

# Response of Ziggo N.V. to the Public Consultation on the Revision of the Recommendation on Relevant Markets

8 January 2013

## Introduction

Ziggo supports the Commission's work on updating the Recommendation on Relevant Markets and welcomes this opportunity to provide input on the questionnaire for the public consultation on the revision of the recommendation on relevant markets.

**Increased competition and its results: innovation, increasing investments, shift in market shares and new entrants; less need for ex-ante regulation**

The electronic communications markets in Europe have become more competitive over the last years. Broadband speeds have increased dramatically; in the Netherlands DSL networks offer > 25 Mbps and are being upgraded, FttH is growing exponentially and Hybrid Fiber-Coaxial (HFC) networks are upgraded to Docsis 3.0. The market is therefore characterised by increasing competition. Also the pace of the introduction of technological developments has increased, such as the convergence of mobile and fixed networks (e.g. via roll-out of LTE networks) and digitalisation of television and radio signals have made it possible to offer audiovisual services via broadband networks.

Currently television services can be transmitted by five infrastructures (HFC, copper, satellite, terrestrial and FTTH) in the Netherlands, and these services can be offered both by the network operators themselves and OTT operators. This could be extended with a sixth infrastructure after the introduction of LTE networks which are scheduled to be operational from this year onwards. Similar developments are taking place in other EU Member States. This all leads to an increasingly competitive landscape for electronic communications services and networks and less of a need for ex-ante regulation. This trend has materialised in the Netherlands; new infrastructures have been rolled out over the last years and new market players have entered the relevant markets. As a result the telecommunication market has become more dynamic: such as significant changes in market shares, increasing investments and as a consequence more innovation. This development towards more competition and consequently less need for ex-ante regulation in the Netherlands has also been recognized by OPTA in its third round of market analyses that took place in 2011.<sup>1</sup>

***The three criteria test as a basis to select relevant markets should not be changed or adjusted***

The current Framework for Electronic Communications Services and Networks has worked well over the past years. It is important that stability and predictability is maintained in the relevant market selection process. The three criteria test has proven to be objective and resilient over time and has been validated by practice. The three criteria test constitutes a

<sup>1</sup> Reguleringsvisie op de markten voor elektronische communicatie 2012 tot en met 2014, OPTA, 23 juni 2011, <https://www.opta.nl/nl/actueel/alle-publicaties/publicatie/?id=3433>

sound economic and legal framework, based on clear competition law criteria, that have proven their stability, effectiveness and efficiency. Any change could lead to adverse outcomes, insecurity and unpredictability of the current Framework and could therefore hamper investments in the telecom sector. Hence, there is no need to change the three criteria test. Any change to the three criteria would bear significant consequences for the functioning of the overall Framework and Ziggo believes that – might such a structural change be considered – such an initiative could only be take place within a separate and broader legislative review of the current Framework (including a separate public consultation).

***No need to introduce new markets to the list of relevant markets***

There is no need to introduce new markets to the list of relevant markets; the trend towards deregulation that has been embraced during the first revision of the Recommendation on Relevant Markets in 2007, should be continued during the revision that is scheduled for 2013. Modest changes can be made in the scope of the relevant markets that are included in the current Recommendation: e.g. the market for access to the public telephone network at a fixed location could be limited to non-residential customers and the market for wholesale broadband access could comprise both mobile and fixed broadband networks.

***Ongoing dialogue needed between stakeholders and European Commission***

Ziggo believes that the Commission should include stakeholders in the debate once the Commission has formed an opinion on possible options for reshaping the three criteria test and/or the list with recommended markets (if any). Ziggo expects that the Commission will follow the same procedure as was applied to the previous revision of the Recommendation on Relevant Markets where the initial call for input (in 2005 as part of a call for input on the proposed reform of the Regulatory Framework) was succeeded by a more detailed consultation (in 2006) once an actual proposal was ready to be put to stakeholders. This will be especially relevant in case of a proposed change to the three criteria test or any addition to, or removals of, the markets contained in the list of relevant markets.

