

Press release

FIXED MARKET REGULATION

Arcep submits its draft regulatory amendments for 2021 – 2023 to the Competition Authority for an opinion, in preparation for fixed market analyses

Paris, 7 July 2020

Fixed market analyses: regulatory bulwark

After having published a preliminary version of its draft amendments in February 2020, and having taken into consideration the responses its received to that consultation, which were made public on 2 June, Arcep is continuing the process of reviewing fixed broadband and superfast broadband market regulation. It is now submitting its draft decision to the Competition Authority, to obtain its opinion, and launching a second public consultation on these planned amendments.

Market analysis decisions define the so-called “asymmetric” obligations to be imposed on all operators that enjoy significant power (SMP) in the relevant market in question, and this for a period of three years. In practice, the SMP operator for the fixed market is incumbent carrier, Orange. The purpose of these asymmetric obligations is to remedy identified competitive imbalances.

Arcep is also proposing changes to the “symmetric” regulatory framework governing fibre, which applies equally to all FttH network operators. This second document will require Government approval before coming into effect.

The documents being published for consultation

Today, Arcep is therefore publishing four draft “asymmetric” decisions for consultation, on fixed broadband and superfast broadband market analysis, namely:

- a separate civil engineering market,
- market 3a: passive solutions,
- market 3b: generalist active solutions and
- market 4: dedicated active solutions for businesses.

Arcep is also submitting two documents for consultation whose purpose is to complete “symmetric” optical fibre regulation: a draft decision and a draft recommendation designed to provide more details on the scope and application of the existing framework. The purpose of these documents is to satisfy the newfound needs to emerge from the accelerated pace of fibre deployment, without altering the overall balance of the existing framework.

The main outlines of Arcep’s work on these matters are as follows:

Maintain pro-investment regulation to make fibre the new reference infrastructure

As the new infrastructure that will outfit the entire country for several decades to come, fibre is a central focus of this new round of regulation. Optical fibre network rollouts represent an unprecedented undertaking, in terms of both scale and form – combining operators’ investments, regional and local initiatives, and government solidarity. Regulation has a vital role to play in creating the right incentives,

and enabling the market to galvanise its full investment power. Arcep's pro-investment regulation has thus served as a real market catalyst over the past several years: driving a rise in spending (unique in Europe) of close to 50% rise in five years, which in 2019 resulted in an unprecedented addition of 4.8 million lines deployed in a single year by infrastructure operators, along with an increase of 7.3 million lines in locations where at least three commercial operators are present at the shared access point. The purpose of the regulation established for 2017 to 2020 was to enable all operators to participate in the investment effort, in areas where Orange stood far too alone. This goal has now been achieved.

Arcep has ascertained that healthy competition now exists in the fibre market. To ensure that this momentum becomes well entrenched, Arcep is proposing to consolidate "symmetric" fibre regulation, which applies equally to all operators. The challenge now is to draw up the guidelines for a fully-fibre France, and so lay the groundwork for an eventually complete transition from the legacy copper network to fibre. To this end, Arcep plans on requiring fibre quality of service guarantees from all operators, to ensure the technology is able to keep all of its promises to every user, both consumers and businesses, and this across the whole of France.

Supporting the transition from the legacy copper network to fibre

The target now is to achieve a complete switchover from the legacy copper network to fibre, within the next ten years. Here, Arcep welcomes Orange's commitment to this unprecedented effort to migrate away from copper. Within the public sector, Arcep intends to act as the guarantor of this transition, to ensure that it proceeds at the right pace, to protect both users' interests and healthy competition. It is crucial that no user be left behind, and the Covid-19 crisis only served to confirm how vital fibre is to future prospects.

Once the first consultation was complete, Arcep confirmed its initial proposals, which included supporting Orange in its phasing out of the copper network and, in the process, encouraging operators to switch over to fibre where available, while taking a non-discriminatory approach and remaining clear and transparent. In particular, Arcep is opening up the possibility of a precocious commercial switch-off of the copper network, prior to its technical switch-off, and provides details on the terms and conditions for doing so.

These terms and conditions are being stipulated even though Orange's plans are far from fully established. Arcep has not yet received a detailed timetable for the switch-off and the procedure for doing so from Orange. The Authority is thus urging the incumbent carrier to provide some clarity on the terms and conditions of this switch-off, as soon as possible. This detailed plan will give Arcep the ability to examine possible supplementary adjustments, such as shorter timelines. To incentivise the market, Arcep is also planning on introducing a review clause in the pricing framework governing unbundling, which would make it possible to increase unbundling prices if the future plan includes guarantees of an ambitious switch-off plan and timetable.

Providing enterprises with fibre access, and creating a truly competitive business market

Having products designed specifically for businesses is another major issue. The aim is to democratise fibre access products for SMEs, both by opening the way for less expensive solutions and by diversifying the quality of service tiers that can be marketed. For both generalist access products and specific high-quality products, this requires a dynamic wholesale market for active solutions that can rely on several suppliers, and makes room for wholesale-only operators, to help foster a large ecosystem of business operators.

Progress has been made on creating a competitive wholesale market for active FttH products, but there is still some way to go. Arcep will therefore continue to work on fostering its development. It also plans on requiring all FttH networks to introduce a passive solution with increased quality of service (guaranteed fault repair times of 10 hours and four hours) to guarantee that every enterprise, regardless of where they are located in the country, has access to a fibre plan tailored to their needs, and to adjust the regulation of pioneer fibre networks (dedicated optical local loop) to take the gradual emergence of these products on FttH networks into account.

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The next steps leading up to adoption in late 2020

This public consultation will run until Monday, 14 September 2020.

After having analysed the contributions to this consultation, the draft market analysis decisions and the draft symmetric decision on the regulatory framework for optical fibre will be notified to the European Commission.

The review process will be completed before the end of 2020, which is the target date for the adoption of these new decisions. The decision package will also include price supervision for unbundling, for which an *ad hoc* draft decision will also be published for consultation in the coming weeks.

Associated documents

- [Draft decision on fixed broadband and superfast broadband market analysis – a separate civil engineering market](#)
- [Draft decision on fixed broadband and superfast broadband market analysis – market 3a: passive solutions](#)
- [Draft decision on fixed broadband and superfast broadband market analysis – market 3b: generalist active solutions](#)
- [Draft decision on fixed broadband and superfast broadband market analysis – market 4: dedicated active solutions for businesses.](#)
- [Draft decision setting out the rules governing access to ultrafast optical fibre electronic communication lines](#)
- [Draft recommendation specifying the modalities of access to ultrafast optical fibre electronic communication lines](#)
- [Annexes pertaining to accounting reports](#)
- [Responses to the first public consultation on draft fixed market regulation \(zip – 26 Mo\)](#)

Arcep at a glance

The Regulatory Authority for Electronic Communications, Postal Affairs and Print Media Distribution (Arcep), a neutral and expert arbitrator with the status of independent administrative authority (IAA), is the architect and guardian of internet, fixed and mobile telecoms and postal networks in France.

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