27 September 2010: Deployment of optical fibre networks in moderately dense areas

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The *Autorité de la concurrence* is in favour of a regulation that reconciles investment incentives and the preservation of competition.



> *Version française*

After having issued an opinion in September 2009 at the request of the French Telecommunications and Posts Regulator (*Autorité de régulation des communications électroniques et des postes - Arcep*) on the deployment provisions for optical fibre in very dense areas[1] , the *Autorité de la concurrence* is now providing it with an opinion on its project to supervise the deployment of optical fibre in moderately dense areas.

The particularity of moderately dense areas justifies a special regulation to manage optical fibre deployment

While operators demonstrate a strong interest for the deployment of an optical fibre network in very dense areas (major urban centres), this is not the case in moderately or only slightly dense areas. In these areas, the prospect of a more far-off return on investment may hinder the operators' investments. Also, if a private operator (most often France Telecom, the only one likely to significantly invest in these areas) deploys its network, it will in principle benefit from a natural monopoly since there is little chance that a competitor will also deploy its own network. In view of these particular features, the *Autorité* considers that a specific regulation, different from the one applicable to very dense areas, is necessary.

The* Autorité *is in favour of measures that would support co-investment but asks the Arcep to encourage access to the very high speed network for new operators

The *Autorité de la concurrence* supports the Arcep in its desire to promote risk sharing between operators, by allowing a greater number to share in optical fibre investments, thereby promoting the technology. Co-investment would also allow alternative operators to have a "right to inspect" the network's architecture, which could encourage technological neutrality and limit future competition problems. In this regard, the projects put forward by the local and regional administrations have certain specifics, and the *Autorité de la concurrence* invites the Arcep to take them into account so that they will not be discouraged.

However, it is essential for suitable wholesale offers to also be available in order to allow newcomers, that do not have sufficient size or financial power to invest or co-invest in a fibre network, to access the network and to serve the very high speed market. In moderately or only slightly dense areas, it is unlikely that such wholesale offers will spontaneously emerge. For the *Autorité*, a regulated wholesale offer of the "line rental" type would appear to be necessary, as it can provide sufficient compensation to maintain an investment incentive.

The network architecture choices are decisive and it is imperative for the sector-specific regulation to manage them

Unlike the copper network (high speed) that was already installed at the time of its opening to competition, the fibre network is still to be built. The fibre network's architecture is therefore an important stake since the operator that will install it could be tempted to make technical choices that would limit the future possibilities of competitors to access its network and to provide first-class services. In moderately and slightly dense areas, where only a single fibre network will be installed, in principle, these choices must be subject to control, all the more so since such choices are generally not reversible at a reasonable cost.

The *Autorité de la concurrence* therefore supports the Arcep in its desire to

impose *ex-ante* regulation obligations regarding the fibre network's architecture, but encourages it to be more vigilant with regard to the pooling points' [2] size since such equipment will play an essential role, similar to the one played by telephone exchanges in the high speed network. Excessively small pooling points could compromise the free play of competition over the long term. Indeed, the additional costs and major operational constraints resulting from having to equip many pooling points could discourage alternative operators from offering very high speed services, to the detriment of user consumers and companies. Finally, the conditions for equipment hosting at the level of these pooling points must not serve to artificially benefit or discourage certain technological options, and it will be necessary for the sector-specific regulation to provide the necessary guarantees for this neutrality.

[1] See opinion 09-A-47 and communiqué de presse of 22 September 2009.

[2] The pooling point is the network concentration point at which the operator is supposed to provide access to its optical fibre network that, downstream, services homes or professional premises. This is where the operators will install their equipment in order to offer very high speed services.

> ***For more details, please consult the complete text of the opinion 10-A-18 relative to a draft decision from the French Telecommunications and Posts Regulator (Autorité de régulation des communications électroniques et des postes) on the deployment of optical fibre outside very dense areas***