Another option would be to publish the study “Future electronic communications markets subject to ex-ante regulation (Recommendation on relevant markets)”<sup>2</sup> that will be drafted by the consortium in mid 2013 and make it subject of a separate public consultation. This will guarantee that any changes vis-à-vis the markets that are susceptible to ex-ante regulation are subject to a public consultation during which all relevant stakeholders can respond.

---

<sup>2</sup> [http://ec.europa.eu/information\\_society/newsroom/cf/dae/itemdetail.cfm?item\\_id=8305](http://ec.europa.eu/information_society/newsroom/cf/dae/itemdetail.cfm?item_id=8305) .

**Question 1: What are the technological developments in the electronic communications sector at the EU level as of 2007 that have an influence on how the markets should be defined in the revised Recommendation from an *ex ante* perspective?**

Since 2007 major technological developments have taken place that have affected – and still do affect – the electronic communications sector in Europe.

First of all broadband internet has further developed and broadband speeds have increased dramatically over the past years. In the Netherlands but also in certain parts of Europe, HFC networks have further rolled out and increased competitive pressure on incumbent telco's.<sup>3</sup> Also FTTH networks have been rolled out<sup>4</sup> and growing exponentially, just as existing DSL networks have been upgraded due to the implementation of pair bonding, vectoring etc.

The second trend that needs to be highlighted is the upgrade of mobile data networks over the last years. Especially the auctioning and introduction of Long Term Evolution (LTE) networks in different EU Member States has added to a competitive landscape for broadband networks. The continued roll-out of LTE networks in Europe will further increase the availability of broadband networks in Europe over the coming years.

Furthermore, the introduction of IP-based communication and transmission has been a significant driver of innovation and cause competitive pressure on incumbents. The introduction of IP-based communication and transmission has paved the way for Over the Top (OTT) players to compete with operators in the market for electronic communications networks and audiovisual media services. Examples of such services are Skype, IPTV, Whatsapp, Spotify, YouTube etc. It is expected that the impact of these services on more traditional services such as fixed telephony, SMS-services and broadcast services will increase over the coming years. A report of ATKearney and Telecompaper that has been published in 2011 as part of OPTA's market analyses to present future scenario's for the Dutch telecommunications market, points towards a scenario of OTT-players gaining a market share of 5-10% in 2014 on the Dutch television market.<sup>5</sup> The rise of OTT operators also highlights that convergence does take place, not only between fixed and mobile operators, but also between audiovisual media services and more traditional telecommunication services.

Consequence of these technological developments are that the traditional 'technology based' boundaries that existed between different product markets, such as leased lines, traditional copper based fixed telephony are blurring and that product markets converge because they become substitutes from an end-user perspective. This is even more relevant now that cloud computing has taken off and services are supplied directly from the internet and not based locally anymore. For end-users the technology that is used to deliver services, becomes increasingly irrelevant. From an end-user perspective WhatsApp and SMS are

---

<sup>3</sup> See for instance the report "Broadband on Demand – Cable's 2020 Vision – Solon Consulting – March 2011."

<sup>4</sup> The Pan-European reach of FTTH networks has expanded to reach an European average of 11,6% of households in 2011. See: Broadband coverage in Europe in 2011, Mapping progress towards the coverage objectives of the Digital Agenda, RESEARCH REPORT, A study prepared for the European Commission, DG Communications Networks, Content & Technology. <https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/BCE%202011%20Research%20Report%20Final%20-%20Format%20No%20Image%2020121001.pdf>

<sup>5</sup> ATKearney, Telecompaper, Toekomstbeelden Nederlandse Telecommarkten 2014, Televisie, Breedband Internet, Vaste Telefoon, maart 2011, bladzijde 101. <http://www.opta.nl/nl/actueel/alle-publicaties/publicatie/?id=3373>

substitutes, just as VoIP and PSTN services and IPTV and cable TV services are substitutes. Also broadband network speed continue to develop; it will be difficult to make a clear distinction between basic broadband networks and Next Generation Networks (NGA); it will be more likely that there will be a range of broadband speeds that can be offered by various fixed and mobile networks with overlaps between the various networks.

