need to be on the lookout for any danger of being sent barking up the wrong tree, to

party appeals against every decision that we take. This is simply par for the course. What I feel is important is that we do not curry favour with anyone. It is not that we are literally above the various parties. We are constantly caught between them. With complete integrity we attempt to present the most reasonable solution and, when doing so, we very seriously examine all relevant interests. I hope that those parties feel that this is the case. ●

2. Consumer protection

When the amended Telecommunications Act came into effect more than two years ago, OPTA was assigned new duties, such as responsibility for Internet safety. This involves tackling spam, diallers and malware. Aspects such as secure services and consumer confidence are becoming increasingly important for the development of the market. Consequently, the amount of attention which OPTA devotes to these types of issues has increased drastically. In addition, OPTA has always promoted consumer protection in the communications markets, where the operation of market forces was inadequate, for example, by enforcing the duty to ensure number retention or by tackling problems relating to switching broadband service providers. As of the year under review, OPTA has also been closely involved with the question of undesirable telephone calls. Finally, ConsuWijzer, the joint consumer information centre run by OPTA, NMa and the Consumer Authority, commenced operations in 2006.

2.1 ConsuWijzer

Many consumers have a need for ready access to information and advice about their rights. The large number of centres which they had to contend with in the past did not make it easy for them to find the appropriate avenue to obtain appropriate information or help. Acting on the initiative of Karien Van Gennip, the State Secretary for Economic Affairs, OPTA, NMa and the Consumer Authority decided together to change this. On 4 October they opened ConsuWijzer, a government online service to answer all consumers' questions about their rights and duties with regard to the fields of operation of the affiliated bodies. In this way it is also possible for consumers to submit complaints relating to OPTA through ConsuWijzer, for example, or to ask questions about telemarketing or how to switch from one broadband service provider to another.

From now on, any consumers who seek contact with one of the affiliated regulators by post or telephone will be referred to ConsuWijzer, where they will be assisted.

ConsuWijzer consists of an extensive website containing information about consumers' rights and duties, tips, examples and links to relevant organisations. Anyone who cannot find an answer there may also call ConsuWijzer staff to obtain assistance by phone. ConsuWijzer received more than 15,000 questions and complaints within the first three months of its existence. The bulk of them were dealt with by the ConsuWijzer call centre. Any questions which require research or which are of a more complex nature are dealt with by the back offices of the affiliated regulatory authorities. Of more than 3300 questions which were forwarded to the affiliated regulators in the fourth quarter of 2006, almost 1200 were dealt with by OPTA's back office. It is anticipated that the number of questions and complaints will rise, as ConsuWijzer becomes more widely known.

See also the interview with Laura van den Berg about ConsuWijzer on [page 56-59](#).

2.2 Combating spam

As part of its legal attempts to boost Internet safety, in 2006 OPTA persisted in its approach to reduce spam originating in the Netherlands further following an 85% reduction during the preceding year. In spite of this reduction, a tough approach is required, because the Netherlands is a major source of English-language spam spread throughout the entire world. OPTA initiated 38 investigations into contraventions of the spam prohibition. In 21 cases these investigations led to warnings being issued, generally for less serious offences. In addition, OPTA referred six incomplete investigations to fellow spam enforcement agencies in other countries.

OPTA notes that the European Commission has cited the Dutch approach as an example for other European countries. "I would like other countries to achieve the same results by adopting a tough approach," the responsible European Commissioner, Viviane Reding, stated in a press release at the end of November, which received widespread attention in the media (international and

otherwise). OPTA utilised its digital pioneering role where it could to share its expertise in workshops for other enforcement agencies, such as the British Office of Fair Trading. OPTA's goal is to raise the overall level at which the prohibition of spam is enforced in Europe and to highlight OPTA's collaborative ventures with other countries as clearly as possible. Owing to the cross-border nature of spam, combating it stands or falls on international collaboration. OPTA has given various presentations dealing with its approach to spam and malware to the London Action Plan, an international association of spam enforcement agencies, to share the experience which the Netherlands has acquired with others.

In 2006 OPTA imposed fewer than the four fines for spam, which it had forecast. Current investigations turned out to be more difficult owing to the advanced technology which the culprits used. Apart from this, investigations were delayed due to the cross-border aspects of many cases. Quite simply it takes more time and effort to obtain information from another country than in the Netherlands. Coordinating matters with and consulting fellow telecommunications regulators in other countries also demands time, although it does ultimately yield results. OPTA's collaboration with the Czech, Belgian, American and Australian authorities is a good example of this.

“Owing to the cross-border nature of spam, combating it stands or falls on international collaboration.”

One major investigation culminated in a private individual offender being fined €75,000.00. This individual sent unsolicited electronic messages to consumers to promote sex aids and similar items. This represents the largest fine which OPTA has imposed for a contravention of the spam prohibition to date. The spammer who was fined, wrongly thought that he was unassailable in the Netherlands, because he sent his messages from servers in the United States.

Six investigations were referred to fellow spam enforcement agencies in other countries for further action. One related to a major spammer who operated in Australia and used no less than 35 servers in the Netherlands to send spam. This investigation was pursued by the Australian authorities and led to an arrest. Tracking down this spammer constituted part of a large-scale investigation, which OPTA had already initiated in 2005. Last year this investigation also resulted in a conditional penalty being imposed on Megaprovider, a Dutch Internet service provider. The latter hired its services out to international spammers, including the above-mentioned Australian. Under the terms of the conditional penalty, Megaprovider is required to refrain from providing such services from now on and, if it is approached for this purpose, it has a duty to report this to OPTA. Thanks to this investigation a large international network of spammers, which had transmitted many billions of spam messages, has been rolled up.

On the national front, OPTA has also started to work together with other organisations which are concerned with Internet safety, such as the police forces united in the National Police Services Agency (Korps Landelijke Politiediensten), the Internal Revenue Intelligence and Investigations Department (FIOD, Fiscale inlichtingen en opsporingsdienst), the Economic Investigations Service (ECD, Economische Controledienst), the Consumer Authority and the Computer Emergency Response Team (GovCert) within the Dutch government. For example, it is often the case that a contravention of the spam prohibition also involves misrepresentation (the domain of the Consumer Authority) or the smuggling of illegal drugs (the domain of the FIOD and ECD). In addition, the various regulatory authorities possess information which may be of vital importance to other regulators. In 2006, OPTA organised two conferences for staff and researchers from the various organisations to share their experience and expertise with each other. Finally, OPTA agreed on collaboration protocols with the National Police Services Agency and the Consumer Authority.

At a meeting of the Internet Corporation for Assigned Names and Numbers (ICANN) held in Marrakech, OPTA pleaded for the retention of avenues for spam enforcement agencies to have access to relevant user details underlying e-mail addresses and domain names (Whois data). ICANN is an international organisation which coordinates a number of branches of the Internet throughout the world, such as the administration and allocation of domain names and Internet addresses. Voices had been raised within ICANN pleading for the implementation of certain restrictions for reasons of privacy, which would also make it more difficult for regulators to trace users. The European policymakers in this field have since come to share OPTA's views.

2.3 Malware

Tackling malware has topmost priority within OPTA. The Netherlands is the largest distributor of malware after the United States and Poland. This was revealed in research conducted by Webroot Software.⁶ Spyware is a form of malware which is installed on a user's computer without his knowledge and which then collects information about him. For example, this type of software records information about his computer usage and forwards it to other people. The aim of spyware is usually to misuse the information obtained in this manner for advertising purposes or criminal activities, such as identity fraud. A growing number of Internet users and companies are troubled by spyware. According to the Webroot study, the average consumer's PC contains 25 spyware programs. In the autumn of 2006, OPTA commenced a major study to determine how these types of malware can be tackled.

However, such research costs a great deal of time and effort. In addition, it is highly specialised. In the case of spam, user complaints represent an important source of information for OPTA but ordinary computer users hardly ever discover spyware themselves. In addition, it

is difficult to determine the precise origin of any malware installed on a PC. Moreover, the creators of malware are becoming ever more inventive in their efforts to evade software which tracks down and removes software. OPTA depends to a large extent on tips from users who have an above-average understanding of the Internet and computers in order to conduct investigations into this type of malware. After all, in practice they appear to be able to provide OPTA with information about places on the Internet and specific websites where infections originate. OPTA has since investigated numerous websites and has conducted raids in various locations. It is likely that OPTA's efforts in relation to spyware may lead to the imposition of sanctions on distributors in 2007.

2.4 Diallers

Since consumers have complained frequently in recent years about unexpectedly high telephone bills, often as a result of diallers, relevant regulations were tightened in the year under review. A dialler is a program which is usually installed on a PC without being noticed (by being downloaded from the Internet), and which then causes the computer to make what are normally expensive calls to foreign numbers.

"It is likely that OPTA's efforts in relation to spyware may lead to the imposition of sanctions on distributors."

Telephone service providers now have to contend with a new set of obligations, which makes it easier for consumers to manage the telephone charges caused by diallers. The Ministry of Economic Affairs amended the Regulations Governing Universal Services and End Users' Interests (*Regeling universele dienstverlening en Eindgebruikersbelangen*) for this purpose

⁶ Source: Webroot, *State of Spyware*.

(see also Chapter 1, Section 1.3.3 in connection with the national number day). In general terms, these regulations impose the following duties on service providers:

- they are required to offer notification of numbers and tariffs;
- they are required to offer usage caps (in terms of time and money);
- they are required to ensure that payment is suspended, if a complaint is submitted to them or a dispute has been brought before a recognised dispute resolution committee.

“Fewer complaints about diallers due to the new legislation and joint action undertaken by OPTA and the telephone service providers.”

In order to fine-tune these regulations, OPTA then drew up policy rules in consultation with the market, which are supposed to offer clarity by showing in concrete terms what is expected of service providers. Acting at the latter's request, OPTA also organised a round table to discuss the stricter regulations and how to deal with them. OPTA considered the essence of the responses received from these service providers, when it drew up the policy rules. In particular, their comments ensured that it was easier for them to carry out their duties. OPTA also included existing self-regulatory practices in these new policy rules. In the year under review OPTA received fewer complaints about diallers than it had in previous years. This is probably due to the new legislation and joint action undertaken by OPTA and the telephone service providers to block those numbers which it has blacklisted, because they were misused.

2.5 Telemarketing

Acting in response to ever louder comments that intervention was required in relation to the growth of telephone sales, in 2006 OPTA developed enforcement pol-

icy to drastically reduce the annoyance experienced by consumers. The Telecommunications Act provides OPTA with the legislative guidelines for this purpose. Telemarketing constitutes a legitimate way of marketing goods and services. In addition, the telemarketing sector is a lucrative one. It provides work for more than 200,000 people and every year 17 million transactions occur through telemarketing in the Netherlands. Nevertheless, it is a sales method which annoys many consumers, certainly when they are called during their proverbial evening meal. The Telecommunications Act stipulates that unsolicited telephone sales are only permitted, if the salesperson draws the consumer's attention to the fact that he may refuse to accept such calls.

In the spring, OPTA consulted the market about the interpretation of the provisions of the law governing telemarketing and how unacceptable telephone sales are to be tackled. OPTA noticed that the telemarketing sector had itself already taken the action that was required to ensure that telephone canvassing occurred appropriately. For instance, based on the Telemarketing Courtesy Code (*Code Telemarketing fatsoensregels*) calls may only be made on working days, but not after ten o'clock in the evening. There is also a registration centre in the form of a special website (Infofilter.nl), where consumers can register their refusal to accept such calls, and the participating businesses have undertaken to honour this. OPTA consulted relevant parties, such as the Werkgeversvereniging Callcenters (Call Centre Employers Association), the Vereniging Contactcenters Nederland (Association of Contact Centres in the Netherlands), Thuiswinkel.org and the Confederation of Netherlands Industry and Employers (VNO/NCW) about the extent to which call centres should be held responsible in the event of complaints. As part of the enforcement policy which it has developed, OPTA has accommodated the express wishes of the market that enforcement be directed not against the call centres but their clients. What is crucial in this respect is that this involves the companies which instruct these call centres to call people, and the businesses which simply carry out these instructions should not be

held responsible. In addition, OPTA directs enforcement mainly against ‘cold’ calls (calls to people who are not customers of the business responsible for them). Nevertheless, an unconditional requirement applies to all calls in that telemarketers are always required to inform consumers actively that it is possible for them to ensure that they no longer receive such calls.

With the opening of ConsuWijzer, a start has been made on itemising consumer complaints about unlawful telemarketing. During the year under review, 75 complaints were received. In response to this OPTA wrote to the businesses concerned and drew their attention to the applicable regulations. In view of what is still a limited number of complaints, OPTA has not yet imposed any sanctions.

With regard to telemarketing, see also the interview with Mei Po Man on [page 70-73](#).

2.6 Electronic signatures

Trusted third parties (TTPs – certification service providers) offer electronic signatures to ensure secure, reliable electronic communication. An electronic signature accompanied by a qualified certificate issued by a TTP has the same legal implications as a handwritten signature. OPTA monitors these types of certification service providers. Through its regulatory work, OPTA builds confidence in the use of electronic signatures and promotes the conduct of electronic business. OPTA registered a new party which is entitled to issue electronic signatures based on qualified certificates, namely, the e-business service provider, De Electronische Signatuur B.V. A total of four TTPs have now been registered.

2.7 Number retention

When switching to a new subscription, an end user is legally entitled to retain his telephone number. This applies if he moves from one provider to another, but also if he enters into a new contract with the same provider. In

the year under review, it appeared that many consumers who took out a new subscription with their existing mobile phone service provider were often unable to retain their old number. OPTA received complaints about this and used the prospect of legal action to compel the four major mobile phone network providers to ensure that this form of number retention was also possible.

“With the opening of ConsuWijzer, a start has been made on itemising consumer complaints about unlawful telemarketing.”

Another obstacle to switching also played a role in respect of number retention. The relevant market parties had stipulated in their portability contracts with each other that a written statement was required from a consumer to ensure that he could take his number with him. Some market parties wanted to dispense with this, because such a requirement means that consumers would no longer be able to arrange a switch entirely via the Internet and would always have to contend with a procedure involving paper. KPN instituted civil proceedings to secure its competitors’ compliance with their contracts. In response, several of these competitors submitted an enforcement application to OPTA, because they felt that KPN was refusing to operate in accordance with the requirements of number retention. However, OPTA decided against taking any formal action for the purposes of enforcement, because the matter only involved an expression of intention on the part of KPN at the time. Nevertheless, OPTA announced that it was of the opinion that requiring a written statement for the purposes of number portability contravened the Telecommunications Act. This opinion was raised during the civil proceedings. In the end, the court ruled that it was not reasonable to require a written expression of one’s intentions because of the advent of the Internet.

2.8 Obstacles to switching

As in 2005, OPTA received many complaints from end users about the problems that they were encountering when switching from one broadband Internet provider to another. This mainly occurred in the case of those end users who were switching from one ADSL provider to another. At the end of 2005, OPTA entered into consultations with the relevant market parties in order to formulate practical, feasible solutions and to reduce the number of problems that occurred when switching. An example of these problems was that consumers had to wait very long (often several weeks) for their new Internet connection, because something went wrong during the switch. The difficulties involved in switching mean that end users become wary about switching again, which can ultimately frustrate the operation of market forces.

“The difficulties with switching make consumers wary, which can ultimately frustrate the operation of market forces.”

Although OPTA has limited powers when it comes to resolving problems involved in switching in the case of broadband Internet access, it undertook various courses of action. For instance, OPTA raised these difficulties in the business umbrella association, FIST, so as to enable the various market parties to seek solutions in this forum. Together with the Ministry of Economic Affairs, OPTA also entered into discussions with ADSL providers, the network operator KPN, and Vecai in order to challenge

the market parties with regard to the improvements required. These consultations produced a joint document issued by the Ministry and OPTA, which identified the problems involved in switching that had been specified by the market parties. To mention one example, in the case of relocation ‘a line’ may still be utilised for a period of time, if the previous resident has failed to cancel all of his services in time. What also happens is that consumers have had to make do without broadband Internet and telephone services for a long period of time, because it is difficult to synchronise the processes of relocating the relevant number (number portability) and of switching to another broadband Internet provider. The market parties that are affected by problems pertaining to relocation and line and number portability have since reached the stage where it will be possible to implement solutions in the first half of 2007. In addition, OPTA has prepared a form that will enable it to identify the problems more clearly, which consumers encounter when switching broadband service providers.

OPTA and the Ministry of Economic Affairs feel that in the first instance market parties should themselves continue to seek solutions to the problems pertaining to switching. The Ministry and OPTA have indicated that they will be taking further action, if they fail to reach an agreement which is satisfactory from the consumers’ point of view. In this respect one might consider the drafting of new regulations by the Ministry of Economic Affairs or the further extrapolation by OPTA of existing obligations in the form of policy rules. ●

3. Operations

OPTA is largely funded by market parties. This demands considerable transparency concerning OPTA's expenditure and its purpose. The proper conduct of operations is a prerequisite for the achievement of targets and results within the budgets stipulated for this purpose. Moreover, OPTA seeks to achieve as coherent an approach as possible towards its policy, operations and financial resources. In its annual budget OPTA specifies the activities which it is planning to undertake and the funds it believes it will spend for this purpose. OPTA's annual report then indicates the extent to which these plans have been implemented, what variances have arisen in relation to the budget and the reasons for this. Interaction with the market is very important in this respect. The market parties have the opportunity to inspect the draft budget and to ask questions about it. In addition, OPTA's view of the market and its annual strategic agenda are consulted. In this way the outside world influences OPTA's operations. Apart from this, OPTA regularly invites market parties to contribute ideas to regulatory and supervisory issues. OPTA's interaction with the market is intensive and absolutely vital to its work.

3.1 Finance and control

In 2006 OPTA took to heart a number of recommendations made in a letter addressed to the management from its accountant in 2005. In particular, significant improvements have been introduced in the payroll administration process and its interface with the accounts. Staff-related financial processes did not function adequately and OPTA implemented the suggestions which its accountant had made in this respect.

It goes without saying that OPTA exercised restraint and was critical in its use of the funds that were available for the performance of its legally stipulated duties. Greater prominence was given to effectiveness and efficiency in OPTA's agenda for 2006. OPTA is endeavouring to lower its budget slightly while continuing to be effective. This is reflected in the inclusion of long-term forecasts of in-

come and expenditure in the 2007 budget. OPTA is most certainly aware that the market parties are responsible for funding it and would like to ensure that its financial impact on the market is no more onerous than necessary. The underlying premise in this respect is to ensure the qualitatively superior performance of OPTA's duties. OPTA explicitly devoted attention to achieving savings. OPTA have exercised great restraint when filling vacancies both with regard to operational positions but especially in direct supportive ones. This has produced substantial savings. The 2007 budget has dropped to €17.8 million from €18.2 million last year.

