18th February 2000 : Request for interim measures filed by the company 9 Telecom, concerning access for telecommunications operators to the market for high-speed Internet access services using ADSL technology

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In a decision dated 18th February 2000, the *Conseil de la concurrence* ruled on the request for interim measures filed by the company 9 Telecom, concerning access for telecommunications operators to the market for high-speed Internet access services using ADSL technology.

This technology is obtained by digitising copper telephone lines at the subscriber's premises. It enables the subscriber to benefit from a high-speed data transmission service that uses his traditional telephone line. It keeps the line open for conventional calls, and at the same time provides a permanent, rapid and unlimited Internet connection.

France Telecom holds a virtual monopoly on access to end customers (local loop), by virtue of its existing telephone network. In 1998, the company began technical testing for this new form of technology. In July 1999, it submitted for ministerial approval a tariff decision concerning the creation of the Netissimo & Turbo IP services, which together make up its commercial offer for high-speed Internet connections using ADSL technology. Approval was subsequently granted for the first six *arrondissements* (districts) of central Paris and for the towns of Vanves, Neuilly-sur-Seine and Issy-les-Moulineaux.

In accordance with the *Conseil de la concurrence*'s decision of 23rd February, issued in response to a request for interim measures filed by the company Grolier Interactive Europe, this offer was only commercially developed from 3rd November 1999, to enable Internet service providers other than France Telecom/Wanadoo to put together their own ADSL service offers. France Telecom then announced its intention to pursue the geographical development of its offer, which should cover 250 French towns and cities by the end of 2001.

As early as the month of September 1999, the company 9 Telecom, a telecommunications network operator, asked France Telecom for access to the permanent virtual network in order to construct an offer for Internet service providers that would compete with France Télécom's own Netissimo & Turbo IP offers. It also asked France Télécom to unbundle the copper wires.

France Telecom did not follow up this request and restricted itself to offering to sell its Netissimo & Turbo IP services to the end customers of third party operators.

In its decision, the *Conseil de la concurrence* observed that in order to be able to propose an ADSL offer, an operator required access to the local loop, for which France Telecom holds a virtual monopoly. It also indicated that whilst other technologies (notably cable) do allow the high-speed transmission of data, at the time of the facts these technologies did not offer the same possibilities as ADSL. Finally, it noted that the development prospects of the ADSL market were particularly rapid and substantial.

Consequently, the *Conseil* deduced that France Telecom's refusal to allow third party operators to develop their own high-speed Internet access offers, and its attempt to limit them to retailing its own commercial offer, could constitute an anticompetitive practice.

The *Conseil* observed that the market lacked fluidity, given that installations needed to be modified at the subscribers' premises and that France Telecom had the possibility of introducing a technical and commercial relationship with almost 60% of the reachable market from the year 2000. Consequently, the

Conseil took the view that France Telecom's refusal to allow other operators to propose their own ADSL Internet access offers was likely to cause serious and immediate damage to the sector, whilst the development of an innovation with the ability to drive economic progress was at stake.

The *Conseil* gave the company France Telecom a maximum period of eight weeks, in which to propose to third party operators a technical and commercial offer giving them access to the market for ADSL services and ensuring effective competition both in terms of prices and in terms of the nature of services offered.

> Decision n° 00-MC-01 of 18th February 2000 relative to a request for interim measures filed by the company 9 Telecom

> See decision of the Paris Court of Appeal (30th March 2000)