

# Market analysis in the Netherlands

Workshop on carrying out relevant markets analysis  
Podgorica, Montenegro

Christa Cramer  
Dept. Director Markets Department  
OPTA



# Agenda

- Legal framework
- Process of market analysis
- Experiences in the Netherlands 2005
- Market developments since 2005
- Regulatory challenges since 2005
- Market analysis 2007/2008 and decisions 2008/2009
- Next steps of implementation
- Questions

# Legal framework

- European Directives and guidelines (in review)
- European Recommendation on relevant markets
- Recommendation on Next Generation Access still under construction
- Opta Act
- Telecommunications Act (and Competition Act)

# Process of Market Analysis (1)

- What is the market? ➤ Delineation of **relevant product market** and the **relevant geographic market**
- Is there a problem? ➤ Analysis of state of competition (**effective competition** = absence of SMP)
- Who is causing the problem? ➤ Identification of operators with **SMP**
- How can we prevent it? ➤ Choosing appropriate and proportionate ex ante **obligations** from the “menu”

# Process of Market Analysis (2): “menu” of possible obligations for parties with SMP

- Wholesale obligations

- Access
- Transparency
- Non discrimination
- Accounting separation
- Price regulation

- Retail obligations

- Carrier (pre) selection
- Non discrimination
- Unbundling
- Transparency
- Price regulation

(only if wholesale obligations are not sufficient)

## Process of Market Analysis (3): conditions for imposing obligations

- Obligations must be **justified**
- Obligations must be **proportionate**
- Obligations must serve the overall objectives of the framework:
  - promote **competition** in the provision of electronic communication services and associated facilities
  - contribute to the development of the **internal market**
  - Promote the **interest** of the European **citizens**
- Retail obligations only if wholesale obligations are not sufficient

# Process of Market Analysis (4): specific goals and conditions when imposing obligations

- General goals:
  - “Ensuring that there is **no distortion or restriction** of competition.”
  - “Encouraging **efficient investment** in infrastructure and promoting **innovation**”. (framework directive)
- When imposing access obligations:
  - To take account of “*the technical and economic viability of using or installing **competing facilities**, in the light of the rate of market development*”
  - *and the **initial investment** by the facility owner, bearing in mind the risks involved in making the investment;*” (access directive)
- To assess the “*effects of a proposed obligation on **investment in alternative** electronic communication networks*”
- To minimize “*the negative effects on the incentives to invest of providers of alternative networks*” (guidelines Minister Economic Affairs)

# Experiences in NL 2005 (1)

- Separate networks for separate services (telephony, television, datanetworks)
- Development from narrowband to broadband internet over ADSL and CTV networks
- Incentives for infrastructure competition present => ladder of investment
- Regulatory challenge: preserving incentives while stimulating competition
- Market decisions 2005



# Experiences in NL 2005 (2): ladder of investment

- End goal of regulation: **sustainable competition** (sustainable without access regulation)
- Main instrument regulatory framework: **access**
- Entrants get access to dominant networks to deliver services to end users at cost oriented prices
- Entrant can build client base with relatively low investment
- Entrant is **stimulated to roll out** (invest in) the network towards the end user (climb the ladder) through f.i.
  - Ascending prices for access over time
  - Relatively lower prices for connecting closer to the end user
- Access **regulation** at connection points further from the end user **removed** when competition emerges