3.1.1 Budget

In the year under review, OPTA pursued numerous courses of action for the purposes of effectiveness, which led to savings on the cost of equipment. The cost of engaging consultants, and of research and consultancy assignments, which constitute part of the expense item, third-party assignments, has been reduced compared with the previous year. OPTA has started to perform more of its work in-house. Reductions have also been achieved by working more efficiently. All of this has had the effect of substantially reducing salaries and wages on balance. Through these types of savings, amongst others, OPTA was able to reduce its budget for 2007 by several hundreds of thousands of euros compared with its budget for the year before. In so far as the performance of its legally stipulated duties allow, OPTA also intends to adopt new measures for the purposes of efficiency which are designed to reduce its expenditure even further in 2008. The need to do this has also been stressed by the new government's announcement of cost-cutting measures throughout the public sector.

3.1.2 Planning and control cycle

Planning and control is of a cyclical nature within OPTA and previously consisted of two sections that were divorced from one another. On the one hand, there was an externally focused cycle. As part of this, external communication occurred in advance concerning targets

stipulated in OPTA's annual plan, market vision and strategic agenda, and afterwards in the form of a review of the results which OPTA had achieved in its annual report and accounts. Apart from this, there was an internally focused managerial cycle, as part of which budgets were drawn up for activities, their progress was monitored and their direction was adjusted where necessary. There was insufficient coherence between the two cycles, because until recently there was no connection between the external communication about objectives and the internal preparation of the budget.

Acting on the instructions of the Ministry of Economic Affairs, in 2004 to 2005 Berenschot, a management consultancy firm, carried out the mandatory four-yearly audit of OPTA provided for in the latter's enabling legislation. Following an initial reassessment in 2004, in 2006 OPTA continued to implement Berenschot's recommendation to ensure that internal and external accounting closely complement each other. From now on the budget and the objectives, which are based on OPTA's vision of the market, will be prepared at the same time. This is leading to greater consistency between the two documents and more transparency for market parties and stakeholders.

3.1.3 Introduction of a fee system

In 2006 a new fee system was introduced for market parties' payments towards OPTA's regulatory work. Based on the telecommunications turnover achieved by market parties in the Netherlands, OPTA determines the fees that are to be paid to it. The companies' financial obligations in this respect have been broken down into three categories based on the amount of their turnover ([see the box](#)). This classification has been determined by the Minister of Economic Affairs. The new fee system ensures a wider spread and fairer distribution of OPTA's expenditure amongst the various market parties. The rationale for this system is that the broadest shoulders are capable of carrying the heaviest loads. The new system has elicited a very limited number of objections.

Fee system broken down into three categories:

- Businesses with a turnover of less than €2 million do not pay any fees to OPTA.
- Businesses with a turnover of less than €20 million, but more than €2 million pay, a predetermined fee, which the Minister of Economic Affairs sets each year.
- The remaining expenditure is divided amongst those market parties with a turnover in excess of €20 million in proportion to their turnover.

Before the new system was introduced, OPTA had to estimate the overall turnover of the electronic communications market and the number of market parties involved. However, at the time it did not yet have the legal basis to request all of the information it required from the market parties. Consequently, when the new system was introduced on 1 January 2006, OPTA did not have the information it required to determine these fees with complete accuracy. As part of its estimate, OPTA had to calculate how many businesses had a turnover of between €2 million and €20 million, and how many had a turnover of less than €2 million. The overall turnover of the electronic communications market appeared to have been correctly estimated, but the number of parties with a turnover of less than €2 million subsequently turned out to be larger than estimated. As a result, in 2006 OPTA received less in the way of fees than was expected and is legally required to make up for this shortfall in the fees for 2007, which means that they will be higher. It is anticipated that the problem occasioned by the estimate will not be repeated.

With regard to the fee system, see also the interview with Stef de Vries on [page 96-99](#).

3.1.4 Treasury banking

In the course of the year OPTA became involved in Treasury banking on its own initiative. This means that OPTA participates in the collective management of funds within

the Ministry of Finance. What this entails is that balances are pooled every day: any positive balance on OPTA's bank account is transferred to the Treasury account held with the Dutch central bank, De Nederlandsche Bank, while any shortfall is topped up from the same account. The benefits for OPTA are higher interest receipts and lower interest payments, because the State pays interest at market rates on credit balances without deducting anything and also charges interest on overdrafts at market rates, but without any mark-up. Apart from these benefits for OPTA, it is also in the public interest: Treasury banking ensures that funds do not leave the Treasury until absolutely necessary, thereby ensuring that public funds are dealt with more efficiently throughout government.

3.2 Organisation

An evaluation of OPTA's restructuring and the ongoing implementation of improvements were significant issues in 2006. OPTA also went to a great deal of trouble to continue implementing these improvements in the organisation in 2006 and achieved positive results. Apart from an Economic Analysis Team, OPTA also established a Legal Analysis Team to stimulate and develop economic and legal ideas concerning important issues in the market which it regulates. This was one of OPTA's top priorities this year. Finally, close collaboration with the Ministry of Economic Affairs ensures that the latter is closely informed about the situation prevailing within OPTA and that OPTA can adequately respond to the questions and requirements of OPTA's parent department.

3.2.1 Analysis teams

OPTA established a Legal Analysis Team (LAT) alongside its existing economic analysis team (EAT) in the year under review. In addition to doing their normal work, a number of members of staff are active in these teams with the aim of stimulating and developing economic and legal ideas on important issues in the market which it regulates, something which OPTA regards as

a top priority. OPTA also seeks to ensure that its long-term vision for regulation is transparent, thereby rendering its regulatory policy more predictable. In this connection OPTA created a number of products in 2006. For instance, the LAT reviewed OPTA's dispute arbitration practice over the past eight years and analysed the rulings which the District Court of Rotterdam and the Trade and Industry Appeals Tribunal had handed down in those cases, so as to ensure that OPTA can benefit from this in its future dispute arbitration decisions. The LAT also drew up a checklist to determine the manner in which OPTA handles requests for information (Section 18.7 of the Telecommunications Act). This checklist is designed to ensure that retrieving information for market parties occurs as efficiently and with as few demands as possible.

“The analysis teams develop and stimulate economic and legal ideas.”

In 2006 the Economic Analysis Team published an economic policy paper entitled *Is Two Enough?*. EAT sought to acquire an understanding of the conditions subject to which effective competition can occur in a market with only two vertically integrated providers. The question remains as to whether a situation featuring two such parties in the Dutch electronic communications market will produce sufficient competition. Following the publication of this paper, a round table was held involving a large number of the parties concerned. The EAT paper outlines a scenario involving two vertically integrated providers that introduce similar multi-play product ranges in the market. In the Netherlands, the situation of cable, on the one hand, and KPN's network, on the other, a possible example. The round table revealed that this scenario does not yet exist here because it was felt that the degree of convergence had not developed to such an extent that complete equivalence exist. For instance, KPN's strengths

still lie predominantly in telephony, while the same applies with regard to cable in the area of broadcasting. Through the economic review, OPTA sought to make a substantive contribution to the debate concerning the regulation of access to the communications sector. The EAT paper also presents several suggestions for a follow-up study in 2007 and will serve as input for the new market analyses.

3.2.2 Evaluation of restructuring

The restructuring which occurred in 2005 was evaluated. Amongst other things, the most important conclusion was that having lawyers work in the various line departments (no longer in a separate Legal Affairs Department) has had a positive effect. There has also been a sharp increase in the desire to work together and the willingness to operate outside one's own department. The principle of integral responsibility has produced a better working environment and increased effectiveness. It was felt that people were more open with each other and more relaxed. At the same time, there were requests for a more equitable spread of the workload and greater flexibility to deploy people irrespective of organisational boundaries. The organisation is still capable of growing further when it comes to learning how to set priorities and to organise work horizontally. The restructuring will be re-evaluated at the beginning of 2007.

3.2.3 Audit follow-up

In 2005 the management consultancy firm, Berenschot, carried out the mandatory four-yearly audit of OPTA's method of operation on the instructions of the Ministry of Economic Affairs. OPTA has experienced various developments since then. Following its overall restructuring and changes to its organisational structure in 2005 (see also the 2005 annual report), OPTA went to great lengths to implement the improvements in its organisation which Berenschot had recommended. For instance, it selected a series of cases to serve as part of a pilot project in which OPTA has focused its attention on ensuring greater transparency (more openness in its communications,

providing an insight into its method of operation and clarifying its priorities) and more rational processes. For the purposes of the latter, OPTA has also made an effort to consider constantly its own actions and their effect on stakeholders in addition to substantive arguments. OPTA realises that it is vitally important that it generate support for the decisions that it takes and the choices that it makes. Finally, in a more general sense, efforts have been made to make management and staff more aware that OPTA has something to learn in this respect.

In addition, OPTA took steps to restructure its operations more effectively. OPTA believes that the improvement of its internal structure enjoys top priority. OPTA has changed its budgeting and accounting systems, and action on numerous fronts has greatly increased the awareness of expenditure within the organisation. Efforts have also been made to reduce indirect expenditure within the organisation where required. This refers to costs which, unlike direct expenditure, cannot in principle be attributed to OPTA's primary, legally stipulated duties. OPTA wanted to obtain greater insight into the extent to which it was making progress in terms of the efficiency and effectiveness of its internal structure and operations. This led to it commissioning Berenschot to conduct an interim evaluation of specific aspects. Berenschot concluded that OPTA's efficiency had increased in the past two years, because it was carrying out a larger amount of work, while its budget had remained unchanged and it was also performing support duties even though its authorised staffing complement (number of FTEs) was declining. In addition, the management consultancy firm noted that greater emphasis had come to be placed on increasing the number of operational hours. However, Berenschot advised us to develop better key figures to facilitate the assessment of effectiveness and efficiency. OPTA has consulted the Ministry of Economic Affairs about this and it is anticipated that in 2007 new performance indicators will be formally stipulated in the Information Charter to which OPTA and the Ministry are party.

3.2.4 Collaboration Ministry of Economic Affairs

Collaboration with the Ministry of Economic Affairs is vitally important. As a regulatory authority, OPTA has been charged with the implementation of legislation and regulations drafted by this Ministry and in this sense policy and implementation are extensions of each other. Apart from the legislation and regulations, the Minister of Economic Affairs has the power to issue policy directives to OPTA. The Ministry does not express itself in relation to individual disputes and current procedures. Either solicited or unsolicited, OPTA provides the Minister of Economic Affairs with advice and assesses the practicability of legislation and regulations in legal terms. For instance, during the year under review OPTA assessed the practicability of the amended Postal Act, amongst other things. OPTA also consulted the Ministry in preparing for the introduction of new regulations concerning consumer protection in relation to the misuse of numbers, in particular the 090x information numbers.

In addition, financial progress meetings are regularly held between the Ministry of Economic Affairs and OPTA about, amongst other things, performance indicators, Treasury banking and the budget including the relevant regulatory fees paid by the market. Close consultation is held about the latter item, in particular. Thanks to these financial routines the Ministry is well-informed about OPTA's financial affairs and the latter is capable of responding to its parent Ministry's questions and requirements.

3.3 Staffing matters

OPTA had an entirely new Commission in 2006. Staffing policy received a boost and OPTA encouraged activities relating to mentorship, coaching and peer supervision. In addition, this year OPTA also provided its staff with support in their efforts towards professional development, focussing on raising their awareness of their surroundings, collaboration and knowledge sharing, amongst other things.

3.3.1 New Commission

Following the departure of the members of OPTA's first Commission, namely, Prof. Dr. Jens Arnbak, Lilian Gonçalves-Ho Kang You and Herman van Karnebeek, an entirely new Commission has since taken office. OPTA's new full-time Commission Chairman and Chief Executive Officer, Chris Fonteijn, had already been appointed by the Minister in September 2005.

At the beginning of the year under review Dr. Mark de Jong joined us as a new member of the Commission on a non-executive basis. Dr. De Jong is an economist and combines business experience with an academic background, an area which is crucial for OPTA's regulatory work. Apart from this, he is also the General Manager of Telematica Instituut in Enschede. Prior to this Mark de Jong spent more than 10 years working for KPN, his last position being Executive Vice-President for Corporate Development at KPN Mobile. In addition, until recently he also served as a special senior lecturer on Economics and the Services Sector at the University of Amsterdam.

Prof. Ad Geelhoed joined the Commission in the autumn. Prof. Geelhoed mainly brings with him experience of the administrative sector as well as European law, both of which are very important for OPTA's work. He used to serve as Advocate-General at the Court of Justice of the European Communities in Luxembourg. Prior to this he served as Secretary-General in the Ministry of General Affairs (1997-2000) and of Economic Affairs (1990-1997). He has also been a member of the Scientific Council for Government Policy (Wetenschappelijke Raad voor het Regeringsbeleid). Ad Geelhoed is also a senior lecturer in European Policy Integration Law at the University of Utrecht.

The appointment of Prof. Geelhoed marked the end of Lilian Gonçalves' membership of the Commission for more than nine years. A great deal of thanks must go to her for the very valuable contribution that she has made to the regulation of the electronic communications and postal markets, mainly as OPTA's 'legal conscience'.

The first associate member of the Commission was also appointed during the year under review, namely Dr. Annetje Ottow. Her appointment underscores the importance which OPTA attaches to the legal quality of its regulatory work. In accordance with OPTA's enabling legislation, associated members of the Commission are appointed on the basis of their special expertise. At the Commission's invitation, they attend its meetings and provide advice. Dr. Ottow is known as a leading telecommunications lawyer who has had years of experience in both the legal fraternity (she was a partner in Houthoff Buruma) and the academic world (the Institute of Information Law at the University of Amsterdam). In June 2006, Annetje Ottow successfully defended her thesis on the regulation of the telecommunications sector.

3.3.2 Staffing policy and professionalisation

OPTA's staffing policy received a boost during the year under review. Various new staffing tools were developed or improved, namely competency management, management development and policy on expert positions. OPTA sought access to facilities and programmes which are used by the Ministry of Economic Affairs. In this way OPTA avoids the need to reinvent the wheel. In addition, projects were established, which had been announced as part of the restructuring in 2005, namely mentorship, coaching and peer supervision. OPTA helps its staff achieve professional development directed towards raising their awareness of their surroundings, collaboration and sharing their knowledge.

OPTA used the various facilities to improve their expertise and skills, in some cases by attending specialist conferences, talks and workshops, in others through competency-oriented training or coaching. Within OPTA, available knowledge was accumulated and distributed through lunch-time meetings and specialist forums, through which best practices and do's and don'ts were developed and shared with the aid of presentations and

case studies. Specialist forums are available for the following disciplines: technology, law and economics. OPTA's legal affairs staff find that their specialist forum is a useful tool for discussions of case law.

OPTA has also started developing e-HRM. Various methods have been adapted to make it more robust (in relation to remuneration changes), reliable and efficient (as in the case of applications for leave). Staff are now able to make their own staffing arrangements at their desk using a PC.

3.3.3 Works Council

Following elections in March, a new Works Council commenced its term of two years in April. The Works Council consists of seven members of staff and an official secretary. It is the body which represents staff in relation to OPTA's organisational policy. To this end, the Works Council regularly consults the 'director', the chairman of the OPTA Commission and the head of the personnel department. If required, the Works Council convenes staff meetings to consider current issues and it consults the rank and file.

During the year under review, the WC dealt with competency management, and risk analysis and assessment, amongst other things. In addition, the WC considered matters such as management development and expert policy, the first evaluation of the restructuring process and OPTA's involvement in *ConsuWijzer* ([see also Chapter 2, Section 2.1](#)). Every year, the Works Council issues a report on its activities and the results which it has achieved.

3.3.4 Absenteeism

OPTA had to contend with a high absenteeism rate (6.8%) in 2006. Compared with regulatory authorities, such as NMa, the AFM (Netherlands Authority for the Financial Markets) and DNB, OPTA's rate is more than 2% higher. Compared with the entire government it is 1% higher. This high figure is greatly influenced by the existence of staff

who have been sick for a lengthy period. OPTA invests a great deal of effort in the reduction of absenteeism by devoting attention to the provision of assistance to long-term absentees, training management, strict compliance with the applicable sick leave protocol, the reintroduction of a staff medical team, and the provision of information to employees in general. The average incidence of absenteeism has now dropped and the number of people who have never been absent is on the rise.

A risk analysis and assessment along with a complementary welfare study have also been conducted. They reveal that there are no major risks in respect of health and safety, but that several employees take less pleasure in their work, especially in relation to support. The various managers have systematically devoted close attention to these symptoms in order to trace the causes and determine possible remedies. At the end of 2006, the Works Council was also consulted about the manner in which this matter needs to be tackled further.

3.3.5 Staffing

In 2006 OPTA exercised restraint when refilling vacant authorised positions. In each case OPTA carefully examined whether it was really necessary to fill a vacancy, before publicising a position as a vacancy. The rationale for this is that OPTA constantly need to ensure the efficient use of its people and resources. As a result, on average its workforce remained below OPTA's maximum authorised staffing complement in 2006, which was incidentally raised slightly during the year. This increase refers to the addition of 1.5 FTEs for staff with rather specific training for electronic intelligence work in connection with OPTA's Internet safety duties.

	Authorised Staffing Complement (FTEs)	Workforce (FTEs)
1 Jan. 2006	150	139.7
31 Dec. 2006	151.5	136.9

3.4 Communication and information

In 2006 OPTA devoted a great deal of attention to making its information more accessible. It does this not only through its normal media, such as its press conferences and releases, its business contact magazine, *Connecties*, and its electronic newsletter but has also improved its website and has organised a webcast, a symposium and a newly established series of meetings for analysts. In addition, OPTA has had a study conducted into its reputation, which has produced positive findings.

“OPTA has had a study conducted into its reputation, which has produced positive findings.”

3.4.1 Improved reputation

The legally stipulated audit which OPTA undergoes every four years mainly covers the manner in which the organisation carries out its duties. Communicative aspects or OPTA's reputation are barely touched on in this respect. Nevertheless, OPTA's reputation is vitally important, because it has an effect on the organisation's effectiveness as a regulator. A study which OPTA commissioned Meines & Partners to conduct into its reputation in February 2006 is a follow-up to a similar study performed two years earlier. On both occasions a number of questions were presented to a wide-ranging group of respondents with considerable experience in dealing with OPTA, namely market parties, policymakers, politicians, journalists and a number of OPTA's own staff. A cautious conclusion which may be drawn from the recent report is that, according to both internal and external parties, OPTA enjoys a good reputation, which is better than two years ago. OPTA has been found to be professional, independent, thorough and proficient. Now OPTA's communications are less 'over-stated' and arrogant. In addition, its relationship with the various

stakeholders, the Ministry in particular, have improved. Finally, the Commission's new chairman has had a positive impact on OPTA's reputation.

