



Competition in the Netherlands: Plenty Still to Do

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Executive Summary

This month, the Netherlands became the fifth nation in Europe to open all its telecommunications services markets to competition, joining Denmark, Finland, Sweden and the UK. In many ways, the Dutch liberalization move is the most important since the UK fully opened its market in 1991. The Netherlands is at the heart of the European Union, politically and economically; it is also a key international trading center and home to many important multinational concerns. As a result, decisions taken in the Netherlands may have significant ramifications elsewhere.

Exhibit ES-1 Regulatory Index, 1991 and 1997

Source: the Yankee Group Europe, 1997

	1991 Overall score	1997 Overall score
Austria	1.2	2.6
Belgium	1.8	3.6
Denmark	3.0	4.4
Finland	3.6	4.6
France	3.0	4.3
Germany	3.2	4.3
Greece	1.2	2.2
Ireland	2.2	3.2
Italy	1.6	3.0
Netherlands	2.8	4.2
Norway	2.6	3.2
Portugal	1.8	2.9
Spain	2.2	3.0
Sweden	3.8	5.0
Switzerland	1.8	2.8
UK	4.6	5.0
Europe	2.52	3.65

A score of "1" = very restrictive regulatory environment; a "5" = very liberal regulatory environment

In this White Paper, we look at the Netherlands' plan for competition and conclude that, while progress is being made, the nation's failure to implement clear rules in areas such as licensing and interconnect, and the failure to establish early a regulatory agency that was clearly independent of the ex-PTT, will delay the establishment of a vigorous competitive environment.

Introduction

In 1998 the European Union (EU) opens its telecommunications markets to competition, and residential and business customers will be free to choose from many telecommunications service providers. That, at least, is the theory. In practice, implementation and enforcement of legislation by national regulatory authorities will be key to the program's success.

Over the past 12 to 18 months, the European Commission has passed a whole range of directives aimed at achieving its 1998 objectives. However, as we noted in our Euroscope Communications White Paper of August 1996, *1998: Enforcement is the Key*, merely passing the legislation is not enough: enforcing it is the real issue. In addition, most of that enforcement will be the responsibility not of the European Commission but of the National Regulatory Authorities (NRAs).

Over the past few years, the Commission has come under increasing pressure from the Council of Ministers and Member States to concede more power to the National Regulatory Authorities. However, not all NRAs are genuinely independent from the government and the incumbent national operator; not all are committed to open and fair competition in the sector; and many are inexperienced and underfunded.

Moreover, the Commission does not have a good track record enforcing directives within a reasonable timeframe. Bearing in mind the complexity of much of the 1998 legislation and its potential impact on national TOs, we therefore believe that the European Commission has a tough time ahead of it.

Despite the best efforts of the Commission, liberalization of telecommunications services in Europe will continue at a very uneven pace and the gap between the most and least liberal nations will continue to be very wide for the foreseeable future. For this reason, assessing the circumstances in each individual country will continue to be a key requirement for participants and observers alike.

Liberalization of Basic Telecommunications: A Euro-Primer

Before looking at the specific situation in the Netherlands, a brief primer on the European Commission's program for 1998 and progress to date follows.

The Commission adopted the Full Competition Directive in February 1996. The directive stipulates that by 1 January 1998 all special and exclusive rights in relation to all telecommunication services including public switched voice telephony will be abolished, except in those countries that have a special derogation because their networks are less developed.

The directive specifies dates by which Member States must issue legislation:

- by January 1997 they should have sent the Commission notification of their licensing and declaration procedures for voice telephony and public telecoms networks; and

- by July 1997 they are mandated to publish licensing conditions and declaration procedures as well as the terms and conditions for interconnection.