# Experiences in NL 2005 (3): Market decisions on ULL and wholesale broadband access

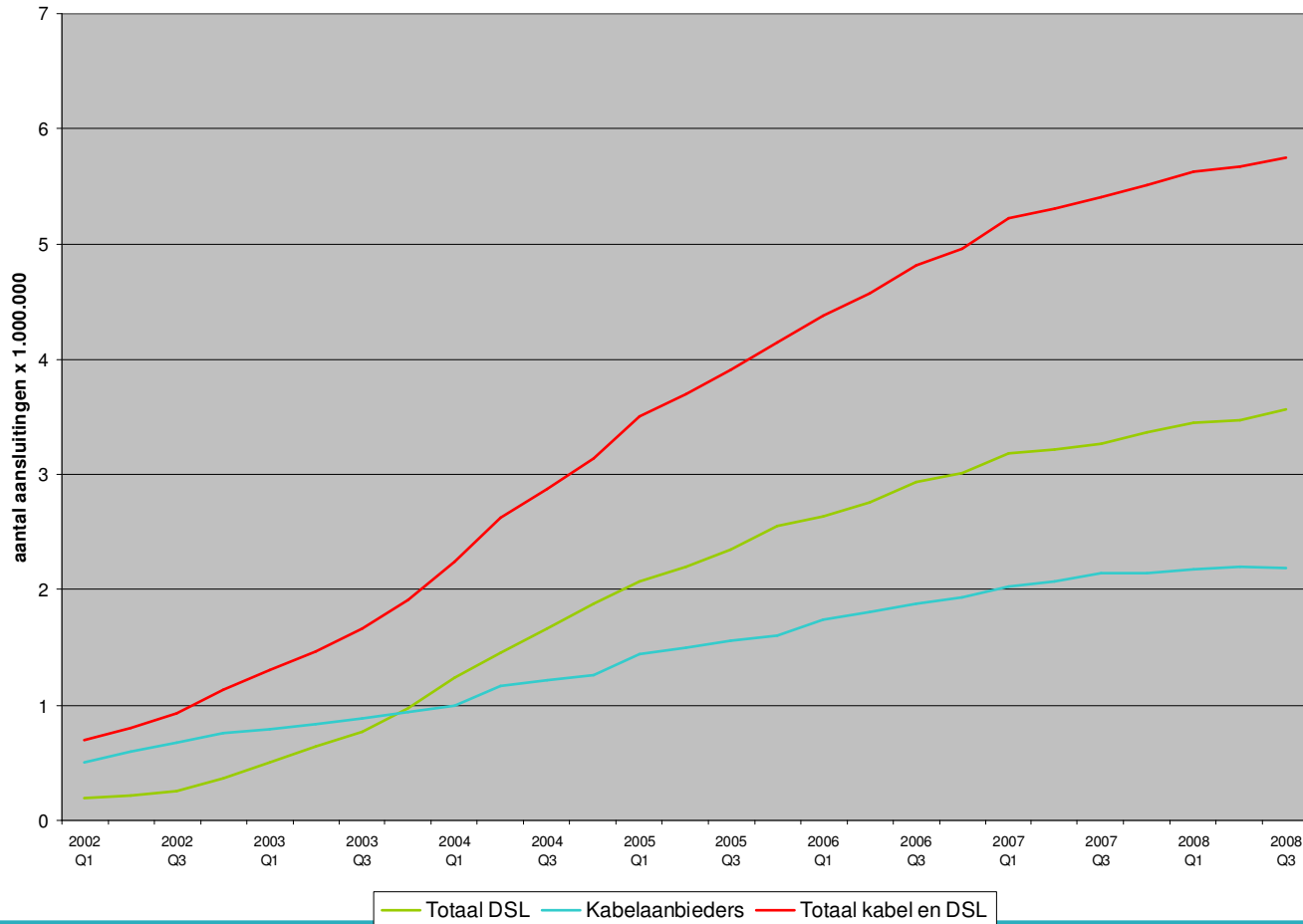
- ULL market: full wholesale regulation, no retail regulation
- WBA market:
  - a) WBA low quality (consumer): no retail regulation, NO wholesale regulation
  - b) WBA high quality (business): no retail regulation, light touch wholesale regulation = no price regulation

=> Incentives for the starting competitors in alternative WBA provision using ULL