**Question 2: What are the changes in structure and functioning of the relevant markets (e.g. supply and demand side developments, bundles, convergence, geographic scope), which should be reflected in the revised Recommendation from an *ex ante* perspective?**

As stated in the answer to the previous question, over the last years *convergence* has had the most profound impact on the structure and functioning of the relevant markets. This has led to increased competition, because customers started using new IP-based operators such as Skype, WhatsApp, Hulu, Netflix, Spotify, but also VoIP and IPTV operators. These are all new internet based Over the Top (OTT) services that used to be separated from traditional services but now start competing with the traditional telecom services. Customers also increasingly demand increased mobile broadband access which will further develop with the introduction of LTE. The latter will be able to offer services that are similar to those as currently offered by fixed broadband operators. The increasing change in demand will further impose competitive pressure on incumbents.

Another trends that should be highlighted is the accelerating pace of *digitalisation*. Digitalisation has had a major impact on the electronic communications sector. New entrants have entered the market due to lower barriers to entry and the roll out of new digitized networks. New innovative services like digital TV and VoIP have been introduced, due to more efficient use of capacity and more efficient use of transport. The speed and impact of digitalisation was also recognised by the Dutch NRA OPTA at the end of 2011 in its decision not to regulate the Dutch broadcasting market.<sup>6</sup> The European Commission accepted OPTA's views without any comments.<sup>7</sup> OPTA's decision was upheld by the Trade and Industry Appeals Tribunal (CBb) on 5 November 2012.<sup>8</sup>

In the coming years convergence and digitalisation will both continue and lead to increasing competition in the traditional electronic communications markets, with significant benefits for consumers. This all means that there is less need for ex-ante regulation and that further deregulation can take place.

**Question 3: Can you identify any market bottlenecks which in your view cannot be addressed by *ex ante* regulation via a revision of the Recommendation alone? How in your view can such market bottlenecks be addressed?**

---

<sup>6</sup> OPTA, Definitief Oordeel Televisie, 20 December 2011. <https://www.opta.nl/nl/actueel/alle-publicaties/publicatie/?id=3524>

<sup>7</sup> Commission decision concerning Case NL/2011/1267: Retail Market for TV Services, Article 7(3) of Directive 2002/21/EC:1 No comments. Brussels, 12/12/2011, C(2011) 9494, SG-Grefte (2011) D/23077.

<sup>8</sup> LJN: BY2135, College van Beroep voor het bedrijfsleven, AWB 12/161 AWB 12/163 AWB 12/165.

<http://zoeken.rechtspraak.nl/detailpage.aspx?ljin=BY2135>. English Press Release of OPTA: <http://www.opta.nl/en/news/all-publications/publication/?id=3673>

It is Ziggo's view that no such bottlenecks exist. To the contrary, the markets are progressing towards more competition and therefore require less ex ante regulation. In those cases where national markets require additional regulation, the three criteria test provides sufficient tools to NRAs to impose additional regulation. Furthermore, also ex post regulation by the competition authorities provides an efficient safety net. Ziggo does not believe that ex ante regulation should be based on the identification of 'bottlenecks'. This is not a legal criterion and has a subjective connotation. The introduction of such terms will lead to legal uncertainty and therefore over-regulation and divergence in regulation across the EU. This runs counter to the EU objective of strengthening the internal market. Moreover, the current framework has already proven to be able to adapt to market imperfections, e.g. by the inclusion of Markets for Mobile Terminating Access (MTA) and Fixed Terminating Access (FTA) in the current Recommendation, and regulation of these markets by the NRAs.