3.4.2 Symposium on market regulation

During a symposium on *Dilemmas Involved in the Sector-Specific Market Regulation*, which OPTA organised on 31 October 2006, Ad Geelhoed, Marc van der Woude and Annetje Ottow presented their views on the subject, following which the introductory speakers and the more than 170 guests in the hall entered into debate with each other. They discussed European influence on the structure of market regulation, how a 'use-by-date' can be determined for sector-specific regulation, and the question as to when general regulation of competition will suffice.

Prof. Geelhoed, a member of the OPTA Commission and also a senior lecturer in European Policy Harmonisation at the University of Utrecht, spoke about European influence on the structure of market regulation and answered the question as to how in an ideal situation a solution should be found for a division of powers between the Community and national levels in the case of the sector-specific regulation of the postal and telecommunications markets. As Prof. Geelhoed puts it, "Brussels and the national bodies possess discrete complementary powers which serve the interests of legal certainty and proper collaboration. National courts of law may not ignore the collaborative framework involving Brussels and the Member States."

Van der Woude, a lawyer practising in Brussels and a senior lecturer in Competition Law at Erasmus University, spoke critically about the scope and benefits of sector-specific regulation alongside the existing general regulation of competition: "Given the manner in which sector-specific competition law is currently taking shape in many sectors, there is reason to fear that OPTA will become even further alienated from the goal of ensuring the optimum operation of market forces, and that sector-specific law is seeking to achieve other objectives".

At the end Dr. Ottow, an associate member of the OPTA Commission, spoke about the need to balance legality and effectiveness in the day-to-day practice of a market regulator: "In our everyday work I see an inconvenient divergence of speed and effectiveness, on the one hand, and the satisfaction of prerequisites, such as the duty of care, transparency and consultation, on the other. The Telecommunications Act facilitates the active achievement of goals involving liberalisation, competition and so forth. At the same time, administrative law requires an entire gamut of prerequisites which, when taken together, can undermine this. There is a need to find an appropriate balance to make it practicable. To my mind, the key lies in the grounds cited for decisions and in highlighting this balance before the courts. If OPTA is to achieve its goals in the foreseeable future, this is all that I can reasonably offer, as OPTA, in terms of its duty of care".

3.4.3 Web symposium on the regulation of the telecommunications market

At the beginning of November, OPTA and the Tilburg Law and Economics Centre, affiliated to the University of Tilburg, organised a symposium on the *Future of Telecoms Regulation*, which dealt with the future of regulation in new and converging electronic communications markets. Reputable experts from the economic, legal, technological and regulatory sectors debated developments in the information and media markets, the relationship between market structure, competition and the need for regulating telecommunications, and finally regulation in the Netherlands. A webcast of the symposium was also broadcast on the Internet. This made it possible for people to pose questions interactively. The webcast attracted 350 visitors from various countries.

3.4.4 Information for analysts

OPTA has started to streamline its contact with financial analysts, banks and their customers. Special meetings are being organised for analysts as of 2006. The first meeting to be held as part of the new approach occurred in May

2006 and dealt with the publication of OPTA's annual report. Until then OPTA had not had a fixed policy governing its dealings with the financial sector. OPTA acceded to requests for interviews, if it had capacity available. This approach proved to be too onerous for the organisation, especially due to an increase in the number of requests received both at home and abroad. In this respect OPTA would like to apply principles of equality to its provision of information about the electronic communications and postal markets. Every stakeholder should enjoy the best possible access to the same amount of information. Although there have never been any irregularities to date, OPTA wishes to preclude the possibility of insider trading occurring due to its coincidental involvement, partly in the light of stricter financial regulations.

3.4.5 Improved website

A visitor survey, which was conducted amongst journalists, lawyers and consumers at OPTA's behest in 2005, established the basis for changes made to the organisation's website in 2006. The findings of this study revealed that the website clearly shows what OPTA stands for and what it does, although it should be easier to find documents and the wording could be more concise. OPTA has ensured that this is the case. What is also important in this respect is that from now on visitors to the OPTA website will be referred to ConsuWijzer, the information centre jointly operated by OPTA, NMa and the Consumer Authority. As a result the focus of the OPTA website has come to rest more precisely on the business target group.

3.5 Information technology and documentation

The automation of processes and tasks helps the organisation to operate more efficiently and to ensure the rapid provision of customer-focused services to external parties. Access to the Ministry of Economic Affairs' intranet and a legal database, a trial involving electronic files conducted together with the District Court of Rotterdam, and purging the archives help to improve OPTA's work.

3.5.1 Sharing information internally

In 2006 the Ministry of Economic Affairs opened its intranet to OPTA's staff. This means that OPTA's personnel have ready access to all types of sources, documents and contact details in the Ministry of Economic Affairs. In addition, OPTA also gained access to the legal database in the State Advocate's office. OPTA has also achieved further improvements in relation to the accessibility of legal information by procuring Legal Intelligence licences for a number of users. Legal Intelligence is a portal which presents and allows one to search content provided by various Dutch legal publishers using a single simple interface.

3.5.2 Electronic files pilot project

Together with NMa, OPTA helped establish an electronic files pilot project at the District Court of Rotterdam. This trial makes it possible for parties to legal proceedings to submit relevant documents relating to proceedings and other documentation to the court in a digital environment established for this purpose. The aim of this project is to examine whether it is possible for OPTA to reduce the flow of paper in its dealings with the court. It is anticipated that this electronic trial will create an avenue for the rapid, convenient exchange of documents. This pilot project will actually start in 2007.

3.5.3 Archives

In August the National Archives of the Netherlands approved OPTA's basic selection document. As a result it was possible to purge OPTA's files and to reveal which documents had been transferred to the National Archives. This has created space and more manageable archives. OPTA also made preparations to digitise files as of 2007 to ensure that documentation and information are more readily accessible both internally and externally. ●

“If we read the signs of this at an early stage, together we will be able to avoid a great deal of trouble.”



ConsuWijzer is a project in which OPTA, NMa and the Consumer Authority pool their strengths in relation to consumer education and complaints handling. This has the advantage of enabling us to help consumers more promptly through a single office and to show them that we take their comments, questions and complaints seriously. Now that we have provided the ConsuWijzer office with a strong presence in the market, we are receiving questions and complaints which we would otherwise not have heard. This means that we are also becoming more closely involved in consumer education now. Our added value lies

in the way of complaints. This does not mean that we automatically resort to law enforcement. This is usually not possible in the case of individual complaints but it could provide grounds for sitting down with the market parties to examine how matters could be improved. We look forward to doing this so as to help both the market and consumers. If on both sides we are aware of the issues that are playing a role and are able to read the signs of this at an early stage, together we will be able to avoid a great deal of trouble.

Many of the main dilemmas which we noted in ConsuWijzer's first year have to do with teething problems and



“How can we ensure that the obligations which we impose on market parties are feasible in practice?”

in the fact that we are now better able to see what issues are playing a role on the consumer side of the market. The market parties are divided in how they view this division of our attention. On the one hand, we hear murmurs to the effect that consumer education is not a task for OPTA. On the other hand, we see that market parties are seizing the opportunity to refer consumers with complaints to ConsuWijzer themselves. Ultimately, we also inform the market parties about what we are receiving

internal communication. This demands some patience and dedication in order to enable the three regulatory authorities to ensure the proper operation of this consumer centre. Not only does the call centre need to be perfectly incorporated in all of our themes and subject matter, the various systems also need to complement each other seamlessly, and our website must satisfy strict requirements. Not only do we have something to offer consumers in this respect, but ConsuWijzer is an eminently suitable avenue through which we can discover what is at stake. We therefore need enough capacity to process registrations and do something with them, because this will improve our regulatory work.

We have received a considerable number of complaints since ConsuWijzer's inception. Many complaints concern telecommunications issues, such as switching, Internet safety and problems with service providers. However, many instances concern matters of a more general nature, with which we have fewer dealings, such as contractual provisions and products. We soon noticed that we had to clarify the definition of subjects promptly amongst ourselves in order to ensure that questions were forwarded to the appropriate place. Where complex questions are involved, the call centre forwards them to the regulatory authorities, each of which has a

receive proper assistance there. It is conceivable that in the future ConsuWijzer may be extended to include consumer phone links to other organisations.

Whereas OPTA mainly used to think in terms of wholesale markets, we now clearly have to get used to a new perspective, namely, that of consumers. It requires a change in the way we view our regulatory work and the

"It demands some patience and dedication for three regulatory authorities to ensure the proper operation of this consumer centre."

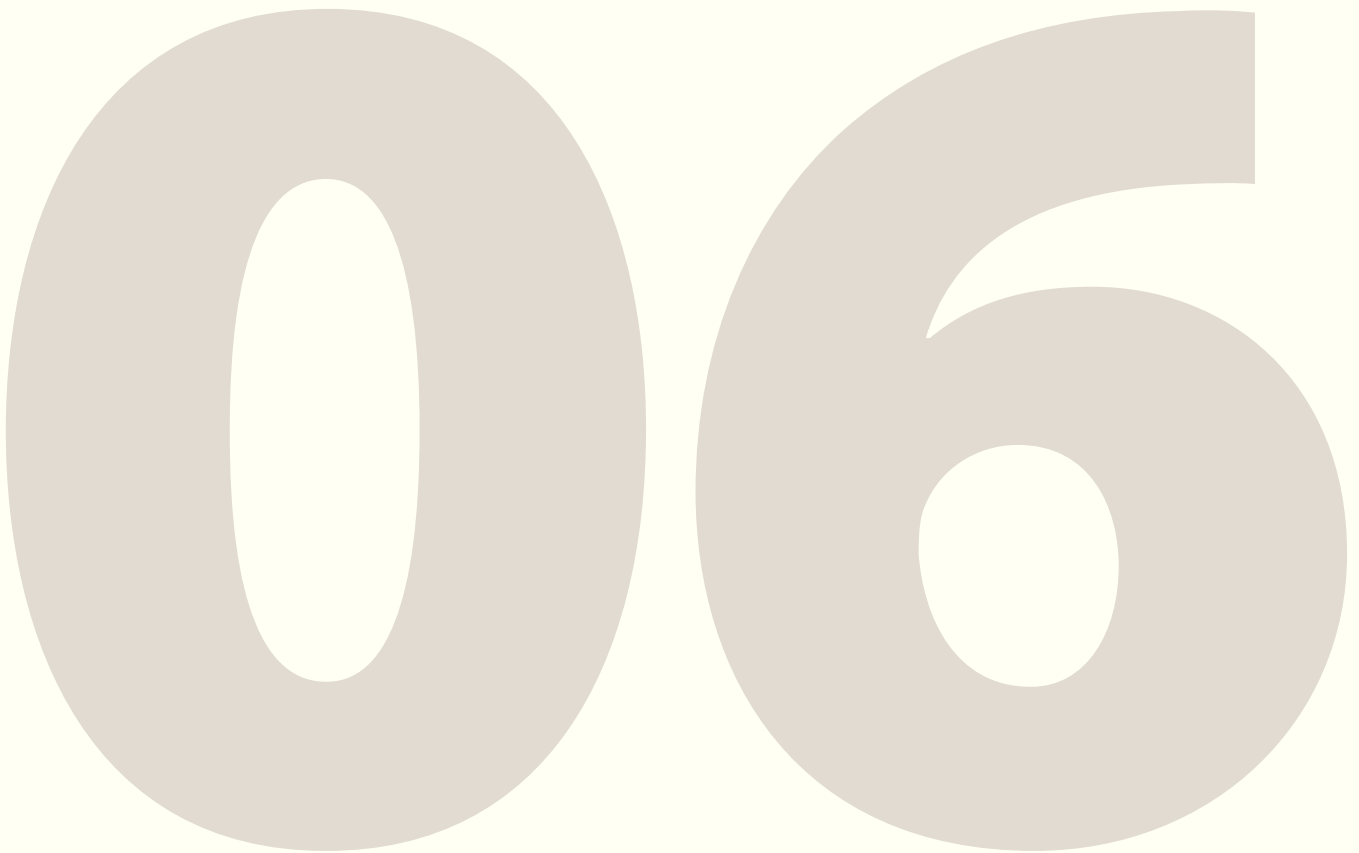


back office to answer them. However, OPTA can only do something with comments that are covered by our legal powers. This means that, while we may be able to do something about spam, we cannot do anything about computers in general, for example. Those are matters which the Consumer Authority now tackles, where possible.

During ConsuWijzer's start-up stage and even now we have contact with other consumer affairs organisations and bodies, such as Consumentenbond (Consumer Affairs Association) and various dispute resolution committees. We find it important that we are able to refer consumers to the appropriate office and that they

various markets, even at the level of the individual. What does it mean to consumers, if the market experiences certain developments? Yet the opposite also applies: how can we ensure that the obligations which we impose on market parties are feasible in practice? Our own regulatory assistants sometimes struggle with this. It is easy to refer consumers to dispute resolution committees, because we can do little at the individual level. Nevertheless, we can also use our expertise to ensure that the markets really function properly. In the case of our back office, we function as the internal mouth of the consumer within OPTA. This is a challenge! ●

Abbreviated annual accounts



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

Balance sheet

	31 December 2006 (in € thousands)	31 December 2005 (in € thousands)
Assets		
Fixed assets		
Intangible fixed assets:		
Formation expenses	-	82
Tangible fixed assets:		
Tenant's property	1,091	1,129
Equipment	230	215
Computer hardware and software	1,830	1,577
	3,151	3,003
Current assets		
Accounts receivable	225	430
Fines and conditional penalties receivable	435	860
Receivable from Ministry of Economic Affairs	396	-
Other receivables	915	477
Cash and bank balances ¹	469	17,875
	2,440	19,642
Total assets	5,591	22,645

¹ The large balance on the Postbank account at the end of 2005 was due to OPTA's receipt of a fine of €17 million from Koninklijke KPN N.V. on 30 December 2005. OPTA remitted this amount to the Ministry of Finance in 2006. This explains the huge drop in the balance of cash and bank balances in 2006.

	31 December 2006 (in € thousands)	31 December 2005 (in € thousands)
Liabilities		
Net assets		
General reserve	373	112
Formation expenses capitalisation reserve	-	82
	373	194
Provisions		
Provision for objections and appeals	36	94
Provision for future remuneration	613	-
Provision for anniversary bonuses	47	-
	696	94
Current liabilities		
Payable to the market	369	1,192
Accounts payable	1,817	1,169
Debt to Ministry of Economic Affairs	-	476
Taxes and social insurance premiums	375	243
Other liabilities	1,961	19,277
	4,522	22,357
Total liabilities	5,591	22,645

Statement of income and expenditure

	Actual 2006 (in € thousands)	Budget 2006 (in € thousands)	Actual 2005 (in € thousands)
Income			
Revenues from market categories	13,331	14,693	15,816
Other income	3,455	3,262	2,160
Extraordinary income ²	179	-	-
Total income	16,965	17,955	17,976
Expenditure			
Personnel costs			
Salaries and social insurance charges	9,110	9,636	9,407
Other personnel costs	1,403	807	1,320
	10,513	10,443	10,727
Third-party assignments	2,510	2,492	2,313
Cost of goods purchased	3,618	3,765	3,447
Depreciation	1,203	1,200	1,122
Extraordinary expenditure	-	-	202
Expenditure subtotal	17,844	17,900	17,811
Contribution toward joint information centre	-	300	-
Total operating expenses	17,844	18,200	17,811
Operating result	- 879	- 245	165
Interest income	235	-	89
Result	- 644	- 245	254

Proposed appropriation of result

The Commission has decided to allocate the 2006 deficit of €644,000.00 as follows:

1. €179,000.00 will be credited to the general reserve;
2. the item, payable to the market, will be debited for €823,000.00.

This decision has already been accounted for in the annual accounts.

² This item consists entirely of a release from reserves which were set aside at the end of 2005 for subsequent costs involved in the restructuring process that was completed on 31 August.

Notes to the abbreviated annual accounts

Current liabilities

Payable to the market

This item is used to account for the result of the various market categories for the purposes of including it in future fees.

€823,000.00 was withdrawn from the item, payable to the market, at the end of 2006. This amount is equal to

the result excluding extraordinary income (€644,000.00 plus €179,000.00).

The following table presents the breakdown of the item, payable to market, over the various market categories (in € thousands).

	31 December 2006	31 December 2005
Public electronic communications networks		- 392
Public electronic communications services		- 154
Systems for conditional access		317
Electronic communications networks per licence		271
Electronic communications	- 1,212	42
TTP – certification service providers	- 46	- 13
Numbers	1,581	1,065
Post	46	98
	369	1,192

Fines and conditional penalties

Fines and conditional penalties may be broken down as follows (in € thousands).

Party	31 December 2006	31 December 2005
KPN Telecom B.V.	495	225
KPN Corporate Legal & Regulatory	360	-
Private individual	75	-
Koninklijke KPN N.V.	45	17,450
Private individual	43	43
Van Leerdam's Verkoopmaatschappij B.V.	27	27
Speko B.V.	23	23
Groenendaal Uitgeverij B.V.	20	25
Stichting Yellow Monday, h.o.d.n. Purple Friday	20	20
Low Cost Linking Inc.	20	20
Zmart B.V.	10	10
Private individual	2	2
Lijbrandt Telecom	-	15
Vitamins Direct B.V.	-	2
	1,140	17,862

When any fines or conditional penalties are collected, they are remitted to the Ministry of Economic Affairs.

Salaries and social insurance charges**Salaries, pension contributions and social insurance charges**

Salaries, pension contributions and social insurance charges may be broken down as follows (in € thousands).

	31 December 2006	31 December 2005
Salaries	7,815	7,593
Pension contributions	877	1,168
Social insurance charges	418	646
	9,110	9,407

Average number of employees

The average number of employees amounted to 145 in 2006 (2005: 145).

Remuneration of Commission members

The costs incurred by OPTA for the purposes of remunerating the members of the Commission in 2006 may be broken down as follows (in € thousands).

	Salaries ³	Fixed Expense Allowance	Business Representation Allowance	Pension Contributions	Social Insurance Charges	Remuneration Payable in the Future	Total
C.A. Fonteijn 1 Jan. – 31 Dec.	116	39	6	17	6	61	245
L.Y. Gonçalves- Ho Kang You 1 Jan. – 6 Oct.	121	7	9	12	1	593	743
H.A. van Karnebeek 1 Jan. – 28 Feb.	7	-	-	-	-	-	7
M.W. de Jong 1 Mar. – 31 Dec.	32	-	1	2	2	-	37
L.A. Geelhoed 7 Oct. – 31 Dec.	9	-	-	1	-	-	10
A.T. Ottow 1 Apr. – 31 Dec.	41	-	3	6	2	-	52
	326	46	19	38	11	654	1,094

For an explanation of the composition of the Commission, [see chapter 3, section 3.3.1](#) of the Annual Report.

The costs incurred by OPTA for the purposes of remunerating the members of the Commission in 2005 may be broken down as follows (in € thousands).

