

OPTA

Guidelines on access to the unbundled local loop ('MDF-access')

16 March 1999

Introduction

1. The Commission of the Independent Post and Telecommunication Authority (OPTA) herewith announces guidelines for, among other things, the settlement of disputes concerning special access according to article 6.9 of the Telecommunications Act (TW). These guidelines also apply by official practices of the Commission's authorisation concerning special access. These guidelines refer to one form of special access only, namely, special access to the unbundled local loop via the main distribution frame in, usually, local exchanges.

2. In OPTA's ruling concerning the interconnection dispute between Enertel N.V. and KPN N.V./PTT Telecom B.V. of 17 December 1997, the Commission established that a request for access to parts of KPN's local network is considered as a request for special access. Also, the Commission ruled that KPN is acting in an unreasonable way if they refuse to make an offer for unbundled access to its local loop. KPN must make a reasonable offer, containing, at least, access to the main distribution frames of its exchanges.

3. On 30 January 1998, KPN published its reference offer on MDF-access (access to the local line via the main distribution frame in the local exchange).

4. On 15 July 1998, in its decision to the appeal of Enertel and KPN against the earlier mentioned ruling of the Commission of 17 December 1998, the Commission has repeated its earlier decision that a request for access to the main distribution frame is a reasonable request.

5. The Commission published a consultation document on 4 June 1998, entitled: 'Consultation Document on Special Access Services', upon which interested parties have submitted comments. On 1 July 1998 a public hearing took place and on 31 July 1998 the consultation process was concluded. In the document, the Commission expressed a number of preliminary views on definitions, rights and obligations concerning access to the local line, the quality of the local line, costs of the local line and on tariffing of special access to the local line. Questions on other forms of special access were also presented to market parties in the consultation document. Separate guidelines are foreseen for forms of special access other than access to the unbundled local loop.

6. The Commission has taken due notice of the comments of market parties. The Commission will respond to their reaction in more detail in separate letters. Also, taking these comments into account, the Commission observes the following.

Facts and starting points

7. The Commission ascertains that, up to now, hardly any competition has developed in the majority of the local and regional markets for fixed telecommunication services. In particular, small business and residential end-users are still dependent on a local connection with KPN Telecom. Although the supply of mobile telephony services via alternative networks is increasing, competition in the market for fixed telephony services is mainly focused on the provision of national and international telephony, (usually by means of carrier selection, via KPN's network).

8. The development of new, especially broadband telecommunication services is limited. New services via carrier selection enter the market only if they can be supported by KPN's telephone network. The development or upgrading of alternative infrastructures, with which two-way broadband services could be provided, is still in its infancy. Consequently, at present, providers are highly dependent on the availability of KPN Telecom's infrastructure for the development of broadband services.

9. Furthermore, the Commission notes that KPN Telecom intends to offer broadband services (using Asynchronous Digital Subscriber Loop, ADSL). This implies that KPN will be providing access to the main distribution frame to itself.

10. The Commission has taken due notice of the views in the current discussion on the economical impact of access to the local loop on the development of alternative infrastructures. The Commission will come back to this subject in § 30.

Definitions

11. The Commission establishes the following definitions:

Local line: 'the fixed transmission path from the network termination point up to and including (a share in) the main distribution frame';

Local connection: 'the local line, as well as a line card (completely or partly) necessary to connect an individual end user to a telecommunications service';

Local loop: 'all parts of a telecommunications network from the network termination points up to and including the line cards (including the line blocks)'.

A reasonable request

A request for special access to the local line via the main distribution frame is a reasonable request if:

12. the access is essential for the requesting party to compete in the telecommunications market. In that case, refusing access would result in impeding access to the end user or rendering this access considerably and unavoidably uneconomical. If the requesting party is demonstrably (by the one refusing access) able to connect a certain client directly to its own infrastructure or via an alternative infrastructure and/or equivalent wireless connection, in an economically justified way, refusal of access to the local line is, in principle, allowed; and

13. sufficient access capacity is available. In principle, the Commission's starting point is that sufficient capacity will be available on main distribution frames where the requesting party is one of the first parties to apply for access. This may, for instance, not be the case in the following instances. KPN Telecom could demonstrate that no suitable access lines are available anymore due to the fact that a number of other parties already use special access, or the service provision of the requesting party would inevitably lead to cross-talk or another irreparable violation of the quality of the services already provided by all other parties via that main distribution frame.

