

Commission issues comments on proposed regulation of the wholesale internet access market in the Netherlands

The European Commission has issued comments on the Dutch regulator's (ACM) proposed regulation of KPN and VodafoneZiggo which are both active on the broadband internet markets in the Netherlands.



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ACM considers that the relevant wholesale market has significantly changed since the last market review. ACM now finds a market for Wholesale Fixed Access, which is comprised of both wholesale local access and wholesale central access at a fixed location for mass-market products.

ACM concludes that the two operators with nationwide networks, KPN and VodafoneZiggo, have joint Significant Market Power (SMP) in the Wholesale Fixed Access market. Given that - according to ACM - there is an equal risk of competition-limiting behaviour by both parties; ACM intends to impose obligations on both KPN and VodafoneZiggo arguing that regulation of only one of the two joint SMP operators would not be sufficient to resolve the identified competition problems.

The Commission did not object to the definition of the relevant market and ACM's finding that both KPN and VodafoneZiggo are jointly dominant. However, the Commission asked the regulator to further substantiate its conclusion regarding the market definition. It also asked the regulator to monitor whether local access products and central access products continue to be functional substitutes. In addition, the Commission asked ACM to further justify the proportionality of extending the full set of remedies also to VodafoneZiggo, and to consider whether a more flexible price control remedy (economic replicability test rather than strict cost orientation) related to VULA as well as all fibre and cable products could better address the identified retail market failures.

Finally, the Commission pointed out that if the competitive landscape changes after the transposition of the Electronic Communications Code into national law, specifically if operators enter into cooperative arrangements or co-investment commitments, then the regulator should reassess the adequacy of the proposed regulation.

ACM will now have to take utmost account of the Commission's comments in the preparation of its final measures, to be published in the coming months.

Background

The EU Regulatory Framework for electronic communications requires National Regulatory Authorities (NRAs) to review national telecoms markets regularly and assess the need for *ex ante* regulatory remedies to foster competition. NRAs are required to determine appropriate regulatory measures to be imposed on operators with SMP in these markets and notify such measures to the Commission under Article 7 of the Framework Directive.

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