



EUROPEAN COMMISSION

Brussels, 5.2.2016
C(2016) 816 final

Autorité de régulation des
communications électroniques et
des postes (ARCEP)
7, square Max Hymans
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France

For the attention of
Mr Sébastien Soriano

Fax: +33 1 40 47 72 02

Dear Mr Soriano,

Subject: Commission Decision concerning

Case FR/2016/1832: Wholesale local access provided at a fixed location in France – details of remedies

Case FR/2016/1833: Wholesale central access provided at a fixed location for mass-market products in France – details of remedies

Case FR/2016/1834: Access to the public telephone network at a fixed location for residential and non-residential customers and call origination on the public telephone network provided at a fixed location in France – details of remedies

Comments pursuant to Article 7(3) of Directive 2002/21/EC

1. PROCEDURE

On 7 January 2016, the Commission registered a notification from the French national regulatory authority, *Autorité de régulation des communications électroniques et des postes* (ARCEP)¹, concerning the setting of price caps for the years 2016-2017 for several services subject to price control remedies imposed on the operator holding significant market power (SMP) in the following markets: wholesale local access

¹ Under Article 7 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), OJ L 108, 24.4.2002, p. 33, as amended by Directive 2009/140/EC, OJ L 337, 18.12.2009, p. 37, and Regulation (EC) No 544/2009, OJ L 167, 29.6.2009, p. 12.

provided at a fixed location², wholesale central access provided at a fixed location for mass-market products³, access to the public telephone network at a fixed location for residential and non-residential customers⁴, and call origination on the public telephone network provided at a fixed location⁵, all in France.

The national consultations⁶ ran from 12 November to 11 December 2015 and from 1 December 2015 to 4 January 2016.

On 18 January 2016, a request for information⁷ was sent to ARCEP and a response was received on 21 January 2016.

2. DESCRIPTION OF THE DRAFT MEASURE

2.1. Background

2.1.1. Wholesale local access provided at a fixed location in France

The last full review of the market for wholesale local access provided at a fixed location in France was notified to and assessed by the Commission under case FR/2014/1602⁸. The relevant product market was defined by ARCEP as including fully unbundled and shared access to local copper loops and sub-loops, access to civil engineering infrastructure, and passive access to fibre local loops⁹. The relevant geographic market was defined as national.

ARCEP designated Orange as the undertaking holding SMP. ARCEP imposed on it the provision of access to the local loop and sub-loop and to its civil engineering infrastructure. Orange was requested to provide access seekers with a set of wholesale offers covering backhaul, co-location and unbundling services under non-discriminatory terms and conditions. In particular cost orientation was applied to access to local copper loops and sub-loops, civil engineering infrastructure used for fibre local loops and

² Corresponding to market 3a in Commission Recommendation 2014/710/EU of 9 October 2014 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (Recommendation on Relevant Markets), OJ L 295, 11.10.2014, p. 79.

³ Corresponding to market 3b in the Recommendation on Relevant Markets.

⁴ Corresponding to market 1 of the Commission Recommendation of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services OJ L 344, 28.12.2007, p. 65-69 (2007 Recommendation on Relevant Markets).

⁵ Corresponding to market 2 of the Commission Recommendation of 17 December 2007

⁶ In accordance with Article 6 of the Framework Directive.

⁷ In accordance with Article 5(2) of the Framework Directive.

⁸ C(2014) 4048

⁹ Provided at a concentration point by operators or by local authorities in the context of network sharing.

ancillary services. The price control for access to the copper local loops was based on "current economic costs"¹⁰ as amended in 2012¹¹. The Commission commented on the need to ensure coherence between symmetrical¹² and asymmetrical fibre regulation¹³.

2.1.2. Wholesale central access provided at a fixed location for mass-market products in France

The last full review of the market for wholesale broadband access at a fixed location in France was notified to and assessed by the Commission under case FR/2014/1603¹⁴. ARCEP included in the relevant product market wholesale access for the provision of broadband and high speed broadband services provided - at regional access points - over copper, fibre and cable networks, independently of the interfaces' technology. The geographic scope of the market was considered to be national although competitive conditions varied depending on the number of network operators who were in the position to offer a LLU-based bitstream¹⁵.

ARCEP designated Orange as the undertaking holding SMP and imposed the following obligations: (i) provision of bitstream over its copper network (although not over fiber); (ii) non-discrimination; (iii) cost-orientation (for those areas where Orange was the only wholesale supplier of DSL); (iv) cost accounting and accounting separation; and (v) transparency. The Commission invited ARCEP to monitor the effectiveness of the symmetric access obligations and reconsider, if needed, the imposition of fibre-based bitstream in the non-cabled areas where a fibre monopoly may arise.