Exhibit 1 European Telecoms Regulatory Index

Source: the Yankee Group Europe, 1997

Country	Basic Services	Value-added/Data Services	Independent Regulator	Private Network Restrictions	Mobile Services
Austria	1	3	2	4	3
Belgium	1/2	5	3	5	3/4
Denmark	4	5	4	5	4
Finland	5	5	4	5	4
France	2/3	5	4	5	5
Germany	2/3	5	4	5	5
Greece	1	2	1	3	4
Ireland	1	4	3	5	3
Italy	2	3	2/3	3/4	3/4
Netherlands	3/4	5	4	5	3/4
Norway	1	5	2/3	4	3/4
Portugal	1	3	3	3/4	3
Spain	2	3/4	2/3	4	3
Sweden	5	5	5	5	5
Switzerland	2	3/4	3	4/5	1
UK	5	5	5	5	5

Key to table

Basic Services:	How much competition is there now? How quickly is it likely to be introduced?
Value-added/Data Services:	Has the 1990 Services Directive been fully implemented? How restrictive is the licensing regime for VADs?
Independent Regulator:	How independent is the regulator in theory and in practice?
Private Network Restrictions:	How difficult is it to operate a private network?
Mobile Services:	To what degree is competition established in the mobile sector?

A score of "1" = very restrictive; a "5" = very liberal

In practice, many failed to do so—not least because the EU neglected to pass enabling legislation on time, a result of disputes among member states, between the EC and the Council of Ministers, and between the EC and the European Parliament.

Two vital directives were delayed by this infighting:

- a directive on the rules for interconnecting competing networks (the Interconnect Directive); and
- a directive on the rules for licensing new operators (the Licensing Directive).

In principle, these directives should have been implemented by member states by July 1997, but the Licensing Directive did not become EU law until May, and the Interconnect Directive became law in June. EU member states have six months to implement the directives.

These delays are symptomatic of the difficulties the European Commission has run into in trying to create a harmonized single market for telecommunications. As Exhibit 1 demonstrates, there are significant differences in the openness of telecom markets in European countries—some countries still have a long way to go.

The Situation in the Netherlands

As the last section implied, the European Commission's powers are quite limited and EU legislation leaves some leeway for member states in terms of timing and implementation of legislation nationally. Most countries also have their own agendas and industrial policies which will influence their approach to the liberalization of their local telecoms market.

The Netherlands is no exception. As a country that is heavily dependent on international telecommunications and trade, it is strongly committed to efficient telecommunications services. In the decade since liberalization began, there has been some friction between the desire to create a competitive sector, and the desire to bolster the international position and ambitions of the nation's major player, PTT Telecom.

As elsewhere in Europe, politicians want to balance the interests of the PTT, which it is selling to the public, and which is an important local employer and economic engine in its own right, with the need to create a more competitive telecommunications environment. This tension, common to many countries, has had implications for the progress on liberalization in the Netherlands. Until recently, it has meant that the Netherlands has been unable to forge ahead of other countries in liberalizing telecoms, but neither has it been forced to lag behind.

Initially, the Netherlands was ahead of other countries, freeing up value added services earlier than most. However, it has been quite slow in some other important areas, such as liberalization of mobile communications and the establishment of an independent regulatory authority. More recently, the Netherlands has taken several initiatives which suggest that it may now be pushing forward more decisively.

As well as liberalizing the voice services market six months ahead of the EC deadline, the Netherlands also took the crucial decision to establish an

independent regulator, and forced PTT Telecom to divest its cable TV interests—an important step on the road to real competition in local networks.

Exhibit 2 Competition Timeline

Source: *the Yankee Group Europe, 1997*

Country	Date of liberalization
UK	1991
Finland	1994
Sweden	1994
Denmark	July 1996
Netherlands	July 1997
Belgium	Jan 1998
France	Jan 1998
Germany	Jan 1998
Italy	Jan 1998
Spain	late 1998
Luxembourg	Jan 2000
Ireland	Jan 2000
Portugal	Jan 2000
Greece	Jan 2001

In the opinion of the Yankee Group, it is now clear that the Dutch market is likely to be highly competitive: its economic significance and geography will make it a very attractive target. Whether new competitors will be able to compete fairly against the incumbent PTT Telecom is now the key question for the future.

Liberalizing Basic Telecoms: How the Netherlands Measures Up

This month, the Netherlands' voice and basic services markets were formally opened to competition. In this section, we measure the Netherlands' record in creating a regulatory environment that will foster the development of a properly competitive sector.