	Salaries	Fixed Expense Allowance	Business Representation Allowance	Pension Contributions	Social Insurance Charges	Total
J.C. Arnbak 1 Jan. – 31 Aug.	98	11	4	16	4	133
C.A. Fonteijn 1 Sep. – 31 Dec.	38	13	2	7	1	61
L.Y. Gonçalves- Ho Kang You	135	10	3	20	2	170
H.A. van Karnebeek	40	-	2	-	-	42
	311	34	11	43	7	406

³ This consists of a salary and a fixed sum. See the full text of the OPTA Permanent Members (Legal Position) Regulations [*Regeling rechtspositie vaste leden van OPTA*] (*Staatscourant*, 31 October 2001, No. 211, p. 12 and 31 August 2005, No. 168, p. 10).

Income and expenditure of market and other categories

OPTA derives its income from its legally stipulated duty to charge market parties fees for its annual regulatory work, registrations, licences, allocations, reservations, amendments and urgent dealings. The market parties were charged these fees on the basis of the OPTA Fee Regulations [*Regeling vergoedingen OPTA*] 2006.⁴ A one-off amendment was made to these regulations in 2006.⁵

OPTA implements enforcement policy in order to determine to what extent the relevant market parties have complied with their legally stipulated duties. The annual report reveals how OPTA performs its regulatory work and hence also the degree of certainty that is achieved with regard to the lawful nature of its receipts from market parties. Actual figures are accounted for in arrears.

Income and expenditure may be broken down by market category as follows (in € thousands).

	Actual 2006	Budgeted 2006	Actual 2005
Income			
Revenues from market categories:			
Public electronic communications networks			4,560
Public electronic communications services			6,750
Systems for conditional access			496
Electronic communications networks per licence			505
Electronic communications	10,652	12,635	12,311
TTP – certification service providers (including a contribution to the Ministry of Economic Affairs)	1	91	36
Numbers	2,188	1,477	2,981
Post	490	490	488
Market categories subtotal	13,331	14,693	15,816
Other income:			
Objections and appeals	3,407	3,055	1,985
Evaluations of the legal feasibility of legislation and regulations	38	207	174
Other income	10	-	1
Other income subtotal	3,455	3,262	2,160
Extraordinary income	179	-	-
Total income	16,965	17,955	17,976

⁴ *Staatscourant*, 21 December 2005, No. 248, p. 10.

⁵ *Staatscourant*, 18 July 2006, No. 137, p. 15 and 23 August 2006, No. 163, p. 9.

As a result of the introduction of the new fee system in 2006 an estimate was made last year of the number of service providers active in the electronic communications market category broken down by three turnover brackets. The estimate for the middle bracket turned out to be too high, with the result that the income from the electronic communications market category was approximately €2 million less than forecast.

The income achieved in respect of the numbers market category was €0.7 million more than forecast owing to

increased revenues from annual invoices issued for series of numbers and the issue of the latter. In the case of TTP virtually no income was received in respect of 2006, because the market had still not developed.

Unlike the market categories, the costs involved in objections, appeals and evaluations of the legal feasibility of legislation and regulations are paid by the Ministry of Economic Affairs each year based on calculations performed in arrears.

	Actual 2006	Budgeted 2006	Actual 2005
Expenditure			
Expenditure of market categories:			
Public electronic communications networks			6,011
Public electronic communications services			6,219
Systems for conditional access			159
Electronic communications networks per licence			390
Electronic communications	12,279	12,549	12,779
TTP – certification service providers	43	121	67
Numbers	1,520	1,778	2,057
Post	557	490	547
Market categories subtotal	14,399	14,938	15,450
Other income:			
Objections and appeals	3,407	3,055	1,985
Evaluations of the legal feasibility of legislation and regulations	38	207	174
Extraordinary expenditure	-	-	202
Other expenditure subtotal	3,445	3,262	2,361
Total expenditure	17,844	18,200	17,811
Operating result	- 879	- 245	165

(Read the Auditor's report on page 74)



“We do not have a monopoly on wisdom, an open dialogue is essential.”



The politicians have asked OPTA to do something about the numerous complaints made by consumers about telemarketing. The Telecommunications Act provides that a callee may protest against unsolicited telephone calls. We have interpreted this to mean that the caller needs to take action to ensure that he respects a consumer's protest. Since we feel that every business needs to enforce these provisions explicitly, we have agreed with the telemarketers that, when making calls, they have a duty to ask consumers whether they may continue to approach them. In our communication with the market, we mainly wanted to make busi-

Our aim was to ensure that consumers were not annoyed without imposing any unnecessary additional burdens on business. We wanted to adopt measures that would be easy for businesses to implement and therefore closely examined how we could ensure that our interpretation was feasible. We met with the relevant professional association, call centres and businesses which conduct telemarketing. In addition, we consulted relevant parties, such as Consumentenbond and Infofilter, which had received many responses. All of the relevant parties adopted a constructive approach and wanted to do something about the complaints. While sales are natu-



“Even with clear agreements we are encountering dilemmas and the situation on the ground appears to be more unmanageable than we had thought.”

nesses more aware of existing regulations and we were very successful in doing so. We again drew their attention to the provisions of the Telecommunications Act and our interpretation of them. In addition, we also have a ConsuWijzer website now, where consumers and others can go with any complaints they have about telemarketing. We pass on these complaints to the market.

rally important to the market, companies can also see that annoying consumers may be harmful to their business in the long term.

Sometimes the process of moving towards a feasible approach was difficult, because it did not involve the straightforward enforcement of a prohibition. Telemarketing is itself not prohibited and it is a legitimate and successful way of selling products. It is therefore not illegal to approach consumers by phone.

Infofilter has been around longer and is a good example of how self-regulation can work. Businesses which join it indicated by doing so that they wish to respect

consumers and do not want to bother them, if this is unwelcome. However, not all sectors were aware of the existence of Infofilter and, in addition, businesses do not have a duty to register with it. This makes it difficult to act forcefully. Nevertheless, our new approach towards the relevant provisions of the Telecommunications Act ensure that we can hold more businesses to account for their calling protocol. We encourage both businesses and consumers to register with Infofilter. Now it is also possible for us to use our powers and to enforce the arrangements that have been made with the telemarketers.

Now that these arrangements are in black and white, we will be enforcing them. However, we are also encountering dilemmas in this process and the situation on the ground appears to be more unmanageable than we had thought. We are trying to deal with this as flexibly as possible and are continuing to listen to what the various parties and consumers are saying about it.

“Our appeal to the market was primarily this: do something about the consumers’ complaints.”



Despite a lengthy, difficult process involving various parties and interests, we have acted as transparently as possible. We have done our best not to respond from our ivory tower but to examine sincerely what businesses feel is feasible. We also went out to examine precisely how a call centre operates and we consulted many people in the workplace. At the same time, we have been very clear as to what our task is. Our appeal to the market was primarily this: do something about the complaints of those consumers who do not like telemarketing.

Our transparency and dedication to collaboration have clearly borne fruit in this process. Businesses are pleased to be able to obtain a glimpse of the inner workings of their regulator. On the other hand, in our capacity as a regulatory authority we do not have a monopoly on wisdom and open dialogue is essential, if correct information is to be obtained. Moreover, we like to offer constructive ideas. Ultimately, this results in feasible collaboration! ●

Auditor's report


We have audited the 2006 abbreviated annual accounts of OPTA in The Hague, which are contained on pages 61 to 69 of this report. The abbreviated annual accounts are derived from the annual accounts of OPTA for 2006, which were audited by us. We issued an unqualified auditor's report in respect of these annual accounts on 28 March 2007. The management of the organisation is responsible for drawing up the abbreviated annual accounts. It is our responsibility to issue an auditor's report in respect of the abbreviated annual accounts.

Activities

We conducted our audit in accordance with generally accepted accounting standards in respect of auditing assignments. According to these standards, our audit must be planned and carried out in such a way that it can be ascertained with a reasonable degree of certainty that the abbreviated annual accounts do not contain any misstatements of material significance. An audit consists, for instance, of sample observations of information offered in

support of the amounts and the notes in the abbreviated annual accounts. An audit also includes an assessment of the financial reporting principles applied in drawing up the abbreviated annual accounts and of important estimates which the management of the organisation made in this respect, as well as an assessment of the overall nature of the abbreviated annual accounts.

Conclusion

We are of the opinion that the abbreviated annual accounts correspond to the annual accounts from which these have been derived in all respects of material significance. To obtain the insight required for a responsible assessment of the financial position and the results of the organisation and for adequate insight into the scope of our audit, the abbreviated annual accounts must be read in conjunction with the full annual accounts, from which these have been derived, as well as the unqualified auditor's report issued by us in respect of these annual accounts on 28 March 2007. 

The Hague, 20 April 2007

BDO CampsObers Audit & Assurance B.V.

J.J. Herst RA

Market Monitor

Electronic Communications and Post

06

1 Introduction

This *Electronic Communications and Post Market Monitor 2006* provides an overview of developments affecting competition in the electronic communications and postal markets. OPTA publishes this monitor every year as required by its enabling legislation. The purpose of this market monitor is to provide interested parties with an objective account of developments in the markets which OPTA regulates.

Both digitisation and bundled services appear to be gaining ground. These are the most important trends in the electronic communications sector. Traditional products are being replaced by digital ones and consumers are procuring bundled services from a single provider with growing frequency. This monitor also considers two other developments which may have an effect on competition in the future: convergence and consolidation. It concludes with a description of developments affecting the postal market and Internet safety.

2 Fixed telephony

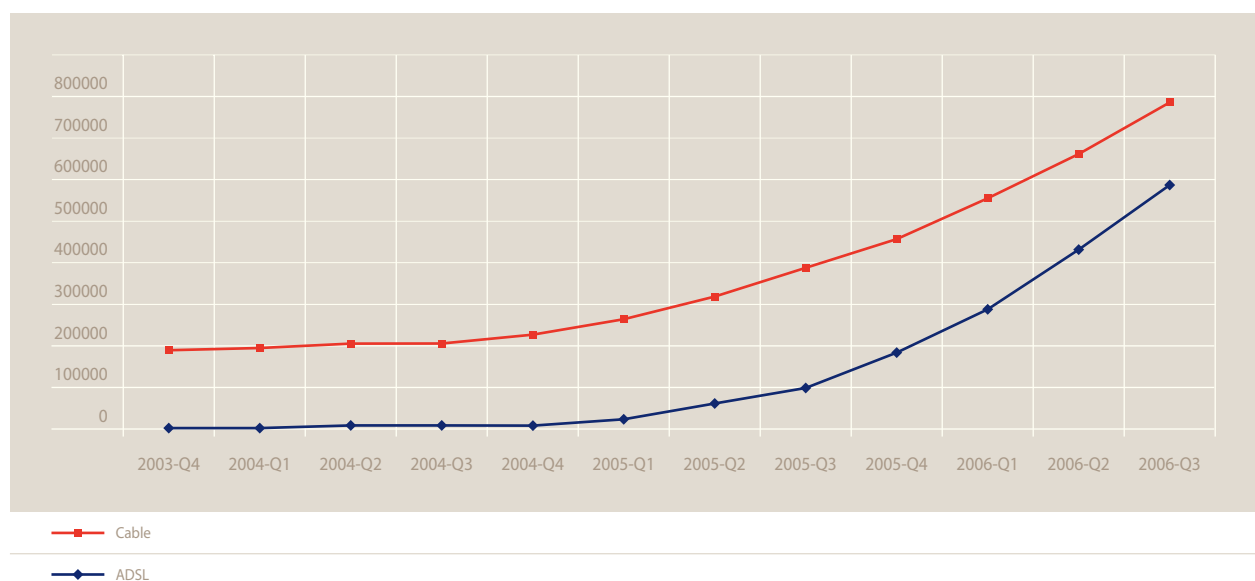
Broadband calls represent the latest trend in telephony. Now one in every five Dutch residents uses digital telephone services via ADSL or cable. Although KPN managed to achieve growth in the ADSL telephone services market, its overall share of the fixed telephony market has declined to below 70%.¹ The corresponding figure for 2005 was still well above 79%. Many Dutch people are also abandoning fixed connections, preferring to confine their calls to mobile services.

Digital calls rapidly gaining ground

The consumer market for fixed telephony via cable expanded rapidly for the second consecutive year. The number of households with a cable telephone connection doubled from almost 400,000 in 2005 to 788,000 in 2006 (in the third quarter of both years). Following the cautious emergence of ADSL telephone services in 2005, the number of such connections also grew to more than 587,000 in the third quarter of 2006. A large proportion of this growth may

Figure 1

Increase in digital telephony via cable and ADSL (number of subscribers).



Source: Telecompaper.²

¹ Any reference to market share in the electronic communications markets throughout this monitor is based on the number of connections.

² Telecompaper, *VoIP Market Adds 282,000 Subscribers in Third Quarter*, 24 November 2006.

be attributed to KPN, which introduced its InternetPlus-Bellen and SlimBellen services at the beginning of 2006. However, these new types of telephone services were beset by numerous teething problems and complaints.

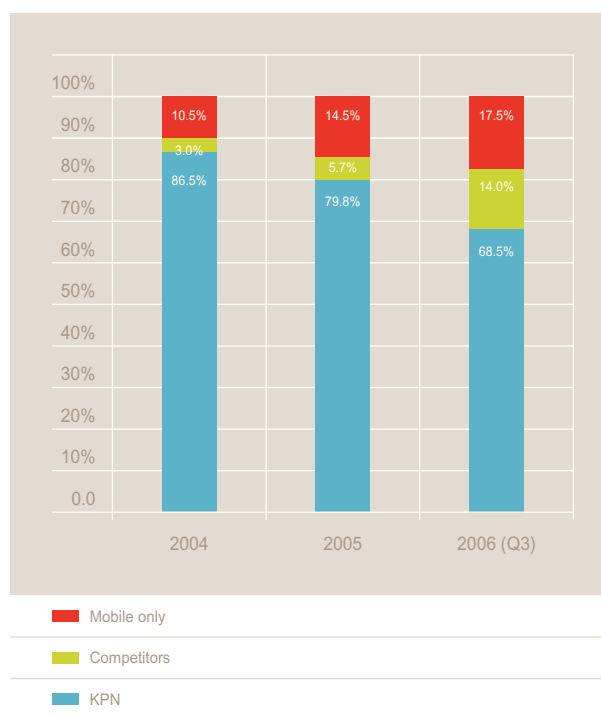
Widespread cancellation of fixed connections

Never before have so few people used fixed telephony for phone calls. The number of households without a fixed telephone connection has risen to approximately 17.5% (approximately 1.3 million households).³ These households are often described as 'mobile only', because it is assumed that they use mobile service to make calls. In mid-2006, 64.8% of Dutch households had a traditional connection with KPN (PSTN or ISDN). This includes about 1 million⁴ Dutch households in which calls are made using so-called carrier preselection (CPS).⁵ The proportion of households that have switched to digital telephony (cable or ADSL) amounts to 17.7%.

UPC is the largest provider of digital telephone services via cable and is followed by Casema and Essent. KPN heads the market for ADSL digital telephony and is

Figure 3

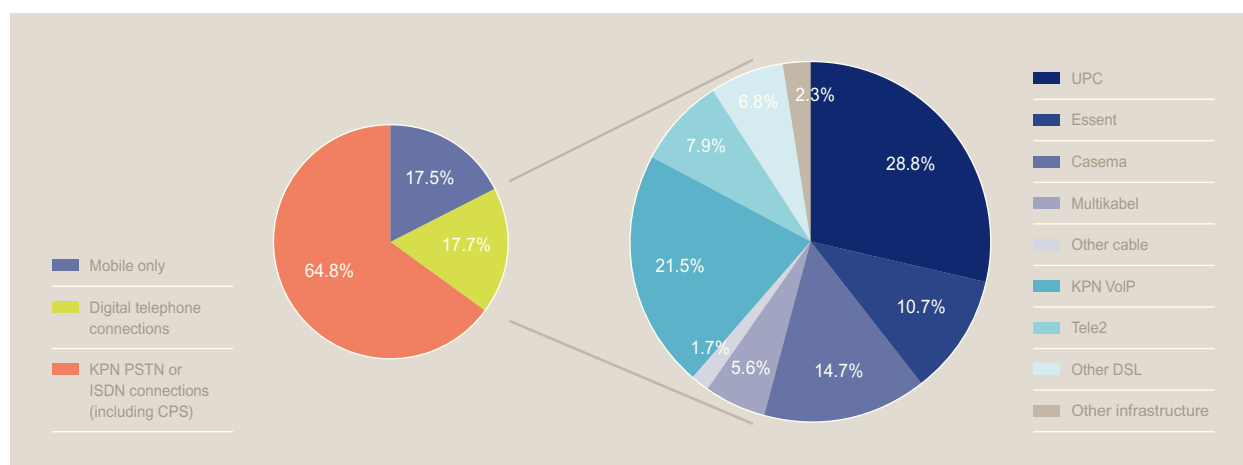
Market share of fixed telephone service providers – entire market (Q3 2006).



Source: Telecompaper.

Figure 2

Market share by type of telephone connection (left) and digital telephone service providers (right) in Q3 2006.



Source: Telecompaper.

³ Based on 7,195 million households at the end of 2006 according to Statistics Netherlands (CBS).

⁴ OPTA, Structural Market Monitoring Project.

⁵ Carrier-selection or preselection (CS or CPS). By pressing four or more digits a telephone subscriber can route a telephone call through another telecommunications service provider. This occurs automatically in the case of carrier preselection. Those companies which offer carrier selection or preselection use KPN's fixed network for their telephone services.

followed by Tele2. Apart from digital telephony via ADSL and cable, a small proportion of digital telephone services is offered through alternative infrastructures, such as fibre-optic cable.

In spite of the fact that KPN managed to expand its digital telephone services, its overall share of the fixed telephony market fell to 68.5%. Its market share had amounted to 79.8% in 2005. KPN's fixed telephony competitors are doing well. Their market share climbed from 5.7% to 14% in one year.

International telephone tariffs

KPN's traditional telephone service tariffs are average when compared with other countries. These tariffs are higher in Spain and Italy, but are lower on average in

Germany and Austria than in the Netherlands. As it happens, national and international voice call charges are relatively low in the Netherlands.

