European Commission: One-Year Intervention in Cable TV and Radio Broadcasting by Dutch Regulator Approved

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In October 2005, the Onafhankelijke Post en Telecommunicatie Autoriteit (Dutch telecommunications regulatory authority - OPTA) notified the European Commission of its intention to intervene in the Dutch retail broadcasting market. It did so in accordance with Art. 7 of the EU Framework Directive.

The OPTA believed that the retail markets for the supply of free-to-air radio and television services via cable networks were not competitive. According to the regulatory authority, the three major Dutch cable operators UPC, Essent and Casema have Significant Market Power on their respective networks, together they account for 85 % of the overall cable subscriptions, and the authority therefore concluded these markets should be subject to ex ante regulation.

In its original notification to the Commission, the OPTA considered a three-year plan to regulate the retail broadcasting market. The plan consisted in imposing a price-cap for the tariffs charged by cable operators to end-users. The Commission, however, found that the market dynamics in the Dutch retail broadcasting transmission area did not justify such a plan. The Commission reasoned that Dutch cable operators will face growing pressure from new commercial offers by suppliers of competing services such as satellite, digital terrestrial TV and radio, and TV over broadband telephone lines. It also argued that the EU regulatory framework for electronic communications requires regulators to turn to competition law to tackle persistent market failures and to regulate only where competition law is insufficient to address the problem. Furthermore, it pointed out regulation should be imposed in the first place on the wholesale level and only as a last resort on the retail level.

The Dutch regulator amended the plan so as to reduce the term of the initial proposal. It will therefore prevent price increases by the three major cable operators transmitting free-to-air radio and TV to end users in the Netherlands for a period of one year. This revised plan has quite recently been approved by the Commission.

Commission allows light touch intervention by Dutch regulator in cable TV and radio broadcasting for one year, press release of 21 December

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