9 July 2011: Social tariff for broadband Internet access

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The *Autorité de la concurrence* welcomes a social tariff for broadband Internet access.
It publishes recommendations on the Government's plan for a label.

> *Version française*

The *Autorité de la concurrence* issued an opinion to the French Minister of Economy, Finance and Industry, following a request for its opinion on the implementation of a social broadband Internet tariff, in a referral dated 8 March 2011.

The government's plan is to develop a social tariff for broadband Internet access to reduce the digital divide affecting low income households. In a draft legislation *reinforcing the rights, protection and information of consumers*[1], the Government is proposing setting up the social tariff through a system of labelling. This solution consists in labelling Internet Service Providers' (ISPs) offers that are below a certain price cap for a package of services. All operators would be able to obtain this label after concluding agreements with the government.

The need to investigate the issue of digital divide

First of all, the *Autorité* stresses the need to investigate the issue of digital divide. This will not be limited to the issue of people on low incomes but will also deal with generational and cultural inequalities. From the geographical point of view, these inequalities particularly affect for the populations in the overseas *départements.*

The combat against the digital divide is as much an educational issue as it is an issue about the price of services, and above all equipment and equality of access to these services on the territory. Measures to promote the *"espaces publics numériques"* (public digital areas) and the development of offers to social landlords are avenues which can be explored for removing these inequalities, in addition to the social tariff.

Setting up a social tariff for broadband Internet access is compatible with competition law

Social mechanisms to help vulnerable consumers can always be made compatible with competition law. The intervention of public authorities is legitimate, since it is aimed at correcting a market failure and to satisfy a general interest goal. In this case the difficulties of access to the Internet for households on the lowest incomes are a market failure: the State is fully legitimate in responding to this. Whatever the chosen methods of allocation and funding, they must keep distortions in competition to a minimum.

The extension of the current mechanism of universal service would be a natural solution

Universal service enables to subsidize affordable price levels that would not spontaneously be reached by the market. The *'pay or play'* mechanism in France notably allows the system to be financed by market players while giving each of them the opportunity to participate in providing the service. This mechanism allows combining several objectives: social cohesion, the respect of competition, economic efficiency and limiting public expenditure.

In telecommunications, the universal service is currently limited to telephone service. It includes a social tariff. Although it is not possible to include broadband Internet service in universal service within the current scope of the European directives of the 'telecom package', the government could, however, and within a very short time, extend the eligibility for the social tariff, which is currently reserved for telephone service offers, to broadband multi-service offers, which include this service in addition to Internet access. Subject to the European

Commission's opinion, such an extension seems compatible with the Community framework.

An alternative solution – under certain conditions – is labelling an unsubsidized broadband Internet social tariff offer for people on basic income support

As an alternative, the government is proposing labelling the offers of ISPs which satisfy certain criteria, notably price. Although there are certain benefits from having a label, such as the market financing of social tariffs, it also raises competitive risks, notably the risk of a margin squeeze[2], given the incumbent's operator's special position on the wholesale and retail broadband markets. The labelling would only be compatible with competition law, if mechanisms were set up, to enable all ISPs to effectively participate in the mechanism.

The draft legislation *reinforcing consumer rights and protection*, adopted by the Council of Ministers on 1 June, provides that draft agreements between the State and operators to implement the labelling will be first submitted to the *Autorité* for its opinion beforehand. Rather than being notified of these draft agreements, as they occur, the *Autorité* would prefer to give a general framework in which such agreements have to be negotiated.

This is why the *Autorité* has published guidelines to carrying out a margin squeeze test in the appendix of its opinion. Using these guidelines and market data on costs and income, the government will be able, if necessary with the telecommunications regulator's support, to further examine the price levels that could be compatible with competition rules, and to finally assess whether they are adapted to the social cohesion objectives sought.

(1) ***Link to the Draft legislation reinforcing the rights, protection and information of consumers*** *(website of French Assemblée Nationale)*
(2) A squeeze tariff results from the structure of the prices charged by a vertically integrated operator in a dominant position on the upstream market for an intermediate good which its competitors must have access to one (or more) downstream market(s) to effectively compete. These tests do not involve the

absolute level of price of the dominant company, but the gap between the upstream and downstream prices: the gap must leave a sufficient economic space to enable efficient competitors to operate viably downstream.

> Consult the full text of Opinion 11-A-10 of 29 June 2011 on setting up a social tariff allowing people with low income to access broadband Internet services

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