4 June 2015: Telecoms – Mobile telephony pylons

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**The Autorité de la concurrence obtains from TDF an improvement of the hosting contracts
binding it to the mobile operators that use its pylons**



> Version française

In the scope of proceedings initiated before the Autorité de la concurrence by FPS Towers (hereinafter FPS), TDF commits to limiting the duration of new hosting contracts to 10 years, and giving them more flexibility to terminate a quota of the sites prior to the term of the contract.

These commitments demonstrate marked improvements on the initial version that was market tested. They will make it easier to offer mobile telephony operators alternative hosting for their radio equipment while their contract with TDF is still in force.

Hosting antennas on pylon sites

In order to cover large areas of territory, mobile telephony operators use a network of antennas installed in high places: flat roofs, water towers and pylons. Pylon sites are mostly found in peri-urban and rural areas. They either belong to the mobile operators themselves or to tower companies such as TDF, FPS, Itas Tim or Towercast. In the latter case, the owners of the pylons lease them to mobile operators so that they can install their antennas on them. TDF is likely to be the dominant operator today on the pylon site antennas hosting market.

Competition concerns

During the investigation, the Autorité's services found that it was not excluded that the combination of very long contracts and the inclusion of very restrictive early termination clauses (only for a few dozen sites per year) was likely to foreclose the market by making it more difficult for TDF's competitors to sign hosting contracts with mobile operators.

TDF's commitments

During the session reviewing the request for interim measures (see press release of 3 February 2015), TDF put forward commitments in response to the competition concerns raised by the Autorité's investigation services. Following a market test and a further session, these proposed commitments were considerably improved. They are aimed at allowing mobile operators[1] to benefit from enhanced competition for the hosting of their antennas.

TDF has thus made the commitment to:

- limit the duration of new contracts to 10 years (previously contracts could be up to 20 years);

- limit compensation for early termination of the contract – in relation to future contracts and those currently in force – to 3 months' rent. (Prior to this, compensation could represent 20% of the amounts owing over the total outstanding duration);

- fix the annual early termination quota at 4% of the total number of pylon sites covered by the contracts and allow unused termination possibilities to be carried over from one year to the next year, up to a limit of 10%.

This possibility of "saving" termination quotas and using them en masse will allow alternative hosts to have the time that they need to prospect sites and construct pylons. As a result they will be able to make offers to mobile telephony operators at regular

intervals; these will be more credible than annual changes which do not correspond to operators' needs. Indeed, telephony operators are strongly committed to the stability and security of their network architecture and do not seek permanent changes.

These commitments are undertaken for a period of 11 years, meaning that at least one renewal of a ten-year contract will be covered.

The three cumulative commitments, made for an eleven-year period, lead to an adequate balance that allows for improved competitive intensity between TDF and competing hosts, in particular while contracts are in force, while meeting the stability requirements of the operators.

On the basis that these improved commitments address its competition concerns, the Autorité has accepted them, made them binding and decided to close the proceedings brought before it. It will ensure they are strictly respected by TDF.

[1] *With the exception of operators who entered into a network sharing agreement (contracts of this sort with TDF offer greater latitude, for the pooled area, in terms of termination of sites).*

> See full text of decision 15-D-09 of 4 June 2015 on practices implemented in the mobile telephony equipment sector

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