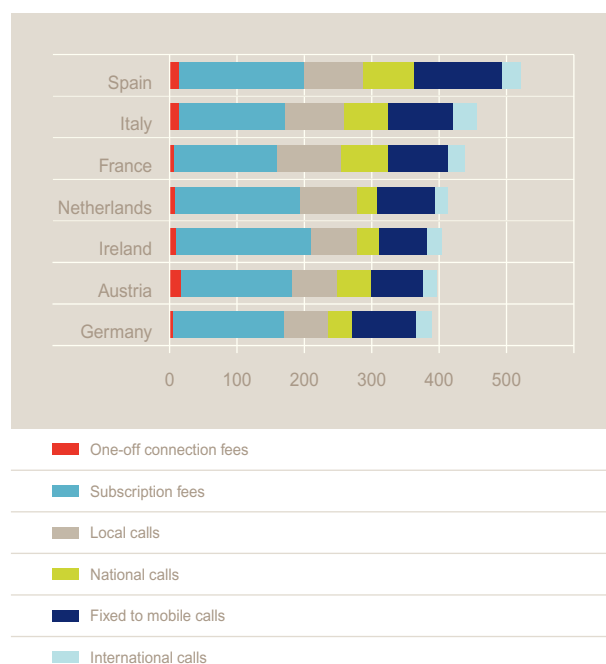
Overall tariffs have declined slightly in the business end-user segment. However, these tariffs are less transparent than consumer charges, because service providers often present special offers to specific customers, especially larger ones. KPN's fixed telephony wholesale tariffs, which OPTA regulates and which KPN charges market parties for the use of its network, have remained virtually unchanged.

New services cheaper than traditional ones

Consumers are able to save a great deal of money by switching to new telephone services. Apart from digital telephony, KPN introduced a number of new types of subscriptions for traditional telephone services in 2006, such as BelVrij and BelNaarMobiel, which enable consumers to make unlimited calls for a flat fee. Digital telephone services routed through either ADSL or cable are often more affordable for consumers than traditional ones. The traditional consumer telephone service charges for existing types of subscriptions have remained essentially the same. This means that for the time being low telephone tariffs are only available for new services and in the form of packaged rates.

Figure 4

Comparison of international traditional telephone service (PSTN) charges (euros per annum).⁶



Source: Tellingen T-basket, in TNO (2007).⁷

⁶ In order to obtain an overview of the tariffs applicable in various countries, the price of a fixed collection (basket) of similar services and quantities in each is compared. These prices are adjusted to accommodate differences in buying power.

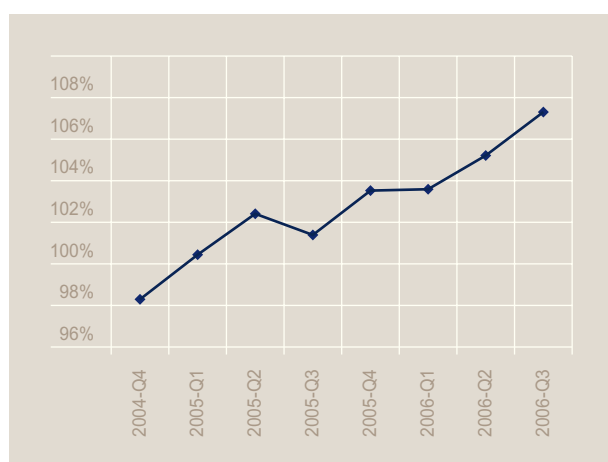
⁷ TNO, *Marktraportage Elektronische Communicatie* december 2006, February 2007.

Rising number of mobile connections

Due to the continued rise in the number of connections, the mobile phone market has now become saturated. There are more than 107 mobile phone connections for every 100 Dutch citizens. A growing number of people are deciding to confine their calls to mobile phones and no longer use a fixed telephone connection. Many mobile phone service providers have announced that they will be reducing their mobile phone subsidies due to the saturation of the market, amongst other things. Until now free phones have been offered with many subscriptions.

Figure 5

**Mobile phone penetration rate
(as a percentage of the population).**

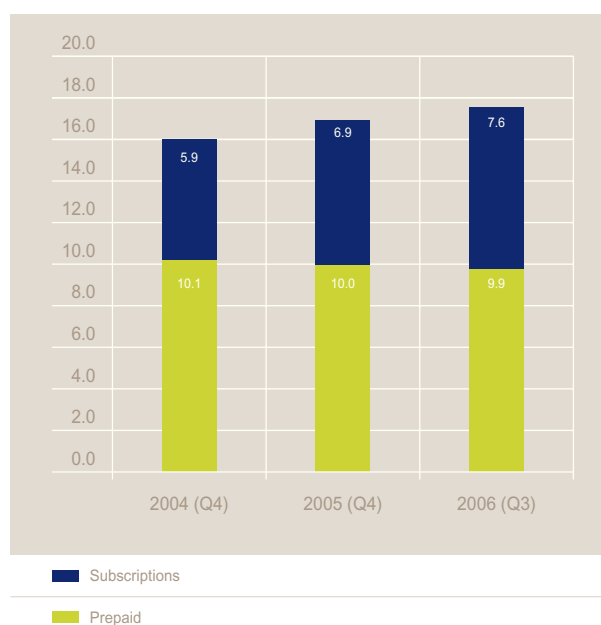


Source: Telecompaper.⁸

The total number of mobile phone connections in the Netherlands (subscriptions and prepaid together) rose to 17.5 million in the third quarter of 2006. More than one million additional mobile phones were connected within a year. This increase was due to a rise in the number of callers with a subscription (post-paid). There were 7.6 million mobile phone subscriptions in the third quarter of 2006. The number of prepaid connections remained virtually the same: a little fewer than 10 million. In spite of the rise of mobile phone subscriptions, there are still

Figure 6

**Number of mobile phone connections
(in millions).**



Source: Telecompaper.

relatively more prepaid connections in the Netherlands: approximately 57% of the total. Viewed within the European context, this is high. As it happens, the number of available numbers does not place any constraints on the further expansion of mobile telephony.

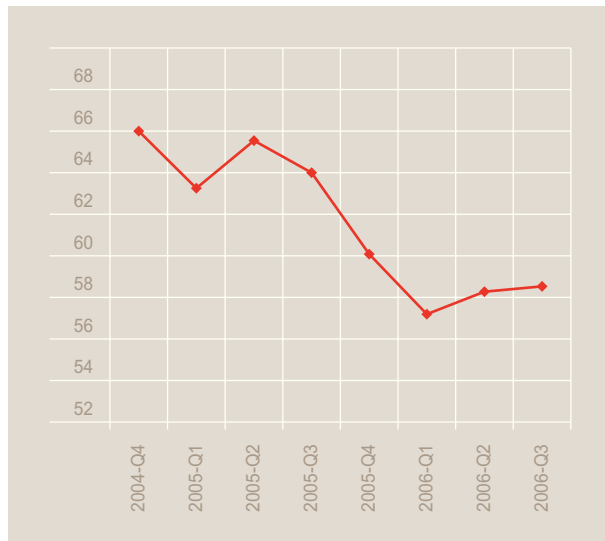
Rise in turnover due to increase in mobile phone subscriptions

Subscribers account for much higher earnings per connection than prepaid connections. Service providers' turnover is also rising thanks to an increase in the number of subscribers. Nevertheless, the average earnings per subscriber dropped from approximately €63.00 per month in 2005 to about €58.00 in 2006. In addition, income is seasonal. Since mobile phones are used more often during the summer than the rest of the year, earnings per connection are usually lower in the first and fourth quarters than during the second and third.

⁸ Telecompaper, *Dutch Mobile Operations third quarter 2006*, 29 November 2006.

Figure 7

Average turnover per subscriber customer (euros per month).

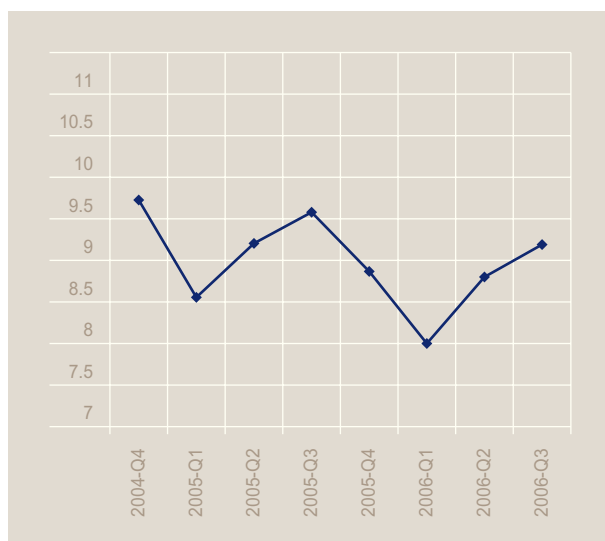


Source: Telecompaper.

Mobile phone service providers achieve a turnover on prepaid customers of about €9.00 per month. This is substantially less than in the case of those of their customers who have a subscription. In this case too seasonal variation is apparent.

Figure 8

Average turnover per prepaid customer (euros per month).



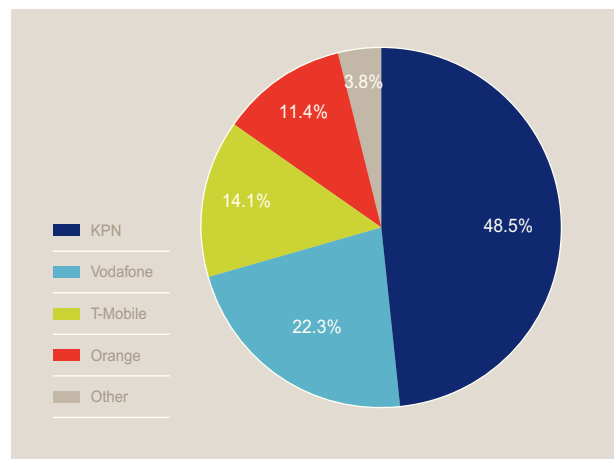
Source: Telecompaper.

KPN holds half of the mobile phone market

KPN acquired the mobile phone company, Telfort, in October 2005. Since then the integration of the KPN and Telfort networks has been proceeding apace. KPN now accounts for almost half of the total mobile phone connections in the Netherlands: 48.5%. Other major parties are Vodafone, T-Mobile and Orange. Another 50 smaller mobile phone service providers are active in addition to these large parties. Well-known providers include Albert Heijn (using the KPN network), Debitel (using the KPN and Vodafone networks), EasyMobile (KPN), Hema (KPN), Scarlet (Orange), Tele2 (KPN), UPC (Orange) and Tele2-Versatel (KPN), amongst others.

Figure 9

Market share of mobile phone service providers in mid-2006.



Source: Telecompaper.

Cheaper mobile calls at home

In 2006 Orange and T-Mobile began to offer a new type of mobile phone subscription. The new service makes it possible for customers to make mobile phone calls at lower rates, thereby presenting competition to fixed telephone service providers. These lower tariffs only apply when a mobile phone is located in the so-called "home zone". Normal mobile phone tariffs apply outside it. In the case of T-Mobile this takes the form of a variation of mobile phone call tariffs. However, Orange offers a combination of both mobile and fixed telephone services with any

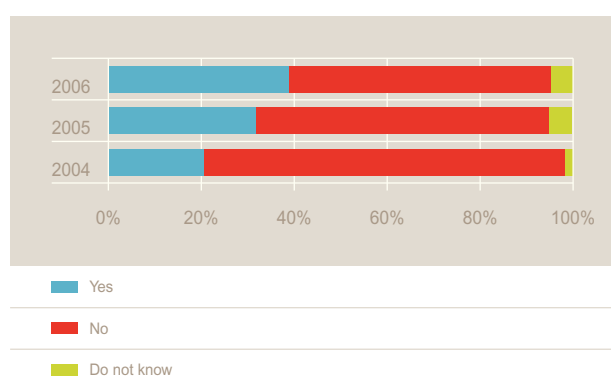
calls made on a mobile phone at home being switched through to a fixed network. A subscription to Orange's ADSL services is also required for this purpose.

Roll-out of 3G networks

The third generation of the UMTS mobile phone network provides faster mobile access to the Internet than the second-generation network based on GSM and GPRS, thereby also making it possible to offer broadband services, such as video telephony. UMTS is also used with business laptop computers. Vodafone, KPN and T-Mobile have all launched third-generation networks. Dutch consumers can mainly use UMTS in the larger cities and on major roads and railways. Consumers are automatically routed through the old GSM and GPRS network, wherever there is no coverage. At the end of 2006, 39% of consumers who were asked indicated that they also had access to the Internet through their mobile phones and could also send images and MMS messages.

Figure 10

Able to access the Internet and to send images and MMS messages by mobile phone.



Source: EIM.⁹

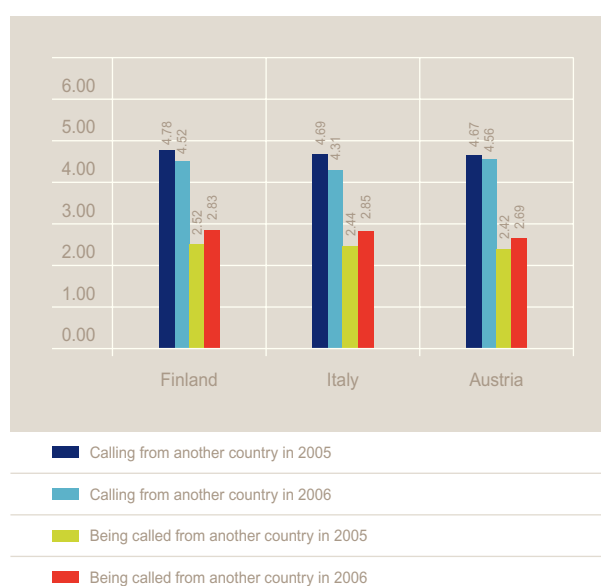
International calls still expensive

High international roaming tariffs still ensure that it is still very expensive to make and receive calls in other countries. In the case of international roaming, consum-

ers who make mobile phone calls abroad use foreign mobile networks as a guest. Mobile phone operators charge each other roaming tariffs in exchange for the use of each other's mobile phone networks. These tariffs are then passed on to consumers, with the result that they have to contend with much higher call charges than when they make mobile phone calls in their own country. These high tariffs have an adverse effect for consumers but also international business, as has been revealed in a study conducted by the European Union.¹⁰ Many consumers indicate that they prefer to turn off their mobile phones while abroad in order to avoid high tariffs. Charges for calls made to the Netherlands using a mobile phone in another country have now declined slightly. Whereas a four-minute call still cost approximately €4.70 in September 2005, the corresponding figure for 2006 was about €4.50. However, the cost of receiving calls abroad has risen slightly. On average it costs €2.80 to receive a four-minute call

Figure 11

Cost of calling or being called from another country with a Dutch phone (euros per 4 minutes).



Source: www.europa.eu.int.¹⁰

⁹ EIM, *Consumentenonderzoek afname van gebundelde communicatieproducten in Nederland, 3e meting, 2007*.

¹⁰ www.europa.eu.int/information_society/activities/roaming/.

abroad in September 2006. The corresponding figure was about €2.50 in September 2005. As it happens, consumers are nevertheless able to cut their call costs by deliberately opting for the cheapest foreign network.

4 Broadband and leased lines

The Netherlands has the second highest broadband penetration rate in the world. The total number of broadband connections in the Netherlands passed the 5 million mark at the end of 2006.

Broadband penetration amongst the highest in the Netherlands

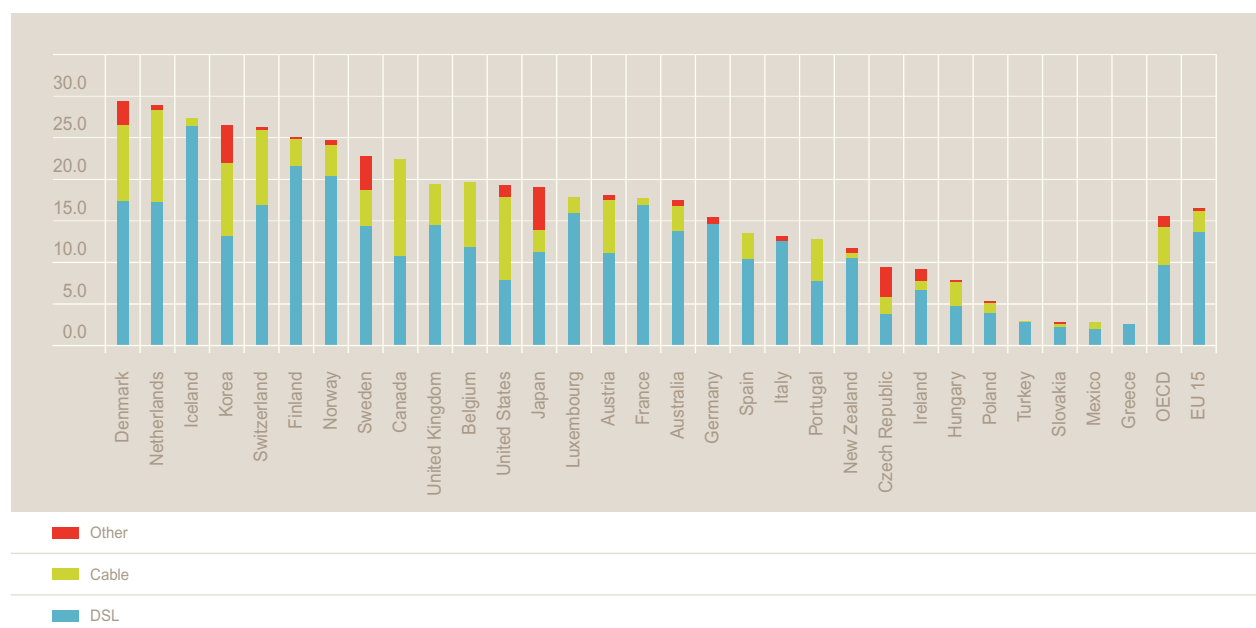
Together with Denmark, Iceland, Korea and Switzerland, the Netherlands is amongst those countries which have the highest broadband penetration rate in the world: 28.8

broadband connections out of every 100 inhabitants. The average figure for all OECD countries is 15.5. In addition, Dutch consumers can obtain broadband Internet access through different infrastructures. The copper local loop (via ADSL¹¹) and the cable network provided by cable companies are most commonly used. In addition, broadband Internet access is also offered on a small scale through fibre-optic, wireless and mobile networks. KPN Mobile and T-Mobile are also extending their networks with so-called WiFi hotspots.¹² There are now more than 90 WiFi hotspots in the Netherlands, where consumers are able to obtain wireless access to the Internet free of charge.¹³

In June 2006 ADSL accounted for 59.8% of Dutch broadband connections, cable 38.5% and other technologies 1.8%. Only Canada has a larger number of cable con-

Figure 12

Number of broadband subscribers per 100 inhabitants by type of connection.