**Question 4: In your opinion, is the three criteria test, as defined in the Recommendation, an appropriate instrument in defining the relevant markets susceptible to *ex ante* regulation or would alternative means to identify relevant markets be more suitable?**

The three criteria test is an appropriate instrument to define markets that would be susceptible to ex ante regulation. The criteria set the right standard and avoid over-regulation. The three criteria test is based on competition law and economic principles that have proved to be effective. In The Netherlands for instance the Dutch NRA, OPTA, has applied the three criteria test in several instances; most recent in the decision of 20 December 2011 not to regulate the Dutch television/broadcasting market.<sup>9</sup> This decision was upheld by the Dutch Trade and Industry Appeals Tribunal (CBB) on 5 November 2012.<sup>10</sup>

Ziggo also believes that competitive market dynamics will deliver the best outcomes for the industry and for consumers. To that end, Ziggo supports a transition of sector specific regulation to an ex post general competition law based market intervention where appropriate. The three criteria test is an important aspect of keeping that goal in sight and making that transition effectively.

**Question 5: Should, in your view, criteria be added or removed from the list or should the criteria be formulated in a different manner? Should additional guidance be given to the existing criteria?**

The current three criteria test is adequate, effective and sufficiently predictable for stakeholders. There is no need for a fundamental change to the functioning of the Framework or a fundamental change to the three criteria test. If however, a change of the criteria is proposed, any such change should be consulted with stakeholders once the parameters of such proposed changes are known. Furthermore, it would be recommended to update and clarify the guidelines and include new developments and case law.

---

<sup>9</sup> OPTA, Definitief Oordeel Televisie, 20 December 2011. <https://www.opta.nl/nl/actueel/alle-publicaties/publicatie/?id=3524>

<sup>10</sup> LJN: BY2135, College van Beroep voor het bedrijfsleven, AWB 12/161 AWB 12/163 AWB 12/165.

<http://zoeken.rechtspraak.nl/detailpage.aspx?lin=BY2135>. English Press Release of OPTA: <http://www.opta.nl/en/news/all-publications/publication/?id=3673>

**Question 6: How, in your view, can legal certainty be best ensured in identifying the markets susceptible to *ex ante* regulation?**

Ziggo believes that legal certainty is best served by indicating any considered changes well in advance. Any substantial changes to the Recommendation on Relevant Markets should be based on market reviews of NRAs.

Legal certainty can also be increased by organizing a second consultation once the revised Recommendation on Relevant Markets has been drafted. It can also be considered to publish the study “Future electronic communications markets subject to ex-ante regulation (Recommendation on relevant markets)”<sup>11</sup> that will be drafted by the consortium in mid 2013 and make it subject of a separate public consultation. This will guarantee that any changes under consideration vis-à-vis the markets that are susceptible to ex-ante regulation are subject to a public consultation during which all relevant stakeholders can respond.

Another way to improve transparency is to limit NRAs powers to unilaterally identify markets that are susceptible to ex-ante regulation. Regulation that goes beyond the principles of the current framework and Recommendation, will increase the unpredictability and therefore might block investments. In this respect the decision of the Belgium NRA in 2011 to regulate Telenet and Belgacom in markets in which these market parties were not dominant, is a clear example of over-regulation.<sup>12</sup>

Finally it may also be appropriate to include the notion of the ladder of investment into the Explanatory Memorandum of the revised Recommendation.<sup>13</sup> This notion suits well with the principle of infrastructure based competition. HFC networks play an important role in securing infrastructure based competition; this form of competition should be prioritized compared to access regulation or resale.