Rights and obligations involved in access to the local line

14. Without detriment to what is defined or stipulated by the Telecommunications Act, when dealing with a dispute concerning special access, the Commission will in any case observe the following:

15. Legal ownership of a local line will not be affected by the provision of special access to that local line. The actual control of the local line will be passed on to the party obtaining special access. If an end user is connected by multiple local lines, then all these local lines will be eligible for special access. The end user, after all, determines which services to obtain from which provider.

16. If the end user, connected by multiple local lines has expressed the wish to continue purchasing the services, or part thereof, as stipulated in article 9.1 paragraph 1 of the Telecommunications Act, from KPN, the obligations on KPN with regard to universal service provision (art. 20.1 and art. 9.1 TW) continue to apply.

17. If the end user is connected by just a single local line and the actual control of the local line has been passed on to a provider other than KPN Telecom, KPN is not obliged to install another local line to the end user concerned. In that case, the end user chooses to obtain all the services he requires of the alternative provider.

18. The provider that 'leases' a local line from KPN Telecom, does so based on a request from an end user requesting the services of that provider. Therefore, this provider must inform the end user sufficiently beforehand about his offer of services, especially about the availability of voice telephony services. In particular when the end user is connected via a single local line, the provider must ensure that the end user is able to make a well informed and considered choice whether to cancel his subscription with KPN Telecom or not. The end user that thus made his choice for using the telecommunication services of another provider, is considered to renounce his right to universal service provision by KPN Telecom.

19. In case the end user, who subscribed with a provider that leases the local line in question, moves house, the control of the local line must be returned to the legal owner. The Commission considers a transitional period of one month to be reasonable in this regard. In this transition period the new end user (the new inhabitant of the premises to which the local line connects) is given the opportunity to choose his provider. If this end user chooses the same provider as the previous end user, the control of the local line will not be returned to the legal owner and the provider is not required to remove his installed equipment from the end user's premises nor from KPN's local exchange building.

The local line

20. Parties must put down agreements on quality standards relating both to delivery of the local line by KPN Telecom and to returning the control of the local line, as well as relating to technical specifications, delivery times, maintenance, and such, in a contract.

21. Without detriment to what is defined or stipulated by the Telecommunications Act, the Commission will, when dealing with a dispute concerning special access, in any case observe the following:

22. The starting point is that the quality of the local line provided must not be inferior to the quality that KPN provides to itself. If KPN does not (yet) provides unbundled access to the local loop to itself, for instance for the provision of broadband services, the quality standards concerning the provision of its voice telephony services apply.

23. KPN Telecom has to adhere to international standards as much as possible. If international standards or recommendations are not available, the existing documented line specifications of

KPN Telecom for, for instance, voice telephony, ISDN-2 and ISDN-30 may apply. If a market party submits a request for special access to the local line, KPN Telecom must immediately and preceding negotiations for an agreement, inform the market party on the number and quality of the available local lines.

24. Where international standards are not available, the Commission is positive towards an initiative to achieve common agreements within the Forum on Interconnection and Special Access (FIST). As long as such an initiative has not led to actual agreements, KPN and the market party that actually requests for special access have to reach agreement on a bilateral basis.

Determination of cost-oriented tariffs on special access to the local loop via the main distribution frame

Facts and assumptions

25. On 1 July 1998, the Commission published its ruling on cost-oriented tariffs for interconnection and special access (hereafter: EDC-ruling; EDC = Embedded Direct Costs). This ruling includes the conditional approval of the cost-allocation system established by KPN, the so-called EDC-model.

26. The EDC-model values the access network at historical costs. Starting 1 May 1998, costs for the access network are no longer included in the tariffs contained in the ruling on cost-orientation of interconnection and special access services.