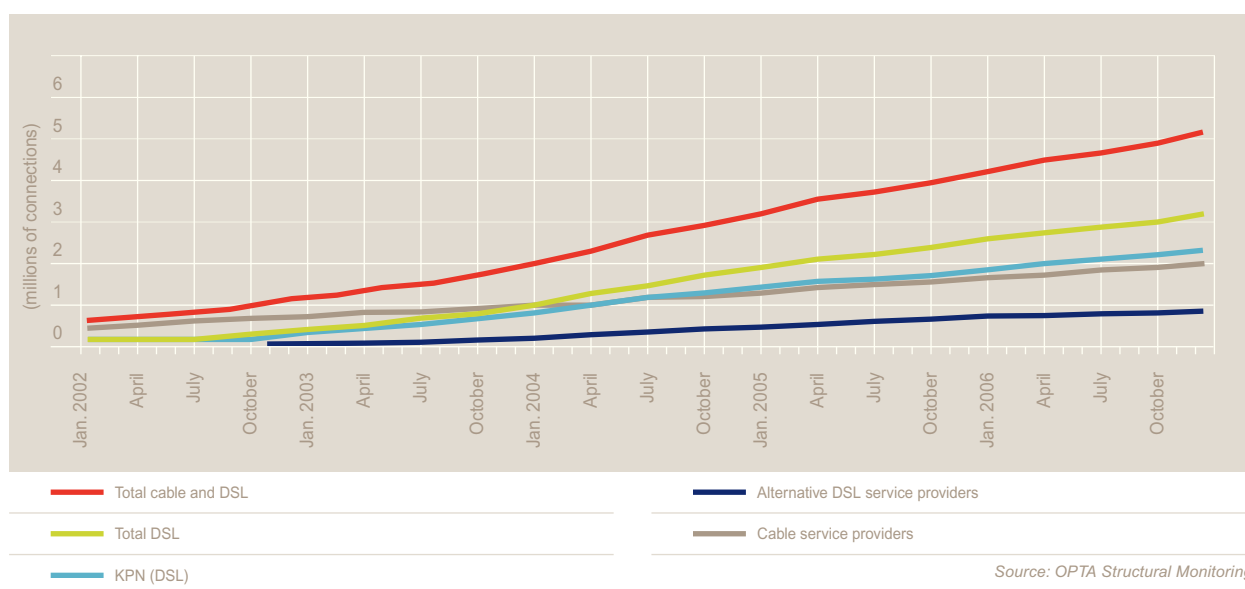
Source: OECD.¹⁴

¹¹ The local loop refers to the connection between KPN's telephone exchanges and each household. Various ADSL providers have their own networks, which extend to the local exchanges.

¹² WiFi hotspots are places where fast, wireless Internet access is available.

¹³ www.free-hotspot.com.

¹⁴ OECD, *Broadband Statistics*, June 2006.

Figure 13**Number of ADSL and cable broadband connections (in millions of connections).**

nections per 100 inhabitants than the Netherlands. The high broadband penetration rate in the Netherlands is partly explained by the extensive national coverage of both the copper and cable networks. Through its copper local loop KPN reaches 99% of all households. The corresponding figure for the cable companies taken together is approximately 94%. Alternative ADSL providers reach anywhere from 50% to 70% of Dutch households through their own networks (mainly Versatel, Orange, bbned and Tiscali).

Five million broadband connections

The number of broadband connections grew steadily in 2006 and rose by approximately 80,000 each month. Between the end of 2005 and the end of 2006 the number of broadband connections surged from 4.2 million to 5.1 million. In relative terms, the number of ADSL connections remained approximately one and a half times more than that of cable connections. At the end of 2006, about 71% of Dutch households had broadband Internet access. This is a substantial increase in relation to the previous year, when only about 58% had access to broadband.

Narrow-band Internet access on the wane

According to a study conducted amongst consumers in mid-2006, 14% of Dutch citizens have narrowband access to the Internet using an analogue modem, ISDN, WAP, GPRS or a mobile phone, which transmits and receives data more slowly. In 2006 9% of those accessing the Internet did so via dial-up and an analogue modem com-

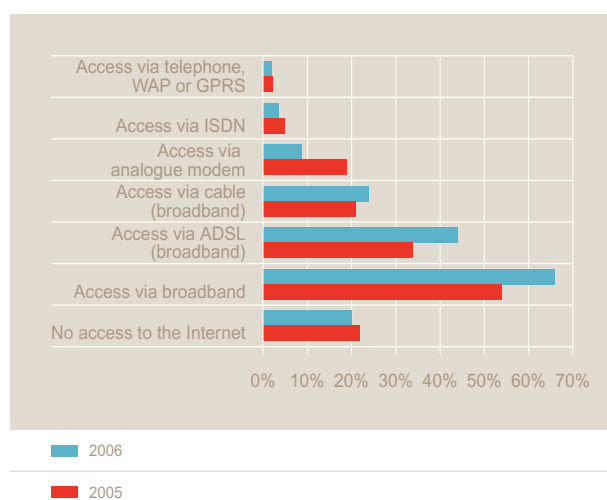
“At the end of 2006, about 71% of Dutch households had broadband Internet access.”

pared to 19% in 2005. There has also been a decline in Internet access via ISDN. A total of 80% of all households have access to the Internet compared with 78% in 2005. Virtually every household with a computer also has access to the Internet.

Numerous alternatives for consumers

Various service providers are active in the broadband market. KPN is the largest broadband service provider. Together with its Internet service providers, Planet

Figure 14
Types of household access to the Internet.



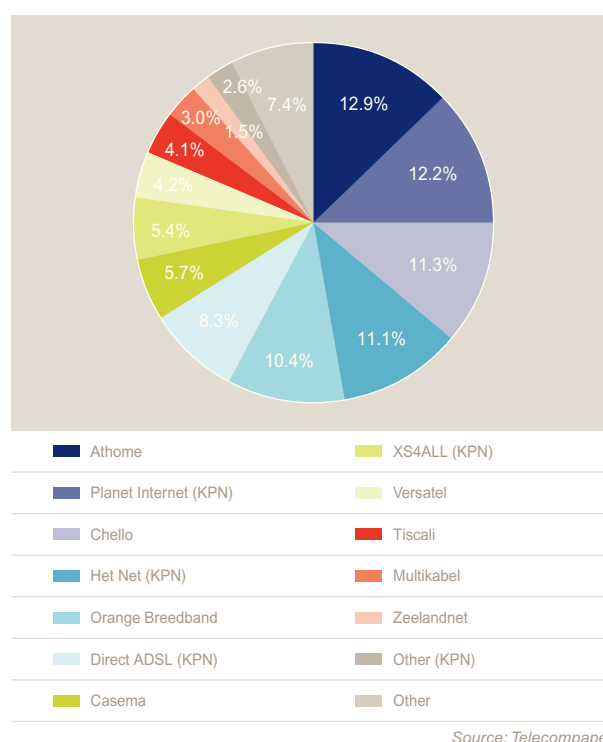
Internet, Het Net, XS4ALL, Speedlinq and Demon, KPN's share of the ADSL market exceeds 65%. Its share of the overall broadband market amounts to approximately 40%.¹⁶ KPN's largest competitors are Orange Breedband and the cable companies, UPC (via Chello), Essent (@home) and Casema. Although the market share of the various cable companies appears to be limited, because these parties only operate regionally, they exert considerable competitive pressure locally. In addition, there are broadband providers that offer their services through the networks of, for example, Versatel and bbned.

In mid-2006 infrastructure other than ADSL or cable accounted for only one in every 60 broadband connections.¹⁷ Nevertheless, alternative infrastructures do compete locally for Internet access through fibre-optic, wireless and mobile networks.

Increase in complaints concerning switching

Consumers who switch to another Internet service provider sometimes experienced difficulties doing so. In 2005 OPTA recorded 620 complaints received from con-

Figuur 15
Share of broadband market in Q3 2006.



sumers in connection with switching. For example, some consumers have to make do without Internet access for some time or are required to pay double for a specific period. In 2006 OPTA recorded 910 complaints about switching through ConsuWijzer.¹⁸

Traditional leased line market shrinks

Leased lines are connections with a fixed capacity which businesses use, for example, to link their various branches. Both data communication and telephone services are provided through leased lines. The trend for traditional leased lines with a fixed transmission capacity to be replaced by so-called virtual private networks (VPNs) continued unabated in 2006. A VPN is a network which screens off the traffic of a particular business and enables the latter to obtain its own guaranteed data

¹⁵ CBS, *Statline 2006*.

¹⁶ KPN's market share does not include those subscriptions which KPN connects but which are resold by ISPs (acting as agents).

¹⁷ OECD, *Broadband Statistics*, June 2006.

¹⁸ Consumers were able to file complaints directly with OPTA until July 2006. Since then, consumer complaints have been dealt with through ConsuWijzer, an information centre jointly run by OPTA, NMa and the Consumer Authority.

capacity. The technologies employed in VPNs are often more efficient and therefore cheaper than traditional leased lines.

KPN's number of analogue and digital leased lines is declining at a rapid rate, while the number of VPNs is growing at the same pace. From the first quarter of 2005, the increase in the number of VPNs has been largely driven by VPNs based on so-called Ethernet technology (E-VPN), while the growth of those based on the Internet protocol (IP-VPN) is stagnating. KPN introduced Ethernet VPNs in 2005. Information available to OPTA also reveals a new trend, namely, a steady increase in the number of business locations with fibre-optic connections. Nevertheless, available traditional solutions are still largely capable of accommodating business requirements for greater bandwidth.

5 Broadcasting

Various infrastructures are available for the reception of radio and television (RTV) in the Netherlands. Although cable is still by far the most commonly used distribution

channel for the transmission of radio and television signals into Dutch living rooms, satellite, digital terrestrial transmission (DVB-T), IPTV and fibre-optic cable also make it possible to receive broadcasts. Digital television grew strongly in 2006. Although tariffs barely changed, they differ greatly depending on the infrastructure.

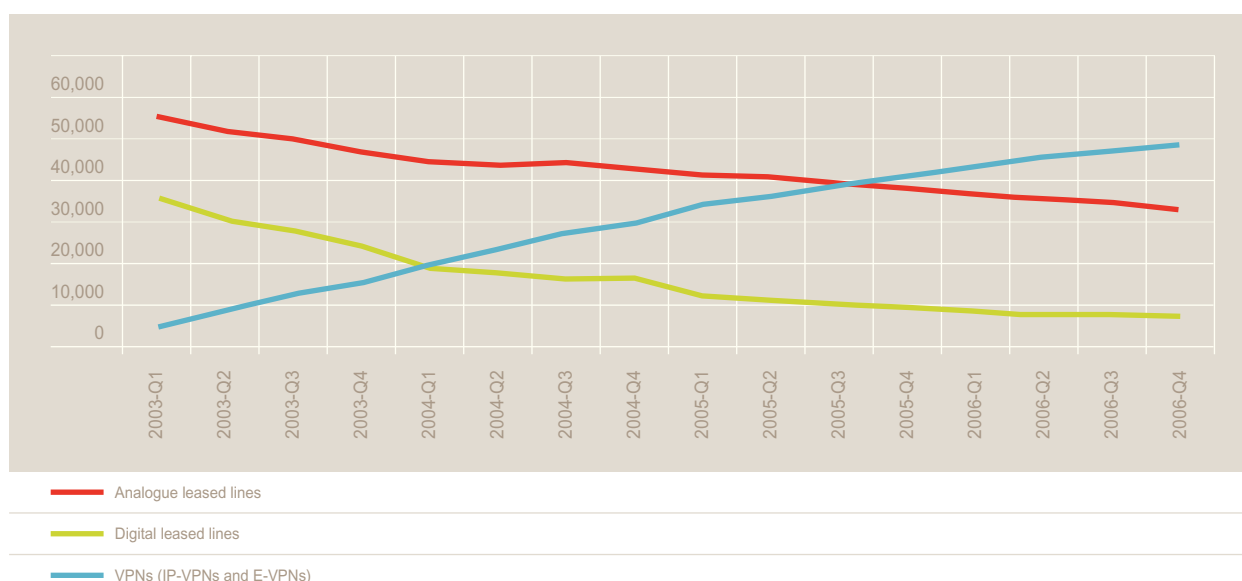
“A steady increase in the number of business locations with fibre-optic connections appears to be a new trend.”

Analogue cable still the most common

The cable infrastructure is by far the most commonly used platform for the transmission of television and radio in the Netherlands. The number of cable connections declined slightly in 2006 compared with 2005. More than 6 million or 86% of the total number of households watch television via cable, according to the industry association, VECAI. This is very high in European terms. In 2006, apart from analogue radio and television most

Figure 16

Changes in the number of KPN's analogue and digital leased lines, and virtual private networks.



Source: KPN.

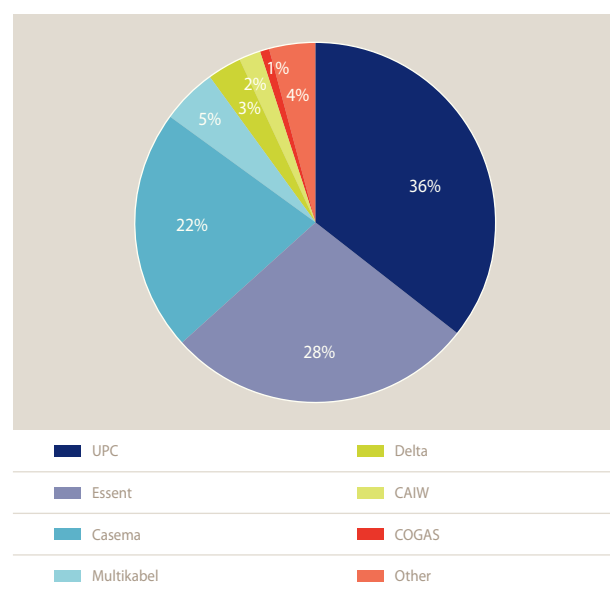
cable companies also offered digital radio and television, broadband Internet and telephone services via cable. In addition, several cable operators are developing video on demand and various types of interactive television services. UPC, Essent Kabelcom and Casema together serve more than 85% of cable subscribers.¹⁹

Expansion of alternative television distribution

A growing number of people are watching television via DVB-T and satellite. Television utilising the Internet protocol (IPTV) via ADSL has not yet experienced rapid growth. In 2006 KPN postponed the commercial launch

Figure 17

Cable companies' market share.

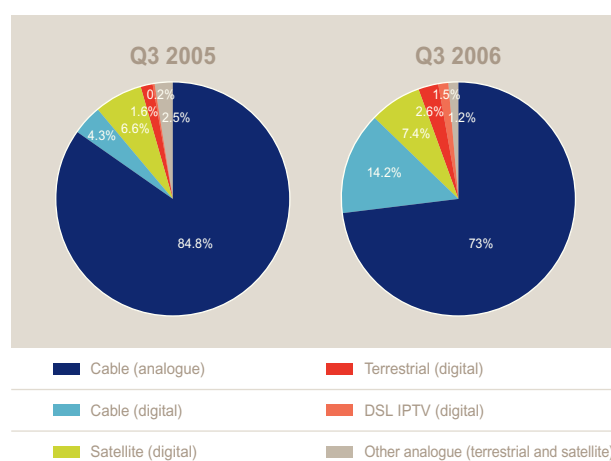


Source: VECAI.²⁰

of IPTV several times. However, when viewed in the light of the increase observed in respect of subscribers to alternative infrastructures, the absolute number of cable subscribers did not decline proportionately. This seems to indicate that these alternative television services are procured alongside cable in some cases.

Figure 18

RTV distribution infrastructure market share in 2005 and 2006.



Source: Telecompaper.²¹

Rapid growth of digital television persists

Digital television grew rapidly in 2006. Growth was most pronounced in the case of cable. At the end of 2006, VECAI announced that one million subscribers were now sourcing digital television via cable. At the end of 2006, 29% of households were watching digital television on at least one television set compared with 17% at the end of 2005.²² As it happens, more than half of all households in the Netherlands have more than one television set. The presence of multiple television sets means that more decoders are required in each household to ensure complete digital reception.

Demand for digital terrestrial and satellite

The number of digital terrestrial television subscribers now amounts to 265,000, double the figure for 2005. Initially, the firm Digitenne offered digital terrestrial television (DVB-T). The same service was also resold by KPN and Scarlet. However, at the end of 2006 Scarlet was not accepting any new television subscribers and Digitenne had completely

¹⁹ In 2006 the British private equity firms, Cinven and Warburg Pincus, the owners of Multikabel, also bought the cable companies, Casema and Essent Kabelcom. Although the new combination of Multikabel, Casema and Essent together represent the largest cable operations by far, they still operated as separate businesses in 2006.

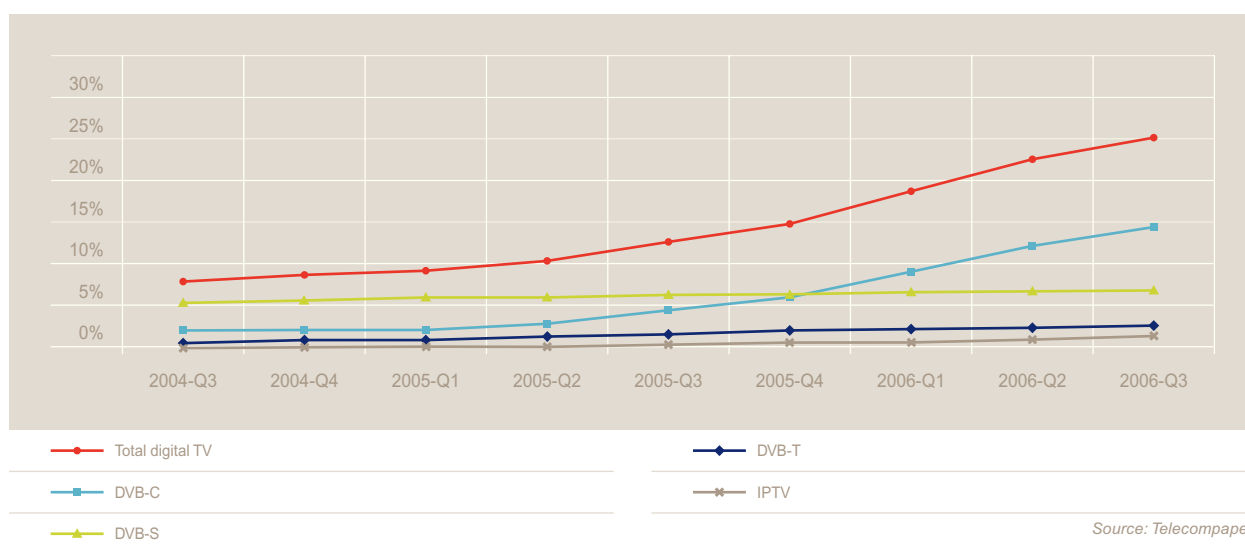
²⁰ www.vecal.nl/portal/alias_Rainbow/lang_nl-NL/tabID_3333/DesktopDefault.aspx.

²¹ Telecompaper, *Dutch digital TV households have doubled past year*, 20 November 2006.

²² TNO, *Verkenning van omroepmarkten in Nederland*, March 2007.