**Question 7: In your opinion, should the scope of any relevant market(s) identified in the Recommendation be changed? If yes, please explain why, referring to the relevant market(s) concerned.**

The inclusion of LTE in market 5 wholesale broadband access could be considered. LTE offers the possibility to deliver high mobile broadband speeds. Therefore fixed broadband and mobile broadband could be considered to be part of one and the same broadband market. This would extend the scope of market 5 to include wholesale broadband access to mobile and fixed networks. This is in line with the recent EU Guidelines for the application of state aid rules in relation to the rapid deployment of broadband networks that state that both basic broadband networks and Next Generation Access (NGA) networks can also

---

<sup>11</sup> [http://ec.europa.eu/information\\_society/newsroom/cf/dae/itemdetail.cfm?item\\_id=8305](http://ec.europa.eu/information_society/newsroom/cf/dae/itemdetail.cfm?item_id=8305)

<sup>12</sup> On 18 July 2011 the CRC (the Conference of Regulators of the electronic communications sector) in Belgium published decisions in which cable operators (Brutélé, Numéricable, Tecteo, AIESH and Telenet) were obliged to offer access to a broadband Internet resale offer, a market in which they were not dominant. Belgacom was obliged to open up its own network for an alternative television offer, a market in which Belgacom was not dominant. See

[http://www.bipt.be/nl/637/ShowDoc/3539/Persberichten/Marktbesluiten\\_inzake\\_televisieomroep\\_en\\_breedband.aspx](http://www.bipt.be/nl/637/ShowDoc/3539/Persberichten/Marktbesluiten_inzake_televisieomroep_en_breedband.aspx)

<sup>13</sup> Martin Cave, Encouraging infrastructure competition via the ladder of investment, Centre for Management under Regulation, Warwick Business School, University of Warwick, Telecommunications Policy, Volume 30, Issues 3–4, April–May 2006, Pages 223–237. <http://www.sciencedirect.com/science/article/pii/S0308596106000164>

comprise wireless mobile technologies.<sup>14</sup> Also in her speech of 12 July 2012 Commissioner Kroes has referred to the 4<sup>th</sup> Generation Wireless Networks that compete with copper, HFC and FTTH networks.<sup>15</sup>

There is no need to separate market 5 for wholesale broadband access into two separate product markets depending on the speed, i.e. a low and high speed broadband access market. There is no evidence of any break in the chain of substitution in terms of network speeds. Broadband services provided over copper and NGA networks are viewed as substitutes by end-users. Even if the two networks may not be directly substitutable from the perspective of any user, they may be part of the same market if they are linked by a chain of substitution. For example, there may be a VDSL network that provides upload and download speeds that lie between those offered by the FTTH network and those available via ADSL. Even though nobody would consider the ADSL connection to be a substitute for a FTTH connection, there may be some customers who would move from FTTH to VDSL in response to an increase in the price of FTTH connectivity above the competitive level, and there may equally be customers who would consider ADSL to be an alternative to VDSL and would switch from one to the other in response to a price increase. In this case, all three types of networks might be part of the same market.

The scope of market 1, access to the public telephone at a fixed location for residential and non-residential customers can be limited to non-residential users only. In many EU Member States the residential market for fixed telephony is competitive or contestable (or will be in the near future), due to the introduction of VoIP, Skype etc. However, the non-residential market for fixed telephony is in most EU Member States still the domain of incumbent telco's. This was one of the reasons to impose more strict control ('verscherpt toezicht') by OPTA on incumbent telco KPN in December 2011.<sup>16</sup>

Ziggo does not believe that the scope of Market 4 for Wholesale (physical) network access (including shared or fully unbundled access) at a fixed location should be changed. While certain NRAs have indeed sought to broaden the scope of market 4 to include cable, this invariably encounters technical impossibilities. For instance in the case (PT/2008/0850) where the Portuguese regulator sought to include cable networks in the defined market 4, the Commission in its decision pointed at the physical and economic constraints on cable unbundling.<sup>17</sup>

**Question 8: If the answer to the previous question is yes, please specify the qualitative and quantitative impact of such changed scope on consumers (users), competition, and**

---

<sup>14</sup> Communication from the Commission, EU Guidelines for the application of state aid rules in relation to the rapid deployment of broadband networks, 19 December 2012, paragraph 56 and 58. Quotes: "Several different technology platforms can be considered as basic broadband networks including asymmetric digital subscriber lines (up to ADSL2+ networks), non-enhanced cable (e.g. DOCSIS 2.0), mobile networks of third generation (UMTS) and satellite systems.(.....) At the current stage of market and technological development, NGA networks are: (i) fibre-based access (FTTx), (ii) advanced upgraded cable networks and (iii) certain advanced wireless access networks capable of delivering reliable high-speeds per subscriber."

