3 April 2012: Peering agreements and neutrality of the Internet

Published on April 04, 2012

The *Autorité de la concurrence* obtains commitments from France Télécom, following the complaint lodged by operator Cogent

These commitments aim to make France Télécom's pricing policy and Internet interconnection technique more transparent

The *Autorité* is organizing a market test to gain stakeholder views

> Version française

Referred to by American telecoms operator Cogent with regard to practices engaged in by France Télécom on the Internet interconnection market, the Autorité de la concurrence has published on its web site the commitments proposed by France Télécom in order to record the observations of players in the sector.

The Internet interconnection market

Three types of players operate on the Internet interconnection market:

- Internet access providers (IAPs), among which Orange, Free, SFR, Bouygues Télécom, etc., which offer consumers Internet access packages;

- information society service providers (ISSPs), which include hosting service providers, web sites, content and online service providers, etc.;

- and transit operators, like Cogent or France Télécom (under the OpenTransit brand), whose role is to connect IAPs and ISSPs by pooling interconnections thanks to their international networks.

In concrete terms, the IAPs and ISSPs subscribe to transit services with one or more transit operators to connect to the global Internet. Transit operators are often interconnected within the framework of peering agreements, which function according to a system of exchanges: each transit operator (peer) exchanges data streams free of charge with other peers to provide its customers network access.

France Télécom's practices criticized by Cogent

In a complaint filed in May 2011, transit operator Cogent criticized France Télécom for taking advantage of its dominant position by calling into question the exchange system between transit operators through *peering* agreements. Its main complaint was France Télécom's refusal to provide new interconnection capacities free of charge to connect its ISSP clients (hosting service providers, web sites, content and online service providers, etc.) to Orange subscribers.

At the time, the video site MegaUpload – which has since been closed down by the American department of justice – was a Cogent client and was sending Orange subscribers (via Cogent) very heavy traffic and very unbalanced compared with the reverse traffic. It was on these grounds that France Télécom wished to be paid for providing new interconnection capacities.

The identified competition concerns

France Télécom's practices as criticized by Cogent do not appear at this stage of the investigation to be an infringement: France Télécom did not refuse Cogent access to its subscribers but simply asked to be paid, in accordance with its peering policy, to open up new capacities.

On the other hand, the investigation found that France Télécom offers Orange subscribers access (via Open Transit) to a site that is very popular with web

users, and thus one that generates heavy traffic, at a price that appears to be appreciably lower than market prices. This could lead to a margin squeeze effect [1] for a competing transit operator wishing to satisfy the site's wish to reach Orange subscribers. Moreover, the more attractive price invoiced to the client site by France Télécom is liable to unduly favour the site in its activity compared with its competitors.

This situation however results from the strong bargaining power of the very popular web site and France Télécom can hardly be criticized in this respect. But more generally it underscores the opaqueness of relations between Orange and Open Transit. The lack of formalized internal exchanges between these two France Télécom group entities makes it difficult to check for any margin squeeze practices or even for discrimination and accordingly makes such practices easier to implement.

France Télécom's proposed commitments

To address these competition concerns, France Télécom has offered to:

- draw up a formal internal protocol between Orange and Open Transit describing the technical, operational and financial conditions governing the provision of France connectivity services.

- monitor the implementation of this internal protocol.

Next steps of the procedure

The market test, organized by the Autorité, will run until 3 May 2012. It will enable the Autorité to gain the views of the parties concerned (web sites, hosting service providers, transit operators, IAPs, etc.) regarding France Télécom's proposals. After the market test, the Board of the Autorité will hold a session to check whether the proposed commitments remove all the competition concerns. The Board of the Autorité may require, if necessary, the said commitments to be modified or supplemented then, after making them mandatory, it may close the case.

[1] The margin squeeze practice consists in an operator (usually vertically integrated) setting both the retail prices on a particular market and the price of an intermediate service required to access the retail market, without leaving sufficient economic space between the two to allow competitors to replicate the integrated operator's offers.

> For more information on this case, see the market test and France Télécom's proposed commitments

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