

general agreement with each of the three above-mentioned parties concerning the conditions subject to which they would be prepared to cooperate in the phase-out of KPN's MDF sites in due course. The Memoranda of Understanding are supposed to lead to final MDF migration agreements.

KPN has indicated that it will also be presenting the offer contained in the Memoranda of Understanding to other MDF customers on a non-discriminatory basis. On 27 July 2007, KPN for this purpose published a summary of the offer that it had agreed to with bbned, Orange and Tele2 in the Memoranda of Understanding on its wholesale website, and it stated that the final offer would be published as a public offer. In addition, KPN commenced bilateral negotiations with other MDF customers based on a standardised version of the Memoranda of Understanding agreed on with bbned, Orange and Tele2.⁴

In a letter addressed to market parties dated 13 July 2007, the Commission stated that the Memoranda of Understanding received on that date and the public offer which was to be based on them would be included in its current market analyses.⁵ In this respect the Commission was to examine to what extent the arrangements which the parties had made with each other would have an impact on the findings of those market analyses, and whether there would be grounds to abandon any obligations envisaged for KPN or to alleviate them. It also stated that the draft market analysis decisions would be published by no later than the end of 2007.

In August the Commission notified KPN that, in principle, it would not be possible to include any new information in the market analyses after 1 October 2007. In response, KPN indicated that it would publish a public offer on its website by no later than 1 October.

With this date of 1 October in mind, the remaining MDF customers applied to the Commission on 18 September for a postponement of its WBT market analysis in order to give these parties the opportunity to agree on Memoranda of Understanding with KPN by no later than 15 December, which the Commission could then include in its WBT market analysis. KPN acceded to this request. The Commission granted the application.

On 28 September 2007, KPN published a public offer dated 1 October 2007.

2. Findings and conclusions

Based on this public offer, which consists of a standardised version of the Memorandum of Understanding for MDF migration dated 1 October 2007 and a supplement to the reference offer for MDF access also dated 1 October 2007, the Commission wishes to note the following in relation to the relevant analyses.

⁴ The parties concerned are Colt Telecom, Easynet, Enterprijs, Plex, Priority Telecom, Solcon and Verizon.

⁵ In this connection see the letter dated 13 July 2007 with the reference OPTA/TN/2007/201385. This letter may be found on the OPTA website (in the All-IP section).

2.1 ULL market analysis

It may be concluded from the Memoranda of Understanding and the public offer that All-IP will actually have a limited impact on MDF services during the period covered by the present decision in relation to Market 11, in this case, the period until 1 January 2009. For instance, the phase-out of MDF sites, where parties other than KPN procure MDF access, is scheduled to occur as of mid-2010, while KPN has itself undertaken to accede to any reasonable request for MDF access and the accompanying facilities until the time that the MDF site is phased-out. In addition, only in the course of 2008 a start will be made with the phase-out of those sites where only KPN obtains MDF access.

The conclusion which the Commission has drawn from this is that there is no need to proceed with the analysis of Market 11, which commenced in the fourth quarter of 2006. This means that no draft market decision will be published for this market this year. The review of the existing market decision will be undertaken as part of the normal review that will need to produce a market decision by 1 January 2009, which will replace the market decision scheduled to expire at that time.

Policy rules governing the conditions for phasing out MDF access

In the Memoranda of Understanding and its public offer KPN arranges with market parties the conditions subject to which MDF customers are prepared to abandon the MDF sites. In this sense the Memoranda of Understanding and the public offer seek to regulate the same matters which the Commission had envisaged for its policy rules (announced in the All-IP position paper) concerning the conditions governing the phase-out of MDF access. In view of the agreement reached by the parties and having regard to the public offer, the Commission no longer sees any grounds to issue such policy rules, which it would have applied in any disputes concerning the phase-out.

Should a position arise in the future in which disputes occur or are foreseeable in relation to the conditions governing the phase-out of MDF access in spite of the Memoranda of Understanding and the public offer, the Commission could consider the publication of policy rules.

2.2 Analysis of SDF backhaul

KPN offers SDF backhaul on a voluntary basis. The principles underlying this offer may be found on KPN's wholesale website.⁶ However, the Memoranda of Understanding entered into by KPN and its MDF customers do not make provision for any further arrangements or conditions agreed on by the parties and consequently neither for the public offer of 1 October. What this means with regard to the SDF backhaul analysis is that the Commission is not in a position to consider a solution which enjoys market support.

By no later than the end of this year, the SDF backhaul analysis will produce a draft decision, which will be consulted at a national level. The provisional finding is that SDF backhaul is a facility that is ancillary to unbundled access to the sub-loop, which constitutes part of Market 11.

⁶ www.kpn-wholesale.com: All IP: Sub Loop Backhaul Service, *SDF Backhaul Aanbod* of 10 November 2006.

2.3 WBT market analysis

As stated in Section 1, in response to a request made by the remaining MDF parties and KPN the Commission has given them until 15 December 2007 to agree on Memoranda of Understanding subject to the simultaneous postponement of the publication of the draft WBT market decision. The Commission does not envisage that the latter will be published before 1 March 2008.

3. In conclusion

This letter will be disclosed to the public by its publication on OPTA's website.

Yours sincerely

THE COMMISSION OF THE INDEPENDENT POST AND TELECOMMUNICATIONS AUTHORITY OF THE NETHERLANDS
on behalf of the Commission
Head, Telephony and Numbers Department

D.I. Bos