The Netherlands Record to Date

In this section, we briefly examine the Netherlands' record to date on a number of key measures:

- **liberalization of value added and data services:** the Netherlands was somewhat ahead in this area initially. In the 1989 Dutch Telecommunications Act, it adopted a very liberal policy on value added services, though the PTT initially retained its monopoly over data services, and these were not liberalized until January 1993, in line with the EU deadline. PTT Telecom still dominates the provision of data services in the Netherlands.
- **liberalization of mobile communications:** the Netherlands has lagged a little behind the European norm. It was relatively late in licensing a second operator, Libertel, which began operating in September 1995. PTT Telecom retains a 90% market share. Only one further license is to be awarded to a DCS-1800 operator, and this will be issued following a spectrum "auction" that is to be held shortly.
- **liberalization of "alternative" infrastructure:** alternative infrastructure is telecommunications transmission equipment and lines, eg, optical fiber cables, which are not owned and operated by PTT Telecom. Owners include railway and electricity companies. An EU directive passed at the start of 1996 obligated member states to allow owners of this infrastructure to offer non-voice telecommunications services from 1 July 1996. The Netherlands passed this into law a few weeks late in July 1996.

Overall, the Netherlands' record is neither outstandingly good nor outstandingly bad—and as we shall see, this is likely to continue to be true in future too.

Looking to the Future

We believe that the emergence of a genuinely competitive environment is dependent on five key measures:

- the establishment of a powerful, independent regulatory agency;
- the establishment of fair, open rules for licensing new operators;
- the establishment of fair, open rules for interconnect between the networks of the dominant telcos and the new operators;
- rules and plans for implementing "equal access"; and
- rules for allocating numbers and implementing number portability.

Independent Regulation and Policing

The European Commission mandated the establishment of independent national regulatory authorities for telecommunications in 1991.

Until this month, telecommunications regulation in the Netherlands was handled by a department of the Ministry of Communications and Transport, the same Ministry which also is responsible for the PTT. In other words, the Ministry is responsible both for PTT Telecom, whose parent, KPN, is still 45% owned by the state, and for independent regulation. This suggests at least the potential for a conflict of interest and there have been complaints in the past that the Ministry has taken too easy a line with PTT Telecom.

Recognizing that the current situation was unsatisfactory in the new environment of total competition, the government has created a new independent regulator, Onafhankelyke Post Telecommunicatie en Autoriteit (OPTA), as a key plank in its new telecommunications law. This regulator begins operation this month and will be staffed by about 50 people. The new regulator has formal responsibility for resolving disputes in areas such as interconnect.

Whereas regulatory staff currently report to the Ministry of Transport, OPTA may also report to the Ministry of Economic Affairs, suggesting that implementation of competition law will be a key issue. This important change should help to establish the authority's independence from the PTT.

The situation in the Netherlands is complicated by the fact that a major new competition law is being implemented. It is unclear at this stage how far this will be used in disputes between telecommunications operators, but as in some other countries such as Germany and Italy, it may be significant.

The Licensing Regime

In the run-up to liberalization, the Netherlands has several times revised the 1989 telecommunications law that freed up parts of the market. The most important of these revisions was passed in July 1996. As well as implementing EC directives liberalizing the use of alternative telecommunications infrastructure, this revision, which will be in effect until January 1998, also resulted in the issuing of two licenses for national network operators in November 1996.

The two national operator licenses were awarded to Enertel, a consortium of regional electricity utilities and Telfort, a consortium comprising the Dutch national railway operator and BT. The law also allowed for up to 1,300 regional licenses.

The two national licenses gave Enertel and Telfort so-called digging rights, allowing them to lay infrastructure wherever they intended to provide a service. However, this legislation also placed certain network coverage obligations on the operators. Both must complete construction of national networks within five years, entailing investment of over \$500m in the case of

Telfort. As well as national licenses, the government has issued about 130 regional licenses.

Meanwhile, the government has been preparing a new Telecommunications Law that will take effect from 1 January 1998 and will replace the existing interim legislation and the 1989 law. At the time of writing, it was expected that this legislation would be passed into law in early summer.

A key feature of this new legislation is that it will effectively end the limit which had apparently been placed on the number of network operator licenses. After taking advice from the European Commission, the government decided that the new law should place no limits on the number of telecommunications operators. The EC's Licensing Directive states, among other things, that there should be no limit on the number of licenses issued and that nations should avoid case-by-case licensing where possible.

