Digital Agenda - Commission queries OPTA's regulatory plans for Dutch business broadband customers

Brussels, 21 March 2012 - The European Commission has decided to investigate whether the Dutch telecoms regulator (OPTA) should oblige KPN (the main Dutch telecoms operator) to give alternative operators access to its infrastructure so they can also offer high-speed broadband connections to business customers. Without this access, business customers may not have a choice of competitive deals from different operators, and could therefore pay higher prices. The Commission has serious doubts whether OPTA's decision not to regulate access to KPN's fibre-to-the-office (FttO) networks and to high-quality wholesale broadband is compatible with EU telecoms rules. In the Commission's view, OPTA's approach could have a negative effect on competition and the future development of fibre investment and innovation. The Commission also believes that OPTA's plans, if implemented, could affect trade between Member States. Conditions for access to the fibre network in The Netherlands will determine the cost and the ability of other operators (including those established in other Member States) to provide telecoms services. The Commission has therefore suspended OPTA's plans.

OPTA has decided to neither regulate access to KPN's fibre-to-the-office network, nor to oblige KPN to provide other companies with high quality wholesale broadband access over its fibre network. Under the Commission's Recommendation on Next Generation Access Networks (see MEMO/10/424), a telecom regulator can only decide not to impose regulated unbundled access to the local loop (the physical link between the local exchange and the customer) if it can show that alternative operators can get such access on the market at competitive terms, which is likely to result in effective competition downstream.

The Commission has suspended these plans, because it needs further proof from OPTA that the market for unbundled access to the fibre-to-the-office network is a market in its own right and that it does not require regulation. OPTA has already found KPN to have significant market power (SMP) in the market for unbundled access to fibre-to-the-home, and has imposed a full set of regulations in this area. OPTA has not sufficiently demonstrated that KPN's considerable and stable market share, alongside other indicators, would not prevent it from using its strong market position to act independently of its competitors, customers and end-users. OPTA has also not sufficiently justified why high quality wholesale broadband access over KPN's fibre network should not need regulation.

Neelie Kroes, European Commission Vice President, said: "Fair competition delivers market innovation and a better deal for Europe's consumers - including business customers. We need a level playing field: that means all national authorities playing by the rules and acting consistently when they implement EU law."
Background:
As a result of the two letters sent by the Commission today, under Article 7 and 7a of the EU Telecoms Directive, OPTA cannot adopt its plans to deregulate fibre-to-the-office wholesale access for two months, and to deregulate high quality wholesale broadband access for three months respectively.

Article 7 of the new Telecoms Framework Directive requires national telecoms regulators to notify the Commission, the Body of European Regulators for Electronic Communications (BEREC) and telecoms regulators in other EU countries, of measures they plan to introduce to solve market problems.

While regulators have some scope to tailor approaches for achieving effective competition in their national telecoms markets, notification of draft regulations to the Commission is required in order to achieve consistency across the EU. If the Commission believes a Member State’s proposals are not compliant with EU telecoms rules the first step of the Commission’s "Article 7 procedure" is to write a "serious doubts" letter to the national regulator (MEMO/11/321).

The EU telecoms rules enable the Commission to adopt further harmonisation measures in the form of recommendations or (binding) decisions if divergences in the regulatory approaches of national regulators, including remedies, persist across the EU in the longer term.

Useful Links
The Commission’s letter sent to the Dutch regulator will be published at:
https://circabc.europa.eu/w/browse/0fc4cbf9-3412-45fe-84bb-e6d7ba2f010e
Digital Agenda website
Neelie Kroes’ website
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