



Commercial wholesale agreements in the Netherlands

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Introduction

- Dutch telecom sector
- Agreements in the Netherlands
 - Co-investment
 - Unregulated market: WBA
 - Regulated market: Civil agreements (VULA)
- Commission's proposal
- View of ACM

Dutch telecom sector: fixed networks

The Netherlands:

High coverage of fixed telecom infrastructures:

- Incumbent operator (KPN)
 - Copper ~ 100%
 - FttH ~ 26%
 - FttC ~ 37%
- Large competitor (Ziggo)
 - Coaxial ~ 84% (~91% of consumers)
- Alternative local operators
 - Coaxial ~ 6%
 - Fibre ~ 3%

Dutch telecom sector: regulation

Current regulation:

- Local access to copper and FttH regulated:
 - Market 3a (unbundled copper & fibre + copper VULA).
 - Market 4 (decentralized WBA high quality).
- Alternative providers: Tele2 & T-Mobile (combined market share 5-10%).
- FttO and coaxial networks unregulated.
- Trend: KPN & Ziggo more and more symmetric due to mergers (Vodafone-Ziggo & UPC-Ziggo).

Commercial agreements in the Netherlands

- What is a commercial agreement?
- Civil agreements are quite common in the Netherlands.
- For example, many WBA agreements in the unregulated market 3b.
- Even all regulated products are implemented in civil agreements, the latest example being VULA.

Agreements in the Netherlands: co-invest

- Currently, no real co-investment agreements in the Netherlands.
 - Already high coverage of fixed networks.
- In 2008, ACM allowed the joint venture between KPN & Reggeborgh (largest fibre operator):
 - ACM imposed ‘merger’ access remedies.
 - In 2015, KPN acquired full control.

Agreements in the Netherlands: unregulated WBA

Why is KPN commercially offering centralized access (WBA) to its networks?

- Regulated local access (3a) creates competition on decentralized (3b) market.
- WBA more profitable for KPN than offering low revenue generating regulated 3a products.
- WBA prevents further infrastructure competition.

Agreements in the Netherlands: regulated VULA

Why is KPN offering VULA?

- First of all, VULA is regulated in the Netherlands.
- KPN expressed the wish to upgrade its copper network. These upgrades would affect the access to the copper network.
- ACM: copper upgrade only allowed if there is a full substitute (VULA) available.

Agreements in the Netherlands: VULA criteria

- ACM:
 - Should be available with any bandwidth and all other parameters within the technical capabilities of the respective underlying loop and active equipment
 - Should be a Layer 2 Ethernet service that ensures transparency in the transmission technique.
 - Should allow for parties to implement their own end-user equipment and some TV-signals.
 - Has to be available at all the local copper network's points of interconnection (nation wide coverage).

Agreements in the Netherlands: VULA implementation

- KPN subsequently offered a civil VULA agreement meeting all these criteria.
- KPN offered an agreement for 7 years, because the copper upgrades were crucial.
- However, regulation was the key factor.

Commission's proposal

- NRAs should take commercial agreements into account:
 - commercial agreements (if sustainable and improving competitive dynamics) can contribute to the conclusion that a particular market does not warrant *ex ante* regulation.
 - motive for network owners to enter into commercial negotiations.
 - In areas with two access providers, where at least one operator offers wholesale access on reasonable commercial terms, NRAs are unlikely to need to impose or maintain SMP-based access obligations. This applies *a fortiori* if both operators offer reasonable commercial access.

ACM's view

Is there a role for NRAs in fostering agreements in the market review process?

- **Yes, there is.**
- On many (deregulated) markets commercial agreements are common, often encouraged by NRAs.
- On regulated markets, regulation helps competition which might stimulate (commercial) agreements.
- However, some agreements only result from regulatory obligations (*regulatory threat*).
- Be careful when applying common rules when assessing commercial agreements as markets and commercial agreements do differ a lot.
- A case-by-case analysis is always required.

Thank you