As a result, new operators, whether they lay infrastructure or not, will merely have to register. Licenses will only be issued for allocation of frequency and allocation of numbers. This apparent re-writing of the original licensing rules may lead to a relaxation in the terms under which the original licensees operate, but at the time of writing this issue has not been resolved.

In any event, the effect of this will be that the window of opportunity for the two initial entrants will be quite limited and the benefits of getting special digging rights will be fairly short-lived.

Interconnect

The financial terms for interconnect are fundamental to fair competition because, in most cases, the new operators do not directly connect customers from end to end. Most calls made by the new operators' customers will at some point pass over the old PTT's network.

The problem which arises is that it is extremely difficult to allocate costs in telecommunications networks and different cost allocation systems result in very different outcomes. This is a second reason why interconnect arrangements typically result in disputes that must be legally resolved.

In the Netherlands, as elsewhere, the Ministry hoped that interconnect agreements might be reached through commercial negotiation alone, although experience elsewhere shows that this is extremely rare: disputes invariably end up in court or in the regulator's office. It is no surprise, therefore, that disputes are already occurring in the Netherlands. Earlier this year, new operator Telfort rejected the terms offered by PTT Telecom and, in early July, the Ministry set a rate that was below the rate offered by PTT Telecom, but still high by international standards.

As a result, the new regulator, OPTA, will very likely be called upon to resolve other disputes by mandating the terms of interconnect after arbitration. The problem: principles for determining interconnect pricing have not been clearly established in the Netherlands.

A consultation document is now out for comment and this suggests several mechanisms for determining interconnect prices and allocating costs. The favored method is based on establishing so-called directly embedded costs and, if adopted, this would tend to favor the new players. However, the situation remains unclear.

One of the issues in the Telfort case is whether network operators who are laying national infrastructure—eg, Telfort and Enertel—ought to get preferential terms on interconnect. In principle, EC law clearly states that there should be no discrimination among those who do and don't own infrastructure and this was the advice given to the Ministry by the EC's Competition Directorate, DG4. However, DG13, the Telecommunications Directorate, suggested that there is room for discrimination if a country's policy objective is to encourage the laying of new physical infrastructure.

The Ministry decided in the end that there should be no discrimination and that everyone—whether building infrastructure or not—should have interconnect on the same terms.

While it is beyond the scope of this White Paper to discuss in detail the fairest methodologies and systems for interconnect, or the correct level for interconnect payments, it is clear from experience in other countries that, where there is no clear direction from an independent arbitrator, then terms tend to favor the incumbent operator. This is because the new operators must have an agreement in order to provide a service, so that the old operator can offer terms on a "take it or leave it" basis. Thus, until the Netherlands has taken a clear position on interconnect new operators may find it difficult to get a "fair" rate.

Equal Access

"Equal access" simply means that customers do not have to dial a special or longer code to reach the non-PTT long-distance network. Equal access is important because, where it is implemented, new long distance carriers tend to pick up market share much more quickly than they do if the customer has to dial a special code to access the new network.

In the Netherlands, a system called carrier selection has been implemented which is not based on equal access. This requires customers to dial in a special code to access new operator networks, but no code to access the PTT Telecom network. There is no plan at present to implement equal access.

The situation is complicated by the fact that the European Commission has decided to revise the Interconnect Directive to force member states to implement equal access by January 2000. At the time of writing, it appeared likely that it might try to pass legislation forcing member states to implement equal access, but this might be resisted by some countries, including the UK, where it has not been implemented.

Equal access is any event a controversial issue. Opponents argue that it discourages the construction of local networks, since there is much less incentive for those building long distance networks to connect customers

directly. Hence, while it may increase competition in the long distance sector, it may stifle it in the local sector. On balance, though, our view is that equal access is beneficial because of the immediate short term gains for customers. Even in the UK, which took a specific decision to postpone equal access to encourage construction of local networks, this did not directly result in widespread local network construction.

Numbering

The Netherlands has been allocating numbers to new operators for over a year and has created a new numbering plan. Under the law, numbers are only made available to those laying infrastructure: the only exception to this rule is for freephone and premium rate numbers.

For new operators who are directly connecting customers (ie, by building local and access networks), number portability is the key issue. Number portability is important for new operators because it means that customers don't have to change their number when switching from one operator to another—a major disincentive to switching, especially for business customers.

