



**POSITION PAPER**

**Open Wholesale Model  
KPN**

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This document is a position paper by KPN published to contribute to the evaluation of the current regulation and is published for discussion purposes only.

## 1. INTRODUCTION: PRESERVING CHOICE IN DUTCH MARKETS

The announced merger of UPC/Ziggo<sup>1</sup> will lead to a unique situation – in Europe – of two providers with a nationwide network, serving consumers and businesses all over The Netherlands. Meanwhile, KPN is in the process of gaining control of the Reggefiber fiber-to-the-home (FttH) activities. Even so, the Ziggo merger is a ‘game changer’: Ziggo will become the largest player in the triple play market in the Netherlands.

This situation puts ACM, which is currently assessing its fourth round of fixed market analyses under the regulatory framework, in a new and challenging position: The Netherlands is the first country in the European Union (EU) in which the incumbent operator is no longer the dominant player in the consumer market, yet many market parties rely on access to KPN’s fixed network. As current rules were not designed to apply to this new competitive landscape, ACM will need to consider an alternative approach.

For KPN, it is of the utmost importance that the current asymmetry in regulation ends, so that KPN will be able to compete with cable companies – in the new situation specifically Ziggo – on the same level of regulatory burden. KPN prefers to have a level playing field without regulation, as this situation fits best with KPN’s view that there is no dominance of KPN left to be remedied by regulation of Unbundled Local Loop (ULL) and Fixed Telephony. This situation would give KPN the possibility to enhance the competitiveness of its copper and fiber platform, of freedom to set prices on the retail and wholesale markets and, finally, to innovate on new and terminate old technologies.

Whether ACM considers regulation of KPN still necessary, is to be determined by ACM in line with EU principles as set forth in the regulatory framework. The framework itself gives room for regulation on the basis of joint dominance but only if strict criteria are fulfilled, amongst others, the lack of competition between the respective companies. Taking into account the fierce competition between KPN and cable companies, it is unlikely that these criteria will be fulfilled. KPN assumes, therefore, that if ACM decides to regulate both KPN and cable companies, it will cause profound regulatory uncertainty due to the very weak basis of this regulation, potentially inviting lengthy legal procedures.

In order to preserve choice for end-users and certainty for current and new market parties active on KPN’s fixed network, and as an extension of its longstanding open network strategy on both fixed and mobile networks, KPN is willing to commit to a voluntary ‘open wholesale model’ on broadband and fixed telephony with price and portfolio certainty for business and consumer related products for the next five years on the target portfolio and three years on legacy portfolio.

In offering this commitment, KPN is confident that it creates a situation where in a transition from ex ante regulation to deregulation, the offer will be a facilitator to replace ex ante regulation, but also provide certainty that access will be continued in a competitive market. As described later, the commitment even goes beyond what can be expected from regulation in the present market situation.

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<sup>1</sup> Hereafter the new merged entity UPC/Ziggo is referred to as ‘Ziggo’, the announced brand of the new combined operator.

This offer is conditional. If ACM arrives at the conclusion that regulation of KPN is called for, KPN needs to review its position on many points described below, since the competitiveness of KPN and, ultimately, the market itself, will change fundamentally. Having said this, KPN is convinced that its proposal is in the interest of the Dutch society, alternative providers, current and future players in the market and, ultimately and most importantly, end-users and anyone else concerned with keeping The Netherlands in the front seat of the European telecoms sector.

## **2. SHIFTING MARKET DYNAMICS: TECHNOLOGICAL CHANGES AT PLAY**

During the last decades, the fixed telecommunication market has gone through massive change. Internet and on-going digitization have resulted in a continuous decline of traditional fixed voice services and is getting increasingly replaced by customer demand for broadband access. Nowadays, almost 90% of Dutch households have a broadband connection enabling VoIP, IP-TV and all kind of OTT services of various suppliers.

