

## Management Summary

### 1 RTV Broadcasting in the coverage area of CAIW

#### 1.1 Introduction

1. Once every three years the Commission of the Independent Post and Telecommunications Authority of the Netherlands (referred to throughout as the “Commission”) is required to study and analyse the electronic communication markets. This is stipulated in Chapter 6a of the Telecommunications Act [*Telecommunicatiewet*]. A determination must be made as to whether there is effective competition in them or whether any business holds significant market power. The Commission may impose remedies on any such business in order to end the disruption of market forces and to encourage competition. The Commission’s market analyses focus on the future and are valid for a period of three years.

2. A market analysis decision is proposed for the broadcasting markets. On 15 July 2008 the Commission published similar proposed decisions based on analyses of the fixed telephony, broadband and leased line markets. These proposals are now being presented to stakeholders for consultation and they may respond to the proposed decisions. A draft decision will then be presented to the European Commission, following which the Commission expects to be able to make a final decision by the end of 2008.

3. The broadcasting market analysis covers the retail and wholesale broadcasting markets. In the retail market end users receive radio and television signals (RTV signals) and access to a broadcasting transmission platform, such as the cable network of CAIW Diensten B.V. (CAIW). The wholesale broadcasting market involves the transmission of these RTV signals and the provision to other providers to offer end-users access to broadcasting transmission platforms. The market for broadcasting content, the purchases of programmes, such as RTL4, Nederland1 or SBS6, for incorporation into CAIW’s standard package, for example, is not covered by the Telecommunications Act and therefore does not constitute part of this market analysis.

4. As part of this broadcasting decision the Commission has identified CAIW as a company which holds significant market power under the terms of the Telecommunications Act.

5. As part of this decision the Commission will render it mandatory for CAIW to accommodate reasonable requests for the wholesale transmission of radio and television signals and the wholesale provision of access to its cable network. This will make it possible for alternative providers to offer digital (packages of) RTV signals (or packages containing them) to end users through CAIW’s cable network. In contrast to Ziggo and UPC, CAIW will not be obliged to provide the resale of analogue RTV signals and the connection to its network. The Commission is of the opinion that this obligation would be too onerous, given the limited size of CAIW. In the case of CAIW, the revenues would not outweigh the cost of the intervention.

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### 1.2 Main points of the decision

6. The Commission sees a trend towards digitisation in the TV markets but notes that end users and providers are going through a transitional period, during which analogue RTV is still of great significance. This is due to the unique circumstances prevailing in the Netherlands. The vast majority of Dutch end users are connected to cable and only receive an extensive analogue standard package. In this respect many digital viewers are still also using analogue RTV alongside their digital services. In addition, 81% of Dutch analogue television viewers are satisfied with the range of television services that are currently available, with the result that they are not readily switching to a digital supply. The Commission has therefore concluded that the analogue transmission of RTV signals will continue to be the dominant modality for the time being.

7. At present CAIW's share of the retail market is currently more than 80% to 90%. In the past regulatory period, CAIW has acquired various cable networks and consequently has grown in size compared to the previous market analysis. It is anticipated that its market share will drop to between 70% and 80% by the end of this regulatory period (2011), which is still considerable. Moreover, CAIW's position is bolstered by additional circumstances, such as the difficulties involved in duplicating its (analogue) infrastructure, and the switching costs involved for end users. The Commission notes that the obstacles to entering the broadcasting market are not of a temporary nature. Digtenne, IP-TV via DSL, satellite and fibre optic cable are still incapable of exerting sufficient pressure on cable tariffs and have not produced a greater choice of cable packages. Consequently, the Commission has concluded that CAIW holds significant market power in the retail market for the provision of RTV packages and access to a broadcasting transmission platform.

8. The Commission believes that a situation of sustainable competition can best be achieved by according preference to measures which are conducive to infrastructure competition where possible when selecting any remedies. It is for this reason that it accords preference to access services which still offer market parties an incentive to invest in their own infrastructure as far as possible.

9. Because infrastructure competition will not develop sufficiently in the absence of regulation to have an appropriate disciplinary impact in the regulatory period ahead, the Commission is also encouraging services competition. Consequently, the aim of regulation specific to broadcasting is to promote services competition on CAIW's broadcasting transmission platform in so far as this will accommodate the potential for the development of infrastructure competition.

10. Through the Commission's imposition of remedies CAIW will be required to allow competing providers of packages to have access to its network. As a result this will give consumers a greater choice of digital cable packages in the future. CAIW will lose its monopoly on the provision of digital packages via cable in its coverage area. In this way the Commission will promote the interests of end users in terms of choice, price and quality.

