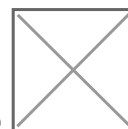


14 April 2010: High and very high speed Internet access coverage for the territories and related markets

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The *Autorité de la concurrence* provides clarifications regarding the opinion that it provided to the ARCEP on the ramp-up of access speed

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On 22 December 2009, the *Autorité de la concurrence* provided the French Telecommunications and Posts Regulator (*Autorité de Régulation des Communications Electroniques et des Postes* - ARCEP) with an opinion on the projects to ramp-up access speed implemented with the local and regional administrations and authorities. Recent press articles regarding this opinion have prompted the *Autorité* to provide the following clarifications.

The opinion in question is not legally binding: it is simply intended to provide the ARCEP - which remains in charge of the sector's regulation - with clarifications on the competitive stakes surrounding the ramp-up projects.

Since 2008, the ARCEP has been working with the interested local and regional administrations on the implementation of so-called "access ramp-up" projects. These projects are intended to increase the available access speed for homes in areas poorly serviced by the market. Such projects can notably be based on the modernization of the telephone network by the incumbent operator, France Telecom. It was within this framework that the ARCEP consulted the *Autorité de la concurrence*, given the potential competitive impact of this endeavour. On the basis of this opinion and of a public consultation carried out in parallel, the

ARCEP published, on 25 February 2010, guidelines and a work calendar.

In the guidelines that it published, the ARCEP largely based itself on the recommendations provided by the *Autorité*. It notably announced its plans to revise the ex ante regulatory framework for the high speed and very high speed wholesale markets, in order to define the conditions that would serve to compensate for the negative effects on competition resulting from the modernization of the telephone network in areas subject to unbundling. The ARCEP also encouraged the local and regional administrations to foster the deployment of optical fibre and to refrain, until the revision of its regulatory framework, from implementing projects to modernize the telephone network in areas subject to unbundling.

Up to now, the *Autorité de la concurrence* had never been asked for an opinion on any France Telecom project to modernize the telephone network, on the basis of a file submitted as required by the French Code of commercial law (*Code de commerce*). As part of the opinion that it issued for the ARCEP, the *Autorité* heard several interested parties, including the ARCEP, operators and representatives of the local and regional administrations. At that time, France Telecom made mention of no plans being prepared in this regard.

In substance, the position of the *Autorité de la concurrence* can be summarized as follows:

1) The deployment of a new fibre optic network reaching subscribers is preferable, given the better technological performance and durability of optical fibre, and also that the deployment of a new network would provide alternative operators with a unique opportunity to stop relying on the incumbent operator's network. While French web users currently enjoy Internet access that is one of the least expensive and most innovative in Europe, this is because the local, national and European Community public authorities have made active efforts to facilitate competition. These efforts notably allowed the emergence of new operators to compete with France Telecom which, for historical reasons, owned the telephone network (the copper wire local loop).

2) The access ramp-up solutions offered by the modernization of the telephone network conceal a twofold risk: on the one hand, that the areas in question would finally never have access to very high speeds (given that investments in the deployment of optical fibre would be discouraged) and, on the other hand, that a monopoly would be established in favour of France Telecom, thereby wiping out the efforts of the last 15 years to encourage more competition between operators on the basis of prices and technologies, for the greater benefit of consumers. Examples from elsewhere in Europe show that this is a genuine risk, and that the simple modernization of the telephone network can jeopardize the competitive dynamics of the high speed market.

3) As such, the *Autorité* considers that it would be preferable for the local and regional administrations to encourage the deployment of optical fibre and reserve solutions involving a modernization of the telephone network for exceptional situations, while giving priority to areas that are not subject to unbundling. In addition, the *Autorité* invited the ARCEP to ensure the sufficiency of the existing obligations as part of the ex ante regulations and, in the event that they are not sufficient, to complete them.

> For more details consult the full text of opinion 09-A-57 of 22 December 2009, regarding a request for an opinion by the ARCEP on the ramp-up of access speed