

# Management summary draft market decision transit

Referring to draft decision on transit of 19 September 2008 (in Dutch)

## 1.1 Introduction

1. Under the terms of Chapter 6a of the Telecommunications Act [*Telecommunicatiewet*] the Commission of the Dutch Independent Post and Telecommunications Authority (referred to throughout as the "Commission") is required to analyse specific relevant markets in the electronic communications sector in order to determine whether there is effective competition in those markets or whether any market party holds significant market power (referred to throughout as SMP) in them based on a forward looking analysis covering the period until the end of 2011. The Commission may impose appropriate remedies on any market party which holds SMP.

2. This decision concerns the wholesale market for call transit between networks belonging to different providers. As such, we are concerned here with routing fixed or mobile telephone calls between providers. Such routing may occur through a specialist third-party provider. In this case we refer to transit. Routing may also occur through a direct connection between the originating and terminating networks. In this case we refer to direct interconnection.<sup>1</sup> In the former relevant markets recommendation (hereinafter referred to as the former recommendation)<sup>2</sup> issued by the European Commission (referred to throughout as the EU Commission) this market was included as part of Market 10.<sup>3</sup> This market is no longer included in the new recommendation (referred to below as the recommendation).<sup>4</sup> Consequently, although this market is no longer mentioned in the recommendation, it is nevertheless regulated based on the previous market analysis decision.<sup>5</sup> It is for this reason that the Commission has a duty to analyse this market in accordance with the provisions of the Telecommunications Act.<sup>6</sup>

## 1.2 Main points of the decision

### Definition of markets

3. The main question in relation to the definition of markets is whether direct interconnection exerts sufficient competitive pressure on transit to assign both of them to the same relevant market. The Commission is of the opinion that this is the case. This is chiefly determined by demand substitution of transit with direct interconnection. Such demand substitution is extensive, which is revealed amongst other things by the actual switch made by parties from transit to direct interconnection in the last three years.

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<sup>1</sup> When defining markets an investigation is conducted to determine whether transit and direct interconnection constitute part of the same market.

<sup>2</sup> Recommendation of the European Commission concerning relevant markets (EU OJ 2003, L114/45).

<sup>3</sup> Other markets that are part of what was formerly Market 10 are those of local and inter-regional call transit.

<sup>4</sup> Recommendation of the European Commission concerning relevant markets (EU OJ 2007, L 344/65).

<sup>5</sup> OPTA/TN/2005/2005/203467, *Wholesalemarkten voor gespreksdoorgifte op het vaste telefoonnetwerk* [Wholesale Markets for Call Transit in the Fixed Telephony Network], 21 December 2005.

<sup>6</sup> In accordance with the provisions of Section 6a(4) of the Telecommunications Act.

4. The Commission has concluded that there is a relevant market for call transit between networks throughout the Netherlands, which consists of both transit services and direct interconnection.

#### **Dominance analysis**

5. At present the largest provider, KPN, has a share of the relevant market which amounts to between 40% and 50%. This market share has shrunk drastically in the past three years. In addition to KPN there are four other transit providers. However, none of them offers transit to all destinations. Their products are consequently less comprehensive than those of KPN. Neither is it too difficult to duplicate the infrastructure nor are the barriers to entry too great. In addition, there is a limited degree of potential competition on the part of transit procurers. The latter are expected to provide transit services themselves in the event of an increase in transit tariffs. Finally, buyers enjoy a certain degree of buying power in that transit procurers may threaten to switch between the various transit providers. In addition to these factors, which contribute to competition, there are those which retard the level of competition. In the first place there are economies of scale which help bolster the strong position held by the largest provider, KPN. The position which KPN holds as the largest provider of fixed and mobile retail telephone services helps to a significant extent to improve its position in relation to the provision of transit services.

6. Considering what is stated above, the Commission is of the opinion that there is effective competition and that KPN no longer holds SMP. The existing remedies imposed on KPN based on the previous market analysis decision will therefore be revoked.