

Press release

OPTICAL FIBRE

Set-up fees for fibre to the home (FttH) last-mile connection in very high-density areas: the Paris Court of Appeal confirms Arcep's Decision in its entirety

Paris, 13 March 2025

On 4 March 2025, the Paris Court of Appeal confirmed Arcep's dispute-settlement Decision regarding the rules for refunding contributions to FttH last-mile connection set-up fees in very high-density areas

Through a Decision dated 29 March 2022, the Arcep Body responsible for settling disputes, legal proceedings and investigations (RDPI) had upheld a request from Bouygues Telecom that the reimbursement of contributions to last-mile connection set-up fees be processed when the "outgoing" commercial operator cancels the FttH line, rather than when the "incoming" commercial operator takes over the FttH line. The RDPI Body had also stipulated that this change in the operative event should be accompanied by a change in the formula for calculating the amount of the associated reimbursement. Having concluded that it was not able to assess the justified and proportionated nature of the formula requested by Bouygues Telecom, the RDPI Body referred the matter back to the parties for negotiation.

Orange appealed this Decision to the Paris Court of Appeal, which has upheld the Arcep Decision and dismissed every argument from Orange.

The Court concluded that, since the contractual mechanism for reimbursing contributions to last-mile connection set-up fees, *"does not satisfy the principles of relevance and efficiency, and does not meet the need for predictability, Arcep was justified in deciding that the operative event of the reimbursement should be the cancellation of the line. It nevertheless follows from the foregoing¹ that it would not be fair for Orange to assume the entirety of the financial burden resulting from the duplication phenomenon. Besides, if such were the case, the different [commercial operators] would have no incentive to assume, each in its quality of [incoming commercial operator] their own responsibility in implementing the contractual mechanism. The applicable formula must take this into account"*.

The Court also concluded that, *"given the limited amount of information at its disposal, it appears to the Court that Arcep did not disregard its competences by requesting that the parties engage in good faith negotiations [on the formula for calculating the amount of the reimbursement], as such a decision falls legitimately within its regulatory purview"*.

Lastly, the Court of Appeal concluded that Arcep did not disregard the limits of retroactivity by granting the request from Bouygues Telecom to change the operative event, starting from 23 July 2021.

The Authority welcomes the judgement of the Paris Court of Appeal.

¹ See §174 and ff.

Reminder of the arrangements governing the construction and use of the last-mile connection

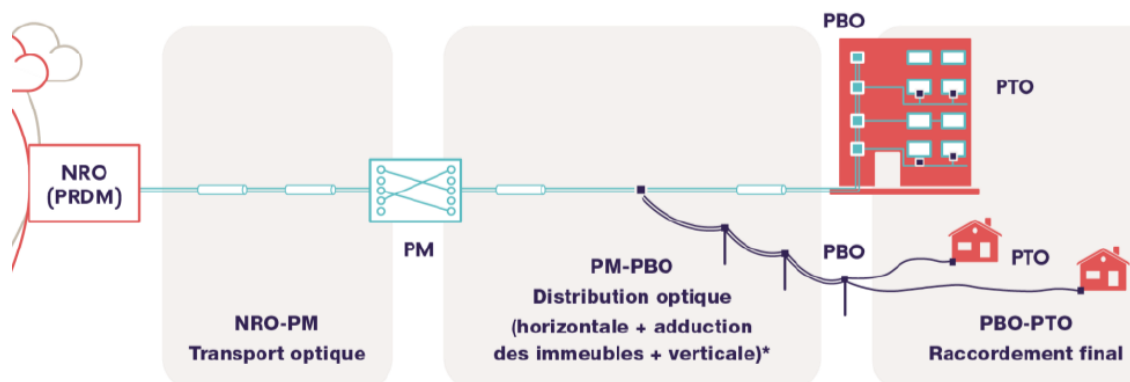
The construction of optical fibre the home (FttH) local loop infrastructure is based on the principle of sharing the “last mile” section of the network and, in practice, is structured into several steps.

The first step in rendering a premises connectable is the infrastructure operator’s deployment of shared access point (**SAP**) infrastructures, up to the optical connection point (**OCP**).

Then, when a user subscribes to an FttH plan in that premises for the first time, the optical network terminal (**ONT**) is installed inside the user’s premises, and connected to the associated OCP, which is typically located on the risers in multi-tenant buildings or outdoors, in the building’s vicinity in the case of a single-tenant building: this is the last-mile connection.

Next, when the user changes its FttH subscription (switches operators, moves...), the **new, aka “incoming” commercial operator** takes over the last-mile connection that has been relinquished by the old or “outgoing” commercial operator.

L’ARCHITECTURE D’UN RÉSEAU EN FIBRE OPTIQUE



PRDM : point de raccordement distant mutualisé (uniquement en zones moins denses) **NRO** : nœud de raccordement optique **PM** : point de mutualisation
PBO : point de branchement optique **PTO** : point de terminaison optique

* Dans le cas des immeubles de zones très denses d’au moins 12 logements ou reliés à un réseau public d’assainissement visitable par une galerie elle-même visitable, le point de mutualisation peut être situé à l’intérieur de l’immeuble.

Orange contractual arrangements for financing the last-mile connection in very high-density areas

In its contract for providing access to FttH lines in very high-density areas, Orange includes a mechanism for financing last-mile connections based on a system of contribution-reimbursement. The commercial operator that requests access to a last-mile connection must pay Orange a contribution to the set-up fees for the line in question. According to the Orange contract as written at the time of the request from Bouygues Telecom to settle a dispute, when it loses its customer and cancels the line, the “outgoing” commercial operator can then obtain a reimbursement, which is processed when the line is taken over by a new, “incoming” commercial operator.

Associated documents:

- Arcep Decision No. 2022-0682-RDPI of 29 March 2022 ruling on a request to settle a dispute between the firms Bouygues Telecom and Orange (in French)

- Paris Court of Appeal judgement – Arcep dispute settlement regarding the rules for refunding contributions to FttH last-mile connection set-up fees in very high-density areas (in French)

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 electronic communications, postal and press distribution networks in France