2.1.3. Access to the public telephone network at a fixed location for residential and non-residential customers and call origination on the public telephone network provided at a fixed location in France

The last full review of the market for access to the public telephone network at a fixed location for residential and non-residential customers in France was notified to and assessed by the Commission under case FR/2014/1643¹⁶. ARCEP included any form of access to the public telephone network at a fixed location, independently of the

¹⁰ "Coûts courants économiques" is the method used by ARCEP for valuing local loop assets since 2005 (ARCEP decision n° 05-0834).

¹¹ ARCEP decision 2012-0007, where ARCEP adjusted the lifetime of ducts and of copper cables.

¹² In 2015 ARCEP notified to the Commission case FR/2015/1736 concerning symmetric remedies for FTTH deployments in France.

¹³ In view of the symmetrical regulation implemented in France in the context of the network sharing legislation, ARCEP did not consider it justified or proportionate to impose additional SMP obligations on FTTH networks given the development of competition induced by the co-investment agreements.

¹⁴ C(2014) 4048

¹⁵ ARCEP identified a geographic area where only one operator was able to provide a bitstream offer and a second geographic area where several operators were able to provide such a product. ARCEP stressed that precise and stable boundaries between the two areas could not be distinguished since the number of unbundled MDFs may substantially change in the timeframe of the market analysis.

¹⁶ C(2014) 6809

underlying technology, used exclusively or principally for the provision of voice telephony services.

The last full review of the market for call origination on the public telephone network provided at a fixed location in France was notified to and assessed by the Commission under case FR/2014/1644¹⁷. The relevant product market comprised services enabling interpersonal voice traffic (through carrier selection) and narrowband internet traffic but, unlike previous market analyses, excluded value-added services (VAS) traffic.

The geographic scope of both markets included the territory of metropolitan France, the French overseas departments and the overseas communities of Saint-Martin, Saint-Barthélemy and Saint-Pierre-et-Miquelon.

ARCEP identified Orange as holding SMP in both markets and proposed to maintain the following obligations: (i) access and interconnection, (ii) non-discrimination, (iii) transparency (including reference offers), (iv) indicators of quality of service, (v) price control, and (vi) accounting obligations. On the market for access to the public telephone network, ARCEP proposed to maintain the obligation on Orange of providing Carrier Preselection (CPS) as well as call by call carrier selection (CS) and Wholesale line rental (WLR).¹⁸

In its comments letter, the Commission called on ARCEP to assess, on the basis of updated market data, whether the lifting of remedies on Value Added Services was appropriate.

2.2. Regulatory remedies

In order to provide more predictability¹⁹ to Orange's wholesale customers, ARCEP proposes to set at the beginning of 2016 price caps for the provision of a number of wholesale services²⁰ for both 2016 and 2017. The notifications therefore only concern a modification of the timeline of the revision of regulated rates.

In its reply to the request for information, ARCEP confirms that the "current economic costs" methodology used to determine the price caps remains unchanged compared to the last review of markets 3a and 3b, notified to the Commission under FR/2014/1602-03. In 2016 ARCEP plans to launch a major review of the cost model used in the context of its copper local loop regulation.

¹⁷ C(2014) 6809

¹⁸ Orange had to ensure that the WLR allowed access seekers to provide bundles. WLR had to be provided together with the necessary ancillary colocation and connecting services. Furthermore, Orange could decline offering WLR services if it decided to stop providing telephony services on its traditional copper-based architecture, provided a minimum 5 year prior notice was given to the access seekers.

¹⁹ Currently the prices are set on an annual basis by Orange, either at the end of December or the beginning of January. By the time prices are published, alternative operators have already established their provisional budget. The evolution of the LLU price has a significant impact on the alternative operators' budget and, therefore, in its investment capacity and commercial performance.

²⁰ The prices for the services not included in the proposed measures will continue to be set by Orange on an annual basis.

In order to estimate the relevant price caps, ARCEP has to forecast the evolution of several of Orange's cost parameters for 2016 and 2017 and then allocate a share of the costs (including common costs) to the regulated wholesale services provided by the SMP operator.

2.2.1. Wholesale local access provided at a fixed location in France

ARCEP proposes to set price caps for the LLU monthly fee, given that it represents the most relevant part of the revenues linked to the copper local loop. ARCEP further considers that price caps should also be set for the services closely linked to the monthly fee, namely the installation fee, contract termination fee and aftersales service (SAV+) charges. Even though SLU does not have the same economic importance as LLU, ARCEP considers it appropriate to set also price caps for it, since the relevant infrastructure is the same as for LLU.

