

Main conclusions of the broadband and superfast broadband market analyses

1 Market analysis: background

In mid-2016, Arcep began the process of reviewing its analyses of fixed broadband and superfast broadband markets, which are being affected by a trend of widespread optical fibre network rollouts. These market analyses define the asymmetric regulation that applies to the different wholesale markets. This regulation includes the obligations that apply specifically to the operator that enjoys significant market power (SMP), which is Orange for the markets being considered here.

During a **first public consultation that was held between February and March**, Arcep queried the sector's stakeholders about a series of planned regulatory measures:

- **concerning fibre in general**, the aim was to help step up network rollouts and the sale of fibre plans, by involving all market players, and in particular:
 - o **regarding FttH infrastructure**, to lift the obstacles to investing in FttH networks and making the transition from broadband to superfast broadband networks for Orange competitors;
 - o **regarding supporting infrastructures** (civil engineering work, etc.), to improve the access conditions for all of the players;
- **concerning the business market**, to enable the development of a fibre mass market for micro enterprises and SMEs, thanks to improved and more competitive products, notably by offering higher QoS options on FttH networks, and by laying the groundwork for the development of a wholesale market populated by at least three national infrastructure providers, dedicated to an enterprise clientele.

On the specific matter of FttH infrastructure, Arcep gave Orange the ability to take action of its own accord on this issue, to assess whether or not it would be necessary to impose FttH-related obligations on the carrier as part of asymmetric regulation decisions.

After a first public consultation, in which 26 entities took part, the Competition Authority's opinion of 5 May 2017, and 15 interviews held in May with residential operators, businesses and local authority representatives, Arcep completed its draft regulation, and will be submitting it once again, in its entirety, to stakeholders for feedback.

As the Competition Authority invited to do in its Opinion No. 17-A-09, Arcep will, first, maintain its analysis of a single, nationwide broadband and superfast broadband market. Arcep has also confirmed Orange's position as the SMP operator in all three wholesale markets: Wholesale local access provided at a fixed location (market "3a"), Wholesale central access provided at a fixed location for mass-market products (market "3b") and Wholesale high-quality access provided at a fixed location (market "4").

Arcep thus examined the need and the extent to which it would be required to impose specific obligations on Orange regarding copper networks, civil engineering, fibre and the business market. In particular:

- in addition to obligations concerning supporting infrastructures (part 2.2), regarding FttH infrastructure in general (part 2.1), Arcep has chosen a pragmatic approach and will take the progress that Orange has made into account;
- regarding fibre access solutions designed for the business market (part 3), Arcep is seeking to impose obligations adapted to that market.

2 On fibre in general

2.1 FttH infrastructure

Regarding FttH infrastructure, Arcep's regulation is an integral part of its pro-investment doctrine. It is seeking to accelerate operators' fibre network rollouts, and subscribers' transition from broadband to superfast broadband solutions. To do so, Arcep plans on mobilising all market players, to maximise the sector's investment and marketing capacities.

As part of the market analysis process, Arcep noted that Orange enjoyed a considerable lead in fibre rollouts and the sale of fibre access plans. It also ascertained a certain number of elements capable of limiting or slowing other operators' ability to be present in this market. Without overlooking the credit due to Orange for having been the first private sector player to have invested in fibre, Arcep has opened up the hypothesis of a possible regulation imposed specifically on Orange, to resolve the identified problems and to free up investments by every player.

Regarding access to this FttH infrastructure, Arcep has concluded that the elements that Orange has provided should make it possible to address, with reasonable assurance, the concerns that the Authority expressed over those obstacles that alternative operators could encounter, in three key areas in particular:

