European Commission: Decision on OPTA's Assessement of the Retail Market for TV Services

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On 12 December 2011, the European Commission notified the Onafhankelijke Post en Telecommunicatie Authoriteit (Independent Post and Telecommunication Authority - OPTA), the Dutch national regulatory authority, that it had no comments on OPTA's assessment of the retail market for TV services in the Netherlands.

As the retail market for TV services is not listed in the Commission Recommendation 2007/879/EC of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation, OPTA has carried out the three criteria test to assess whether the market warrants ex ante regulation. According to Article 2 of the Commission Recommendation, a market is susceptible to ex ante regulation when three (cumulative) criteria are met: the market is subject to high and non-transitory entry barriers; the market structure or characteristic does not tend over time towards effective competition and general competition law is insufficient to address market failures.

Considering the first criterion, OPTA finds that although significant investments are required to enable operators to enter the market, entry barriers have decreased since its last review of the wholesale broadcasting markets and could decrease further. Consequently, at this stage, OPTA could not reach a final conclusion on the nature of the entry barriers and thus proceeds with the analysis of the second criterion. OPTA concludes that this second criterion is not fulfilled as competition is developing faster than expected and in the absence of ex ante regulation the retail TV market will develop towards effective competition. Its assessment of the situation is based in on recent developments in the television services market. Among these developments are the declining importance of analogue television, the investments in copper and fibre networks, the expansion of TV products offered by the competitors and the increase of OTT (over the top) television. These developments have led to a reduction of market shares held by the different operators. As the second criterion does not apply, OPTA does not assess the third one and concluded that the TV-services market does not warrant any ex ante regulation.

In its response, the European Commission acknowledges the aforementioned details of OPTA's analysis. It also refers to OPTA's remark concerning the

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existence of strong players in the Dutch television services market and to the commitment made by the national authority to follow and re-analyse the market if deemed appropriate. The Commission declares itself as having no comments, without prejudice to any position it may take towards other notified draft measures. This ends the national OPTA-proceedings regarding regulation of the retail market for TV-services, although there are procedures still pending that have been initiated by market players that disagree with OPTA's assessment.

Commission decision concerning Case NL/2011/1267: Retail Market for TV Services, 12 December 2011

https://circabc.europa.eu/d/d/workspace/SpacesStore/7eda67ad-5468-4706-bd0f-4cfa05ce57b7/NL-2011-1267%20Acte(1)_EN+date+nr.pdf

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