

Press release

OPTICAL FIBRE

As part of a dispute settlement, Arcep specifies the pricing terms and conditions for Bouygues Telecom to access the shared fibre to the home networks operated by SFR FTTH

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Reminder of the guiding principles of FttH regulation introduced more than ten years ago

France's main national operators elected to deploy a new Fibre to the Home (FttH) infrastructure to meet the ever increasing demand for faster connections. Back in 2008, the legislator adopted the principle of sharing the last drop of FttH networks, to free up investment and enable efficient rollouts, and gave Arcep the task of setting the rules governing this new scheme.

As a result, commercial operators wanting to provide ultrafast broadband services can physically access the last drop of the networks deployed by infrastructure operators. The regulation that Arcep introduced in the country's more sparsely populated areas includes a stipulation that infrastructure operators must propose, on the one hand, co-financing solutions and, on the other, a passive line rental solution, and this under reasonable pricing terms and conditions.

Regarding the request from Bouygues Telecom

In late January of this year, Bouygues Telecom seized the Arcep Executive Board body responsible for settling disputes, legal proceedings and investigations (RDPI), requesting that it settle a dispute it was having with SFR FTTH. This dispute concerned **the pricing terms and conditions under which Bouygues Telecom accesses the optical fibre lines operated by SFR FTTH, outside of very high-density areas in those parts of the country where SFR subsidiary, SFMD, operates.**

These "SFMD" areas correspond to those locations where SFR FTTH acts as an infrastructure operator:

- Municipalities covered by SFR's pre-existing deployments in those parts of the country where the Government has issued a call for investment letters of intent – called "zones AMII" in French (those municipalities that Orange handed over to SFR under a redivision agreement concerning these "zones AMII" signed in 2018 are therefore not concerned by this dispute);
- Those areas covered by the commitments that SFR made as part of calls for expressions of local interest (AMEL in French).

The requests contained in Bouygues Telecom's referral to Arcep include:

- The cancellation of the price increase on SFR FTTH's different FttH access solutions, which came into effect on 1 February 2020;
- A decrease in the monthly line rental price set by SFR FTTH at €16.40 excl. VAT/month/line, to a range of between €12.20 excl. VAT/month/line and €13.20 excl. VAT/month/line starting on 3 January 2020.

To reach a decision on the requests from Bouygues Telecom, Arcep's "RDPI" body relied in particular on the investment ladder principle arising from the regulatory framework, which implies that the reasonable nature of rental prices will be assessed with respect to gap between them and the price of co-financing.

Arcep also addressed the request concerning the increase in co-financing rates to be able to then assess whether the line rental pricing could be considered reasonable.

1/ Regarding the increase in co-financing rates

Arcep concluded that the elements supplied by SFR FTTH did not make it possible to justify an increase in its co-financing rates. In particular, it emerged from the investigation that the elements put forth by SFR FTTH made it impossible to assess the reality of the alleged additional costs, or the extent to which the market parameters underlying the co-financing rates actually departed from SFR FTTH's initial hypotheses.

As a result, in light of the regulations governing changes in pricing and commercial operators' need to benefit from access rules that guarantee them lasting access to FttH networks, Arcep concluded that the price increase introduced by SFR FTTH was neither justified nor reasonable.

The Authority thus required that SFR FTTH submit to Bouygues Telecom, within a month of having been notified of the decision, an amendment to their agreement on FttH line access in SFMD areas, stipulating the restoration of the co-financing rates that were in effect prior to 1 February 2020 – with SFR FTTH nevertheless retaining the ability to adjust this pricing upon that date, within the limits of the price index set for the current year.

2/ Regarding the monthly line rental fee

In accordance with the investment ladder principle, an infrastructure operator must, first, offer several access solutions (co-financing and rental), corresponding to different levels of commitment and investment for a commercial operator and, second, to implement clearly differentiated pricing for these two access solutions, to protect co-financing incentives while also facilitating commercial operators' access to FttH networks. In keeping with this principle, the reasonable nature of the passive line rental fee must be assessed based on the difference in the price of co-financing and rental solutions.

In light of the gap with the co-financing rates charged by SFR FTTH, calculated based on the 2015 pricing model, Arcep concluded that the passive line rental price of €16.40 excl. VAT/month/line was unreasonable, and that the high end of the price range requested by Bouygues Telecom, namely €13.20 excl. VAT/month/line, was reasonable.

As a result, Arcep required that SFR FTTH submit to Bouygues Telecom, within a month of having been notified of the decision, an amendment to their agreement on FttH line access in SFMD areas, stipulating that the price of passive line rental will not exceed €13.20 excl. VAT/month/line starting from 3 January 2020, with SFR FTTH nevertheless retaining the ability to adjust this pricing, within the limits of the price index set for the current year.

The full decision will be published in the coming weeks, making allowances for confidential information protected by law.

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.