Figure 19

Breakdown of digital television subscriptions (as a proportion of all television subscriptions).



become part of KPN TV. KPN has become the most important DVB-T service provider as a result. In December the 'old' analogue terrestrial television signal was abolished to make more room available for digital terrestrial television, which is now available nationwide. Those people who used to receive public broadcasts via a roof antenna and who did not have access to cable had to choose either digital terrestrial television or a satellite connection following the cessation of analogue transmissions.

IPTV television via ADSL

In 2006 a fourth alternative became available for digital television: Internet protocol television. IPTV is television that is transmitted through a broadband connection and is available through ADSL2+, for example.²³ In March 2006 Tele2-Versatel extended its IPTV Premier division football service to make it a fully fledged television product. Soon after KPN followed this up with its IPTV product called Mine based on subscription for a trial period, which ultimately lasted until the end of 2006. Both Tele2 and KPN offer IPTV based on a maximum of one television set at each address and their cover-

age with these services encompasses roughly half of all households. However, apart from various broadcasting channels, IPTV also offers video on demand and various other interactive services. Both Tele2 and KPN provide a video-on-demand service featuring films and series on request (in return for payment), and the public broadcasters' video-on-demand service Uitzending Gemist (Missed Broadcasts) (free of charge).

Fibre-optic cable

Fibre-optic cable represents the fifth infrastructure through which television can be provided. Although fibre-optic networks, such as those present in some cities and municipalities, constitute a promising alternative for television, amongst other things, no more than 1% of all households received television through this infrastructure last year.

Tariff differences between infrastructures

In recent years the larger cable operators, in particular, have raised their tariffs on various occasions. This trend came to a halt in 2006. Acting within the context of

²³ This should not be confused with Internet television displayed on a computer via a website.

OPTA's regulation of the broadcasting market, in 2006 UPC, Essent and Casema decided to freeze their tariffs until 1 January 2007. Average subscription fees for analogue cable television rose from €15.16 in 2005 to €15.48 in 2006, following an increase in tariffs by Multikabel and Delta. Figure 20 depicts the different tariffs for RTV broken down by type of infrastructure in 2006.

The fees for digital terrestrial television (21 broadcasting channels) and satellite (33 broadcasting channels)²⁵ were significantly less than for cable television (an average of 34 broadcasting channels, while IPTV (32 to 70 broadcasting channels) cost as much as cable or more. There is little difference in the broadcasting channels that are available. The most noticeable differences lie in the relatively small package available for digital terrestrial television (KPN TV), the rather large number of free-

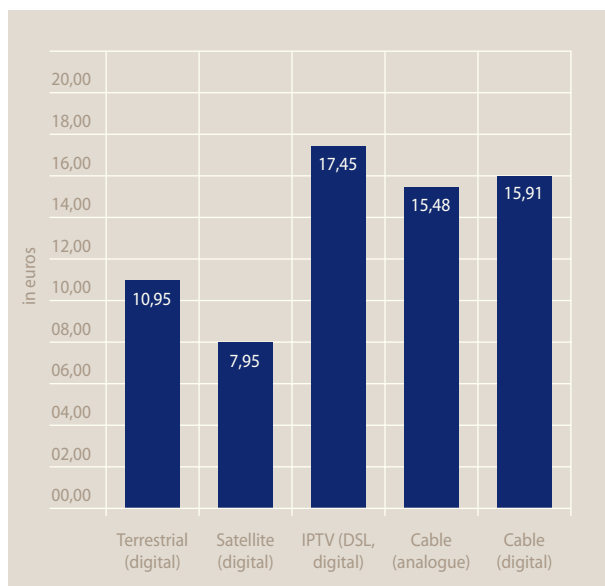
to-air broadcasting channels available via satellite, the availability of several premium channels as part of standard IPTV plans and the ability to receive on-demand content in the case of IPTV and UPC.²⁶

6 Bundling

The bundling of services in the electronic communications sector again gained in importance in 2006. At present 35% of households source their fixed telephone and broadband Internet access services from the same provider: approximately 2.8 million households. Consumers are also becoming more aware of the possibility of procuring bundled services from one and the same provider. Bundling can be to the advantage of consumers in the form of discounts or greater convenience, for instance, one bill, one customer service department and one help desk. Bundling also provides benefits to the service providers, because having a single contract for multiple products creates a closer bond between them and their customers. Such a bond may actually be a disadvantage to consumers, if it makes it difficult for them to switch.

OPTA has again had research done into the extent to which Dutch citizens procure bundled communications services. The respondents were asked whether they procure two or more of the following services from a single provider: fixed telephony, mobile telephony, broadband Internet access and television. The number of households which said that they obtain multiple services from one provider is growing and consequently so is the potential for service providers to capitalise on this. In particular, the combination of fixed telephone and broadband services is exceptionally popular amongst consumers. The combination of television and broadband services is also being sourced from a sin-

Figure 20
Average subscription fees for standard RTV package via different infrastructures in 2006.²⁴



Source: service providers' websites (2006).

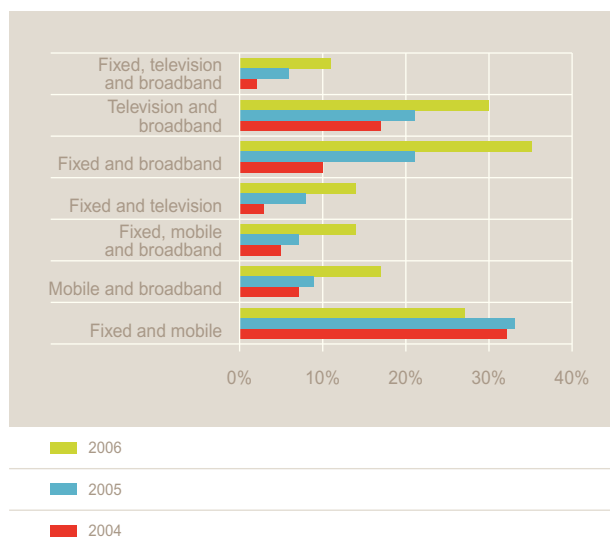
²⁴ Where digital cable is concerned, UPC supplies a decoder to use free of charge, although subscription fees for digital television are higher than those for analogue. In the case of most other cable companies, analogue and digital subscription fees are the same but consumers are required to invest in their own decoder.

²⁵ In addition to the television channels that are part of a package, satellite also always provides access to about 200 international free-to-air broadcasters.

²⁶ NMa, *Besluit Cinven – Warburg Pincus – Essent Kabelcom*, 8 December 2006.

Figure 21

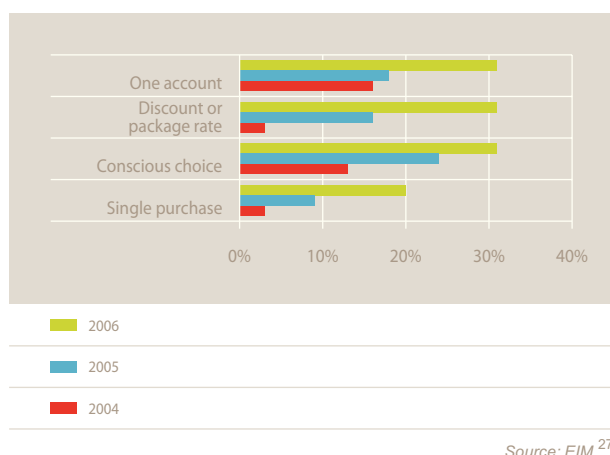
Households sourcing services from the same service provider.



gle provider with growing frequency, as is that of fixed telephone, television and broadband services (especially via cable). The rise in the number of combinations including mobile telephony supports the view that consumers are increasingly opting for a single service

Figure 22

Criteria cited as reasons for procuring bundled services.



provider, even if the various services are not provided through one connection. The only combination which declined last year was that of fixed and mobile services. This may be explained by the fact that a growing number of consumers are replacing their fixed telephone connection entirely with nothing more than a mobile one.

“More than 111,000 homes in the Netherlands had a fibre-optic connection by the end of 2006.”

The respondents were also asked why they purchase bundles. Although the number citing ‘discount’ as the reason for choosing a bundle increased most, criteria such as ‘one account’ and ‘conscious choice’ are now mentioned as the reason for sourcing services from a single provider as often as ‘discount’ is.

7 Infrastructure investments

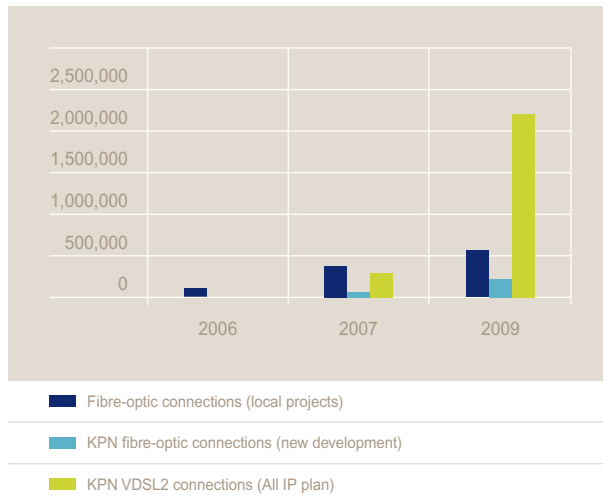
Investments in infrastructure in the electronic communications sector are substantial. In 2006 market parties invested in fibre-optic, wireless and ADSL2+ networks, although investments in alternative ADSL networks have since ceased due to KPN’s All IP plan.

Fibre-optic networks slowly on the rise

Preparations are being made to roll out small-scale fibre-optic networks to every house in numerous cities and municipalities. Fibre-optic networks are capable of providing much faster broadband connections than KPN’s copper local loop or the cable network. This is also one of the reasons why KPN announced in 2005 that it will be laying fibre-optic cables to the street cabinets and to homes in new residential development projects throughout the Netherlands (KPN’s All IP plan – see Chapter 1,

²⁷ EIM, *Consumentenonderzoek afname van gebundelde communicatieproducten in Nederland, 3e meting, 2007*.

Figure 23
Current and planned fibre-optic and VDSL2 connections (number of connections)



Source: Stratix.²⁸

Section 1.1.2 in the annual report for a more detailed explanation). In addition, numerous other projects are being undertaken to roll out smaller fibre-optic networks to the home. Such fibre-optic projects are being started by local developers, housing corporations, telecommunications companies (bbned and Lijbrandt), Glasvezel Netwerk Exploitatie Maatschappij and student accommodation firms. The Reggefiber company, is the most important builder of new fibre-optic networks but does not operate them commercially itself.

More than 111,000 homes in the Netherlands had a fibre-optic connection by the end of 2006. More than one third of them were student residences. Figure 23 shows how many fibre-optic connections had been installed by the end of 2006 and how many were planned as part of the above-mentioned projects. It also follows from this that there are plans to install 579,000 fibre-optic connections by 2009. The diagram also depicts KPN's scheduled fibre-optic and VDSL2 connections. Although the planned growth of the number of so-called fibre-to-the-home connections is substantial, in the years ahead the

current fibre-optic plans only offer a limited number of households a third alternative connection in addition to copper and cable.²⁹

Wireless infrastructures

Apart from this, mobile service providers have also invested in infrastructure. Various mobile service providers have extended their coverage for UMTS, HSDPA and WiFi hotspots, with the result that a larger area of third-generation mobile broadband services are available for use.

Investments in ADSL halted

At the beginning of 2006, ADSL service providers were still channelling significant investments into upgrades to ADSL2+. Most ADSL service providers, including KPN, have been offering ADSL2+ in most places since mid-2006. ADSL2+ makes it possible to achieve faster, more stable broadband connections than with ADSL and makes IPTV possible. KPN went ahead with its billion-euro plan, which it had announced in 2005 (its All IP plan), to upgrade its network radically. Amongst other things, this plan entails that KPN will be phasing out its local exchanges, which is where the alternative ADSL providers have access to KPN's network. Although it is still unclear what implications this plan will ultimately have for KPN's competitors, the other ADSL service providers have hardly invested anything in new collocation facilities in local exchanges to extend their coverage. This is a clear break with the trend of past years. The market parties are uncertain about their future and their access to KPN's network. (For a more detailed explanation of All IP see Chapter 1, Section 1.1.2 in the annual report.)

8 Convergence and consolidation

Apart from the market developments that have already been outlined in this market monitor, this section deals with two other significant trends in the electronic com-

²⁸ Stratix, *The Netherlands: FTTH deployment overview Q4 2006, 2007*.

²⁹ The total number of households in the Netherlands amounted to approximately 7.2 million at the end of 2006.

munications sector: convergence and consolidation.³⁰ Convergence can boost competition, while consolidation concentrates the market and, by doing so, can reduce competition.

Market parties active in multiple markets

Convergence and digitisation make it possible for consumers to procure different services through a single connection, such as broadband Internet, telephony and television. Potential competition is boosted by the advent of new products. Tele2-Versatel and KPN have introduced radio and television services via telephone lines (IPTV). By doing so, these ADSL service providers are operating and competing in the same market as the cable companies and triple play has become possible through both fixed networks: a bundle of telephone services, Internet access and television through a single connection. Various ADSL and cable service providers are now extending their range of services to include mobile telephony. At the same time several mobile phone service providers have indicated that they also intend to introduce services through fixed lines. Mobile phone service providers have also introduced subscriptions combining mobile and fixed telephone services. In addition, new mobile broadband services are on offer. As such, convergence is also continuing to evolve in the mobile sector. Due to these developments new parties have become active in numerous product markets, which had already been operating in other communications markets. Thanks to convergence there was a further increase in both the offer and procurement of bundled services in 2006.

Fewer market parties

The number of market parties is on the decline partly as a result of mergers, and partly because they are being taken over by larger parties. This trend is known as consolidation and has the potential to have an impact on the future development of competition. Two noticeable

takeovers occurred in the cable sector in 2006. The owners of Multikabel (the British private equity firms, Warburg Pincus and Cinven) first bought Casema and later Essent Kabelcom. Together this combination represents by far the largest cable company in the Netherlands. UPC, which has now become the second largest cable company following the merger, had made a bid for both Casema and Essent, but missed out on both occasions. Apart from these large takeovers, various minor cable companies have merged with each other. CAIW of Naaldwijk almost doubled its size after acquiring ONS CAI (Schiedam), Cai IJsselstein and DCAS in Doorn.

“This trend towards consolidation has the potential to impact on the future development of competition.”

KPN also acquired several of its competitors in 2006 in both the telephony and broadband sectors. It has announced its intention to take over Tiscali, one of the four major alternative ADSL service providers that use KPN's telephone network (along with bbned, Orange and Tele2-Versatel). KPN's plan to acquire Tiscali is currently awaiting the approval of the Netherlands Competition Authority. KPN also acquired the Internet service providers, Demon and Speedling, the telephone service provider, Enertel, and the VoIP wholesale company, iBasis. In addition, KPN achieved expansion in the broadcasting sector through acquisitions. Following its takeover of Nozema Services KPN acquired control over the television service provider, Digitenne, and the DVB-T infrastructure in the Netherlands (digital terrestrial broadcasting).

³⁰ In its *Vision and Annual Plan 2007* OPTA described these trends in the electronic communications sector and provided an explanation of the potentially contradictory effects these trends could have on competition.

9 Post

In recent years the postal market has still largely been governed by various legal provisions. TNT N.V. had a monopoly on the delivery of letters of up to 100 grams. On 1 January 2006 the ceiling was lowered to 50 grams. In addition, TNT has a duty to provide a number of postal services for all inhabitants of the Netherlands (universal service) through its subsidiary, TNT Post. For example, this includes the delivery of letters and printed matter of up to 2 kg, parcels of up to 10 kg and registered consignments. Competition is growing steadily in the free sector of the postal market.

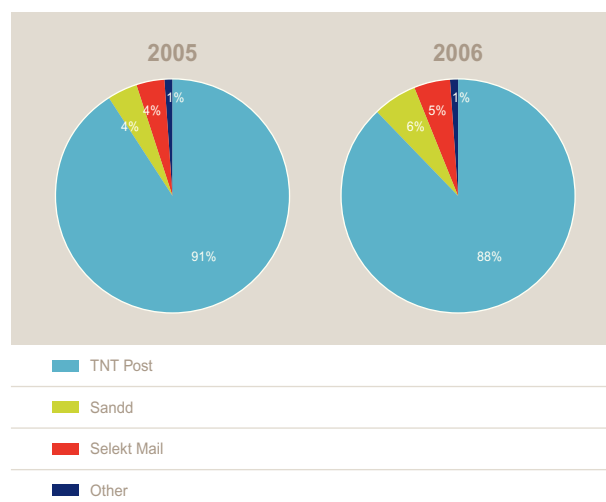
“Although competition has grown, TNT remains the largest party in relation to all addressed mail.”

TNT has the largest market share

The size of the overall market for addressed mail amounted to approximately 5.5 billion items per annum in 2005 and 2006. It is anticipated that this number will decline slightly

Figure 24

Addressed mail market share in 2005 and 2006 based on volume.



Source: RBB Economics and TNT.³¹

³¹ RBB Economics, *Postmarktmonitor*, 2007, and TNT, *TNT Annual Report 2006, 2007*.

in the years ahead due to the penetration of electronic messaging, amongst other things. In 2006 consumer mail accounted for approximately 8% of the total postal flow (consumer-to-consumer and consumer-to-business). Business correspondence accounts for 92% of the market for addressed mail (business-to-consumer and business-to-business). Two prominent alternative service providers are active in the free market segment (letters above 50 grams and printed matter) in addition to TNT, namely Sandd and Selekt Mail Nederland. Both of them are predominantly active in the business market and have their own growing network of delivery staff with national coverage. These market parties have more than 10,500 and 9,000 delivery staff respectively and they deliver twice a week. TNT Post delivers post throughout the country six times a week and has approximately 40,000 delivery personnel. Based on the number of postal items, Sandd, Selekt Mail Nederland and other competitors have a combined market share of 12%, which is an increase of 3% compared with the year before. Although competition has grown, TNT remains by far the largest party in relation to all addressed mail.

Bundled mail allowed

For some time now competitors have been carrying bundled mail, for example an invoice accompanying a brochure. In mid-2006 TNT brought a dispute before the courts in order to establish whether such bundled postal items constituted an infringement of TNT's monopoly. The postal company reasoned as follows: while it is true that the total weight of the item exceeds its monopoly threshold of 50 grams, the weight of the statement is well below it. However, the court ruled that the overall weight is decisive and consequently what competitors are doing is allowed.

TNT's low-priced services

TNT has developed two new services which it provides in the free market segment, namely TNT-Economy and Budgetmail. In addition to these two services, TNT Post will be using its subsidiary, Network VSP, which is cur-

rently active in the unaddressed advertising segment, to deliver addressed mail. TNT will be employing these services to compete with Sandd and Selekt Mail Nederland for the delivery of unscheduled post.