27. On 17 April 1998, the Commission accepted the system for the allocation of costs and income for voice telephone services, established by KPN. The access network costs are included in this system.

28. Despite the fact that both systems are closely related, a number of important differences between the principles used for determining the cost price for telephony services and the principles for determining the cost price for the various interconnection and special access services exist. Both systems use a relatively different methodology for cost allocation and different valuation principles: the system for telephony services applies fully allocated costs on the basis of historical costs, the EDC-model incorporates direct cost allocation, applies the so-called stand-alone criterion and also involves so-called forward-looking elements. The costs of the core network (the telephone network minus the access network) in the EDC-model are based on current costs (CCA: Current Cost Accounting).

29. In order to determine a cost oriented tariff for unbundled access to the local loop, the Commission sees reason to temporarily (about which more in § 31) adhere to the cost allocation methodology for the access network as incorporated in the EDC-model. This is caused by the development of effective competition both in the market for telecommunication services and in the market for telecommunication networks. As discussed in § 8, the Commission considers it important that more competition develops in the product markets for local telecommunication services, such as internet access, as well as in the markets for innovative, in particular broadband, telecommunication services. The charges paid by competitors for a local line should therefore, in principle be the same as the charges KPN Telecom pays, i.e., recovers for the use of that part of the local connection from the end users.

30. On the other hand, the Commission recognises that the development of alternative access networks is, at present, in its infancy. In a more mature market, a provider requiring the use of such networks would rather pay charges in line with a valuation on the basis of current costs, as is also the case with the valuation method of the EDC-model for the core network. The effective competition between access networks should, in such a market, not be impeded by potential differences in (regulated) cost allocation methods and valuation principles.

31. The Commission is of the opinion that a gradual transition period from, in brief, a tariff based on historical costs to a tariff based on current costs, does justice to both the early stages of development of competition at present and the further development of competition in coming years. The Commission determines the transition period to be five years. After this period, KPN Telecom is, in principle, free to set the tariff on a commercial basis. The time period is based on the following considerations. A term of five years is considered to be representative for the minimum period in which to earn a return on (initial) investments for new services in a capital intensive industry such as the telecommunications industry. In mobile telephony, for instance, the break-even point is reached, on average, after the third or fourth year of operation. More in general, a period of five years is not unusual in view of earning a return on certain investments, for instance, in facilities in leased premises. Furthermore, reference can be made to Canadian legislation, in which a period of five years is considered sufficient to, on the one hand, stimulate innovative access and, on the other hand, to activate market parties to install their own facilities in due time or acquire these in another way. Finally, the Commission points out that wireless broadband networks based on UMTS-standards will arrive within the next five years.

32. The Commission is of the opinion that the technical and economical dynamics of the access network differ from the dynamics of KPN Telecom's core network, which, for example, manifests itself in the depreciation periods and investment levels that KPN currently maintains. The Commission expects this to be also (still) the case in coming years. Therefore, the Commission considers it to be unreasonable to apply the principle of forward-looking elements with regard to the architecture of the access network in determining the tariff for special access to the local line. Investments by KPN for the upgrading of (parts of) the access network may be expressed in a factor (about which more in § 36), with which the tariff for MDF-access is allowed to change. This factor will be determined with reference to the cost price based on current cost valuation in the relevant year, as will be explained further in § 37 and 38.

Determination of the methodology for setting a cost oriented tariff for special access to the local line

33. The Commission considers it to be reasonable to assess the cost orientation of the rental charge for unbundled access to the local line as well as the cost orientation of the one-off charges on the basis of following principles:

34. The tariff must be calculated on the basis of the principles of the EDC-model, as approved by OPTA, observing what is stipulated hereafter.

35. The Commission judges that it is reasonable to apply a transition period of five years with regard to the valuation principle to be used.

36. The development of the tariff must be calculated every year according to the formula in annex 1. The formula includes a factor with which the tariff must

develop to a level determined on the basis of current cost evaluation (identical replacement value). It is expected that, initially, this will be a factor with which the tariff increases annually.

