

8 March 2011: Broadband and next generation access networks

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The *Autorité de la concurrence* recommends that sector-specific regulatory obligations of the incumbent operator regarding broadband access in urban areas be reduced.

The *Autorité* also invites the French Telecommunications and Posts Regulator (Arcep) to begin preparatory work related to the implementation of a new tool: a possible functional unbundling of monopolistic activities from competitive activities

> *Version française*



The *Autorité* issues today an opinion on a project of regulatory mechanism issued by the French Telecommunications and Posts Regulator (Arcep) regarding the wholesale broadband market and the regulation of next generation access networks (NGA) for 2011-2014, in the frame of its third round market analysis¹.

The success of broadband access regulation, welcomed by the *Autorité*, justifies reducing some obligations imposed to France Télécom

Unbundled access to the local loop in the fixed public telephone network², imposed by a sector-specific regulation, constitutes the main means for new entrants to enter the market of broadband internet access. It fostered the development of innovative offers (triple play) at a competitive price for consumers. With regard to the dynamic of its broadband market, France is often

cited as a model. In the densest areas, alternative operators' (Free, SFR) market shares are closed to the incumbent operator's (Orange) on the residential retail market and alternative operators also dominate the wholesale market, which allows new operators to commercialize offers on the retail market.

In these dense areas, where competition is now effective, the *Autorité* considers that the ex-ante regulation, which closely monitor France Télécom on the wholesale broadband market, should be lighter and give place to common competition law enforcement. Nevertheless, sustained regulation remains necessary in less densely populated areas and on the business segment, where the incumbent operator still holds strong positions.

The *Autorité* suggests introducing a mid-term clause (in 18 months) to review the efficiency of the regulatory framework regarding the deployment of fibre network

Looking forward, the metallic pair circuit of France Télécom's public telephone network will be replaced by new fibre networks connected to the consumer's premises that will provide very high speed broadband services. The conditions, in which these new networks will be rolled out, as well as their competitive environment, will be crucial regarding the future of the sector.

The Telecommunications and Posts Regulator (Arcep) is fulfilling its role when seeking a balance between economic incentives to invest in fibre infrastructures and the obligations imposed to investors³. This balance, at this stage focused on facility-based competition, must be monitored on a regular basis. A mid-term clause in 18 months (at the mid-term of the market analysis) would be necessary to monitor the efficiency of this regulatory framework. When a lack of investment by the operators in networks would be established, or when the choice offered to the final consumer would appear to be too limited, regulation could be adapted to foster service-based competition: the obligation to provide wholesale broadband access on fibre networks could cover a broader scope as today.

Moreover, the *Autorité* welcomes Arcep's proposals to increase bandwidth in rural areas

The longest public telephone lines, most of the time located in rural and peri-urban areas, offer a limited bandwidth. Therefore, some local authorities are considering financing the upgrade of France Télécom's network. In an opinion issued at the request of Arcep (Opinion 09 A 57⁴), the *Autorité* underlined in December 2009 a range of risks that could derive from such operations : less active competition due to a decrease of local loop unbundling in these areas ; distortion of competition during the tendering processes for such public projects, due to the specific position of France Télécom on the telephone network; possible exclusion of these geographic areas from any future high speed broadband access, through discouraging new investments in fibre network.

The *Autorité* welcomes that Arcep has taken into account these worries. Indeed, in its proposals, Arcep intends to give local authorities the possibility to rapidly increase bandwidth in their geographical areas without hindering a competition that consumers strongly support. The scheme proposed by Arcep should in principle address the competitive worries identified by the *Autorité*.

The *Autorité* considers that, in any case, the upgrade of the fixed public telecom network is only one available tool among others to increase bandwidth. When it is viable, the roll out of a new fibre local loop remains the best solution regarding technological aspects and competition.

Functional separation of France Télécom is henceforth part of the telecommunications regulator's "toolbox"

Arcep will soon be empowered to impose to the incumbent operator a functional unbundling of monopolistic activities and competitive ones. Such measure, already existing in most of the other regulated network industries, can strongly secure the well functioning of markets and limit the regulatory burden over the regulated operator. It would be premature to tell whether such a tool has to be used or not in the electronic communications sector and the *Autorité* invites Arcep to begin the preparatory work related to its possible use.

1 Please refer to Press Releases of 1 February 2005, 20 November 2006 and 6 June 2008.

2 Local loop unbundling allows alternative operators to have access to the physical twisted metallic pair circuit in the fixed public telephone network

3 Please refer to Press Releases of 22 September 2009 (Opinion 09-A-47) and 27 September 2010 (Opinion 10-A-18)

4 Please refer to Press Release of 14 April 2010.

> Full text of Opinion 11-A-05 of 8 March 2011, relative to a request for opinion by ARCEP, regarding the third round market analysis of wholesale broadband access services (in French)

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