# Market developments since 2005 (1)

- Broadband markets
- Bundles and convergence
- All-IP/NGN

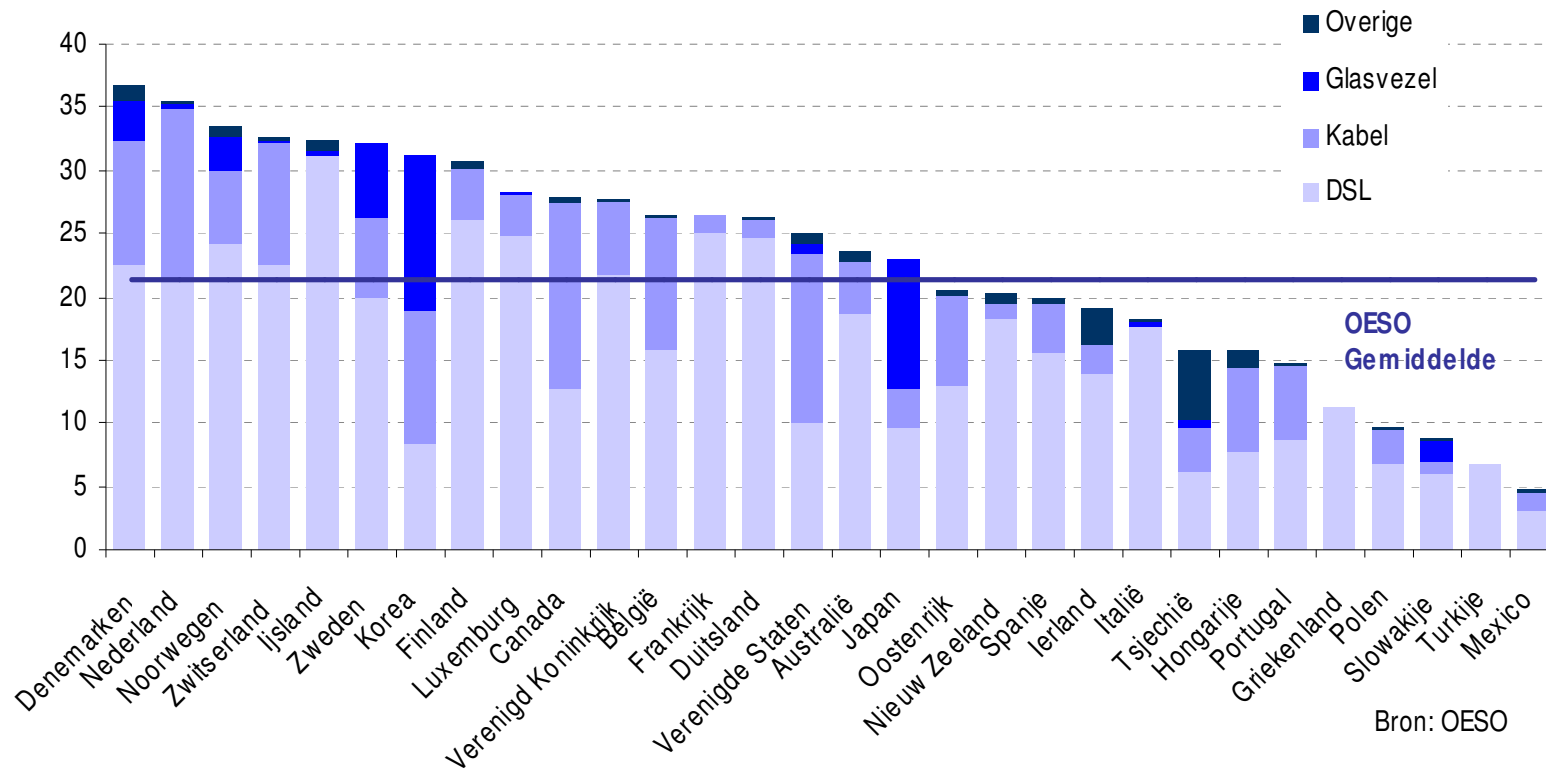
# Market developments (2): growth in broadband connections