37. The cost price component of the initial tariff P_0 is determined on the basis of historical costs and according to the EDC methodology. One of the relevant starting points is that customers only pay for what they use, which means that with regard to access to the local line, for example, cost for line cards should not be taken into account.

38. The tariff must be determined annually, following the methodology as described in annex 1. With regard to this determination, a tariff based on the current cost price must be calculated.

39. The principle of the use of forward-looking elements regarding the architecture of the local loop, must not be used for the determination of this tariff.

40. The ex-ante rate of return allowed, must be equal to the ex-ante rate of return that is determined yearly for interconnection and special access services.

41. The determination of the allocation of the relevant costs and the calculation of the tariff based on the current cost price, must be part of the annual procedure of establishing the tariffs for interconnection and special access services (as described in the EDC-ruling of 1 July 1998).

42. KPN must determine the tariff every year at the same time as the tariffs for interconnection and special access are determined. The tariff, determined accordingly, will come in force on the first day of the following year. KPN must determine tariff P_0 immediately after these guidelines come into force, according to the EDC-methodology, and applying a return on investment of 12,2%, the current rate of return for interconnection and special access services. This tariff will be valid for the entire year of 1999. Before final determination, KPN must submit this tariff to OPTA for approval.

43. The charges for one-off costs, as well as for collocation to be applied to providers that submit a reasonable request for special access to the local line, must be part of the annual procedure for determining the tariffs for interconnection and special access services. In other words, KPN should define a standard offer for collocation in the context of access to its local lines, of which the tariff is judged in the procedure of the annual approval of tariffs for interconnection and special access services. The charges for tailor-made solutions must be determined on the basis of the same principles. The Commission considers itself authorised at all times to judge, on request, the cost orientation of the charges for tailor-made solutions.

Enforcement

These guidelines qualify as policy rules. They enter into force on the day after publication in the Official Dutch Gazette.

The Commission of the Independent Post and Telecommunications Authority
On behalf of the Commission,
Prof. dr. J.C. Arnbak, Chairman

Annex 1: Determination of the tariff for unbundled access to the local loop

The tariff is determined according to the following formula:

$$P_t = P_t^H + \frac{t}{5} (P_t^E - P_t^H)$$

by which

P_t^H = the tariff in year t based on historical cost price

P_t^E = the tariff in year t based on current cost price

$\frac{t}{5}$ = the time factor, by which t refers to the year in which the tariff is determined, and 5 refers to the number of years in which a tariff based on current costs must be reached.

After the fifth year the following will apply: $P_t = P_t^E$

The method works as follows:

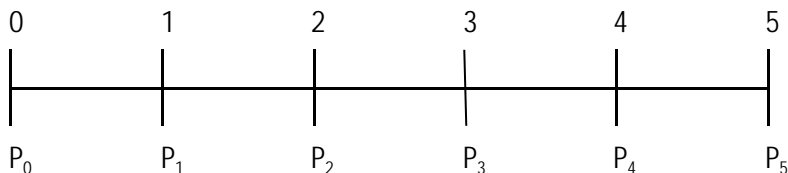
The initial tariff is tariff P_0 . This is the tariff of which the cost price component is determined on the basis of historical costs (P^H_0).

In year 1 a tariff P^H_1 is determined. Also, a tariff P^E_1 is determined. The difference between the two tariffs indicates the path along which, in five years, a tariff based on the current cost price is achieved, as calculated in year one. One fifth of that is the development factor allowed for that year. The current tariff P_1 is the sum of the tariff based on historical costs plus the development factor allowed.

In year 2, a tariff P^H_2 and a tariff P^E_2 are determined. The difference between the two tariffs indicates the path along which in the original year 5, a tariff is achieved on basis of current cost valuation, as calculated in year 2. Two fifths of that is the increase allowed for that year. And so on. In year 5, the ultimate 'market' price will be reached, tariff P_5 will then equal P^E_5 .

The following time path serves as illustration.

Point of tariff determination:



P_0 is the initial tariff. P_1 will be determined on 1 July 1999 and comes into force on 1 January 2000.

P_2 will be determined on 1 July 2000 and comes into force on 1 January 2001. Etc.