- **other operators' ability to connect to buildings in large cities where Orange has installed its fibre network:** in the most densely populated cities, commercial operators can encounter operational difficulties in a number of instances in reaching the fibre junction point – which is often located inside the building – between their own network and fibre deployed in the building. This operation is vital to their ability to market fibre products to their customers. Arcep offers the reminder that, under the current legislative and regulatory framework, the operator that installs fibre in the building must guarantee that other operators can actually connect to it, under reasonable and non-discriminatory conditions. This is not an obligation that is proper to Orange. However, because of the lead that Orange enjoys, Arcep examined where there needed to be a specific obligation to ensure alternative operators' actual ability to access those buildings outfitted by Orange. For buildings where past difficulties in this area persist, Orange has indicated that, to achieve a results-oriented outcome, it would introduce adapted solutions which, within its existing access offers, would enable the rapid elimination of the number of buildings where these past difficulties persist by mid-2019. As an adjunct, Arcep will introduce a dedicated mechanism for monitoring fibre connection in buildings in very high-density areas, and will also commit to working to improve the information available to real estate market players, working in tandem with operators.
- **Marketing Orange's horizontal fibre network to other operators:** in these same areas, Orange may have excess fibres installed along streets which, if they were made available to certain players in a discriminatory fashion, could distort competition and investment dynamics. To allow the Authority to ensure that no discrimination whatsoever exists, Orange has indicated that it would take the proactive measure of informing Arcep of any commercial discussions on the matter.
- **Inter-operator processes when Orange has outfitted the building or the neighbourhood with fibre:** fibre deployments involve several operators that need to cooperate to sell access, install fibre in the building and on customer premises, and ensure after-sales service. The development of a dynamic and competitive fibre mass market will only be possible if the corresponding inter-operator processes are efficient, fluid and harmonised. For Arcep, ensuring that vertically integrated operators use the same IT tools as those made available to alternative operators, along with common processes, as a way to guarantee equal treatment,

would make for more efficient processes that benefit every operator, as well as competitive dynamics. In the particular case of an operator that will be deploying a very significant percentage of optical fibre lines, it is all the more crucial to ensure that it does not benefit, knowingly or *de facto*, from easier management than the other operators that are helping to finance the network. It is in this context that Orange stated that it would be revising its FttH processes. Orange has thus begun the work needed to ensure that, by 1 September 2018, it would be using the same eligibility-related IT flows internally as those made available to other operators. Regarding the optical fibre line ordering process, Orange has begun the developments needed to ensure that, by 31 December 2018, it will be possible to verify systematically, for every order, that validation requirements for alternative operators and Orange's retail branch are identical. Next, regarding future changes to its IS and FttH processes, Orange stated that it would seek to implement software tools and modules that are common to its retail and wholesale operations whenever it is proportionate. Moreover, to accelerate the IT developments required to industrialise FttH network sharing, and give commercial operators the ability to plan ahead, Orange has proposed better communication of development roadmaps from infrastructure operators, so that any new functionality that is introduced can be discussed beforehand multilaterally, and within an appropriate timeframe. Lastly, Orange will provide Arcep with regular progress reports on its implementation of these actions, and the results it has achieved.

In light of the responses that Orange provided on each of these topics, Arcep has concluded that it will not be necessary to subject the carrier to a specific set of obligations, on top of those that already apply to every operator deploying fibre. Arcep will commit to carefully monitoring that the measures in question are properly executed. It also reserves the right to intervene immediately should a problem arise, and to impose relevant remedies on Orange if necessary.

On the specific matter of inter-operator FttH processes, for which the actions that are taken must make it possible to rapidly strengthen non-discrimination guarantees, Orange will be invited to deliver a progress report on its work during Interconnection and Access Committee meetings. Arcep will draft and publish an assessment of the implementation of Orange's proposed actions, before 1 September 2018.

As a parallel measure, Arcep plans on having all FttH operators commit to working continually to improve inter-operator processes, and will supervise the work that needs to be done to achieve greater operational efficiency in FttH network sharing.

2.2 Supporting infrastructures

In addition, Arcep is adopting a series of measures for facilitating public and private sector operators' FttH rollouts, and in this draft confirms new remedies concerning civil engineering, collocation and backhaul infrastructures that it had introduced during the first public consultation.

Arcep is thus adapting the obligations imposed on Orange regarding civil engineering refurbishments, and is introducing the possibility for the operator deploying the fibre to intervene itself on the infrastructures, when they cannot be used for optical fibre deployments, and to be compensated by Orange for the work they did. Arcep is also homogenising the rules governing overhead deployments, ensuring more fluid access to prior information and better monitoring of these processes thanks to more complete quality of service indicators.

Regarding collocation and backhaul, Arcep believes that Orange must revise its corresponding solutions and make them usage-agnostic. Arcep is also asking Orange to bring changes to its "LFO" fibre backhaul solution to allow third-parties' to connect "NRO" fibre concentration point to one

another within the same geographical area, regardless of whether or not the client operator is present on the Orange “NRA” subscriber connection point located at the backhaul link’s end points.

Arcep is also introducing the possibility for Orange to close down its copper infrastructures more rapidly in cases where the existence of a fully deployed fibre to the home network has been ascertained through the attribution of “fibre zone” status.

3 The business market

The development of a fibre mass market for micro enterprises and SMEs is a vital part of the French economy’s digitisation, which is why it is a top priority for Arcep. The Authority’s goal is to ensure a broad range of fibre products for businesses, with distinct levels of quality, capitalising on the deployment of FttH local loops to share costs and make it possible to provide enterprises with affordable plans.