June 5, 2009

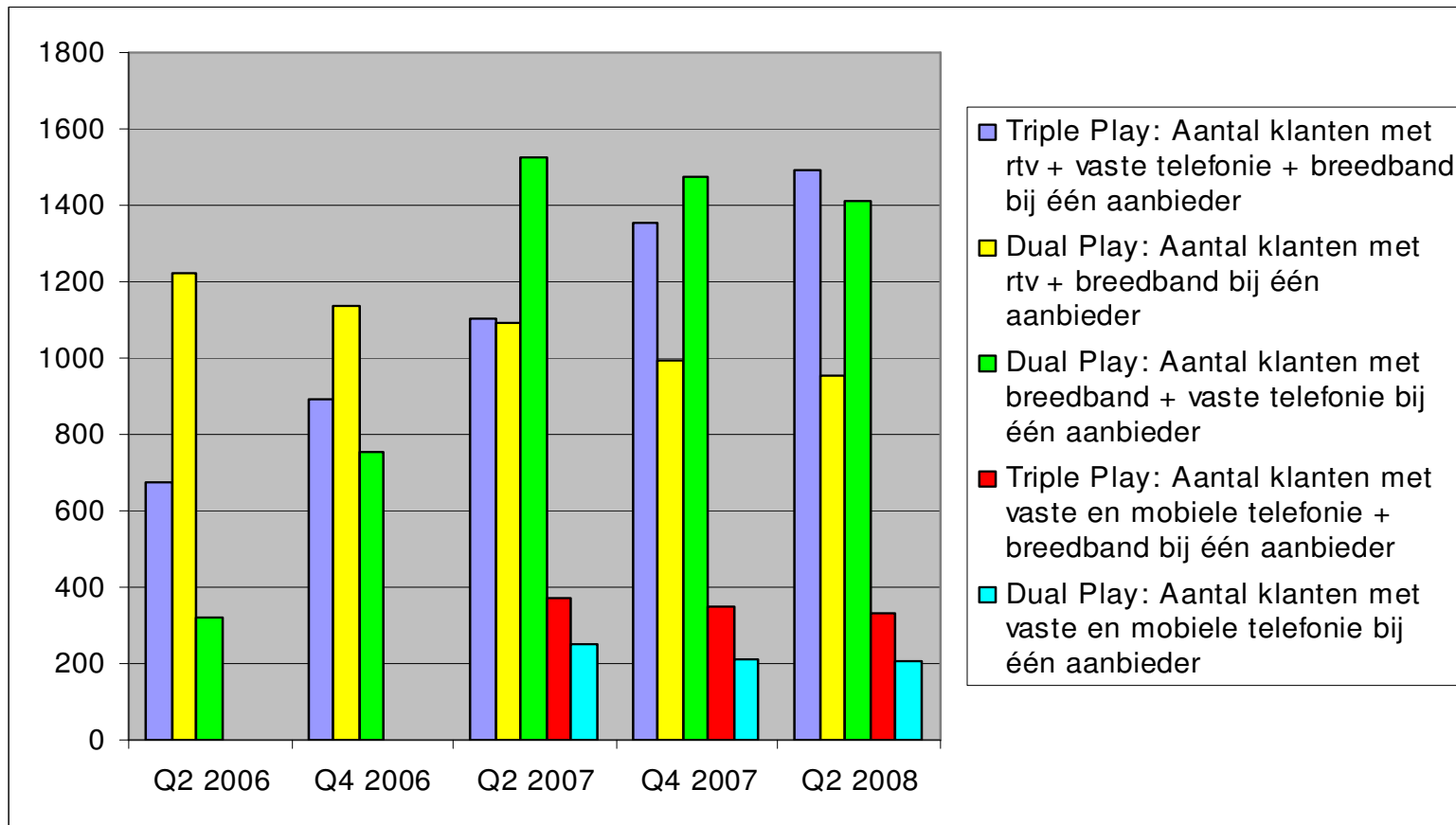


# Market developments (3): in international perspective



OESO broadband connections per 100 inhabitants and per technology, June 2008

# Market developments (4): multiplay



# Market developments (5): copper networks and coax networks

## Copper Network

- 2000 Introduction ADSL(1Mb)
- 2003 Start of DVB-T
- 2004
- 2005 Introduction ADSL 2+ (20Mb)  
Introduction IPTV  
Introduction FttH (Reggefiber)  
Voip(on ADSL)  
DVB-T (KPN)
- 2008 Pilot VDSL2 (30Mb) KPN  
FttH (kpn)

## Cable Network

- Introduction Doscis (512 kb)
- Digital TV (on cable)
- Voip (on cable)
- Introduction Docis 3.0 (120 Mb)

# Regulatory challenges since 2005 (1)

- Convergence of networks: from separate networks to a single multiservices platform, both in CTV networks and copper networks
- Fibre deeper in the networks becomes realistic possibility (FttC, FttH)
- Intent of KPN to phase out copper network/MDFs
- Is 2 enough?

