

Closure of the ex officio proceedings regarding the sale of Completel's DSL network

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The Autorité closes the ex officio proceedings it had started to ensure compliance with the commitments concerning the sale of Completel's DSL network made by Altice France when it acquired SFR.

The Autorité considers that there is no evidence to characterise Altice France's actions as failure to comply with its commitments relating to the sale of Completel's DSL network.

On 15 March 2018, the Autorité de la concurrence initiated proceedings to determine whether Altice France had complied with the commitments submitted in the framework of Decision 14-DCC-160 relating to the acquisition of sole control of SFR by Altice and which concerned the sale of Completel's DSL network.

The commitments made by Altice France as part of Decision 14-DCC-160 in the wholesale business telecoms market

In its Decision [14-DCC-160](#) clearing the acquisition of SFR with conditions (see [press release of 27 October 2014](#)), the Autorité had in particular identified competition concerns in the wholesale market for business telecommunications and obtained several commitments to address these concerns.

Among other things, the Autorité had taken into account the impact of the transaction on the wholesale market for capacity services in the terminal

segment. This market is upstream of the telecommunications market for companies.

Operators active in this upstream market (wholesale operators) offer data transport services to retail operators to connect their business customers to their own networks.

On this market, the Autorité examined wholesale contracts based on the copper local loop (DSL) as well as on a dedicated optical local loop (optical fibre). As part of its competitive analysis, it had identified similar competition concerns in these two market segments.

For contracts using the copper network (DSL), Altice France undertook to sell Completel's DSL network to an operator capable of stimulating competition in the market.

- This commitment consisted mainly in the sale of all the assets constituting Completel's DSL network, which in itself did not constitute a complete and autonomous network and which therefore had to be connected either to the existing network of the purchaser or to so-called "long distance" links subscribed by the purchaser.

- In addition, and in order to enable a new entrant who did not previously have a network to acquire Completel's DSL network, Altice France undertook to offer the buyer "long-distance" links to connect the various assets constituting Completel's DSL network.

The scope of analysis used by the Autorité in its ex officio proceedings

The commitments made by Altice France in 2014 concerned the market for

copper (DSL) contracts for corporate operators. It was therefore the Autorité's responsibility to assess compliance with the commitments relating to the sale of Completel's DSL network in the light of this market for copper contracts.

However, the assessment of compliance with the commitments did not cover the deployment of a fibre-optic network or the overall situation on the wholesale market for fibre-optic contracts, which were not covered by the commitments in question. Indeed, when examining compliance with a commitment, the Autorité does not have a general power comparable to that which it holds in the context of the competitive analysis carried out when notifying a transaction, but its control is limited to the framework set by the decision under which the commitment was made.

In addition, the Autorité also considered that Altice France was not responsible under the commitments to divest Completel's DSL network for the process of powering the divested network, insofar as it was not included in the scope of the commitments and included phases involving the action of other companies. Consequently, the analysis of compliance with the commitments focused on the process of disposing of the assets covered by the commitment.

Lastly, the Autorité acknowledged the delivery of the divested assets by the deadline of transfer of assets set by the contract, i.e., 31 March 2017. Since the delivery process for the assets provides for a period of 30 days between the signature of the delivery report by Altice France and its signature by Kosc, the network's buyer, the Autorité completed its analysis with a review at the end of April 2017.

No evidence that Altice has not respected its commitments

The *Autorité* conducted its investigation to determine whether Altice France had complied with the commitments it had made in 2014.

After a thorough analysis of the information provided by the monitoring trustee

and by Altice France and Kosc, the network's buyer, the Autorité took into account the following:

- *On the Altice and Kosc support programme set up by Arcep*

Between February and April 2018, Arcep set up an operational support programme for the two operators, Altice France and Kosc, to resolve incidents identified on Completel's DSL network.

The goal of the programme was to overcome the difficulties encountered in the most cooperative context possible, in order to enable Kosc to launch its business as quickly as possible.

- *On modifications to the divested network*

In addition, the Autorité found that the modifications to the divested network, negotiated jointly by the transferor and the transferee, were not in themselves such as to reveal a breach by Altice France of its commitments. Indeed, the modifications were explained by the necessary technological developments and by the fact that the transferee did not already have a network at the time of the purchase of Completel's DSL network.

- *On the delivery process*

An in-depth analysis of the delivery process for the components of Completel's DSL network revealed sometimes divergent assessments between Kosc and Altice France of the delivery status of the network as at 31 March 2017 and 30 April 2017. The Autorité noted that Kosc considered many assets not to be delivered by mentioning in the delivery report difficulties whose resolution did not depend on Altice France within the scope of its commitment. In these cases, the Autorité considered that the date on which the commitment was made could not depend on the diligence of third party operators and the provision of services over which Altice France had no control and therefore did not consider these late deliveries to constitute a breach of the commitments entered into with the *Autorité*.

Consequently, the *Autorité*'s in-depth analysis revealed that there was no evidence to establish that Altice France had failed to fulfil its obligations under the commitments made under Decision 14-DCC-160. As a result, the Autorité closed the ex officio proceedings.

DECISION N° 19-CSO-02 OF 3 SEPTEMBER 2019

See full text of the
decision

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