



PO Box 90420  
2509 LK The Hague  
Telephone +31 70 315 35 00  
Telefax +31 70 315 35 01

**Visiting address:**  
Zurichtoren  
Muzenstraat 41  
2511 WB The Hague  
The Netherlands

**Summary notification form relating to a draft decision of the commission of the Independent Post and Telecommunications Authority (OPTA) in the Netherlands with respect to the relevant market for wholesale unbundled access (including shared access) to metallic loops and sub-loops for the purpose of providing broadband and voice services (market 11).**

This summary notification form relates to a draft decision of the commission of the Independent Post and Telecommunications Authority in the Netherlands (hereafter: the commission) with respect to the relevant market for wholesale unbundled access (including shared access) to metallic loops and sub-loops for the purpose of providing broadband and voice services (market 11).

In accordance with article 6b.2 of the Telecommunications Act the commission notifies draft measures which would affect trade between Member States to the Commission of the European Communities and to the national regulatory authorities. The commission gives both to the Commission of the European Communities and to the national regulatory authorities the opportunity to make comments to the draft measure.

Comments to this draft measure are due to be sent to Ms. M.C. Kracht at [Breedband-MA@opta.nl](mailto:Breedband-MA@opta.nl) by 4 December 2005.

The Hague, 4 November 2005

## Section 1

### Market definition

#### 1.1 *The affected relevant product/service market.*

The relevant product market consists of the market for wholesale unbundled access (including shared access) to metallic loops and sub-loops.

(See chapter 5)

#### 1.2 *The affected relevant geographic market.*

The relevant geographic market for wholesale unbundled access (including shared access) to metallic loops and sub-loops is the Netherlands.

(See paragraph 5.5)

#### 1.3 *Summary of the opinion of the Netherlands Competition Authority*

The Netherlands Competition Authority (NMa) agrees with the conclusions drawn by the commission, as confirmed in a letter to the commission dated 8 June 2005 (included in 'Bijlage 6').

#### 1.4 *Overview of the results of the public consultation to date on the proposed market definition*

See separate chapter 8, 'Consultatie ontwerpbesluit'. The public consultation has not given the commission cause to make material changes in the proposed market definition.

#### 1.5 *Differences with the Commission Recommendation on relevant markets*

None.

## Section 2

### Designation of undertakings with significant market power

- 2.1 *Name(s) of the undertaking(s) designated as having individually or jointly significant market power or where applicable, the name(s) of the undertaking(s) which is (are) considered to no longer have significant market power.*

Koninklijke KPN N.V. and its group entities (hereafter: KPN) is considered to have significant market power on the relevant market for wholesale unbundled access (including shared access) to metallic loops and sub-loops.

(See chapter 6)

- 2.2 *Criteria relied upon for deciding to designate or not an undertaking as having individually or jointly with others significant market power.*

The criteria relied upon are:

- market share;
- control of infrastructure not easily duplicated;
- lack of countervailing buying power;
- vertical integration.

(See chapter 6)

- 2.3 *Name of the main undertakings (competitors) present / active in the relevant market.*

KPN

- 2.4 *Market shares of the undertakings mentioned above and the basis of their calculation (e.g., turnover, number of subscribers).*

KPN has a market share of 100% and is monopolist for wholesale unbundled access (including shared access) to metallic loops and sub-loops.

(See paragraph 6.1)

- 2.5 *Summary of the opinion of the national competition authority where provided.*

The Netherlands Competition Authority (NMa) agrees with the conclusions drawn by the commission, as confirmed in a letter to the commission dated 8 June 2005 (included in 'Bijlage 6').

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2.6 *Summary of the results of the public consultation to date on the proposed designation(s) as undertaking(s) having significant market power (e.g., total number of comments received, numbers agreeing/disagreeing).*

See separate chapter 8, 'Consultatie ontwerpbesluit'. In this chapter the results of the public consultations are described, as well as the way in which the consultation will lead to changes in the draft decision 'Analyse van de markt voor ontbundelde toegang op wholesale-niveau (inclusief gedeelde toegang) tot metalen netten en subnetten, voor het verzorgen van breedband- en spraakdiensten' published by the commission on 1 July 2005.

The public consultation has not given the commission cause to make material changes in the conclusions regarding undertakings with significant market power.

## Section 3

### Regulatory obligations

#### 3.1 *Legal basis for the obligations to be imposed, maintained, amended or withdrawn*

The commission imposes the following obligations

- Access, based on article 6a.6 of the Telecommunications Act;
- Non discrimination, based on article 6a.8 of the Telecommunications Act;
- Reference offer, based on article 6a.9 (2) of the Telecommunications Act;
- Tariff regulation, based on article 6a.7 of the Telecommunications Act;
- Separated accounting, based on article 6a.10 of the Telecommunications Act.

(See chapter 7)

#### 3.2 *Reasons for the imposition, maintenance or amendment of the obligations*

The obligations are imposed to prevent/counteract potential competitive problems:

refusal to deal/denial of access;

pricing issues:

- excessive pricing and price discrimination
- cross-subsidisation and predatory pricing

non-price issues:

- discriminatory use or withholding of information
- delaying tactics
- undue requirements
- quality discrimination
- strategic design of product
- undue use of information about competitors
- bundling/tying

(See chapter 7)

#### 3.3 *Exceptional measures*

Not applicable.

## Section 4

### Compliance with International obligations

4.1 *Imposition, amendment or withdrawal of obligations provided for in Article 8(5) of Directive 2002/19/EC (Access Directive)*

Not applicable.

4.2 *Name(s) of the undertaking(s) concerned*

Not applicable.

4.3 *International commitments entered by the Community and its Member States that need to be respected.*

Not applicable.