

6 June 2008: Wholesale market for high speed and very high speed

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The Conseil de la concurrence considers that ex ante regulation is necessary given the importance of the issues relative to the deployment of fibre optics on wholesale markets for high speed and very high speed

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Following a referral by ARCEP, as part of the analysis procedure set up by the Code of postal and electronic communications, the Conseil de la concurrence has just published an opinion which provides an analysis of high speed and very high speed wholesale markets and the name of operators exercising a significant power.

As the Conseil already had the occasion to do in Decision 08-D-02 of 12 February (referral by Free) and in Opinion 08-A-06 of 6 May 2008 (relative to the legislative draft provision concerning the development of very high speed fibre optic networks); the Conseil stresses again the major issue for competition which constitutes the current deployment of fibre optic. Two wholesale markets have been submitted to the Conseil's analysis.

The Conseil considers that the first market includes all access offers to physical infrastructures (notably copper pairs and tubes) both for high speed and very high speed

In a context where the local copper loop proves currently insufficient for the development of new generation services, the development of fibre optic offers new opportunities for competing operators, who will be led to invest in this new technology allowing almost unlimited access. However the deployment of fibre

infrastructures by these operators cannot be made completely independently from current civil engineering infrastructures hosting the local copper loop.

If eventually, it cannot be excluded that wholesale offers enabling the creation of retail very high speed internet access offers will have to be distinct from the offers currently available for high speed, the Conseil considers that during the opening technological transition phase, such a distinction is not justified and that all the offers using these physical infrastructures are located on the same market.

The second market: activated broadband access offers

The so-called "activated" offers are based on the use of already existing physical networks and equipment. These offers are essential for certain operators to allow them to supply their customers in areas where their networks are not sufficiently capillary. The Conseil focused its analysis on the wholesale market of activated high speed offers supplied below the national level, since the market for national offers is considered sufficiently competitive so that ex-ante regulation is no longer necessary (see Opinion 06-A-21).

The Conseil de la concurrence considers that France Télécom holds almost all the national network for the local copper loop and therefore controls over 99,99% of copper access in France. The Conseil also reminds the decisive advantage constituted by existing civil engineering infrastructures for the deployment of fibre optics and concludes that the preservation of a sufficient economic area allowing the combination of effective competition between all operators and the concern not to discourage investment in innovative technologies falls within ex-ante regulation.