Broadband speeds of 40 Mbit/s download or above are the common standard in the market and approximately 55% of Dutch households have chosen triple play services (internet, VoIP and TV) from their operator of choice. Besides the diversity of the offered bundled services, with TV as a crucial element, broadband speeds have become the most important factor in customer choice. With the substitution of PSTN and ISDN by mobile telephony and VoIP, fixed telephony is no longer a crucial service. Voice services have become an 'add-on', which are offered together with broadband at no or limited extra fee by both DSL, fiber and cable providers. Consequently, volumes of fixed telephony, the incumbent's market share, and the importance of WLR/CPS<sup>2</sup> services have decreased and will continue to decrease further due to the growing demand for IP services; initially starting in the residential market, but meanwhile getting irrevocable traction in the business market as well, ultimately leading to the end of traditional fixed telephony services within a foreseeable time frame. These trends have also been recognized by the European Commission<sup>3</sup> and is already followed up, e.g., by the Belgian regulator<sup>4</sup>.

Hence, the telecommunication market has changed. On the supply side, The Netherlands has two nationally rolled-out infrastructures, cable (coax) and copper, which fully compete with each other. Cable currently has a competitive advantage over copper because it is able to offer higher broadband speeds, yet is not regulated or faced with regulatory uncertainty in the same way copper is. With FttH still in its early stage of development, covering 20-25% of The Netherlands, cable infrastructure, with nearly 100% coverage nationwide, will be able to take further advantage thriving on its higher broadband capabilities and its first mover advantage on TV services.

With the newest technologies, higher broadband speeds on copper can be achieved with VDSL from the cabinet. However, current regulation on ULL hampers these innovations, as well as the rationalization of legacy platforms which is necessary to remain competitive.

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<sup>2</sup> WLR = Wholesale Line Rental; CPS = Carrier PreSelect.

<sup>3</sup> See Ecorys report 'Future electronic communications markets subject to ex-ante regulation', September 18, 2013, and draft EC Recommendation on relevant markets.

<sup>4</sup> See draft decision for fixed telephony by BIPT, January 14, 2014.

### 3. INTRODUCTION TO OPEN WHOLESALE OFFER OF KPN

KPN no longer is the largest player in the Dutch broadband market. Fixed telephony is likely to be lifted from the list of the EC recommendation of relevant markets susceptible to ex ante regulation.

To preserve choice on its networks and to prevent uncertainty for retail customers and wholesale partners, KPN proposes a voluntary wholesale offer to access the copper and fiber platforms it operates on, based on the following principles.

The offer aims to:

- *Increase competitiveness of platforms* and seize commercial opportunities, among others, through elimination of price restrictions on wholesale broadband which limit the possibilities of attractive pricing for wholesale parties;
- *Innovate network platforms*, among others, by introducing techniques to serve a larger part of Dutch households with higher broadband speeds (vectoring, G.FAST, PON, etc.);
- *Rationalize legacy platforms* and eliminate unnecessary costs, among others, by switching off the ATM network, and future phasing out of passive services and the PSTN platform;
- *Provide long term certainty* to wholesale partners on portfolio and tariffs;
- *Preserve choice* for end users in a multi-player market, with equal access to KPN's networks for wholesale partners and a clear ex post supervision role for ACM to safeguard positions of market parties.

KPN will present the offer in an open dialogue with its current and potential wholesale partners and will consider all reasonable requests for adaptation of this offer, as long as such requests are in line with above principles.

### 4. OPEN WHOLESALE OFFER

#### 4.1. General

KPN is willing to offer open fixed wholesale access during five years on its target portfolio and during three years on legacy portfolio, as of 1 January 2015, giving certainty on portfolio and pricing. MDF/ODF services on the installed base will be continued, but not expanded. Wholesale based services based on PSTN and ISDN services will be offered until 1 January 2018.

The offer itself will be a standardized offer which can be considered as a minimum and the offer can be extended on the basis of commercial agreements. It will be irrevocable during the whole period unless any regulation affects the scope of this wholesale offer during this period or part thereof, in which case KPN will have the freedom to decide on continuation of the offer under the agreed conditions.