Overall market situation:

- Consumer services
  - Strong competition between cable operators, KPN and ULL-operators
- Business services
  - Weak competition. KPN has a strong position and small scattered competitors.
  - Position of cable operators is rather weak in business segment



# Regulatory challenges since 2005 (2)

Promote infrastructure competition and investments in NGN, without disturbing level of competition

- Access regulation (also on NGN) via Optical Distribution Frame (ODF) access is necessary
- Regulatory (un)certainty as part of (minimizing) investment risks

Smooth and adequate transition from old situation towards new situation

- Phasing out current network and existing access conditions
- Find a solution for tariffing “old network” services => due to decrease of volumes access tariffs might raise ceteris paribus
- Create a set of migration conditions for current ULL-providers

# Regulatory challenges since 2005 (3): approach OPTA

- Cable and KPN is not enough: effective and lasting competition is not secured in a duopoly situation: “troubled water situation” and risk of tacit collusion
- Third party access required
- Infra-based competition is driver for innovation and investments => promote *infra - based (facility based) access model - regulation*
  - Local Loop Unbundling (LLU)
  - Subloop Unbundling (SLU)
  - Unbundled Fiber (ODF Access): viable business case (Analysis research)
  - Stay away from (cost oriented) WBA regulation to solve competition problems, if possible

# Regulatory challenges since 2005 (4): approach OPTA

- Wholesale broadband regulation if infra-access is not effective
  - SLU has limited potential (economies of scale)
  - LLU becomes less effective (phasing out network)
- No WBA regulation for FttH connections
  - ODF Access has strong potential (report Analysys)
- WBA regulation for all wholesale business markets
  - Scattered competition on business markets
  - Strong market position of KPN
  - Important to have national network coverage for large(r) business customers

# Regulatory challenges since 2005 (5): approach OPTA

- OPTA forced KPN to come with MDF migration offer in 2008:
  - Keep (at least) 50% of MDF lines in service until 2012
  - Price-cap on ULL-prices until 2012
  - No migration fees for MDF migrations
  - OPTA is assessing the offer on a regular basis: judgement of reference offer by OPTA
- Analogue cable connection resale option (for RTV-offer):
  - Allowing ULL-based competitors to have same triple-play service (including analogue TV) as cable
  - Makes FttH business case more attractive and incentive for NGN investment
  - Temporary solution!

# Market analysis 2008 and decisions 2009

|                               | LLU         |                         | WBA HQ              |                         | WBA LQ          |                                 |
|-------------------------------|-------------|-------------------------|---------------------|-------------------------|-----------------|---------------------------------|
|                               | 2005        | 2009                    | 2005                | 2009                    | 2005            | 2009                            |
| <i>Product definition</i>     | Copper      | Copper and <b>fiber</b> | Copper              | Copper and <b>fiber</b> | Copper and Coax | Copper, Coax and <b>fiber</b>   |
| <i>Geographical dimension</i> | national    | national                | national            | national                | national        | national                        |
| <i>SMP</i>                    | Y           | Y                       | Y                   | Y                       | N               | <b>Y on copper N on fibre</b>   |
| <i>Access obligation:</i>     | MDF and SDF | MDF, SDF and <b>ODF</b> | Copper              | Copper                  | Copper          | Copper                          |
| <i>Other remedies</i>         | all         | all                     | no price regulation | <b>all</b>              | none            | <b>all on copper N on fibre</b> |

*Remedies exclude accounting separation  
Price regulation on fibre is separate system*

# Next steps of implementation

- Industry Groups on reference offers and tariffs
- Implementation decisions on tariffs
- Supervising adherence to obligations: compliance program + inspection team
- Dispute resolution

# Questions

Questions to you:

- 1) How to best promote sustainable competition?  
Working with the ladder of investment: using service competition to attain infrastructure competition. Is this of use to you?
- 2) Alternative ways to achieve competitive markets?  
E.g. functional separation as a remedy?

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