<sup>15</sup> Neelie Kroes Vice-President of the European Commission responsible for the Digital Agenda Enhancing the broadband investment environment Statement at Midday Briefing Brussels, 12 July 2012. Reference: SPEECH/12/552 Event Date: 12/07/2012.

<sup>16</sup> OPTA: KPN per direct order verscherpt toezicht, <https://www.opta.nl/nl/actueel/alle-publicaties/publicatie/?id=3527>

<sup>17</sup> Case PT/2008/0850: Wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location. Comments pursuant to Article 7(3) of Directive 2002/21/EC, Brussels, 05/01/2009, SG-Greffe (2009) D/3.

**development of the internal market. Please provide separate reasoning for each market subject to a new scope.**

The possibility to include mobile networks into the scope of market 5 wholesale broadband access can be included in the revised Recommendation as option or suggestion for NRAs to investigate. The answer to the question what networks should be included in the scope of market 5 (and whether regulation is needed) is of course depending on national market circumstances, such as the presence of LTE networks or other wireless broadband networks.

The limitation of the scope of market 1 access to the public telephone network at a fixed location to non-residential customers is based on the notion that over the last years the residential market for fixed telephony has become more competitive. This has been caused by cable operators that have introduced fixed telephony services, but also as a result of the introduction of Carrier (Pre) Select, VoIP services and OTT-services such as Skype. To a certain extent one could even argue that mobile telephony could be a substitute for fixed telephony, taken into consideration the share of mobile-only households. Fixed telephony for non-residential customers is in most EU Member States, if not all, still the domain of traditional incumbents. Regulation of this market will add economic benefits to most EU Member States; especially most Small and Medium Enterprises (SMEs) are still tied to the incumbents for their fixed telephony services.

**Question 9: On the basis of the three criteria test carried out at EU level, should any of the markets listed in the Recommendation be removed from the list in the revised Recommendation? If yes, please provide comprehensive reasoning thereof.**

No. Although markets are moving towards more competition, Ziggo does not believe that any market should be removed from the list of relevant market yet. However, as stated in the answer to the previous question, the scope of some markets on the list could be limited such as market 1, the relevant market for access to the public telephone network at a fixed location, could be limited to non-residential customers only.

**Question 10: If the answer to the previous question is yes, please specify the qualitative and quantitative impact of such removal of markets on consumers (users), competition, and development of the internal market. Please provide separate reasoning for each market you propose to delete from the list.**

N/A

**Question 11: On the basis of the three criteria test carried out at EU level, should any of the markets regulated by NRAs on the basis of national circumstances (such as SMS termination or broadcasting transmission services) be added to the list in the revised Recommendation from an *ex ante* perspective? If yes, please provide comprehensive reasoning thereof.**

No. In relation to the specifically mentioned broadcasting transmission market (ex-market 18), Ziggo would make the following observations about the functioning of the market.