The open wholesale offer will be offered in addition to wholesale access provided on the basis of the current HQWBA/RL<sup>5</sup> regulation aimed at the Business Network

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<sup>5</sup> HQWBT/RL = High Quality Wholesale Broadband Access / Rental Lines, the current active wholesale regulation aimed to remedy assumed dominance of KPN in the Business Network Services Market.

Services market. Both offers are independent from each other and without a requirement to offer unbundled access.

The offer consists of an offer for open broadband access as well as an offer for fixed telephony. Below, KPN outlines the main elements of the offer for discussion purposes.

#### ***4.2 Offer for open broadband access***

This part of the offer consists of open broadband access for existing and new parties who want to enter into the market. The access will be provided on the active layer of the copper and fiber platform, with proposition and tariff certainty until 1 January 2020. Parties who currently have unbundled access may choose to move to the open broadband offer. Key elements include:

- KPN offers both WBA and WEAS<sup>6</sup>;
- The tariffs are based on the current WBA and WEAS prices, for respectively copper and fiber; KPN offers tariff certainty during the period of 1 January 2015 up to 1 January 2020 with maximum annual cpi<sup>7</sup>-adjustment;
- The service description is based on the current offers (both the regulated and unregulated part of the service). Technological upgrades (e.g., vectoring) are included, and will be made available to wholesale customers;
- New access lines, copper and fiber, will only be offered on the active layer.

MDF/ODF access service offering will be continued upon request of the customer for the installed base only (with annual cpi-adjustment) until 1 January 2018, under the condition that MDF/ODF access will not block network innovation. Specifically:

- Wholesale customers must cooperate in the activation of the so-called “inner rings” by KPN. This will be detailed in the standardized offer;
- KPN wants to keep the possibilities for rationalization and technological development on both the copper platform, e.g., vectoring and “G.Fast”, and on the fiber platform, e.g., PON on fiber;
- If and when KPN will leave the Central Office (MDF), customers will also leave the Central Office (MDF), using the opportunities of new technologies that will make it possible to move active equipment closer to the customer.

#### ***4.3 Offer for fixed telephony***

The voice offer consists of a WLR/CPS offer. This offer provides wholesale based parties with tariff and portfolio certainty in a fully competitive voice market. This part of the wholesale proposal retains choice for customers as well as enables the inevitable transition to a deregulated situation for voice services as also addressed in the draft EU recommendation on Relevant Markets of 2013.

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<sup>6</sup> WBA = Wholesale Broadband Access, both CM and ZM. WEAS = Wholesale Ethernet Access Service. Currently WEAS is partly regulated, and KPN is willing to commit to the unregulated part of the service as well.

<sup>7</sup> cpi = consumer price index.

KPN offers continuation of the current WLR/CPS services with tariff certainty for both PSTN and ISDN services until 1 January 2018. The tariffs are based on the current WLR/CPS tariffs with maximum annual cpi-adjustment<sup>8</sup>.

## **5 FIT WITH CUSTOMER DEMANDS AND REGULATORY FRAMEWORK**

### **5.1 Customer considerations**

Some KPN wholesale partners discussed considerations, which they believe need to be addressed in the phase after regulation of unbundled access. KPN has taken those considerations into account and, with this open wholesale offer, has taken the effort to address them, as summarized below:

- *Price development*: the open wholesale offer ensures price changes to access services are limited and predictable, by which it eliminates any risk of discretionary or disproportionate price increases;
- *Service continuity*: the open wholesale offer includes portfolio certainty until 2020 on the target portfolio, exceeding any period likely to follow from regulation;
- *Service limitation*: although KPN recognizes that access on the service, instead of the passive layer, somewhat limits wholesale partners to define their own products and services, KPN is convinced that sufficient differentiation possibilities remain (e.g., differentiation in bandwidth offerings). The open wholesale offers creates the preconditions to innovate and rationalize legacy, resulting in better broadband speeds at competitive prices. KPN commits to make those innovations available for wholesale parties. On the balance, the total package of the offer meets the needs for an attractive wholesale offer, and is in the interest of KPN and wholesale parties to compete against cable companies on the retail voice and broadband markets;
- *Level playing field*: when discussing the open wholesale offering, wholesale partners expressed the need for a level playing field, where - all other things being equal - wholesale pricing would be similar for all wholesale partners. In the open wholesale offer, which will be valid for all current and new wholesale parties, KPN commits to a price cap based on current tariffs and maximum annual cpi-adjustment both for broadband and fixed telephony.