It should be noted that, in the context of prices oriented to costs, ARCEP ensures that all costs related to the provision of LLU are recovered through the whole of the imposed tariffs. However, ARCEP explains that it is not possible to accurately identify and allocate the costs corresponding to each individual service (installation, contract termination, etc.).

		2013	2014	2015	2016	2017 ²¹
LLU	Monthly fee net of all taxes	8.68 €	8.58 €	8.39 €	8.20 €	8.32 €
	Monthly fee including IFER ²²	8.90 €	9.02 €	9.05 €	9.10 €	9.45 € ²³
	Installation fee	56 €	56 €	56 €	50 €	50 €
	Contract termination fee	20 €	20 €	20 €	15 €	15 €
	SAV+ ²⁴	186 €	145 €	135 €	105 €	105 €
SLU	Monthly fee	1.64 €	1.64 €	1.77 €	1.77 €	1.77 €
	Installation fee	66 €	66 €	66 €	66 €	66 €
	Contract termination fee	35 €	35 €	35 €	35 €	35 €

Table 1: Price caps²⁵ for market 3a

²¹ The price caps will be applicable until 27 June 2017, when the current market review will expire. ARCEP does not foresee any interim period between the current and the next market review.

²² The IFER ("*imposition forfaitaire annuelle sur les entreprises de réseaux*") is an annual tax introduced in France in 2013 as a partial replacement of the professional tax. The annual IFER values for 2015, 2016, and (as of) 2017 are 7.62 €/pair, 10.12 €/pair and 12.65 €/pair, respectively (Art. 1599 quarter B of the "code general des impôts pour les répartiteurs généraux"). In order to incorporate the IFER into the LLU monthly fee, ARCEP increases it by 3% (Art. 1641 of the "code general des impôts pour les répartiteurs généraux") and divides it by 12 to obtain the monthly increase, which is then adjusted through an annual re-evaluation coefficient (Art.112 of law n° 2010-1627 29 December 2010).

²³ ARCEP explains that in previous years, Orange's substantial productivity gains on operating costs allowed to significantly attenuate the effects of the IFER increase in the LLU price. ARCEP, however, explains in its response to the request for information that it estimates that such gains will no longer take place between 2016 and 2017.

²⁴ Service après-vente.

2.2.2. Wholesale central access provided at a fixed location for mass-market products in France

The tariffs affected by the proposed measures in market 3b correspond to a number of wholesale services for the provision of broadband and high speed broadband services provided at sub-national level over copper-based DSL infrastructures.

That offer breaks down into two main components: access, that may be provided through various technologies (ADSL, ADSL2+, VDSL) over a line that may or may not have a subscription to the switched telephony service (provided by Orange) and may be single channel ("mono VC") or dual channel ("bi VC"); and delivery at sub-national level carried out through ATM, IP or Ethernet.

As for access prices, ARCEP proposes to set the following price caps²⁶ for 2016 and 2017:

		2013	2014	2015	2016	2017
DSL access without telephone subscription	Installation fee	61 €	61 €	61 €	61 €	61 €
	Monthly fee single channel	12.21 €	12.41 €	12.53 €	12.63 €	12.93 €
	Monthly fee dual channel	12.31 €	12.51 €	12.63 €	12.73 €	13.03 €
DSL access with telephone subscription	Installation fee	56 €	56 €	56 €	56 €	56 €
	Monthly fee single channel	4.09 €	4.39 €	4.79 €	4.79 €	4.79 €
	Monthly fee dual channel	4.19 €	4.49 €	4.89 €	4.89 €	4.89 €

Table 2: Price caps²⁷ for market 3b (access)

As to delivery, ARCEP is of the view that none of the corresponding tariffs²⁸ should exceed the 2015 price level during 2016 and 2017²⁹.

2.2.3. Access to the public telephone network at a fixed location for residential and non-residential customers and call origination on the public telephone network provided at a fixed location in France

Regarding the "vente en gros de l'accès au service téléphonique"(VGAST), ARCEP proposes to set cap prices³⁰ for 2016 and 2017³¹ at the 2015 price level.

²⁵ The only tax further applied to these values is the VAT.

²⁶ As for market 3a, these price caps will be applicable until 27 June 2017, when the current market review will expire. ARCEP does not foresee any interim period between the current and the next market review.

²⁷ The only tax further applied to these values is the VAT.

²⁸ Comprising ATM (both local and regional tariffs), IP (both fix and variable components) and Ethernet (both the fix component and the variable components).

²⁹ The price caps will be applicable until 27 June 2017 (after the expiration of decision n° 2014-0734). ARCEP does not foresee any interim period between the current and the next market review.

