

Going back in time: from liberalization towards protectionism again?

Dear Editor,

From newspaper articles printed in the *Today* and *The Daily Herald* on Tuesday and last week, it follows that Minister Meyers, responsible for telecommunication matters, is unwilling to grant a landing permit for an optic fibre cable to the Rijkdienst Caribisch Nederland RCN for only one reason; he desires to protect the commercial interests of Smitcoms/the Telem Group of Companies (hereinafter: "Smitcoms"). Smitcoms is a government owned company, also known in the field of telecommunication as 'the incumbent.'

The above strikes me as a typical example of old fashioned politics that is not in the interest of the end-users/consumers in the long term. It is globally recognised that consumer interests are best and most served by liberalisation of the telecommunication market. Protecting government owned companies does not serve the consumer interests in the long term.

Classical arguments in favour of protecting the 'incumbent' is that it should be avoided that there will be too many players on the market, which may result in the government-owned company to go 'belly up,' and that protectionism is necessary to enhance technical development.

Time has taught that protectionism does not work. Government-owned companies that are protected are not very interested to act in a competitive manner and to invest in new technologies. Furthermore, if Smitcoms is not able to operate in a competitive environment then it should improve its services and/or make the operation more competitive. If necessary it should privatise or join forces in the form of finding a strategic partner (a process that the Telem Group started a few years ago, but which outcome is still unknown, at least to me).

It is not without reason that since the year 2000, the government of the Netherlands Antilles implemented and applied a policy of liberalisation. The liberalisation policy was amongst others based on the findings of two reports of Arthur Anderson, the last report from 2004 was titled: (translated in English) "Liberalisation telecommunication in the Netherlands Antilles, dated September 2004." The liberalisation policy is based on the assumption that setting strict quality requirements (business plan, technical and financial requirements) will lead to "a managed form of competition," a faster development of technologies and lower prices for end users. The policy sees telecommunication as the best tool to enhance economic activities.

With his refusal to grant a landing permit to RCN, Minister Meyers creates the impression that he wants to go back in time: from liberalisation back towards protectionism. In my view, this is contrary to all global trends, in conflict with several court decisions of the last decade (where art.10 EVRM, the fundamental right to supply and receive information, played an important role) and this is almost certainly is not in the interest of the consumers.

Last but not least, the active interference and the manner it has been executed seems to be in conflict with the principles of good corporate governance. The government of St. Maarten is both shareholder of one the biggest players in the market (the Telem group of Companies) and regulator. In situations like this, the OECD 'Guidelines on Corporate Governance of State Owned Enterprises,' prescribe the following good corporate governance principle: "*Full administrative separation of responsibilities for ownership and market regulation is a fundamental prerequisite for creating a level playing field for government owned companies on one side and private companies on the other side and for avoiding distortion of competition.*"

Before 10-10-10 you often heard criticism from St. Maarten that the government of the Netherlands Antilles and the former regulator were (allegedly) primarily focused on protecting and safeguarding the interests of UTS (the government-owned company of the Netherlands Antilles at the time). Now that St. Maarten has become Country, the Minister of St. Maarten seems to do exactly the same of what he was so vigorously against before 10-10-10.

Roeland Zwanikken,
partner at BZSE Attorneys
at Law / Tax advisers