### **5.2 Regulatory framework**

During the term of the offer ACM will, in line with EU regulation, carry out the market analyses along the new guidelines in the draft EU recommendation, including the guidelines on how to assess markets in transition from regulation to non-regulation.

According to KPN, the outcome of the market analysis for ULL and Fixed Telephony should take into account the open wholesale offer<sup>9</sup>. As argued above, KPN is no longer the largest player in the Dutch broadband market, and fixed telephony will soon be lifted from the EC recommendation list of relevant markets subject to ex

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<sup>8</sup> Possible FTA decline will be compensated for in the CPS tariff.

<sup>9</sup> See Commission guidelines on the assessment of markets and significant market power. O.J. 2002, C 165.

ante regulation. Since the Business Network Services market is still regulated and controlled by HQWBA/RL obligations, there will no longer be any situation of dominance by KPN left to be remedied by any regulation. Such a result of the market analyses fits well with the conditions for the open wholesale offer and provides a solid legal basis.

Additionally, the open broadband offer reflects the new thinking of the Commission with respect to (alternatives for) physical access. Although the Commission, in case of a dominant position of the incumbent, considers physical unbundling the most adequate access remedy, it recognizes the negative effects of this type of access and therefore promotes new forms and alternatives to physical access in order to stimulate innovation, such as vectoring. The Commission also urges to assess the competitive pressure of substitution of wholesale access offered by cable television operators (Docsis 3.1).

The offer for open broadband access will replace the current unbundled offers. KPN recognizes that the offer does not fully meet the criteria formulated by the Commission to qualify as a VULA<sup>10</sup> service, but KPN is convinced that the total package of the offer, including price certainty for up to five years, is at least as attractive.

With regard to fixed telephony, regulation will only be possible if the strict three-criteria-test for markets no longer mentioned in the draft Recommendation on Relevant Markets applies.

### **5.3 Enforcement**

All interested alternative operators, current or new, may refer to the offer. The offer will result in a mutual agreement between KPN and the wholesale partner who has accepted the offer and signed the agreement. In case of any disputes on the execution of the agreement, the dispute section in the agreement shall apply and the civil courts will have jurisdiction to judge the matter, as is customary in an open, deregulated market. ACM as well as wholesale partners will be consulted in the preparation phase of the offer.

## **6. CONCLUDING REMARKS**

With this proposal, KPN provides up to five years certainty to wholesale partners on price and portfolio in a transition phase from regulation to no regulation on ULL and Fixed Telephony wholesale markets. With the technology upgrades (e.g., vectoring) in this offer, KPN enhances the competitiveness of its platforms for its wholesale parties as well as for itself. The offer is made voluntarily by KPN. KPN reiterates that this offer is subject to the condition that no regulation will be imposed on the competitive markets for ULL and Fixed Telephony.

Wholesale access on the active layer instead of regulated access on the passive layer makes it possible to innovate and negotiate the best price points, as in any regular market where prices are set by the dynamics of supply and demand, creating an attractive wholesale proposition. This not only holds for mature services, but certainly for innovative services, still in the early phase of their adoption curve.

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<sup>10</sup> VULA = Virtual Unbundled Local Access.

The proposal contributes to both competition and certainty on customer choice. Therefore, KPN is convinced that the offer is in the interest of the Dutch society, KPN's wholesale partners, other current and future players in the market, the end-users and anyone else concerned with keeping The Netherlands in the front seat of the telecoms sector.