Competition in the retail market for television services has further increased, compared to 2007 when the original Recommendation on Relevant Markets dated 11 February 2003 was revised for the first time. The wholesale market for broadcasting transmission services (ex-market 18) already has been removed from the list in 2007, because according to the European Commission at that time (quote)<sup>18</sup>:

*“There are a number of reasons why it is considered appropriate to remove the existing wholesale market from the recommended list. Many of the comments received during the consultation indicated that significant market changes are underway. There is evidence of greater platform competition as the transition from analogue to digital delivery platforms occurs. One implication is that there are likely to be fewer capacity constraints on any given platform. A second is that many Member States are likely to have 3-4 competing platforms (terrestrial, satellite, cable and telecom-based) in contrast to 2-3 analogue platforms, one of which, satellite, developed much later. The transition from analogue to digital provides an impetus for platforms to compete and attract end-users, which in a two-sided market context, also means obtaining content. These changes indicate that despite the market entry barriers that may exist, the market dynamics are such that the second criterion is not satisfied.”*

These observations are still relevant, as a matter of fact they are more relevant than ever. This has been recognized by OPTA which has decided at the end of 2011 there is no need to regulate the Dutch television market.<sup>19</sup> The Commission did not submit any comments on OPTA’s decision<sup>20</sup>. This decision was upheld by the Dutch Trade and Industry Appeals Tribunal (CBb) in a judgment of 5 November 2012.<sup>21</sup>

Ziggo is not aware of any negative impacts on consumers in Europe which have resulted from the withdrawal of the broadcasting transmission market from the Recommendation in 2007. Its re-inclusion in the list of relevant markets would be unfounded and retrograde step. Therefore the basis on which a broadcast transmission market was rejected in 2007 remain valid today and the analysis conducted by the Commission at that time has been shown to be robust.

**Question 12: If the answer to the previous question is yes, please specify the qualitative and quantitative impact of adding those market(s) on consumers (users), competition, and development of the internal market. Please provide separate reasoning on the impacts for each market you propose to add to the list.**

N/A

---

<sup>18</sup> COMMISSION STAFF WORKING DOCUMENT EXPLANATORY NOTE, Accompanying document to the Commission Recommendation on Relevant Product and Service Markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (Second edition) ((C(2007) 5406)), Brussels, 13/11/2007, SEC(2007) 1483/2, page 48.  
[http://ec.europa.eu/information\\_society/policy/ecomm/doc/implementation\\_enforcement/eu\\_consultation\\_procedures/sec\\_2007\\_1483\\_2.pdf](http://ec.europa.eu/information_society/policy/ecomm/doc/implementation_enforcement/eu_consultation_procedures/sec_2007_1483_2.pdf)

<sup>19</sup> Definitief Oordeel Analyse Televisie, OPTA, 20 December 2011, <https://www.opta.nl/nl/actueel/alle-publicaties/publicatie/?id=3524>

<sup>20</sup> Commission decision concerning Case NL/2011/1267: Retail Market for TV Services, Article 7(3) of Directive 2002/21/EC:1 No comments. Brussels, 12/12/2011, C(2011) 9494, SG-Grefte (2011) D/23077.

<sup>21</sup> LJN: BY2135, College van Beroep voor het bedrijfsleven, AWB 12/161 AWB 12/163 AWB 12/165.

<http://zoeken.rechtspraak.nl/detailpage.aspx?ljin=BY2135>. English Press Release of OPTA: <http://www.opta.nl/en/news/all-publications/publication/?id=3673>

**Question 13: On the basis of the three criteria test carried out at EU level, can any other markets be identified that should be added to the list in the revised Recommendation, from an *ex ante* perspective? If yes, please provide comprehensive reasoning thereof.**

No.

**Question 14: If the answer to the previous question is yes, please specify the qualitative and quantitative impact of the relevant market(s) you propose to add on consumers (users), competition, and development of the internal market. Please provide separate reasoning on the impacts for each market you propose to add to the list.**

N/A

**Question 15: On the basis of the three criteria test carried out at EU level, can any transnational market(s) be identified in the revised Recommendation, from an *ex ante* perspective? If yes, please provide comprehensive reasoning thereof.**

No.

**Question 16: If the answer to the previous question is yes, please specify the qualitative and quantitative impact of the relevant market(s) you propose to introduce on consumers (users), competition, and development of the internal market. Please, provide separate reasoning on the impacts for each market you propose to introduce.**

N/A