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Press release

## FIXED BROADBAND AND SUPERFAST BROADBAND MARKET REGULATION

### Regulatory changes for the 2025 to 2025 period: Arcep publishes a draft plan to deregulate the market for wholesale central access solutions (“3b”) and submits it to the Competition Authority for an opinion

Paris, 30 May 2024

After having published its “Scorecard and Outlook” document for public consultation in July 2022<sup>1</sup>, followed by a public consultation on the first version of its draft analysis decisions on fixed broadband and superfast broadband markets<sup>2</sup> in February 2023, Arcep had deemed it necessary to extend its work on wholesale generalist activated solutions, aka Market “3b”, to be able to measure and factor in the ongoing changes taking place in this market over the previous year. At the end of the 7<sup>th</sup> period of market analysis, the European Commission had approved the Authority’s draft market analysis decisions, maintaining regulation of the three markets<sup>3</sup>. Regarding market “3b”, in light of the Competition Authority’s opinion and the European Commission’s observations on the notified draft analysis decisions on markets 1, 2 and civil engineering, the Authority extended the existing decision by a year.

**Based on its analysis of the competition dynamic in market “3b”, Arcep now plans to deregulate this market, after a transitional period during which existing remedies will remain in place up to 31 March 2026.** Today, the Authority is submitting the corresponding draft decision to public consultation, while also sending it to the Competition Authority for an opinion.

**The way the competition dynamic is evolving in market “3b” no longer seems to justify maintaining *ex ante* regulation.**

The competition dynamic in market “3b” is being shaped by three main trends:

- **A rapid decrease in the overall volume of generalist activated solutions** (which represented less than 4% of broadband and superfast broadband access lines at the end of 2023), due to the progress made in fibre deployments. A portion of operators that had previously depended on Orange copper generalist activated solutions have since opted to connect all of their subscribers to their own fibre network, or use wholesale passive access to FttH networks, rather than replace those solutions with activated FttH access offers. This decrease in volume is expected to continue and result in only a small number of lines using generalist activated solutions five years from now.
- **The decrease in the number of copper generalist activated lines is going hand in hand with the development of generalist activated FttH lines.** The decreasing number of generalist activated lines is due primarily to the ongoing decrease in copper generalist activated lines. Their numbers dropped by half between 2020 and 2023, going from around 2 million lines at the end of 2020 to close to one million at the end of 2023. On the flipside, the number of fibre generalist activated lines increased by around 20% during that same time. Against this backdrop of the transition to fibre and the copper network switchoff, the Authority concluded that this trend is likely to continue over the next five years.
- **Stronger competition.** The significant progress in the percentage of premises that have access to at least three FttH generalist activated solutions, thanks to the decrease in Orange’s share of the

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<sup>1</sup> [Arcep press release of 13 July 2022](#)

<sup>2</sup> [Arcep press release of 20 February 2023](#)

<sup>3</sup> Wholesale local access provided at a fixed location (market 1), wholesale provision of high quality activated access (market 2), as defined in the European Commission Recommendation (2020/2245/UE) on “relevant markets” of 18 December 2020, as well as the market for the wholesale provision of access to physical civil engineering infrastructures.

wholesale market, all technologies combined, suggests that market “3b” is likely to move towards a state of effective competition over the next five years.

In addition, *ex ante* regulation of markets upstream from<sup>4</sup> market “3b”, combined with the provisions of the “symmetric” regulation governing FttH<sup>5</sup> markets, will provide a framework that protects alternative operators’ investments in passive access to FttH networks and, by the same token, enable them to provide FttH generalist activated solutions well into the future.

**In light of these developments, the Authority plans on no longer maintaining *ex ante* regulation in market “3b”, following a transitional period**

To provide the sector with predictability, the draft decision plans on having a transitional period up to 31 March 2026, during which Orange is required to comply with all of the obligations set forth in market analysis decision No. 2020-1447, namely the obligation to grant all reasonable requests for access under non-discriminatory and transparent conditions, and at cost-based prices in part of the national territory.

**Next stages before adoption in late 2024**

This public consultation will run until 31 July 2024.

After analysing the Competition Authority’s opinion and the contributions received to this consultation, the draft market analysis decisions, amended as needed based on this input, will be notified to the European Commission.

The review process will be brought to completion by the end of 2024, the target date for adopting the new Decisions.

**Associated documents**

- [The public consultation on a draft decision on deregulation of the market for central access solutions](#)

**Reminder:**

- [Table of all fixed market regulatory periods to date](#)

**Other markets are subject to *ex ante* regulation from 2024 – 2028**

Fixed market regulation defines so-called asymmetric obligations that apply to every operator that enjoys significant power in the market in question (aka SMP operator), to remedy any identified competition imbalances. In practice, in fixed markets the SMP operator is incumbent carrier, Orange. If the Authority plans on lifting regulation of market “3b” for wholesale central access, three other markets are the subject of market analysis decisions for 2024-2028, and create the ability to ensure fair and effective competition between operators during the copper network switchoff and the completion of fibre rollouts. They are the civil engineering market (required for fibre deployments), wholesale market 1, including the Orange copper unbundling offer, and wholesale market 2 for the provision of high quality activated access, specifically for businesses.

<sup>4</sup> Market for the wholesale provision of local access in a fixed position, and the market for the wholesale provision of access to physical civil engineering infrastructures

<sup>5</sup> Arcep Decisions Nos. 2009-1106, 2010-1312, 2013-1475, 2015-0776, and 2020-1432 and the recommendations made for their application, notably the one of 7 December 2015 on implementing the obligation of completeness for FttH deployments outside of very high-density areas

## 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 communications and postal networks in France.