³⁰ Comprising the installation fee and the monthly fee for each of the analogue and digital VGAST.

ARCEP proposes to set the following prices caps for 2016 and 2017 for the call origination service linked to the VGAST:

	2014	2015	2016	2017
Call origination linked to the VGAST	0.445 c€/min	0.4895 c€/min	0.5384 c€/min	0.5923 c€/min ³²

Table 3: Price caps³³ for call origination linked to the VGAST

3. COMMENTS

The Commission has examined the notifications and the additional information provided by ARCEP and has the following comments.³⁴

Monitoring of the market outcome based on the proposed retail criteria and potential updates of the proposed measure

The Commission recognises that ARCEP would like to ensure that the setting of the regulated wholesale tariffs is more compatible with the annual budgetary calendar of alternative operators. The Commission further takes note of the fact that ARCEP is developing a new costing methodology which ARCEP intends to apply as of the beginning of the next regulatory period, i.e. end of June 2017, as far as the wholesale local and central access markets are concerned. In this respect, the Commission calls on ARCEP to take full account of its Recommendation on Non-discrimination and Costing³⁵ when developing the new cost model.

The Commission further highlights that the deadline foreseen by the Recommendation on Non-Discrimination and Costing for implementing the recommended costing methodology is 31 December 2016. Although current wholesale access prices are well within the price band foreseen in the Recommendation on Non-Discrimination and Costing and therefore access prices are likely to remain broadly stable also following the review of the cost model, the Commission asks ARCEP to implement the new costing methodology within the planned time horizon and without further delay.

³¹ The price caps for markets 1 and 2 of the 2007 Recommendation will be applicable until 3 October 2017, when the current market review will expire. As for markets 3a and 3b, ARCEP does not foresee any interim period between the current and the next market review.

³² According to ARCEP, the underlying costs for the provision of call origination linked to the VGAST strongly increase due to the continuous downfall of traffic volumes.

³³ The only tax to be further applied to those values is the VAT.

³⁴ In accordance with Article 7(3) of the Framework Directive.

³⁵ Commission Recommendation 2013/466/EU of 11 September 2013 on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment (Recommendation on Non-Discrimination and Costing), OJ L 251, 21.9.2013, p. 13–32.

Pursuant to Article 7(7) of the Framework Directive, ARCEP shall take the utmost account of the comments of other NRAs, BEREC and the Commission and may adopt the resulting draft measures; where it does so, shall communicate it to the Commission.

The Commission's position on this particular notification is without prejudice to any position it may take *vis-à-vis* other notified draft measures.

Pursuant to Point 15 of Recommendation 2008/850/EC³⁶ the Commission will publish this document on its website. The Commission does not consider the information contained herein to be confidential. You are invited to inform the Commission³⁷ within three working days following receipt whether you consider that, in accordance with EU and national rules on business confidentiality, this document contains confidential information which you wish to have deleted prior to such publication.³⁸ You should give reasons for any such request.

Yours sincerely,

For the Commission,
Roberto Viola
Director-General

³⁶ Commission Recommendation 2008/850/EC of 15 October 2008 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, OJ L 301, 12.11.2008, p. 23.

³⁷ Your request should be sent either by email: CNECT-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

³⁸ The Commission may inform the public of the result of its assessment before the end of this three-day period.



EUROPEAN COMMISSION

Brussels, 19.2.2016
C(2016) 1175 final

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For the attention of
Mr Sébastien Soriano

Fax: +33 1 40 47 72 02

Dear Mr Soriano,

**Subject: CORRIGENDUM of Commission Decision of 5.2.2016 C(2016) 816
final concerning**

**Case FR/2016/1832: Wholesale local access provided at a fixed
location in France – details of remedies**

**Case FR/2016/1833: Wholesale central access provided at a fixed
location for mass-market products in France – details of remedies**

**Case FR/2016/1834: Access to the public telephone network at a
fixed location for residential and non-residential customers and call
origination on the public telephone network provided at a fixed
location in France – details of remedies**

Comments pursuant to Article 7(3) of Directive 2002/21/EC

Please note that the above decision is amended as follows:

In section 2.2.1, the following sentence

"Even though SLU does not have the same economic importance as LLU, ARCEP considers it appropriate to set also price caps for it, since the relevant infrastructure is the same as for LLU."

is replaced by:

"Even though partial unbundling does not have the same economic importance as full unbundling, ARCEP considers it appropriate to set also price caps for it, since the relevant infrastructure is the same."

In section 2.2.1, the left column of Table 1

LLU
SLU

is replaced by:

Full unbundling
Partial unbundling

Yours sincerely,

For the Commission,
Roberto Viola
Director-General