Postage stamps more expensive in 2007

In mid-2006 TNT Post announced a price increase, which was to take effect on 1 January 2007. The price of a standard postage stamp for addressed mail of up

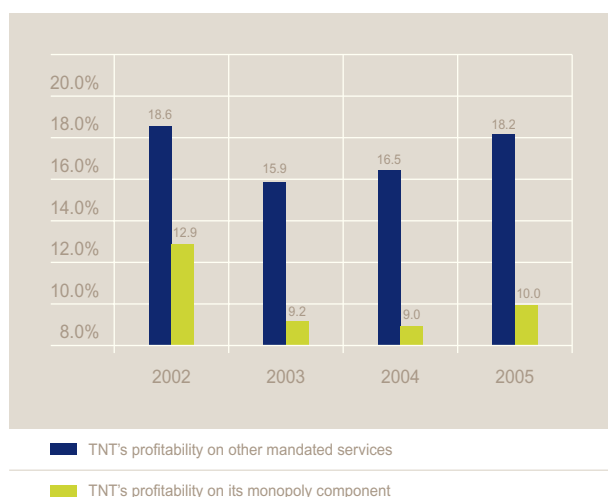
to 20 grams increased from €0.39 to €0.44, an increase of 12.5%. This is below the applicable tariff ceiling which the Ministry of Economic Affairs has set. According to TNT, the new price will apply until 2010.

Increase in TNT's monopoly profit

TNT Post has a duty to report to OPTA on the quality of its services and the financial results achieved in respect of its mandated services. The profitability of its monopoly operations edged up slightly from 9% in 2004 to 10% in 2005. The profitability of its other mandated services rose from 16.5% in 2004 to 18.2% in 2005.³²

Figure 25

TNT's profitability on its monopoly component (reserved services).



Source: TNT Post's concession reports for 2004 and 2005.

“With regard to the number of postal outlets and delivery times, TNT again satisfied the applicable requirements in 2005.”

TNT satisfies stipulated quality requirements

The quality of postal services is expressed in, amongst other things, the number of postal outlets, the range of products that are carried, the delivery time agreed for letters and the availability of post boxes. This is stipulated in the Postal Act and related subordinate regulations. With regard to the number of postal outlets and

Table 1

Number of postal outlets offering a comprehensive, virtually comprehensive or limited range of products and services.

	Reported			Legally Stipulated Minimum Requirements as at 1 Jan. 2006
	2003	2004	2005	
Comprehensive postal concession range	1169	1133	1105	902
Virtually comprehensive postal concession range	763	916	1016	-
Limited postal concession range	167	63	0	-
Total	2099	2112	2121	2000

Source: TNT Post Concession Report 2005.

³² TNT had not yet submitted a concession report for 2006 when this Market Monitor went to press.

agreed delivery times, TNT again more than satisfied the applicable requirements in 2005. Its quality report for 2006 will be assessed in 2007.

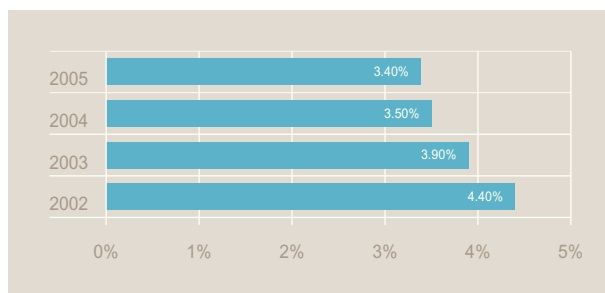
TNT Post has carried the entire postal concession range of products and services at all outlets as of 2006. A study conducted by the research firm, RBB, reveals that Selekt Mail Nederland had 110 business postal outlets in 2005 and Sandd had 80. They did not have any postboxes, because they do not focus on consumer mail.

Post increasingly on time

The agreed delivery times for letters and bulk postal items covered by the monopoly represents another quality criterion. The legal standard stipulates that TNT is required to deliver no less than 95% of letters by the following day (overnight service). The figure for 2005 was 96.6%, a further improvement compared with previous years.

Figure 26

TNT Post: Letters delayed within the Netherlands (standard overnight service) of TNT Post.



Source: TNT.

10 Internet safety

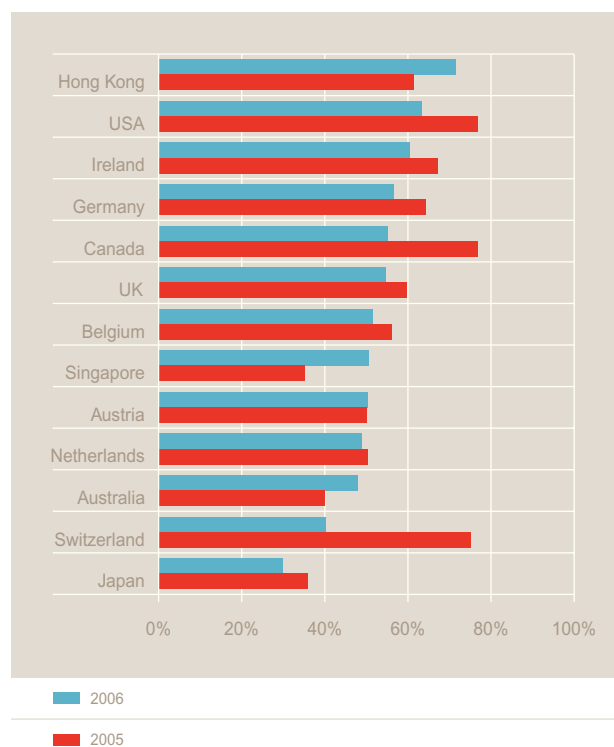
One in every two e-mail messages is spam, which is greatly annoying consumers. Apart from promoting competition, the work required in relation to Internet safety is becoming increasingly important to OPTA. Spam and viruses are a major source of annoyance to consumers. Ensuring that Internet access is secure boosts consumer confidence when making use of the web and e-mail.

Spam stable in the Netherlands

Of all of the e-mail messages received in the Netherlands 50% is spam. This figure has not risen compared with 2005. Substantially more spam is received in Hong Kong, Singapore and Australia and the proportion of spam has also grown. At the same time the proportion of spam has shrunk in Switzerland, Canada and the United States.

Figure 27

Spam received (as a proportion of the total number of e-mail messages)



Source: Message Labs Intelligence, 2006 Annual Security Report.

In the Netherlands most spam by far is sent by e-mail. Although fax and SMS spam also occurs, it does so to a far more limited extent. As it happens, the amount of spam e-mail that is sent in the Netherlands has been held at the same low level of 2005 thanks to OPTA's active intervention.³³

³³ Owing to a drastic reduction of spam runs in the Netherlands from 2004 to 2005, as measured by Spamvrij.nl, the latter stopped registering these at the beginning of 2006. At the beginning of 2004, 400 spam runs occurred every quarter and the corresponding figure for 2005 was an average of 50.

Spam is the greatest source of annoyance amongst consumers where Internet access is concerned, as is revealed in research conducted by TNS-NIPO.³⁴ Men are more likely to be irritated by it (29%) than women (22%). Amongst business users, as many as 42.4% of respondents stated that they were annoyed by spam. Internet users also cite banners, viruses and malware as sources of annoyance.

Malware

Malware can have far-reaching but also costly consequences for end users. Such software performs harmful or undesirable acts for the service of others often without the end user being aware of it. Malware is the collective term for these programs. The following are several variants of them:

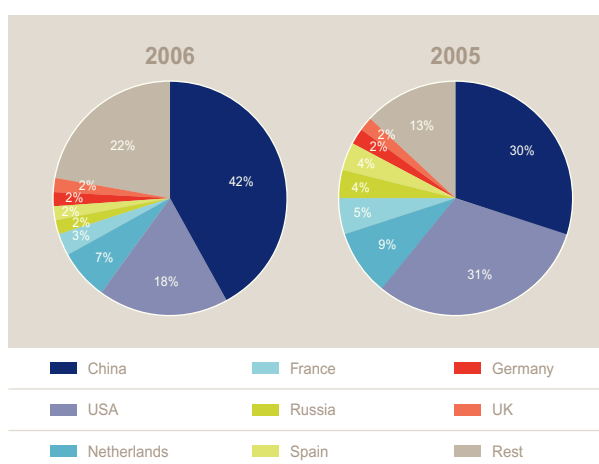
- *spyware* – software which searches for end user data, such as bank details and credit card numbers;
- *adware* – software which ensures that end users are troubled with advertisements from time to time;
- *traditional viruses* which harm end users' computers;
- *modern viruses* which hand over control of a computer to some other person.

E-mail, websites and free software represent the most common ways of spreading malware. It is estimated that 59% of computers are infected with adware throughout the world.³⁵ The Netherlands is amongst the top three countries from which websites attempt to install spyware. In 2006 most spyware in the world came from China, followed by the United States, the Netherlands and France.

It is striking to see the Netherlands listed as the third largest distributor of spyware. The Netherlands also ranked high on the list of spam-distributing countries in previous years. Amongst other things, this is due to the high rate of broadband penetration in this country and the fact that many computers are connected to the Internet throughout the day. This makes the Netherlands interesting to spammers.

Figure 28

Origins of spyware in 2006 and 2005.



Source: Webroot, State of Spyware, 2006 and 2005.

Botnets transmit malware

A large variety of viruses is often used to create a so-called robot network that escapes notice. A robot network or a botnet is a group of computers which run an application that is only controlled and manipulated by the owner of the source of this software. In actual fact a botnet therefore consists of zombie computers which are imperceptibly controlled from a centrally located computer. Internet criminals use these networks to send spam. Such networks ensure that the sender remains anonymous. No reliable statistics are available concerning the extent to which botnets are active. Nevertheless, it is a major problem. In mid-2006 the Internet safety company, Symantec, claimed that it had discovered 4.7 million zombie computers worldwide.

Electronic signatures

A fourth party was registered as a certification service provider (trusted third party or TTP) in the electronic signatures sector. It is anticipated that the electronic signatures market will receive a boost in the years ahead following the introduction of digital identifiers. ●

³⁴ TNS-NIPO, 'Het Nationale Internetonderzoek', 2006, research done for Webwereld.

“Dilemmas are not bad, but it is important to lay them on the table.”



The fee system which we employed until last year was not entirely honest and well-considered. OPTA is largely funded by the market and the dominant market party paid the bulk. The other parties paid a fixed amount irrespective of whether they were very large or very small. The new system has righted this and now turnover is considered.

The Ministry of Economic Affairs held a round of consultations concerning the new system in order to gauge the market parties' response. Most criticism and pressure came from those parties for which OPTA does a great

point in time. In such a situation we say that we have to make do with what we have and the rules that govern us, namely, that the market has to fund our regulatory work. In addition, we also do a great deal for the markets and the market parties!

It was quite a job to ensure the rapid introduction of this system. It was only late in 2005 that we knew that it was really coming and we then had to notify the market of this promptly. Not only was this a challenge in itself, but we also had to estimate the turnover of the various parties in order to calculate new tariffs for the first year. If



“Nevertheless, we were also clear in laying out the ground rules: this is permitted, that is not and this is how it will be done.”

deal but which are now required to pay more, because they have a relatively large turnover. The dominant party, KPN, may now pay less at their expense. There are parties which feel that OPTA should be financed with public funds, because it benefits the entire society and the operation of market forces. This approach is possible but it is not one which the politicians have opted for at this

there was a major discrepancy between our estimates and actual turnover, we would have had to accommodate that at a later stage and put up with any relevant inconvenient administrative implications, as would those parties. It was exciting but fortunately our estimates of turnover were good.

In spite of the pressures of time experienced in relation to the introduction of the new system, we did our best to ensure that our communication was frank and precise in our contact with the various market parties. At a certain point there was a good deal of debate about the concept of 'relevant turnover' and to the extent to which turnover from in-

terwoven operations also needed to be considered. Some market parties object to the fact that turnover from both the wholesale and retail markets had to be counted. We found it difficult to establish the weighting of these options. At that point we could have turned the various parties away telling them to 'simply sort it out with your accountant' but instead we decided to tackle the matter proactively.

We then arranged a mini-forum and sat down to discuss the matter with five large parties. Is it feasible? What questions are there? What is the overall feeling in this respect? There was a great deal of incomprehension

could however constantly adopt a formal position but this would not be of any benefit to the market parties nor the process. In the end we drew up an addendum in which we set out our interpretation of, for example, certain definitions. This also involves risks, because we were anticipating any disputes. The appeals that are now current should reveal whether we were right in doing

"Although we wrestled with this, I feel that we established a healthy process within a short period."



concerning the introduction of the system and the definitions. What we found difficult was that we were only the administrator of the system and not its inventor, which was after all the Ministry of Economic Affairs. Nevertheless, we wanted to take the market parties' criticism seriously and provide as much clarity as possible. We therefore shared ideas with these parties and searched for a proper form of implementation. We also conducted lengthy discussions about this inside the organisation.

By doing this we were skating on thin ice, on the one hand, because 'sharing ideas' can sometimes be held against you at a later stage. On the other hand, you

this. Nevertheless, we were also clear in laying out the ground rules: this is permitted, that is not and this is how it will be done. We also have been and wish to be clear about this.

Although we wrestled with this, I feel that we established a healthy process within a short period. Differences of interpretation and dilemmas are not bad but it is important that we have managed to lay them on the table. The fact that for our part we have also been fair about this has also helped this, I think. ●

Appendix

06

Key figures

Enforcement

Regulation and enforcement	
Number of fines imposed	3
Conditional penalties	5

Disputes

Number of disputes	
Received	12
Under consideration	3
Resolved in 2006	9

Disputes by market	
Access to services	2
Cable switching (accepted)	3
Cable transmission	1
Number portability	6
Total	12

See also Chapter 1, Section 1.3.1 of the annual report for an explanation of the disputes resolved in 2006.

Objections and appeals

Received in 2006	
objections	62
appeals	128
provisional relief	9
Objections reopened following judgment on appeal (final or otherwise)	24
Current objections	6
Current appeals	64
Current provisional relief	0
Current punitive decisions	0

Resolved in 2006	
Objections	99
Appeals	123
Provisional relief	10
Punitive decisions	2

Outcome of resolved objections	
Withdrawn	34
Well-founded	17
Without grounds	24
Inadmissible	15
Partly well-founded, partly without grounds	7
Partly without grounds, partly inadmissible	1
Not considered	0
Other	1
Total	99

Outcome of resolved appeals	
Withdrawn	11
Well-founded	30
Without grounds	23
Partly well-founded, partly without grounds	7
Inadmissible	1
Other	2
Totaal	74

See also Chapter 1, Section 1.3.2 of the annual report for an explanation of the appeals and objections in 2006.

Market analyses

Analyses conducted	3	Appeals against analyses	
Analogue terrestrial radio signals	1	Fixed telephony	23
Implementation of the WLR decision	1	Mobile	15
Implementation of the WPC decision	1	Broadband	7
		Broadcasting	13
		Total	58

See also Chapter 1, Section 1.1.1 of the annual report for an explanation of the appeals against the market analyses.

Registration of market parties

Category	Situation as at 1 Jan. 2006	Registration	Registration Withdrawn	Situation as at 31 Dec. 2006
Provider of a public electronic communications network	253	57	8	302
Provider of a public electronic communications service	281	101	20	362
Provider of related facilities	9	2	0	11
Provider of qualified certificates	3	1	0	4

Numbers

Number of information numbers assigned, reserved and withdrawn

	Assigned	Reserved	Withdrawn
0800	2286	303	905
0900	3978	334	1190
0906	844	16	311
0909	1288	15	727
Total	8396	668	3133

Number of decisions concerning numbers broken down by information, business and other numbers

Information numbers	4647
Business numbers	568
Other numbers	184
Total	5399

Number of decisions concerning numbers broken down by type of decision

Assigned	3366
Withdrawn	1385
Rejected	353
Change of name	244
Decommissioned	51
Total	5399

Number lotteries and urgent applications

Number of lotteries	4
Number of urgent applications	72

Scarcity of relevant series of numbers

Number Series	Percentage of Available Numbers
Short 0900 numbers	41.3%
Short 0800,0906 and 0909 numbers	78.2%
Long 0800, 0900, 0906 and 0909 numbers	> 99%
Mobile numbers	17.1%
Carrier selection (4-digit) numbers	34%

Personnel and budget**Exits**

Exits	5
Total net severance pay	€210,000.00

The bulk of this severance pay pertains to OPTA's restructuring in 2005.

Personnel costs

Personnel costs	2006	2005
Total salaries (including remittances and bonuses but excluding the Commission)	€8,177.00	€8,698.00
Average salary	€48.00	€48.00
Other personnel costs	€365.00	€333.00

Workforce

Date	Authorised Staffing Complement (FTEs)	Staff		
		Men	Women	Total
As at 1 January 2006	150	79	67	146
As at 31 December 2006	152	73	70	143
Average 2006	151			145

Breakdown by age as at 31 December 2006

Age Group	Number of Staff
25 years and younger	2
25 to 34 years	55
35 to 44 years	56
45 to 54 years	23
55 years and older	7

Absenteeism

The absenteeism rate for all of OPTA was 6.8%. Of this, 5.7% was due to long-term absenteeism. [See also Chapter 3, Section 3.3.4](#) of the annual report for an explanation of absenteeism.

Ratio of direct to indirect expenditure

The ratio of direct to indirect expenditure was 67:33 in 2006. The budget for that year made provision for a ratio of 50:50. Acting partly on the basis of external advice that it has obtained, OPTA now uses a more reliable method to calculate this ratio. The principle underlying this method is that certain costs of the organisation's internal structure are partly incurred for the purposes of the market and are partly direct as such. In this instance, one might consider accommodation expenses, general expenditure and the remuneration of manager and the members of the Commission.

Breakdown of staff by scale as at 31 December 2006

Scale	Number of Staff
3	1
4	3
5	3
6	13
7	14
8	7
9	7
10	12
11	27
12	19
13	23
14	9
15	2
16	3

Complaints and accessibility


Complaints about OPTA (Under the terms of Part 9 of the General Administrative Law Act (*Algemene wet bestuursrecht*))

Considered and dismissed	1
Considered and resolved	1
Not considered because no objection was filed as permitted	2
Total	4

ConsuWijzer, back office and Spamklacht.nl

- Number of questions and complaints received by OPTA front office (first half of 2006): 1,607 (mainly complaints concerning the Internet in general and spam).
- Number of questions and complaints submitted through ConsuWijzer and dealt with by OPTA back office (second half of 2006): approximately 1,200.
- Number of complaints submitted about spam through Spamklacht.nl: 11,069.

Accessibility by telephone

Telan B.V. conducted a study into OPTA's accessibility by telephone in 2006. OPTA was rated at 7.2 in this respect (more than adequate). 

Interviews

*With our thanks to those who were
willing to grant interviews.*

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