
Press release

MARKET ANALYSIS

The Conseil d'Etat rejects all of the appeals filed against the Arcep Decision amending the economic conditions governing access to Orange local loop civil engineering

Paris, 25 November 2024

Through its Decision of 14 November 2024, the Conseil d'Etat (French Council of State) rejected the appeals filed by the firms Colt Technology services, Eurofiber France, Ielo-Liazo-Services, Lumen Technologies France and Celeste against the Arcep Decision on the economic conditions governing access to carrier Orange's local loop civil engineering infrastructures¹.

Arcep adopted this Decision on 14 December 2023 as part of the 7th period of fixed broadband and superfast broadband market analysis, covering the years 2024 to 2028. In a context where fibre access lines account for two thirds of all fibre and copper subscriptions, and as it had previously announced, Arcep adjusted the method used to allocate costs between copper and fibre when calculating prices², while maintaining the pricing principles for accessing civil engineering that were adopted in 2010³.

Arcep welcomes the Conseil d'Etat ruling that confirms the legality of the contested Decision

Cost distribution method. In particular, the Conseil d'Etat concluded that the contested Decision "*allows for access prices to more accurately reflect the cost distribution between the civil engineering infrastructures they are intended to cover,*" and cannot be considered as making it impossible for Orange to comply with its obligation to charge cost-based prices.

Proportionality in achieving the pursued objectives. The Conseil d'Etat also concluded that "*it has not been proven that the price increase for 2024 attributable to the contested Decision – which is around 19% after applying the provisions stipulating that only up to three quarters of the price increase resulting from the reference year will be factored in – would not be proportionate for achieving the objectives set forth in Article L. 32-1 of the French Postal and Electronic Communications Code*".

Public consultations and predictability. The Conseil d'Etat further concluded that, given that Arcep held multiple public consultations during which stakeholders were invited to provide feedback on the change that would occur as a result of the contested Decision, Arcep did not ignore either the principle of legitimate expectations or the obligation to ensure that changes to the regulatory framework are made in a predictable fashion.

Legal certainty and equality. Lastly, the Conseil d'Etat concluded that "*in light of the different imperatives that it is required to reconcile, Arcep [...] adopted transitional measures that ignored neither the principle of legal certainty nor, in any event, the principle of equality.*" On this point, the Conseil d'Etat gave particular consideration to the circumstance whereby prices for 2024 would only factor in up to three quarters of the price increase resulting from the reference year, with the remainder of the increase carried over to prices for 2025.

Associated documents

- [Conseil d'Etat decision](#)
- [Decision No. 2023-2820](#)

¹ [Decision No. 2023-2820 of 14 December 2023 amending Decision No. 2017-1488 of 14 December 2017.](#)

² Stipulating that this allocation would be prorated to the forecast number of active fibre access lines as of 30 June of year n rather than being prorated to the number of access lines calculated as of 31 December of year $n-2$. A mechanism for smoothing the pricing consequences of this change for the years 2024 and 2025.

³ [Decision No. 2010-1211 of 9 November 2010](#) which was succeeded by [Decision No. 2017-1488 of 14 December 2017.](#)

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, postal networks and press distribution in France.