The new law in the Netherlands states that number portability must be offered from 1 January 1999, well ahead of the proposed EU deadline of 2003.

Conclusion: Lessons for Europe

After a period of relative caution, the Netherlands has taken several decisive steps in the last 12 months which moves it back into the vanguard among European nations now liberalizing telecommunications services. The Netherlands has issued licenses to several operators, created a new independent regulatory office, created a new Telecommunications Law and pushed liberalization forward by six months—a message to the market about the importance which the Netherlands now attaches to this policy.

At the same time, recent experience in the Netherlands also indicates how important it is to get procedural issues resolved and to plan carefully for competition in advance, so as to avoid confusion among incumbents and new operators alike.

In the Netherlands, operators began without the benefit of the new, permanent Telecommunications Law and with the new regulator OPTA, only just in place. The passage of successive pieces of interim legislation made it hard for new operators to get a clear view of policy. In particular, the new regime for licensing was muddled and, arguably, unfair to the initial beneficiaries, Enertel and Telfort. With hindsight, it might have been better to get the permanent law and the regulator in place well before competition actually began.

Equally, on certain very key issues, such as interconnect, Dutch policy is not yet clear and this creates significant uncertainty for both old and new players about the terms and conditions under which they must compete. The absence of a detailed policy on interconnect is a particular problem—though in fairness to the regulator, it has often been the case in other countries that disputes can

only be resolved on a case-by-case basis at first, thereby creating precedents for future operators.

Exhibit 3 summarizes the Netherlands' progress to date, and assigns a score for that progress.

Exhibit 3 Measuring Netherlands against other EU Member States

Source: the Yankee Group Europe, 1997

Sector	Criteria for measurement	Score	Commentary
Value added and data services	Date of liberalization	3/4	Netherlands was ahead in liberalizing VANS, average in liberalizing basic data services
Mobile services	Date of liberalization; number of licenses issued	2	Netherlands has lagged a little behind in opening up the sector
Use of "alternative" infrastructure to provide services	Date of liberalization; licensing system and conditions	3	Netherlands almost exactly in line with EC Directive on this topic
Independent regulation	Clear separation from dominant operator; extent of powers; stance vis-à-vis dominant operator	3	Netherlands slow to create an independent regulator, in view of its decision to open up six months early
1998: licensing regime	Clarity of rules; licensing conditions	2	Rules muddled by decision to issue two licenses, then scrap limit. However, highly liberal regime will bring competitive benefits
1998: interconnect regime	Clarity of rules; degree to which they favor entrants; level of interconnect payments agreed	3	Though competition has begun early, Netherlands has been slow to take a clear position on interconnect.
Equal access	Is there a plan to implement equal access? On what terms and when?	2	No plan to implement equal access at present.
Numbering	Is their equal access to numbers? Is there a plan for number portability and when?	4/5	Netherlands has taken an aggressive stance on number portability, with plans to implement it by 1999

Note: this table takes into account two major factors, one quantitative and one qualitative: when was the sector liberalized, by comparison with other EU countries and are the rules adopted in the sector clear and fair, by comparison with those adopted in other EU countries?

The scores shown in column 3 are based on the following assessment:

- 1: much worse than average
- 2: slightly worse than average
- 3: average
- 4: slightly better than average
- 5: much better than average

In conclusion, we believe that the Netherlands is set fair for a highly competitive market which will ultimately result in major benefits for Dutch telecommunications users. However, a few regulatory instabilities and uncertainties need to be resolved before competitors can proceed with complete confidence and this may counteract its decision to implement competition earlier than national rivals such as Belgium, France and Germany.

Research Review

Management Strategies

Business Process Outsourcing: Users Speak

The Yankee Group will highlight a variety of “best-of breed” business process outsourcing solutions. The business process outsourcing marketplace has seen dramatically increasing levels of interest from the user community that wishes to leverage the advantages realized in information technology outsourcing in areas of business process re-engineering and business process functionality in order to reduce cost, increase value, improve customer satisfaction and increase business value. IT Outsourcing vendors see BPO as a method to diversify business offerings and protect the historical revenue growth rates experienced over the past seven years in the IT outsourcing arena.

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