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### 1.3 Remedies in the wholesale market

11. To a large extent CAIW owes its position in the wholesale broadcasting market to its position in the retail broadcasting market. It holds a significant share of those markets at present and will also do so at the end of the regulatory period. Providers of RTV signals are dependent on transmission through CAIW's cable network in order to reach a sufficiently large number of end users in CAIW's coverage area. RTV signal providers do not have enough buying power to prevent CAIW from acting independently. It is for this reason that CAIW holds significant power in the wholesale broadcasting market.

12. Because of its dominant position, CAIW is able to deny access to competing providers of RTV signals (or packages of these services). In addition, CAIW has the ability to cause problems that disrupt competition in relation to access, such as the discriminatory use and concealment of information, the improper use of information about its competitors, delaying tactics, unfair terms and conditions, quality discrimination, strategic product design, and bundled or linked sales. Due to its limited size, CAIW experiences some pressure on its wholesale tariffs and CAIW is not in a position to charge excess rates on a sustained basis.

13. In line with European regulations, which stipulate that problems relating to competition should preferably be resolved by adopting wholesale measures, the Commission will impose the following obligations on CAIW:

- a duty to accede to reasonable requests for the transmission of RTV signals (digital or otherwise), which will enable RTV signal providers to offer RTV packages;
- a duty to ensure non-discrimination – the obligation to allow the transmission of RTV signals and related services and facilities in identical circumstances subject to the same terms and conditions. This obligation also entails that CAIW must ensure supply to external customers in identical circumstances subject to the same terms and conditions governing supply to itself;
- a duty to provide transparency, which means that CAIW will provide the information necessary for the purchase of transmission, such as tariffs and technical specifications, on request to a provider of RTV signals which wishes to have signals transmitted.

### 1.4 Changes relative to 2006

14. No obligations apply to CAIW at present. However, as a result of various acquisitions, CAIW has increased in size, as a result of which its market position has been strengthened, in particular on the wholesale market. In addition, CAIW has a large market share in its coverage area and competitive pressure has only increased slightly. However, the fact that other providers, such as KPN and CanalDigitaal, are increasingly offering competitive RTV services is important. The obligations which the Commission imposes are ultimately the same as those imposed on DELTA. The most

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important differences between this decision and the broadcasting market decision of 2006 are therefore as follows:

- more extensive retail and wholesale markets have been defined, with the result that the broadcasting transmission platforms of satellite, digital terrestrial transmission, IPTV via DSL and fibre optic networks have now become part of the relevant markets;
- a distinction is no longer being made between free-to-air accessible and paid RTV packages. All of the various RTV services provided through CAIW's cable network now constitute part of the same market;
- in addition to the transmission of RTV signals, the wholesale market also includes the wholesale provision of access (for retail purposes or otherwise) to a broadcasting transmission platform. This differs from the 2006 broadcast marketing decision as part of which the Commission had initially intended to regulate access at the retail level. The Commission ultimately abandoned this approach following objections from the European Commission;
- as a result of the increase in its size, CAIW has acquired a stronger position on the wholesale market and has an appreciable dominant position relative to providers of RTV signals;
- the Commission imposes an obligation on CAIW to transmit the packages of RTV signals (digital or otherwise) of other providers, subject to non-discriminatory and transparent conditions and tariffs.

### *Regulation anyway*

15. Based on the European regulatory framework, which is partly reflected in the Telecommunications Act, there is no need for the Commission to analyse the broadcasting markets. Nevertheless, the Commission feels that regulation is required because of the unique competitive situation prevailing in the Dutch broadcasting market, which also causes specific problems in relation to competition. After all, there are barriers to entry which are not of a temporary nature, amongst other things, because it is not easy to duplicate the requisite infrastructure. In addition, the broadcasting market is not moving towards effective competition, particularly because the transmission of analogue RTV signals remains the dominant modality for the time being. Access to CAIW's network is necessary for providers of RTV packages in the coming regulatory period, if they are to reach a group of end users that is large enough in CAIW's coverage area. Finally, competition law and the Media Act [*Mediawet*] (the so-called 'must carry' rules) are not adequate to address the problems that have been found to exist in relation to competition.

### **1.5 Advice from NMa**

16. The NMa [Netherlands Competition Authority] Board shares the Commission's conclusion that there is a relevant wholesale market for the transmission of RTV signals and the wholesale provision of access to a broadcasting transmission platform within CAIW's area of coverage. In addition, NMa shares the Commission's conclusion that CAIW holds significant market power in these markets.