Arcep has noted Orange’s very strong position in the business market. On the particular matter of fibre products, Arcep has observed, first, the lack of QoS options on FttH infrastructure that would provide a more tailored response to businesses’ different needs and, second, an underdeveloped wholesale market, which could result in hampering the many small business operators’ ability to access the market, and to design and deliver innovative services.

Regarding services aimed at businesses, Arcep has put forth the following conclusions:

- **Options with improved quality of service (QoS) on the FttH local loop:** to stimulate the introduction of SLAs on fibre solutions that satisfy operators’ requests, and ultimately meet the needs of business customers, it seems necessary to require Orange to offer an increased quality of service option on its FttH network. The aim is to allow commercial operators to meet the QoS needs of the majority of businesses customers which currently have an SDSL connection. Here, Orange has proposed a guaranteed service restoration time (SRT) of 10 working hours, on the entire shared network. Arcep believes this offer must become available rapidly: both at the “NRO” fibre concentration point and the FttH concentration point by 1 January 2018 at the latest, and in any event prior to or at the very least simultaneously with other possible wholesale solutions providing increased quality of service, including those that would rely on FttH infrastructure adaptation. Moreover, Arcep believes that SLA options must be presented to alternative operators with sufficient lead time – which would be no less than six months – before Orange begins marketing its corresponding retail products. Orange must also make said SLA options available within a reasonably long enough time frame before these new retail products are introduced, so that alternative operators are able to begin selling retail products that include the same features on that same date. Working in tandem with the players concerned, over the course of 12 months Arcep will examine whether the guaranteed service restoration time of 10 working hours indeed makes it possible to achieve the above-mentioned objective. As a parallel measure, Arcep will examine the conditions for extending an obligation to offer SLA options in the wholesale market to all operators installing an FttH local loop.
- **Development of the wholesale market for activated offers:** all business operators must be able to access a competitive wholesale market for regional and national activated FttH local loop offers, to be able to deliver their services and their innovations. Arcep believes that increased competition in this wholesale market is the best way to guarantee its proper operation in the medium term, which means a more dynamic market populated by at least three national infrastructure operators. Under these circumstances, Orange would be required to provide a passive FttH local loop offer for businesses under economic conditions that will ensure a sustainable activated wholesale market, by 1 January 2018 at the latest. If

necessary, as a complementary measure, Orange could propose an activated solution delivered at the “NRO” fibre concentration point, notably in those areas where it will be impossible to provide a passive solution that satisfies this objective.

- **Resale offer that makes it possible to meet multi-site organisations’ FttH needs:** Arcep also believes that Orange must introduce a solution, very rapidly, that allows alternative operators to resell the access products for the businesses market that Orange sells, based on its FttH network (with and without SLAs). Such a solution would indeed allow all operators to complete their geographical footprint and so be in a position to satisfy the needs of multi-site organisations, which is a concern the Competition Authority raised in its Opinion No. 17-A-09. However, Arcep considers it neither necessary nor proportionate, given its regulatory objectives – and notably the development of a dynamic activated wholesale market – and the previous obligations imposed on Orange to provide a regional and national activated offer.

In terms of timetable, these measures should allow retail market business operators to have access to both: activated wholesale offers and resale offers for Orange retail business access products based on its FttH network (with and without SLAs) by the following deadlines: in the form of local trials starting on 1 January 2018, and throughout the entire market by 1 March 2018 – regarding the resale offers, this date will still need to be confirmed after Orange has conducted a feasibility test.

Arcep will work to ensure the proper implementation of these remedies, and compliance with the deadlines.

Lastly, Arcep is adapting the remedies that were initially proposed **regarding price regulation:**

- activated wholesale products designed specifically for businesses, which are part of the wholesale high quality access market, on the dedicated local loop will be subject to the same remedies as during the previous round, and the perimeter of the associated tariff freedom area will evolve to include those municipalities where the density of businesses is greater than 20 establishments with a staff of more than 10 people per km²;
- the other activated wholesale optical fibre offers designed specifically for businesses, which are part of the wholesale high quality access market, will be subject to an obligation of non excessive and non predatory pricing, nationwide.

4 What comes next

The three draft decisions will be published for public consultation in the coming days. These consultations will run to 15 September. After having taken stakeholders’ feedback into account, the draft decisions will be notified to the European Commission. The final decisions will then be adopted before the end of November 2017.