

The Dutch case

- electronic communications regulation
and cable networks -

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Is there a Dutch case?

- There definitely used to be a Dutch case, or - if one would prefer - multiple Dutch cases;
- One could state that there currently is no Dutch case, as the highest court (CBB) in NL annuled OPTA's most recent MA-decisions;
- Whether there will be a new Dutch case is part of a new market analysis procedure, which started recently;
- New decisions expected within a year.

What happened?

- That's a long story ...
- OPTA's first market decisions ,17 March 2006
 - serious doubts by EC;
 - initial decision amended after notification procedure;
 - result; general access obligation for largest cable operators. Light and limited retail regulation.
- OPTA's latest market decisions, 17 March 2009
 - no serious doubts by EC;
 - WLR-C obligation for 2 largest cable operators (UPC, Ziggo), general access obligation for 4 largest cable operators. No retail regulation.

WLR-C, what is it and why was it imposed?

- The obligation for cable operators to allow other operators to resell their basic (analogue) package;
- Unique obligation;
- Dominant position cable on TV-markets;
- IP-TV in NL slow take-up;
- DVB-T more as a niche;
- Analogue TV in coming years still a unique selling point;
- Analogue TV key element in multiplay markets;
- Issue: copyrights, but these were resolved by Tele2;
- Tele2 was the first party to offer WLR-C services.

The CBb decision and relevant markets (1)

- 2006
relevant (retail) product market:
transmission of rtv-signals via cable networks;
relevant geographical market:
coverage area of each of the cable operators;
- 2009
relevant (retail) product market:
transmission of rtv-signals (cable, IP, DVB-T,
satellite);
relevant geographical market:
coverage area of each of the cable operators.

The CBb decision and relevant markets (2)

- CBb decision of August 18, 2010
 - OPTA was right with the broader definition of the relevant product market, but ...
 - not sufficient evidence for the existence of *regional* markets;
 - According to CBb the definition of relevant markets was in conflict with the EC guidelines.

New market analysis

- OPTA is not convinced that the problems OPTA identified in the former market analysis have automatically disappeared;
- OPTA was surprised that CBb concluded a violation with EC guidelines as EC and NMa both supported the market definition;
- Important for consumers to have choice and reasonable prices, choice for separate products as well as for bundles;
- The way forward is by starting a new market analysis procedure based on the latest facts and taking into account latest developments;
- To be continued ...