Hosting of antennas on pylon sites: the Autorité de la concurrence rejects TDF's request to lift its commitments

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Background

The *Autorité de la concurrence* has rejected TDF's request to lift the commitments made mandatory by Decision 15-D-09 of 4 June 2015.

The *Autorité* considers that while the market for mobile telephony equipment hosting has evolved since 2015, it has not been established that the competition concerns identified in the 2015 decision have disappeared. The lifting of the commitments before their end is therefore not justified in this case.

Hosting of antennas on pylon sites

To cover large areas of the country, mobile network operators rely on a network of antennas installed in high places, particularly 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 companies called *Tower companies* (known as "*TowerCos*"). TowerCos lease the towers they own to mobile operators so they can install their antennas on them.

The commitments made by TDF in 2015 and its subsequent request for review

Following proceedings initiated before the *Autorité de la concurrence* by FPS Towers (now ATC France), TDF made a series of commitments in 2015 to make it easier for other TowerCos to offer mobile network operators alternative hosting options for their mobile phone equipment.

During the investigation, the *Autorité's* services considered that TDF was likely to be dominant in the market for hosting antennas on pylon sites and that it could not be ruled out that the combination of very long contracts and the insertion of highly restrictive early termination clauses in TDF's contracts could foreclose the market by making it more difficult for TDF's competitors to sign hosting contracts with mobile operators.

In view of the competition concerns identified by the *Autorité*, TDF had committed:

- to limit the duration of its future framework hosting contracts to ten years;
- to increase the possibility of the early termination of sites for MNO (mobile network operator) customers to 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, up to a limit of 10%;
- to limit the amount of fixed compensation for current and future contracts to three months' rent.

The *Autorité* made these commitments binding for a period of 11 years, i.e. until 3 June 2026 (Decision 15-D-09 of 4 June 2015).

In 2021, TDF referred to the *Autorité* for a review of its commitments on the grounds, in particular, that the changes that have occurred in the mobile telephone equipment hosting sector since the decision are sufficiently significant to have altered the structure of competition in the market and made it unnecessary to maintain the commitments.

In light of developments in the market since 2015, the *Autorité* agreed to consider TDF's request for a review of its commitments.

The *Autorité* found that the number of TowerCos in the market has increased significantly due to the divestiture of pylons owned by mobile network operators (MNOs) to TowerCos. So while there were only two TowerCos in 2015, there were five at the time of TDF's review request, and then six with the creation of Totem. In addition, since 2018, mobile operators have been required to deploy a significant number of new mobile sites.

The *Autorité* considers that these developments constitute a sufficiently significant change to justify the consideration of TDF's request for a review.

However, the *Autorité* rejects TDF's request to revise its commitments and considers that they should be maintained in their entirety.

In this respect, the *Autorité* recalls that, while the demonstration of a significant change is a necessary element for the lifting or revision of commitments, it is also the responsibility of the company invoking the commitments to prove, on the basis of sufficiently accurate and detailed information, that all the competition concerns identified in the decision that made the commitments binding have effectively disappeared.

Although the market and TDF's position have changed, the *Autorité* notes that TDF has not provided any evidence that the competition concerns identified in Decision 15-D-09 of 4 June 2015 have disappeared before the end of the commitments.

In fact, even though the pylon sites have been largely divested by the MNOs to the newly created TowerCos, the *Autorité* finds that these sites remain largely reserved for the divesting MNOs and are therefore not available in the market. In

this context, the *Autorité* notes that TDF's market shares in the market for hosting on pylon sites remain indicative of possible dominance insofar as they are much higher than those of its competitors. The *Autorité* also considers that the information provided by TDF in relation to the dynamics of the market, in particular that on the growth of pooling, is too general, imprecise and forward-looking.

The *Autorité* concludes that there are no grounds for lifting the commitments made binding by the *Autorité* in its aforementioned Decision 15-D-09 before their term.

DECISION 22-D-24 OF 6 DECEMBER 2022

regarding the request for a review of TDF's commitments made binding by Decision 15-D-09 of 4 June 2015

Read the full text

Read the press release of 4 June 2015

Read the press release of 3 February 2015

Read Decision 15-D-09 of 4 June 2015

For more information

Article L. 464-2 of the French Commercial Code (Code de commerce), states that the *Autorité* may modify or supplement the commitments where one of the facts on which the commitments decision is based has changed significantly.

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